

# Montana Noxious Weed List

Effective: June 21, 2019

**PRIORITY 1A** These weeds are not present or have a very limited presence in Montana. Management criteria will require eradication if detected, education, and prevention:

- (a) Yellow starthistle (*Centaurea solstitialis*)
- (b) Dyer's woad (*Isatis tinctoria*)
- (c) Common reed (*Phragmites australis* ssp. *australis*)
- (d) Medusahead (*Taeniatherum caput-medusae*)

**PRIORITY 1B** These weeds have limited presence in Montana.

Management criteria will require eradication or containment and education:

- (a) Knotweed complex (*Polygonum cuspidatum*, *P. sachalinense*, *P. × bohemicum*, *Fallopia japonica*, *F. sachalinensis*, *F. × bohémica*, *Reynoutria japonica*, *R. sachalinensis*, and *R. × bohémica*)
- (b) Purple loosestrife (*Lythrum salicaria*)
- (c) Rush skeletonweed (*Chondrilla juncea*)
- (d) Scotch broom (*Cytisus scoparius*)
- (e) Blueweed (*Echium vulgare*)

**PRIORITY 2A** These weeds are common in isolated areas of Montana. Management criteria will require eradication or containment where less abundant. Management shall be prioritized by local weed districts:

- (a) Tansy ragwort (*Senecio jacobaea*, *Jacobaea vulgaris*)
- (b) Meadow hawkweed complex (*Hieracium caespitosum*, *H. praealtum*, *H. floridundum*, and *Pilosella caespitosa*)
- (c) Orange hawkweed (*Hieracium aurantiacum*, *Pilosella aurantiaca*)
- (d) Tall buttercup (*Ranunculus acris*)
- (e) Perennial pepperweed (*Lepidium latifolium*)
- (f) Yellowflag iris (*Iris pseudacorus*)
- (g) Eurasian watermilfoil (*Myriophyllum spicatum*, *Myriophyllum spicatum* x *Myriophyllum sibiricum*)
- (h) Flowering rush (*Butomus umbellatus*)
- (i) Common buckthorn (*Rhamnus cathartica* L.)
- (j) Ventenata (*Ventenata dubia*)

**PRIORITY 2B** These weeds are abundant in Montana and widespread in many counties. Management criteria will require eradication or containment where less abundant. Management shall be prioritized by local weed districts:

- (a) Canada thistle (*Cirsium arvense*)
- (b) Field bindweed (*Convolvulus arvensis*)
- (c) Leafy spurge (*Euphorbia esula*)
- (d) Whitetop (*Cardaria draba*, *Lepidium draba*)
- (e) Russian knapweed (*Acroptilon repens*, *Rhaponticum repens*)
- (f) Spotted knapweed (*Centaurea stoebe*, *C. maculosa*)
- (g) Diffuse knapweed (*Centaurea diffusa*)
- (h) Dalmatian toadflax (*Linaria dalmatica*)
- (i) St. Johnswort (*Hypericum perforatum*)
- (j) Sulfur cinquefoil (*Potentilla recta*)
- (k) Common tansy (*Tanacetum vulgare*)
- (l) Oxeye daisy (*Leucanthemum vulgare*)
- (m) Houndstongue (*Cynoglossum officinale*)
- (n) Yellow toadflax (*Linaria vulgaris*)
- (o) Saltcedar (*Tamarix* spp.)
- (p) Curlyleaf pondweed (*Potamogeton crispus*)
- (q) Hoary alyssum (*Berteroa incana*)

**PRIORITY 3** Regulated Plants: (NOT MONTANA LISTED NOXIOUS WEEDS)

These regulated plants have the potential to have significant negative impacts. The plant may not be intentionally spread or sold other than as a contaminant in agricultural products. The state recommends research, education and prevention to minimize the spread of the regulated plant.

- (a) Cheatgrass (*Bromus tectorum*)
- (b) Hydrilla (*Hydrilla verticillata*)
- (c) Russian olive (*Elaeagnus angustifolia*)
- (d) Brazilian waterweed (*Egeria densa*)
- (e) Parrot feather watermilfoil (*Myriophyllum aquaticum* or *M. brasiliense*)

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## Part 21

### County Weed Control

**7-22-2101. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

- (1) "Board" means a district weed board created under 7-22-2103.
- (2) "Commissioners" means the board of county commissioners.
- (3) "Coordinator" means the person employed by the county to conduct the district noxious weed management program and supervise other district employees.
- (4) "Department" means the department of agriculture provided for in 2-15-3001.
- (5) "District" means a weed management district organized under 7-22-2102.
- (6) "Integrated weed management program" means a program designed for the long-term management and control of weeds using a combination of techniques, including hand-pulling, cultivation, use of herbicide, use of biological control, mechanical treatment, prescribed grazing, prescribed burning, education, prevention, and revegetation.
- (7) "Native plant" means a plant indigenous to the state of Montana.
- (8) "Native plant community" means an assemblage of native plants occurring in a natural habitat.
- (9) (a) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:
  - (i) as a statewide noxious weed by rule of the department; or
  - (ii) as a district noxious weed by a board, following public notice of intent and a public hearing.
- (b) A weed designated by rule of the department as a statewide noxious weed must be considered noxious in every district of the state.
- (c) Marijuana, as defined in 16-12-102, may not be considered a noxious weed.
- (10) "Person" means an individual, partnership, corporation, association, or state or local government agency or subdivision owning, occupying, or controlling any land, easement, or right-of-way, including any county, state, or federally owned and controlled highway, drainage or irrigation ditch, spoil bank, barrow pit, or right-of-way for a canal or lateral.
- (11) "Weed management" or "control" means the use of an integrated weed management program for the containment, suppression, and, where possible, eradication of noxious weeds.

**7-22-2102. Weed management districts established.** A weed management district shall be formed in every county of this state and shall include all the land within the boundaries of the county, except that a weed management district may include more than one county through agreement of the commissioners of the affected counties.

