Nursery Law

TITLE 80. AGRICULTURE

CHAPTER 7. DISEASE, PEST, AND WEED CONTROL

Part 1. Control of Diseases and Insects in Nurseries

Definitions

80-7-105. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Firm" means an individual, company, partnership, association, or corporation.

(2) "Landscape service" means a firm that buys, sells, or resells nursery stock.

(3) "Nursery" means the business or location where nursery stock is grown, offered for sale, or distributed.

(4) "Nursery stock" means botanically classified plants or parts of plants, including but not limited to tropical potted plants, aquatic plants, and turf or sod grass. Certain plants and plant materials intended for human or animal consumption and not intended for planting may not be considered nursery stock, including the following:

(a) commodity plants and their seeds;

(b) pasture grasses;

(c) cut plants not for propagation;

(d) fruits or vegetables for human or animal consumption;

(e) cut trees and products that are going to be processed to a point that they no longer represent a pest risk; and

(f) plant debris for disposal or processing.

(5) "Plant dealer" means a firm that buys plants or plant products from a producer for the purpose of offering the plants or plant products for sale or resale or as part of a landscape service.

(6) "Plant inspection certificate" means a document issued by the department or the plant pest regulatory agency of another state that declares that the nursery stock, plants, or plant material grown by the firm named on the certificate is apparently free of injurious plant pests.

(7) "Plant pest" means an insect, weed, fungus, virus, bacteria, or other organism that can directly or indirectly injure or cause damage in a plant or a product of a plant and that meets the criteria as a pest established by department rule. For purposes of this chapter, noxious weeds, as defined in **7-22-2101**(8)(a)(i), or other exotic weeds are defined as plant pests.

License Required -- Application And Payment Of License Fee -- Exemption

80-7-106. License required -- application and payment of license fee -- exemption. (1) (a) Except as provided in subsection (1)(b), a firm, nursery, plant dealer, or landscape service engaging in the business of selling or distributing nursery stock in this state shall obtain a license from the department for each location.

(b) A firm, nursery, plant dealer, or landscape service is not required to obtain a license in Montana if the firm, nursery, plant dealer, or landscape service is licensed as a nursery in another state and the state in which the firm, nursery, plant dealer, or landscape service is licensed grants nonresident licenses to residents of this state on the same basis.

(2) The license must be in the name of the firm, nursery, plant dealer, or landscape service seeking the license and expires on the anniversary date established by rule by the board of review established in **30-16-302**. The applicant shall provide information that the department finds necessary to carry out the provisions and purposes of this chapter and in the form determined by rule by the board of review established in **30-16-302**.

(3) (a) The license fees for each location for a firm, nursery, or plant dealer are as follows:

Gross annual sales of nursery stock:	Fee range:
not more than $5,000	$25 to $35
$5,001 to $75,000	$135 to $185
$75,001 to $150,000	$200 to $250
$150,001 to $250,000	$300 to $350
Over $250,000	$400 to $450

(b) A landscape service shall pay a license fee of not less than $150 or more than $200. A landscape service that sells nursery stock shall pay a license fee for either a landscape service or a nursery, whichever is greater.

(c) A sod farmer shall pay a license fee of not less than $220 or more than $270.

(d) The department may adjust by rule a license fee within the fee range described in this subsection (3) to maintain funding for this part. When calculating a license fee, the department shall adjust gross sales down to the nearest dollar.

(4) A new applicant or a firm, nursery, plant dealer, or landscape service failing to renew a license for any location on or before the annual anniversary date provided for in subsection (2) shall pay an additional nonrefundable late fee of $25 for the license for the location.

(5) The fees required by this section may be paid by credit card.

Grounds For Refusal Or Revocation Of License

80-7-107. Grounds for refusal or revocation of license. The department, in accordance with Title 2, chapter 4, may refuse to issue a license or it may revoke a license under this part when:

(1) the firm has been adjudged bankrupt, insolvent, or guilty of fraud or deceit by a court of competent jurisdiction; or

(2) a verified complaint is made to the department that a licensee has failed to comply with this part.

Nursery Stock Inspections

80-7-108. Nursery stock inspections. The department:

(1) may enter the premises of a licensed firm, nursery, plant dealer, or landscape service during regular business hours for the purpose of inspecting nursery stock or other materials for possible plant pests or for determining licensure compliance; and

(2) shall, pursuant to rules promulgated by the department, determine the schedule, the need for inspections based on complaints received and the department's assessment of risk to the state from potential plant pests, and the expected amount of time for the inspections.

Duty To Notify Department Of Infestation

80-7-109. Duty to notify department of infestation. A firm, nursery, plant dealer, or landscape service with nursery stock or other materials that are infected or infested with plant pests shall notify the department. The firm, nursery, plant dealer, or landscape service shall comply with the instructions of the department for the control of the plant pests.

Removal Of Nursery Stock -- Assessment Of Costs

80-7-110. Removal of nursery stock -- assessment of costs. If a firm, nursery, plant dealer, or landscape service that owns nursery stock or other materials infected or infested with any injurious plant pest fails to comply with the instructions of the department for the destruction or control of the injurious plant pest or the destruction of the infested or infected nursery stock or other material within the time specified by the department, the department may condemn, remove, or destroy the nursery stock or other material or treat it with a proper remedy at the expense of the owner.

