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Montana Administrative Register Notice 4-14-213

No. 15 08/08/2013

Page No.: 1377 - 1377

Prev

Next

BEFORE THE DEPARTMENT OF AGRICULTURE OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
4.5.313 pertaining to Noxious Weed) PROPOSED AMENDMENT
Seed Free Forage Fees)

TO: All Concerned Persons

1. On August 28, 2013, at 2 p.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at 302 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5 p.m. on August 22, 2013, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, MT 59620; telephone (406) 444-5402; fax (406) 444-5409; or e-mail cojensen@mt.gov.

3. The rule as proposed to be amended provides as follows, deleted matter interlined, new matter underlined:

4.5.313 FEES (1) An A field inspection fee of \$2.50 4.50 per acre or a \$25_ minimum charge per field for forage inspection will be charged to the person for whom the forage was inspected. State mileage and per diem rates may also be assessed by the department or its agents.

(2) Fees charged are payable to the department or its agent:

(a) at the time of inspection; or

(b) by special arrangement made for payment through a written agreement with the department or its agent.

(c) If additional inspections are required because of weather operation delays or other related problems, the discretion of whether to charge an additional inspection fee will be left to the department or its agent. The department will not require that the \$1.00 per acre be charged for additional inspections due to weather, or other related problems, so the maximum inspection fee (if charged) will be \$1.50/ per acre.

(3) Agents The government agent must submit a copy of the department completed inspection form and submit \$1.00 2.25 per acre or \$40.00 20.00 minimum inspection fee, whichever is greater, for ten acres or less for hay or straw to the department and report on a financial form provided by the department. The funds and form must be submitted by September 15 of each year to ensure that the persons producing certified forage will be included on the NWSFF producer list.

(4) remains the same.

(5) An inspection fee of \$20.00 44.00 per hour or a an \$40.00 88.00 minimum charge per facility per inspection will be charged to manufacturers of certified processed pellets using noncertified forage in the process and certified grain concentrates harvested from noncertified fields that are mechanically cleaned of noxious weed seed. State mileage, and per diem, rates and lodging may also be assessed by the department or its agents: when conducting in-state

ECONOMIC AFFAIRS INTERIM COMMITTEE 2013-14

facility inspections. Actual costs associated with out-of-state facility inspections will be assessed by the department or its agents. Costs may include, but are not limited to, airfare, vehicle rental, state mileage, per diem, and lodging. The manufacturer shall document the tons of grain concentrate or pellets processed and submit the document to the department on or before January 30 for the previous year's production.

(6) remains the same.

(7) The cost for grain concentrate analysis shall be paid by the manufacturer. The product marker (label) will be provided by the department or its agent to the manufacturer of certified grain concentrates and pellets at \$0.40 per marker (label) cost.

AUTH: 80-7-905, 80-7-907, 80-7-908, MCA

IMP: 80-7-905, 80-7-907, 80-7-908, MCA

REASON: The Noxious Weed Seed Free Forage Act, under 80-7-905(7), MCA, provides authority for fee assessments and the ability to accept other funds to make the certification program financially self-supporting. Current fees are generating significantly less revenue than needed. The program has been receiving financial support from the Montana Noxious Weed Trust Fund and Pesticide Program. With passage of SB 144, the reduction in funding to the department for administration and program costs will eliminate the department's ability to continue supplemental support of the forage program through the Noxious Weed Trust Fund. Pesticide program funds must be used in the department's analytical lab to fill the hole left by federal sequestration cuts and, therefore, will no longer be able to support the forage program. A fee increase is necessary to generate revenue to fully meet expenditures associated with the Noxious Weed Seed Free Forage program. Fees for this program were last raised in 2006.

ECONOMIC IMPACT: Fees associated with the Noxious Weed Seed Free Forage Program are established both by administrative rule and policy. The per acre inspection fee, the hourly fee, and the cost for labels are set by administrative rule while the fees for the twine and tags are set by policy. All fees associated with the program are included in this economic impact statement to give the reader an understanding of the fees as a whole.

There are 200 producers growing 14,505 acres of certified weed seed free forage. These producers will see an increase in inspection costs from \$2.50 per acre to \$4.50 per acre. Actual inspection costs for individual producers will depend on the number of acres being requested for certification. Producers will also see an increase in price for twine from \$37.55 to \$50.00 per box and an increase in price for tags from \$0.10 per tag to \$0.50 per tag. Actual costs will depend on the type of marker being purchased (twine or tags).

In addition to field inspection fees, the department proposes increasing the hourly inspection rate and certification label cost. These costs are primarily associated with facilities that produce pelletized products. Facility inspection charges are at actual costs, e.g., airfare, vehicle rental or state mileage, per diem, and lodging. Hourly inspection charges will increase by \$24 per hour from \$20 per hour to \$44 per hour. The change will provide cost recovery of personnel costs associated with facility inspections. There are 11 facilities, eight located in Montana and three located out of state (Colorado, Washington, and Utah). Out-of-state facility inspections consume 12 to 14 hours each, depending on location and trip arrangements available to meet inspection requests. Average increase in hourly costs for an out-of-state facility would be \$336. Travel associated with in-state facility inspections can often be combined, reducing the associated inspection hours. Time commitment ranges from 2 hours to 13.5 hours per facility inspection with an average of 5.75 hours. The increased hourly costs range from \$48 to \$324 with an average of \$138. Certification labels would increase from \$0.10 to \$0.40 per label. Increased costs to a facility will depend on the number of labels purchased.

Agents who conduct field inspections will see an increase in revenue from inspection fees from \$1.50 to \$2.25 per acre. Agent revenue from inspections is dependent upon the number of acres inspected in a growing season.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, MT, 59620; telephone (406) 444-5402; fax

(406) 444-5409; or e-mail cojensen@mt.gov, and must be received no later than 5 p.m., September 5, 2013.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be electronic unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at: <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the amendment of the above-referenced rule will significantly and directly impact small businesses.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ron de Yong
Ron de Yong
Director
Department of Agriculture

Certified to the Secretary of State July 29, 2013.

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For questions about the organization of the ARM or this web site, contact sosarm@mt.gov.