**7-22-2103. District weed board — appointment — commissioner powers.** (1) The commissioners shall appoint a district weed board subject to the provisions of 7-1-201 through 7-1-203.

(2) Upon a recommendation from the weed board, the commissioners may appoint a weed coordinator.

(3) The commissioners shall approve, approve with revisions, or reject a weed management plan submitted pursuant to 7-22-2121.

**7-22-2104. Repealed.** Sec. 8, Ch. 681, L. 1991.

**7-22-2105. Repealed.** Sec. 25, Ch. 543, L. 1995.

**7-22-2106. Renumbered 7-22-2115.** Code Commissioner, 1985.

**7-22-2107. Renumbered 7-22-2116.** Code Commissioner, 1985.

**7-22-2108. Renumbered 7-22-2117.** Code Commissioner, 1985.

**7-22-2109. Powers and duties of board.** (1) In addition to any powers or duties established in the resolution creating a district weed board, the board may:

(a) supervise a coordinator and other employees and provide for their compensation;  
(b) purchase herbicide, materials, and equipment and pay other operational costs necessary for implementing an effective noxious weed management program. The costs must be paid from the noxious weed fund.

(c) determine what herbicide, materials, or equipment may be made available to persons controlling weeds on their own land. The cost for the herbicide, materials, or equipment must be paid by the person and collected as provided in this part.

(d) enter into agreements with the department for the control and eradication of any new exotic plant species not previously established in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial use if the plant species spreads or threatens to spread into the state;

(e) enter into cost-share agreements for noxious weed management;

(f) enter into agreements with commercial applicators, as defined in 80-8-102, for the control of noxious weeds;

(g) request legal advice and services from the county attorney; and

(h) perform other activities relating to weed management.

(2) The board shall:

(a) administer the district's noxious weed management program;

(b) establish management criteria for noxious weeds on all land within the district; and

(c) make all reasonable efforts to develop and implement a noxious weed management program covering all land within the district owned or administered by a federal agency.

**7-22-2110. Repealed.** Sec. 3, Ch. 407, L. 2009.

**7-22-2111. Liability restrictions.** A district is liable for damages caused by its use of herbicides only for an act or omission that constitutes gross negligence. The provisions of 2-9-305 apply to board members, coordinators, and employees of a district.

**7-22-2112. Information on herbicide use.** The district must provide information on protective clothing, health hazards, and proper application techniques to mixers, loaders, and applicators of herbicides and make the information available for review by the public at the district office.

**7-22-2113. Minutes.** The board administering and operating the district shall submit the minutes of its proceedings for electronic storage as provided in 7-1-204.

**7-22-2114 reserved.**

**7-22-2115. Noxious weeds and seeds declared nuisance.** Noxious weeds and the seed of any noxious weed are hereby declared a common nuisance.

**7-22-2116. Unlawful to permit noxious weeds to propagate — notice required in sale.** (1) It is unlawful for any person to permit any noxious weed to propagate or go to seed on the person's land, except that any person who adheres to the noxious weed management program of the person's weed management district or who has entered into and is in compliance with a noxious weed management agreement is considered to be in compliance with this section.

(2) When property is offered for sale, the person who owns the property shall notify the owner's agent and the purchaser of:

(a) the existence of noxious weed infestations on the property offered for sale; and

(b) the existence of a noxious weed management program or a noxious weed management agreement as provided in subsection (1).

**7-22-2117. Violations.** (1) Any person who interferes with the board or its authorized agent in carrying out the provisions of this part or who refuses to obey an order or notice of the board is liable for a civil penalty in the amount of the actual cost to the board or the estimated cost of removing the noxious weeds from the impacted property in addition to any penalty imposed under 7-22-2134.

(2) All fines, bonds, and penalties collected under the provisions of this part must be paid to the county treasurer of each county and placed by the county treasurer into a fund to be known as the noxious weed fund.

**7-22-2118 and 7-22-2119 reserved.**

**7-22-2120. Funding — reporting requirements — emergency exemption.** (1) (a) Before a district applies to the state for state or federal funding, the district shall provide the department with a weed management plan, as provided in 7-22-2121, and with a copy of the resolution creating the board.

(b) After the initial submission of the weed management plan, the district's weed management plan must be updated and submitted to the department every 2 years.

(c) The department may adopt rules and procedures necessary to implement this section. The rules may not impair the ability of the district to meet its responsibilities.

(2) The department may exempt a district from the requirements of subsection (1) if a noxious weed emergency is declared by the governor as provided in 80-7-815.

**7-22-2121. Weed management program.** (1) The noxious weed management program must be based on a plan approved by the board and the commissioners.

(2) The noxious weed management plan must:

(a) specify the goals and priorities of the program;

(b) review the distribution and abundance of each noxious weed species known to occur within the district and specify the locations of new infestations and areas particularly susceptible to new infestations;

(c) specify herbicide management goals and procedures, including but not limited to water quality protection, public and worker safety, equipment selection and maintenance, and herbicide selection, application, mixing, loading, storage, and disposal; and

(d) estimate the personnel, operations, and equipment costs of the proposed program;

(e) develop a compliance plan or strategy; and

(f) incorporate cooperative agreements established pursuant to 7-22-2151.

(3) The board shall provide for the management of noxious weeds on all land or rights-of-way owned or controlled by a county or municipality within the district. It shall take particular precautions while managing the noxious weeds to preserve beneficial vegetation and wildlife habitat. When possible, management must include cultural, herbicidal, and biological methods.

(4) The board may establish special management zones within the district. The management criteria in those zones may be more or less stringent than the general management criteria for the district.

**7-22-2122. Repealed.** Sec. 32, Ch. 607, L. 1985.

History: En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; R.C.M. 1947, 16-1713(part).

**7-22-2123. Repealed.** Sec. 10, Ch. 301, L. 2013.

History: (1)En. Sec. 9, Ch. 195, L. 1939; amd. Sec. 1, Ch. 90, L. 1941; amd. Sec. 2, Ch. 228, L. 1947; amd. Sec. 1, Ch. 51, L. 1961; amd. Sec. 1, Ch. 64, L. 1965; amd. Sec. 2, Ch. 185, L. 1969; amd. Sec. 3, Ch. 360, L. 1974; Sec. 16-1713, R.C.M. 1947; (2)En. Sec. 10, Ch. 195, L. 1939; amd. Sec. 2, Ch. 90, L. 1941; Sec. 16-1714, R.C.M. 1947; R.C.M. 1947, 16-1713(part), 16-1714; amd. Sec. 13, Ch. 607, L. 1985; amd. Sec. 1, Ch. 141, L. 1987; amd. Sec. 10, Ch. 407, L. 2001; amd. Sec. 1, Ch. 407, L. 2009; amd. Sec. 1, Ch. 320, L. 2011.

**7-22-2124. Repealed.** Sec. 10, Ch. 301, L. 2013.

History: En. Sec. 11, Ch. 195, L. 1939; amd. Sec. 3, Ch. 90, L. 1941; amd. Sec. 3, Ch. 228, L. 1947; R.C.M. 1947, 16-1715(part); amd. Sec. 14, Ch. 607, L. 1985; amd. Sec. 2, Ch. 141, L. 1987; amd. Sec. 11, Ch. 407, L. 2001; amd. Sec. 2, Ch. 407, L. 2009; amd. Sec. 2, Ch. 320, L. 2011.

**7-22-2125. Repealed.** Sec. 32, Ch. 607, L. 1985.

History: En. Sec. 12, Ch. 195, L. 1939; amd. Sec. 4, Ch. 228, L. 1947; R.C.M. 1947, 16-1716.

**7-22-2126. Embargo.** (1) The board may establish embargo programs to reduce the spread of noxious weeds within the district or the introduction of noxious weeds into the district.

(2) The board shall establish a special embargo program for the movement of forage, as defined in 80-7-903, into or out of the county. The board may implement an embargo upon confirmation of a violation, based upon complaint investigations, requests for investigation by the department, or through county investigations, if the forage has not been certified by the state and is being sold as noxious weed seed free, as defined in 80-7-903.

(3) A person in possession of the forage that is not in compliance with Title 80, chapter 7, part 9, may not transport or dispose of the forage as noxious weed seed free that is subject to embargo until written permission is obtained from the board. If the forage that is subject to embargo meets the requirements of the state certification program and the department verifies compliance with the program, the board shall release the embargo. The forage may also be released if the board:

- (a) verifies the guaranteed delivery back to the original producer, as defined in 80-7-903;
- (b) approves burning or disposal of the forage; or
- (c) approves other alternatives.

(4) The board shall report all embargoes issued and the final resolution of an embargo imposed pursuant to a violation of Title 80, chapter 7, part 9, to the department within 48 hours.

(5) The person in possession of forage subject to embargo shall comply with the conditions approved by the board within 30 days. If resolution is not accomplished, the board may condemn the forage and implement through its employees the conditions in this section. If the board proceeds with correction of these conditions after 30 days, all actual expenses incurred and documented by the board are payable by the producer unless the person in possession of the forage also has an interest in the forage.

**History:** En. Sec. 3, Ch. 195, L. 1939; R.C.M. 1947, 16-1707; amd. Sec. 16, Ch. 607, L. 1985; amd. Sec. 17, Ch. 521, L. 1995; amd. Sec. 2, Ch. 313, L. 2007; amd. Sec. 7, Ch. 244, L. 2011.

### **Compiler's Comments**

*2011 Amendment:* Chapter 244 in (3) in first sentence before "or dispose" substituted "transport" for "move" and in last sentence substituted "The forage may also be released if the board" for "The board may also release the forage under the following conditions"; in (5) in second sentence after "employees" substituted "the conditions" for "any of the conditions set forth"; and made minor changes in style. Amendment effective April 21, 2011.

*2007 Amendment:* Chapter 313 in (1) near beginning after "establish" deleted "voluntary". Amendment effective October 1, 2007.

*1995 Amendment:* Chapter 521 inserted (2) requiring the board to establish an embargo program for the movement of forage and allowing embargoes; inserted (3) relating to moving forage that is not in compliance with Title 80, chapter 7, part 9, and to release of the embargo under certain stated conditions; inserted (4) requiring the board to report embargo information to the Department; and inserted (5) relating to compliance with board conditions, condemnation of forage, board implementation of conditions, and payment of board expenses. Amendment effective January 1, 1996.

*1985 Amendment:* Substituted "The board may establish voluntary embargo programs to reduce the spread of noxious weeds within the district or the introduction of noxious weeds into the district" for "Whenever the supervisors have reason to believe that farm products, including seed, which will cause the spread of noxious weeds are about to be introduced into the county, the supervisors shall declare an embargo against the importation of such farm products and seeds into such county".

### **Cross-References**

Embargo against introduction of noxious weed seed from other states, 80-7-701.

**7-22-2127. Repealed.** Sec. 32, Ch. 607, L. 1985.

**History:** En. Sec. 14, Ch. 195, L. 1939; amd. Sec. 5, Ch. 228, L. 1947; R.C.M. 1947, 16-1718.

**7-22-2128 and 7-22-2129 reserved.**

**7-22-2130. Weed district coordinator training.** Within the limitations of available funds, the board shall ensure that the weed district coordinator obtains training to properly implement the noxious weed management program described in 7-22-2121. The department shall specify through rulemaking the level and type of training necessary to fulfill this requirement.

**7-22-2131. Noncompliance with weed control requirements — general notice.** (1) (a) If a complaint is made against a landowner or if the board has reason to believe that noxious weeds are present on a landowner's property, the board shall notify the landowner by certified mail of the complaint and shall request permission for the board's agent to enter the property to conduct an inspection.

(b) If the landowner has an agent for service on file with the secretary of state, the notice must be given by certified mail to the registered agent.

(c) The landowner or the landowner's representative shall respond within 10 days of receipt of the notice.

(2) (a) If the board's agent and the landowner or landowner's representative agree to an inspection, the agent and the landowner or representative shall inspect the land at an agreed-upon time.

(b) The board or the board's agent may seek a court order to enter and inspect the land to determine if noxious weeds are present on the property if:

(i) within 10 days of sending the certified letter to the address on the tax records or to the agent for service, the board is unable to determine the owner of the property; or

(ii) the letter cannot be delivered because the landowner or the landowner's representative refuses to sign the receipt or does not reside on the property.

(3) If the board finds noxious weeds on the property during the inspection, the board shall:

(a) seek the landowner's or representative's voluntary compliance with the district weed management program in accordance with 7-22-2132; or

(b) if voluntary compliance is not obtained, notify the landowner or the landowner's representative by certified mail that noxious weeds were found on the property.

(4) The notice must contain the language specified in this section.

(5) If the board believes it is advisable, the board may post a dated order in a conspicuous place on the property providing notice that noxious weeds have been found on the property and informing the landowner or landowner's representative of the options for complying with the weed management program pursuant to 7-22-2132 and the actions that may be taken under 7-22-2134 if the landowner fails to comply with the weed management program.

(6) All correspondence with a landowner or the landowner's representative concerning notifications of weed infestations, including requests made pursuant to subsection (1) to inspect property and notifications of noncompliance, must be made on the uniform notification material provided by the department and must:

(a) list the noxious weeds found on the property;

(b) provide the legal description of the property;

(c) provide the address of the property, if available;

(d) state the fact that the presence of the weeds violates state law and that the landowner has 10 days after receiving the notice to contact the board or its agent;

(e) provide the address and phone number for the board;

(f) notify the landowner of the landowner's:

(i) responsibility to submit a weed management proposal; and

(ii) right to request a hearing to contest the finding of noncompliance, including the timeframe for making the request; and

(g) specify the actions the board may take if the landowner fails to remove the weeds, including but not limited to the anticipated costs of destroying the weeds and the 25% penalty allowed under 7-22-2134.

**7-22-2132. Procedures for compliance.** (1) A landowner is in compliance with this part if the landowner submits and the board accepts a written weed management proposal to undertake specific control measures, and the landowner remains in compliance if the terms of the proposal are met. The proposal must require that the landowner or the landowner's representative notify the board as measures in the proposal are taken.

(2) In accepting or rejecting a weed management proposal, the board shall consider the economic impact on the landowner and neighboring landowners, practical biological and environmental limitations, and alternative control methods to be used.

**7-22-2133. Noncompliance — actions for landowners.** (1) If the board is unable to obtain the landowner's voluntary compliance with the weed management program within 10 days of the landowner's receipt of the notification, the landowner is considered to be in noncompliance and is subject to appropriate control measures pursuant to 7-22-2134.

(2) (a) Within 10 days after receiving notice to comply with the weed management program, the landowner may request a hearing before the commissioners if the landowner disagrees with the weed control measures proposed by the board.

(b) If the landowner's objection to the board's action remains after the hearing, the landowner has 10 days to appeal the commissioners' decision to the district court with jurisdiction in the county in which the property is located.

(3) If the landowner has requested a hearing pursuant to subsection (2)(a) or has appealed a hearing decision pursuant to subsection (2)(b), the board may not take any action to control the noxious weeds until after the hearing and authorization is provided from the commissioners or the court.

**7-22-2134. Noncompliance — actions by board.** (1) The board may seek a court order to enter upon the infested parcels of the landowner's property if attempts to achieve voluntary compliance have been exhausted. The board may institute appropriate noxious weed control measures, including but not limited to:

(a) allowing the local weed district coordinator to implement the appropriate noxious weed control measures if the actions taken are valued at the current rate paid for commercial management operations in the district and are reflected in the bill sent to the landowner and the clerk and recorder; or

(b) contracting with a commercial applicator as defined in 80-8-102 if the issues of compliance are not resolved under an agreement proposed and accepted pursuant to 7-22-2132 and:

(i) the landowner does not take corrective action within the 10-day period provided for in 7-22-2133; or  
(ii) the board does not receive a formal objection or the board of county commissioners does not receive a request for a hearing.

(2) A commercial applicator hired under this section shall carry all insurance required by the board.

(3) If a court issues an order approving a board's actions, the court retains jurisdiction over the matter:

(a) until the actions specified in the weed management plan or court order are complete;

(b) for the length of time specified in the order; or

(c) for 3 years if the order does not specify a time limit.

(4) After instituting appropriate noxious weed control measures, the board shall submit a copy of the bill, including the penalty provided for in subsection (4)(b), to the county clerk and recorder and, by certified mail, to the landowner that:

(a) covers the costs of the weed control measures;

(b) contains a penalty of 25% of the total cost incurred;

(c) itemizes the hours of labor, cost of material, equipment time, legal fees, and court costs or includes an invoice from a commercial applicator if the board contracted for weed control pursuant to subsection (1); and

(d) specifies that payment is due 30 days from the date the bill is received.

(5) If a landowner who received a notice to take corrective action requests an injunction or seeks to stay the corrective action in district court within 10 days of receipt of the notice, the board may not institute control measures until the matter is finally resolved, except in emergency situations.

(6) If the board declares an emergency and institutes appropriate measures to control the noxious weeds, the landowner who received the order is liable for costs as provided in subsection (4) only to the extent determined appropriate by the board, the board of county commissioners, or the court that finally resolves the matter.

**7-22-2135 through 7-22-2140 reserved.**

**7-22-2141. Noxious weed fund.** (1) The commissioners shall create a noxious weed fund to be used only for purposes authorized by this part.

(2) The fund must be maintained by the county treasurer in accordance with 7-6-2111.

**7-22-2142. Sources of money for noxious weed fund.** (1) The commissioners may provide sufficient money in the noxious weed fund for the board to fulfill its duties, as specified in 7-22-2109, by:

(a) appropriating money from any source in an amount not less than \$100,000 or an amount equivalent to 1.6 mills levied on the taxable value of all property; and

(b) subject to 15-10-420 and at any time fixed by law for levy and assessment of taxes, levying a tax of not less than 1.6 mills on the taxable value of all taxable property in the county. The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.

(2) The proceeds of the noxious weed control tax or other contribution must be used solely for the purpose of managing noxious weeds in the county and must be deposited in the noxious weed fund.

(3) Any proceeds from work or herbicide sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year.

(4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund.

(5) Subject to 15-10-420, the commissioners may impose a tax for weed control within a special management zone as provided in 7-22-2121(4). For the purposes of imposing the tax, the special management zone boundaries must be established by the board and approved by a majority of the voters within the special management zone. Pursuant to an election held in accordance with 15-10-425, the amount of the tax must be approved by a majority of the voters within the special management zone, and approval of the zone and the tax may occur simultaneously. Revenue received from a special management zone tax must be spent on weed management projects within the boundaries of the special management zone.

**7-22-2143. Determination of cost of weed control program.** Based on the board's recommendations, the commissioners shall determine and fix the cost of the control of noxious weeds in the district, whether the same be performed by the individual landowners or by the board.

**7-22-2144. Payment of cost of weed control program.** The total cost of weed control within the district must be paid from the noxious weed fund. The cost of controlling weeds growing along the right-of-way of a state or federal highway must, upon the presentation by the board of a verified account of the expenses incurred, be paid from the state highway fund in compliance with 7-14-2132 and any agreement between the board and the department of transportation. Costs attributed to other lands within the district must be assessed to and collected from the responsible person as set forth in 7-22-2134.

**7-22-2145. Expenditures from noxious weed fund.** (1) The noxious weed fund must be expended by the commissioners at the time and in the manner as is recommended by the board to secure the control of noxious weeds.

(2) Warrants upon the fund must be drawn by the board. Warrants may not be drawn except upon claims duly itemized by the claimant, except payroll claims that must be itemized and certified by the board, and each claim must be presented to the commissioners for approval before the warrant is countersigned by the commissioners.

**7-22-2146. Financial assistance to persons responsible for weed control.** (1) The commissioners, upon recommendation of the board, may establish a cost-share program for the control of noxious weeds. The board shall develop rules and procedures for the administration of the cost-share program. These procedures may include the cost-share rate or amount and the purposes for which cost-share funds may be used.

(2) (a) Any person may voluntarily enter into a cost-share agreement for the management of noxious weeds on the person's property. The coordinator shall draft a cost-share agreement in cooperation with the person. The agreement must, in the board's judgment, provide for effective weed management.

(b) The agreement must specify:

(i) costs that must be paid from the noxious weed fund;

(ii) costs that must be paid by the person;

(iii) a location-specific weed management plan that must be followed by the person; and

(iv) reporting requirements of the person to the board.

(c) The cost-share agreement must be signed by the person and, upon approval of the board, by the presiding officer.

(3) The agreement must contain a statement disclaiming any liability of the board for any injuries or losses suffered by the person in managing noxious weeds under a cost-share agreement. If the board later finds that the person has failed to abide by the terms of the agreement, all cost-share payments and agreements must be canceled and the provisions of 7-22-2134 apply to that person.

(4) (a) When under the terms of any voluntary agreement, whether entered into pursuant to 7-22-2132 or otherwise, or under any cost-share agreement entered pursuant to this section a person incurs any obligation for materials or services provided by the board, the board shall submit a bill to the person, itemizing hours of labor, material, and equipment time. The bill must specify and order a payment due date not less than 30 days from the date the bill is sent.



(b) A copy of the bill must be submitted by the board to the county clerk and recorder. If the sum to be repaid by the person billed is not repaid on or before the date due, the county clerk and recorder shall certify the amount not repaid, with the description of the land to be charged, and shall enter the sum on the assessment list as a special tax on the land, to be collected in the manner provided in 7-22-2148.

**7-22-2147. Repealed.** Sec. 32, Ch. 607, L. 1985.

**7-22-2148. Payment of weed control expenses — tax liability.** (1) The expenses incurred by the board for noxious weed control undertaken pursuant to 7-22-2134 must be paid by the county out of the noxious weed fund.

(2) If the sum to be repaid by the landowner billed under 7-22-2134 is not repaid on or before the date due, the county clerk shall certify the amount due, with the description of the land to be charged, and shall enter the amount on the assessment list of the county as a special tax on the land. If the land is exempt from general taxation for any reason, the amount due and to be repaid may be recovered by direct claim against the landowner and collected in the same manner as personal taxes.

(3) All amounts collected pursuant to subsection (2) must be deposited in the noxious weed fund.

**7-22-2149. Repealed.** Sec. 5, Ch. 313, L. 2007.

**7-22-2150. Cooperation with state and federal-aid programs.** The board may cooperate with any state or federal-aid program that becomes available if the district complies with 7-22-2120. Under a plan of cooperation, the direction of the program must be under the direct supervision of the board of the district in which the program operates.

**7-22-2151. Cooperative agreements.** (1) A state agency that controls land within a district, including the department of transportation; the department of fish, wildlife, and parks; the department of corrections; the department of natural resources and conservation; and the university system, shall enter into a written agreement with the board. The agreement must specify mutual responsibilities for integrated noxious weed management on state-owned or state-controlled land within the district. The agreement must include the following:

- (a) an integrated noxious weed management plan, which must be updated biennially;
- (b) a noxious weed management goals statement;
- (c) a specific plan of operations for the biennium, including a budget to implement the plan; and
- (d) a provision requiring a biennial performance report by the board to the state weed coordinator in the department of agriculture, on a form to be provided by the state weed coordinator, regarding the success of the plan.

(2) The board and the governing body of each incorporated municipality within the district shall enter into a written agreement and shall cooperatively plan for the management of noxious weeds within the boundaries of the municipality. The board may implement management procedures described in the plan within the boundaries of the municipality for noxious weeds only. Control of nuisance weeds within the municipality remains the responsibility of the governing body of the municipality, as specified in 7-22-4101.

(3) A board may develop and carry out its noxious weed management program in cooperation with boards of other districts, with state and federal governments and their agencies, or with any person within the district. The board may enter into cooperative agreements with any of these parties.

(4) Each agency or entity listed in subsection (1) shall submit a statement or summary of all noxious weed actions that are subject to the agreement required under subsection (1) to the state weed coordinator and shall post a copy of the statement or summary on a state digital access system.

**7-22-2152. Revegetation of rights-of-way and areas that have potential for noxious weed infestation.** (1) Any person or state agency proposing a mine, a major facility under Title 75, chapter 20, an electric, communication, gas, or liquid transmission line, a solid waste facility, a highway or road, a subdivision, a commercial, industrial, or government development, or any other development that needs state or local approval and that results in the potential for noxious weed infestation within a district shall notify the board at least 15 days prior to the activity.

(2) Whenever any person or agency constructs a road, an irrigation or drainage ditch, a pipeline, an electric, communication, gas, or liquid transmission line, or any other development on an easement or right-of-way, the board shall require that the areas be seeded, planted, or otherwise managed to reestablish a cover of beneficial plants.

(3) (a) The person or agency committing the action shall submit to the board a written plan specifying the methods to be used to accomplish revegetation at least 15 days prior to the activity. The plan must describe the time and method of seeding, fertilization practices, recommended plant species, use of weed-free seed, and the weed management procedures to be used.

(b) The plan is subject to approval by the board, which may require revisions to bring the revegetation plan into compliance with the district weed management plan. The activity for which notice is given may not occur until the plan is approved by the board and signed by the presiding officer of the board and by the person or a representative of the agency responsible for the action. The signed plan constitutes a binding agreement between the board and the person or agency. The plan must be approved, with revisions if necessary, within 10 days of receipt by the board.

**7-22-2153. Agreements for control of noxious weeds along roads — liability of landowner who objects to weed district control measures — penalties.** (1) The board may enter into an agreement with a landowner that allows the landowner to manage noxious weeds along a state or county highway or road that borders or bisects the landowner's property.

(2) The agreement must be signed by the landowner and the board's presiding officer. An agreement involving a state highway right-of-way must also be signed by a representative of the department of transportation.

(3) The agreement must contain a statement disclaiming any liability of the board and, if applicable, the department of transportation for any injuries or losses suffered by the landowner or anyone acting on behalf of the landowner in managing noxious weeds pursuant to the agreement. The signed agreement transfers responsibility for managing noxious weeds on the specified section of right-of-way from the board to the landowner who signed the agreement.

(4) If the landowner violates the agreement, the board shall issue an order informing the landowner that the agreement will be void and that responsibility for the management of noxious weeds on the right-of-way will revert to the board unless the landowner complies with the agreement within a specified time period.

(5) (a) If a landowner objects to weed control measures along a state or county highway or road that borders or bisects the landowner's property and does not enter into an agreement pursuant to this section and if the board finds that the person has failed to provide alternative weed control, the board shall issue an order informing the landowner that the management of noxious weeds on the right-of-way will be undertaken by the board unless the landowner provides to the board an acceptable plan of alternative weed control within 30 days.

(b) Failing to provide alternative weed control pursuant to subsection (5)(a) is a misdemeanor. Upon conviction, an offender shall be sentenced pursuant to 46-18-212 and assessed the costs of weed control provided by the board. A second or subsequent conviction is punishable by a fine of not less than \$500 or more than \$2,000, plus the costs of weed control provided by the board.

**7-22-2154. Public purchase or receipt of property — weed management plan.** (1) Except as provided in subsection (4), prior to the purchase of real property with public funds or the receipt of real property by a nonfederal public entity, the purchaser or grantee shall have the property inspected by the county weed management district. The county weed management district's report regarding the property must be filed with the purchaser or grantee. The costs associated with the inspection must be borne by the seller or grantor.

(2) If the report indicates that there are noxious weeds present on the property, the purchaser, seller, grantee, or grantor shall develop a noxious weed management agreement to ensure compliance with the district noxious weed management program. However, unless the parties agree otherwise, a seller or grantor is obligated by a noxious weed agreement only until the property sale or transfer is completed. Except as provided in subsection (4), the weed management agreement must be incorporated into the purchase agreement.

(3) The provisions of this section do not apply to:

- (a) the state acquisition or disposition of a public right-of-way pursuant to Title 60, chapter 4; or
- (b) lands sold or purchased through land banking pursuant to 77-2-361 through 77-2-367.

(4) If a transfer of property will occur during the winter months when the ability to identify noxious weeds is significantly reduced by snow cover, the purchaser, seller, grantee, or grantor may request a 6-month extension for completion of the inspection and any noxious weed management agreement that may be required. If, upon inspection, it is determined that a noxious weed management agreement is necessary, unless otherwise agreed by the parties, the purchaser or grantee is responsible for implementing the provisions of that agreement.

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## **Part 7**

### **Weed Control**

**80-7-701. Regulation of importation or sale of noxious weeds.** (1) As used in this section:

(a) "native plant" means a plant indigenous to the state of Montana; and

(b) "native plant community" means an assemblage of native plants occurring in a natural habitat.

(2) The department may regulate or prohibit the importation or sale of grain, plants, seed, tubers, nursery stock, fruit, or other materials containing noxious weed seed or plants harmful to Montana's horticultural, agricultural, forestry, livestock, wildlife, or native plant communities.

**80-7-702. Rulemaking authority.** The department of agriculture shall adopt all necessary rules for the regulation of the importation or sale of materials as provided in 80-7-701. The department in adopting the rules may provide for the establishment of inspection stations, the appointment of inspectors, the establishment of the inspection fees, the issuance of certificates, the methods of transporting and packaging, the regulation of nursery stock commerce, and other rules and procedures necessary to carry out 80-7-701 through 80-7-704.

**80-7-703. Violations of importation rules — penalty.** Any person who refuses to obey an order of an appointed inspector or willfully disobeys the provisions of 80-7-701 through 80-7-704 shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$50 and not more than \$500.

**80-7-704. Disposition of fines and inspection fees.** All fines levied as provided in 80-7-703, except fines paid to a justice's court, and all fees collected from inspections must be deposited with the department of revenue to the credit of the state special revenue fund for the use of the department for the purpose of administering and enforcing 80-7-701 through 80-7-704.

**80-7-705. Weed management district program enhancement.** (1) On an annual basis, the department shall distribute equally among Montana's counties that have established a noxious weed fund the funds in the noxious weed state special revenue account, provided for in 80-7-816, that were collected pursuant to 80-7-823 to be deposited in the county noxious weed fund as provided in 7-22-2141. Any unused portion must revert to the department for deposit in the noxious weed management trust fund established in 80-7-811.

(2) The weed management districts shall use the funds on a county level to enhance noxious weed management programs.

**80-7-706 through 80-7-710 reserved.**

**80-7-711. Technical assistance.** The department is authorized to provide technical assistance and services to local governments, agricultural producers, and the general public on the management and control of noxious plants. This assistance and service may include:

(1) development, compilation, and reporting of information and records on noxious plant infestations in every county;

(2) information and data on the location of noxious plants and acres infested per county and major infestations of watersheds and geographical regions of the state;

(3) a determination of the economic and environmental impact of noxious plants on Montana and its citizens;

(4) providing technical assistance to various governmental units and citizens on managing long-term noxious plant control programs;

- (5) delineation and recommendation of areas in the state where management programs or certain management tools should not be utilized because of economic or environmental considerations;
- (6) information on the restrictions and proper use of pesticides and other management techniques;
- (7) publishing of model quarantine standards for counties desiring to provide a quarantine program for noxious plants, plant parts, and seed transported in the county; and
- (8) cooperation and coordination of activities with any government agency, private industry, or citizen.

**80-7-712. Funding of noxious plant management programs.** (1) The department may make every effort to obtain federal funds under 43 U.S.C. 1242 to implement management of noxious plants on federal lands in cooperation with any federal agency and the local government body responsible for noxious plant management. These federal funds shall be directly disbursed to local governments authorized to conduct noxious plant management programs. The department may require individual or multiple local government units wishing to apply for federal funds to make proper application for the funds following the management program, budget guidelines, and policies of the department, and the requirements of 43 U.S.C. 1241 through 1243. The department shall request 3% of the total federal funds received per year to cover the complete cost of administering, monitoring, and auditing the expenditure of these federal funds.

(2) The department may cooperate in and coordinate the planning and disbursement of these funds with federal, state, and local agencies responsible for management of noxious plants.

(3) The department may directly expend or provide federal or state funds to local governments to manage or eradicate new noxious plant infestations invading federal or state lands within the state.

(4) The department may hold a public hearing in the specific locale requesting funding prior to granting the federal funds. The department may determine if there are any special requirements or restrictions that should be incorporated into the management program prior to its implementation.

**80-7-713. Reports.** The department may prepare a biennial report on the status of noxious plants and their management in Montana. Reports may be submitted to the governor, to the legislature as provided in 5-11-210, and to other such groups and organizations as the department considers necessary.

**80-7-714. Rules.** The department may adopt rules and policies necessary to implement 80-7-711 through 80-7-713 pursuant to the Montana Administrative Procedure Act.

**80-7-715 through 80-7-719 reserved.**

**80-7-720. Biological agents for weed control.** (1) The department of agriculture is authorized to expend funds for the collection and distribution of biological agents to control leafy spurge and spotted knapweed. The project will reduce energy consumption by reducing the need for repeated chemical application.

(2) The department of natural resources and conservation is authorized to administratively transfer funds to the department of agriculture for the project described in subsection (1).

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## Part 8

### Noxious Weed Management Funding

**80-7-801. Definitions.** As used in this part, the following definitions apply:

(1) "Crop weed" means any plant commonly accepted as a weed and for which grants for management research, evaluation, and education under 80-7-814(5)(g) may be given.

(2) "Department" means the department of agriculture established in 2-15-3001.

(3) "Noxious weed" means any weed defined in 7-22-2101(9)(a).

**80-7-802. Rules.** The department may adopt rules necessary to implement this part.

**80-7-803 and 80-7-804 reserved.**

**80-7-805. Noxious weed management advisory council.** (1) The director of the department shall appoint a noxious weed management advisory council to provide advice to the department concerning the administration of this part and part 9 of this title.

(2) If appointed, the council must be composed of 11 members, as follows:

- (a) the director of the department of agriculture, who shall serve as presiding officer;
- (b) one member representing livestock production;
- (c) one member representing agriculture crop production;
- (d) one member from a recreationist/wildlife group;
- (e) one member who is a herbicide dealer or applicator;
- (f) one member representing noxious weed seed free material interests;
- (g) one member representing weed research and control interests;
- (h) one member from the Montana weed control association;
- (i) two members representing counties, one each from the western and eastern parts of the state, which may include a county commissioner, district weed board member, or weed district supervisor; and
- (j) one at-large member from the agricultural community.

**80-7-806 through 80-7-809 reserved.**

**80-7-810. Repealed.** Sec. 253, Ch. 574, L. 2001.

**80-7-811. Noxious weed management trust fund.** (1) As required by Article IX, section 6, of the Montana constitution, there is a noxious weed management trust fund of \$10 million. The department shall administer the trust fund in accordance with this part.

(2) Deposits to the principal of the noxious weed management trust fund may include but are not limited to:

- (a) federal contributions;
- (b) private donations; and
- (c) state contributions.

**80-7-812. Repealed.** Sec. 10, Ch. 220, L. 1995.

**80-7-813. Acceptance and expenditure of gifts and other funds.** The department may accept gifts, grants, contracts, or other funds designated for noxious weed management. The funds must be deposited in the noxious weed management trust fund or in the account established in 80-7-816 and may be expended to support a noxious weed management project.

**80-7-814. Administration and expenditure of funds.** (1) The provisions of this section constitute the noxious weed management program.

(2) (a) Except as provided in subsection (2)(b), money deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches \$10 million.

(b) In the case of a noxious weed emergency, as provided in 80-7-815, a vote of three-fourths of the members of each house of the legislature may appropriate principal from the trust fund.

(c) Interest or revenue generated by the trust fund, excluding unrealized gains and losses, must be deposited in the noxious weed management special revenue fund and may be expended for noxious weed management projects before the principal of the noxious weed management trust reaches \$10 million with a majority vote of each house of the legislature.

(d) Any grant funds, regardless of the time at which the grant was awarded, that are not fully expended upon termination of the contract or an extension of the contract, not to exceed 1 year, must revert to the department. The department shall use any reverted funds for future grant awards, provided the noxious weed management trust fund principal exceeds \$10 million as provided in subsection (2)(a).

(e) The department may not apply for or receive grant awards from the noxious weed management special revenue fund.

(3) The principal of the noxious weed management trust fund in excess of \$10 million may be appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of \$10 million may be used only to fund the noxious weed management program.

(4) The department may expend funds under this section through grants or contracts to communities, weed management districts, or other entities that it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program using one of the following methods, whichever is less:

- (a) levying an amount of not less than 1.6 mills or an equivalent amount from another source; or
- (b) appropriating an amount of not less than \$100,000 from any source.

(5) The department may expend funds without the restrictions specified in subsection (4) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

(b) cost-share noxious weed management programs with local weed management districts;

(c) special grants to local weed management districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) costs incurred by the department for administering the noxious weed management program as follows:

(i) In fiscal year 2014, the funds used by the department for administering the program, including but not limited to personal services costs, operating costs, and other administrative and program costs attributable to the program, may not exceed 16% of the total amount expended through grants and contracts made under subsection (4). No additional administrative or other costs may be taken by the department on reverted funds used for future grant awards.

(ii) In fiscal year 2015 and in each succeeding fiscal year, the funds used by the department for administering the program, including but not limited to personal services costs, operating costs, and other administrative and program costs attributable to the program, may not exceed 12% of the total amount of grants and contracts awarded from the noxious weed management special revenue fund under subsection (4) in the previous fiscal year. No additional administrative or other costs may be taken by the department on reverted funds used for future grant awards.

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines that the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(6) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

(7) In making expenditures under subsections (3) through (5), the department shall give preference to weed management districts and community groups.

(8) If the noxious weed management trust fund is terminated by constitutional amendment, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose.

**80-7-815. Noxious weed emergency.** (1) The governor may declare a noxious weed emergency if:

(a) a new and potentially harmful noxious weed is discovered growing in the state and is verified by the department; or

(b) the state is facing a potential influx of noxious weeds as the result of a natural disaster.

(2) In the absence of necessary funding from other sources, the principal of the noxious weed management trust fund may be appropriated as provided in 80-7-814 to government agencies for emergency relief to eradicate or confine the new noxious weed species or to protect the state from an influx of noxious weeds due to a natural disaster.

**80-7-816. Account — deposit — investment.** (1) There is a noxious weed account in the state special revenue fund established in 17-2-102. The interest from the noxious weed management trust fund and the funds directed to be deposited as provided in 80-7-823, excluding unrealized gains and losses, must be deposited in the account and must be expended as provided in 80-7-705 and 80-7-814.

(2) The department may direct the board of investments to invest the funds collected under subsection (1) pursuant to the provisions of 17-6-201. The income from the investments must be credited to the account in the state special revenue fund.

**80-7-817 through 80-7-820 reserved.**

**80-7-821. Repealed.** Sec. 10, Ch. 220, L. 1995.

**80-7-822. Terminated.** Sec. 7, Ch. 493, L. 1999.

**80-7-823. Transfer of funds.** There is transferred \$100,000 annually from the highway nonrestricted account, provided for in 15-70-125, to the noxious weed state special revenue account, provided for in 80-7-816, for the purposes provided in 80-7-705.

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## Part 9

### 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;

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

(g) to the extent there is a need for standards and good practices for other materials to prevent the spread of noxious weeds, seeds, and other invasive organisms, the department may create options for proof of compliance in a cost-effective manner to protect the state and to provide options for businesses.

(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 and other materials free of noxious weeds and their seeds.

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

(1) "Advisory council" means the Montana noxious weed management advisory council. Except as provided in 80-7-805, 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, 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. Repealed.** Sec. 4, Ch. 65, L. 2023.

**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 available for appropriation 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 80-7-805, 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. Creation of certification programs — other materials.** (1) The department may by rule establish certification programs for materials other than forage. Certification may include but is not limited to:

- (a) noxious weed free;
- (b) noxious weed and seed free; or
- (c) invasive organism free.

(2) Programs established in accordance with subsection (1) must be paid for using fees or donations and may not be mandated by the department.

(3) All fees, materials, and standards for programs established in accordance with this section must be included in rules established in accordance with subsection (1).

(4) A person who falsely claims a certification created under this section is subject to penalties under 80-7-922.

(5) To assist in implementation of a program, the department may enter into agreements with counties, the Montana state university extension service, other states, federal agencies, or other parties.

**80-7-914 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.