Nursery Account -- Investment Of Funds

80-7-123. Nursery account -- investment of funds. (1) There is an account in the state special revenue fund. All fee revenue and reimbursements for costs authorized under **80-7-106**, **80-7-110**, **80-7-135**, and this section must be deposited in this account. Revenue in the account must be used for the purposes and provisions of this part.

(2) Revenue received under **80-7-106**, **80-7-110**, **80-7-135**, and this section not immediately required for the purposes of **80-7-106**, **80-7-110**, **80-7-135**, and this section must be invested in accordance with the unified investment program established in Title 17, chapter 6, part 2. Income from the investments must be deposited in the account.

Acts Made Unlawful -- Penalty

80-7-133. Acts made unlawful -- penalty. (1) It is unlawful for a firm, nursery, plant dealer, or landscape service to:

(a) fail to properly identify nursery stock offered for sale. Identification must include but is not limited to the scientific name, common name, and variety, except with regard to mixed annual plantings. Each nursery plant offered for sale as a separate plant must be identified. A single means of identification is allowed on each bundle of bare root seedlings, liners, or hedging grade nursery stock.

(b) falsely represent or misrepresent the name, age, variety, or class of any nursery stock sold or offered for sale;

(c) falsely represent or state that any nursery stock offered for sale, sold, or delivered was grown in a certain location, when in fact the nursery stock was grown in another location;

(d) deceive or defraud any firm in the sale of any nursery stock by substituting inferior or different varieties or ages from those ordered;

(e) bring into this state, offer for sale or distribution within this state, or ship, sell, or deliver upon any sale any nursery stock that is infected or infested with a plant pest dangerous to the agricultural or horticultural interests of the state or that violates any federal or state quarantine; or

(f) sell or distribute nursery stock, cut decorative plants, or aquatic plants declared to be noxious weeds as defined in **7-22-2101**.

(2) In case of misrepresentation, false representation, deceit, fraud, substitution, or sale and distribution of noxious weeds, the firm, nursery, plant dealer, or landscape service is subject to punishment as provided in **80-7-135** and is liable to a party damaged or injured to the extent of all damages sustained, which may be recovered in a civil action in any court of competent jurisdiction.

Penalty For Violation

80-7-135. Penalty for violation. (1) A firm, nursery, plant dealer, or landscape service that violates or aids in the violation of a provision of this part or of the rules, orders, or quarantines of the department adopted under Title 2, chapter 4, and this part commits a civil offense and is subject to a civil penalty of not more than $1,000 for each violation.

(2) Assessment of a civil penalty may be made in conjunction with another warning, order, or administrative action authorized by this chapter. A civil penalty collected under this section must be deposited in the nursery account established in **80-7-123** for response activities of the department, education, training, research, and development for the nursery industry pursuant to rules established by the department.

(3) The department shall establish by rule:

(a) a penalty schedule that establishes the types of penalties and the amounts, not to exceed $1,000, for initial and subsequent offenses; and

(b) other matters necessary for the administration of civil penalties.

(4) Sections **80-7-105**, **80-7-106**, **80-7-108**, **80-7-109**, **80-7-123**, and this section may not be construed as requiring the department or its agents to report violations of this part when the department believes that the public interest will be best served by a suitable notice of warning.

Quarantines And Pest Management Procedures -- Department Rules

80-7-402. Quarantines and pest management procedures -- department rules. The department may adopt rules concerning:

(1) intrastate and interstate quarantines;

(2) procedures to investigate and enforce quarantines to prevent the introduction or spread of plant pests, plants capable of spreading plant pests, plants defined as noxious weeds in **7-22-2101**, and other exotic plants defined by department rule as plant pests;

(3) pest management standards and procedures for surveying and controlling plant pests;

(4) procedures for the introduction of plant pests and biological control agents into the state; and

(5) procedures for the recovery of expenses and imposition of penalties.

Penalty

80-7-404. Penalty. (1) A person who violates the quarantines, procedures, or rules of the department adopted under **80-7-402** commits a civil offense and is subject to a civil penalty of not more than $5,000 for each violation.

(2) Assessment of a civil penalty may be made in conjunction with another warning, order, or administrative action authorized by this part. A civil penalty collected under this section must be deposited in the general fund.

(3) The department shall establish by rule:

(a) a penalty schedule that establishes the types of penalties and the amounts, not to exceed $5,000, for initial and subsequent offenses; and

(b) other matters necessary for the enforcement of civil penalties.

(4) This section may not be construed as requiring the department or its agents to report violations of **80-7-402** when the department believes that the public interest will be best served by a suitable notice of warning.

Quarantines and Pest Management Standards

4.12.1301 DEFINITIONS

(1) "Article" is any item subject to a quarantine.

(2) "Department" means the Department of Agriculture.

(3) "Accredited Certifying Official (ACO)" is a federal, state, or county official accredited to perform phytosanitary inspections and sign phytosanitary certificates for commodities meeting phytosanitary requirements.

(4) "Fomite" is any inanimate object or substance capable of carrying an organism, functions to transfer an organism, or in any other way acts as a nonliving vector of a pest.

(5) "Location" is any place where quarantine pests, quarantine articles, plants, plant propagative material, plant products, and other associated items or materials are. This includes, but is not limited to, businesses; fields; gardens; production areas; propagation areas; greenhouses; processing facilities; places where regulated articles or plants are kept, sold, traded, bartered, used, given away, or distributed; and all conveyances.

(6) "Long-term quarantine" is a quarantine that lasts over 12 months.

(7) "Permit" is a written authorization issued by the department, another state, or the federal government and is approved by the department for the movement of any prohibited or restricted plant pests or quarantined articles.

(8) "Phytosanitary documentation" is legal paperwork certifying that visual inspections have been completed by a state or federal official and that all other requirements such as, but not limited to, surveys, laboratory tests, and treatments, have been met.

(9) "Phytosanitary inspection" is an inspection conducted by an individual trained and certified to determine if prohibited materials or organisms are present or to take official samples to be examined by a qualified individual or an accredited laboratory elsewhere.

(10) "Phytosanitary measure" is an action taken to assure that prohibited materials and/or organisms are not present in or on plants or plant materials.

(11) "Plant matter" is any plant species that includes, but is not limited to, agricultural, forest, range, nursery, or ornamental species; soil; fruit, vegetables, seeds, or nuts; any other plant part or propagative material; or plant product. This includes house, greenhouse, hothouse, potted (regardless of planting medium), bareroot, aquarium, pond or other water related, and windbreak plants.

(12) "Plant pest" is any organism that can directly or indirectly injure or cause damage in or to a plant, plant propagative material, or a plant product including, but not limited to, an insect, weed, fungus, virus, bacteria, parasite, pathogen, nematode, vector or other organism that meets the criteria as a pest established by department rule.

(13) "Proper documents" is a copy of the original invoice listing the origin of the articles, quantity and value of articles, location where the articles are destined to arrive, anticipated date of arrival, and/or other requirements specified under a quarantine.

(14) "Quarantine" is a rule, order, or other legal instrument duly imposed or enacted by the department on regulated areas or articles.

(15) "Quarantined article" is anything covered by a quarantine order in ARM 4.12.1302, 4.12.1303, or an emergency declared by the director of the Department of Agriculture.

(16) "Regulated area" is an area into which, within which, and/or from which plants, plant products, and other regulated articles are subject to phytosanitary measures or a quarantine to prevent the introduction and/or spread of quarantine pests.

(17) "Regulated article" is any plant, plant matter, propagative plant parts, plant products, associated plant material, container, conveyance, or any other object or material capable of harboring or spreading plant pests, and that is subject to phytosanitary measures or a quarantine.

(18) "Short-term quarantine" is a quarantine that lasts 12 months or less.

(19) "Vector" is an organism that transmits a pathogen.

4.12.1302 ESTABLISHING A QUARANTINE

(1) The director of the Department of Agriculture or his/her designated representative may establish or modify a quarantine by signing an order. The order will specify what is to be quarantined, the quarantine requirements, and the length of the quarantine.

(2) A long-term quarantine shall be adopted into rule, but is effective upon signature of the director or his/her designated representative.

(3) A list of quarantines is available by contacting: Montana Department of Agriculture, Agricultural Sciences Division, 302 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; fax: (406) 444-7336; e-mail: agr@mt.gov, or through the department's web site: www.agr.mt.gov.

4.12.1303 NOTIFICATION OF IMPORTS

(1) Anyone who transits or imports quarantined articles for use, sale, resale, or distribution shall provide notice and required proper documents to the department by mail, fax, e-mail, or other approved method.

(2) The department must be in receipt of all proper documents at least 48 business hours before bringing the items into the state. Business hours are Monday through Friday, 8:00 a.m. to 5:00 p.m., MST, excluding state holidays.

(3) Under no circumstance may the imported item(s) be unloaded within the state until the department receives the proper documents and authorizes entry of the regulated articles.

(4) The department may notify the shipper or the receiver that the imported or transiting items cannot be brought into the state, must be removed from the state, must be inspected, or must show that it has met any requirements the department deems necessary.

4.12.1304 PERMITS

(1) The quarantine order or rule may specify the type and kind of permit required for import, export, transit, movement, handling, or other actions of regulated articles. Permits may require actions by the permittee or department such as, but not limited to, inspection, sampling, analysis or testing, cleaning, decontamination, treatment, covering/sealing, destruction or disposition, safeguarding, or other services or actions to mitigate the pest risk and protect the state and its resources.

(2) At the department's discretion, the department may recognize and grant reciprocal permit agreements with other units of government through a written memorandum of understanding. Such agreements will, at a minimum, specify the unit of government and duration of the agreement and provide for termination of the agreement at the discretion of the department.

(3) All permits are subject to department oversight and may be subject to audit or inspection to ensure conformance with all permit conditions.

(4) Any permit may be canceled by the department at any time.

(5) Permits may have an associated fee. