

**MONTANA DEPARTMENT OF AGRICULTURE  
AGRICULTURAL SCIENCES DIVISION  
HELENA, MONTANA**

**TITLE 80, CHAPTER 7  
PART 9**

**NOXIOUS WEED SEED FREE FORAGE ACT**

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NOXIOUS WEED SEED FREE FORAGE ACT**

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**CHAPTER 7  
DISEASE, PEST, AND WEED CONTROL**

**Part 1**

**Noxious Weed Seed Free Forage Act**

**80-7-901. Short title.** This part may be cited as the "Noxious Weed Seed Free Forage Act".

**80-7-902. Findings -- purpose.** (1) The legislature finds that:

(a) natural resources of the state need to be protected from noxious weeds and their seeds;

(b) the movement of agricultural crops or commodities as livestock forage, bedding, mulch, and related materials, including pellets, cubes, and other processed livestock feeds with noxious weed seeds, causes new and expanding noxious weed infestations on private and government-managed lands, which adversely impact agricultural, forest, recreational, and other lands;

(c) it is necessary to develop and implement a state forage and product noxious weed seed free program in cooperation with federal, state, and local government, the university system, and private enterprise;

(d) an educational program is needed to inform all citizens of the importance of the incentive to market and handle forage that is free of noxious weed seeds;

(e) a cooperative forage and product distribution system with federal, state, local, and private land manager participation is needed to prevent increased noxious weed infestations; and

(f) compliance standards involving the import or export of forage, in cooperation with county weed districts and the department, are needed.

(2) The purpose of this part is to promote incentives to benefit the people of this state and other states by producing and making available forage free of noxious weed seeds.

**80-7-903. Definitions.** As used in this part, the following definitions apply:

(1) "Advisory council" means the Montana noxious weed seed free forage advisory council. Except as provided in 80-7-904, the council is subject to the provisions of 2-15-122.

(2) "Certification" means the state-approved and documented process of determining within a standard range of variances or tolerances that forage production fields are free of the seeds of noxious weeds, as defined in 7-22-2101 (8)(a)(i), which process allows a person to sell the forage as noxious weed seed free and to attach approved certification identification.

(3) "Forage" means any crop, including alfalfa, grass, small grains, straw, and similar crops and commodities, that is grown, harvested, and sold for livestock forage,

bedding material, or mulch or related uses and the byproducts of those crops or commodities that have been processed into pellets, cubes, or related products.

(4) "Noxious weed seed free" means that forage has an absence of noxious weed seeds within a standardized range of variances or tolerances established by department rule.

(5) "Person" means a natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(6) "Producer" means a person engaged in growing forage, a tenant personally engaged in growing forage, or both the owner and the tenant jointly and includes a person, cooperative organization, trust, sharecropper, and any other business entity, devices, and arrangements that grow forage that is proposed to be certified as noxious weed seed free.

(7) "Sale" or "sell" means the selling, wholesaling, distributing, offering, exposing for sale, advertising, exchanging, brokering, bartering, or giving away by any person within this state of any forage as noxious weed seed free or certified or approved as noxious weed seed free.

**80-7-904. Composition of advisory council.** (1) The director of the department shall appoint an advisory council to provide advice to the department concerning the administration of this part.

(2) The advisory council must be composed of 10 voting members and 2 ex officio, nonvoting members, as follows:

(a) the director of the department or a designee, who shall serve as presiding officer;

(b) four members who are producers of forage under a certified forage noxious weed seed free program and who represent different geographical areas of the state;

(c) one member involved in the processing of forage into pellets, cubes, or related products;

(d) one member representing the livestock or agricultural industry;

(e) two members representing county weed districts involved in a forage certification program, who must be members of the Montana weed control association and who represent different geographical areas of the state;

(f) one member representing an outfitter's or guide's organization;

(g) the director of the Montana state university-Bozeman extension service or a designated representative, who is an ex officio, nonvoting member; and

(h) the director of the Montana state university-Bozeman agricultural experiment station or a designated representative, who is an ex officio, nonvoting member.

(3) The members shall serve staggered 3-year terms. A member may not serve for more than two consecutive terms.

**80-7-905. Powers and duties of department.** The department may:

(1) provide for administration and enforcement of this part;

(2) enter into contracts and agreements;

(3) authorize the purchase of all office equipment or supplies and incur all other reasonable and necessary expenses and obligations that are required for administering the provisions of this part;

(4) become a member of and purchase membership in trade organizations and subscribe to and purchase trade bulletins, journals, and other trade publications;

(5) plan and conduct publicity and promotional campaigns to increase the incentives to use Montana forage that is free of noxious weed seed and to make publicity and promotional contracts and other agreements as necessary;

(6) establish certification standards and processes for forage and byproducts of forage and determine if processed forage byproducts are noxious weed seed free, based upon field of origin or verification that the production process has destroyed the viability of noxious weed seeds;

(7) establish fee assessments and accept other funds to make the certification program financially self-supporting;

(8) establish a standard range of variances or tolerances for noxious weed seeds in different forage subject to certification as noxious weed seed free, based upon scientific and operational considerations;

(9) administer rules and orders to be adopted for the exercise of its power and the performance of its duties, in accordance with Title 2, chapter 4;

(10) cooperate with any local, state, or national organization or agency, whether voluntary or created by the law of any state or the United States government, and enter into contracts or agreements with organizations or agencies for carrying on a joint campaign of research, education, product protection, publicity, reciprocity, and enforcement of this part;

(11) hire employees and designate authorized agents to conduct certification inspections, investigations, and sampling and to collect evidence of possible violations of this part; and

(12) accept grants, donations, and gifts from any source and expend those funds for any purpose consistent with this part, which may be specified as a condition of any grant, donation, or gift.

**80-7-906. Certification.** (1) A person shall make an annual application to the department for certifying forage. The person shall comply with all certification standards and processes and pay any required fees prior to receiving certification approval and identification markers for the forage. If a production tonnage fee is established, the department may establish the method and time of payment.

(2) A person who wishes to deliver forage as noxious weed seed free into this state from out of state shall notify the department and pay any application fee or other appropriate fee, including an inspection fee, if required, prior to delivering the forage. The forage must be certified as noxious weed seed free from the state or province of origin if the department approves the certification through a reciprocal agreement or other process approved by the department. The department may waive some certification documentation or fees based upon the provisions in a reciprocal agreement.

**80-7-907. Fees.** (1) The department, with the advice of the advisory council, may establish fees to support the cost of administering the noxious weed seed free forage program. Fees may be established for:

- (a) processing applications;
  - (b) per acre inspection of forage;
  - (c) inspection of facilities;
  - (d) minimum administration;
  - (e) inspection related to processing or manufacturing forage into pellets, cubes, and related products;
  - (f) certification identification markers;
  - (g) mileage and per diem; and
  - (h) import inspection.
- (2) Fees, structures, and procedures must be recommended to the department by the advisory council.

**80-7-908. Deposit and disbursement of funds -- records -- investment.** (1) There is a state noxious weed forage account in the state special revenue account. All funds received by the department from fees or penalties collected or received under 80-7-905 through 80-7-907, 80-7-921, and 80-7-922(1) and all other related funds received must be deposited in the state noxious weed forage account.

(2) The department may by contract allow for the collection of fees authorized under 80-7-907. A portion of the fees collected may be retained by the collector, and the portion of the fees assigned to the department must be submitted to the department. The contract must require:

- (a) a record of the name of the person collecting fees;
- (b) a record of fees collected;
- (c) a record of the amounts submitted to the department;
- (d) a record of the amount retained by the collector; and
- (e) that all records be kept in accordance with generally accepted accounting principles.

(3) Funds received under 80-7-905 through 80-7-907, 80-7-921, and 80-7-922(1) that are not immediately required for the purposes of this part must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2. The income from the investments must be deposited in the state special revenue fund and credited to the department.

(4) Funds received pursuant to this part are appropriated to the department for the administration of the noxious weed seed free forage program and for the purposes of this part.

**80-7-909. Rules.** The department may, with the advice of the advisory council appointed under 80-7-904, adopt rules necessary to carry out its responsibilities under this part in accordance with Title 2, chapter 4. The rules may include but are not limited to:

- (1) contracts and agreements;
- (2) certification standards, processing, and sampling and equipment standards and operation;
- (3) inspections and investigation procedures and standards;
- (4) operations;
- (5) records;
- (6) application, inspection, production, import, certification identification, mileage, and per diem fees and their collection;
- (7) reciprocal agreements with other states or Canadian provinces; and
- (8) penalties, stop sales, condemnation, and other orders.

**80-7-910. Investigation and enforcement authority.** (1) In enforcing the provisions of this part, the department or its authorized agents, upon reasonable cause, may enter any private or public premises, property, or vehicle with a warrant or with the consent of the inhabitant or owner to inspect, sample, or investigate at reasonable times forage subject to certification or sale as certified forage or as free of noxious weed seeds.

(2) All enforcement actions and orders must be made under the contested case provisions of Title 2, chapter 4, part 6.

**80-7-911. Stop sale, use, or removal order.** When the department has reasonable cause to believe that a person is selling, distributing, storing, transporting, or using forage in violation of any of the provisions of this part, a written stop sale, use, or removal order may be issued to that person. If the person is not available for service of the order, the department may attach the order to the forage and notify the person. The forage may not be sold, used, or removed until compliance with the provisions of this part is achieved. The department may release the order once compliance is achieved. The department may require that the forage be sold or used only as an uncertified forage or delivered back to the seller, or the department may order condemnation of any forage that does not meet the requirement of this part or other alternatives established by rule. The department, upon finding that the person responsible for the embargoed forage has failed to comply with the order in any respect, may petition the district court of the first judicial district for enforcement of the order.

**80-7-912. Prohibited acts.** (1) It is unlawful for a person to certify or sell as certified or as noxious weed seed free any forage as free of noxious weed seed within this state, unless the forage is identified under a department-approved process as "Montana certified" and the forage meets all the requirements of this part. A person may not designate forage as certified or use any other title, designation, words, letters, abbreviations, sign, card, or identifier tending to indicate that the forage is certified unless the forage meets all the requirements of this part.

(2) Forage certified under a reciprocal agreement between the department and another state or Canadian province and identified according to approved certification standards to be shipped into the state or shipped to another state or province must

meet the requirements of this part.

(3) All forage products used by public utilities and local, county, state, or federal agencies, including but not limited to mulches, bedding materials, and erosion control barriers, must be certified as noxious weed seed free. All seeds used for reclamation purposes by public utilities and local, county, state, or federal agencies must be free of noxious weed seeds and be certified seed according to Title 80, chapter 5.

**80-7-913 through 80-7-920 reserved.**

**80-7-921. Penalty for nonpayment of fees.** In addition to the penalties set out in 80-7-922, a person who fails to pay or improperly pays any fee assessment or fee assessed under the provisions of this part is subject to a penalty of \$100 or double the assessment, whichever is greater, including the original fee. The penalty must be paid to the department and deposited as provided in 80-7-908. A certification issued to a person who fails to pay or improperly pays any fee assessment or fee assessed under the provisions of this part is invalid until the original fee and penalty are paid to the department.

**80-7-922. Penalties.** A person who violates or aids in a violation of any of the provisions of this part or any rules or orders of the department adopted under this part is subject to the following penalties:

(1) a civil penalty of not more than \$1,000 for each offense. Assessment of a civil penalty by the department may be made in conjunction with any other warning, order, or administrative action authorized by this part that is issued by the department.

(2) a misdemeanor penalty of not less than \$100 or more than \$1,500 or up to 6 months' imprisonment, or both, if the person is convicted in district court.

**80-7-923. Injunction authorized.** The department may commence a civil action in the district court of the first judicial district seeking appropriate relief, including a permanent or temporary injunction, for a violation of this part.

**80-7-924. Embargo.** Upon receiving a report from a district weed board, as provided in 7-22-2126, that forage is subject to embargo and upon verification of a violation of this part, the department shall enforce the embargo throughout the state and issue appropriate stop sale orders as provided in 80-7-911.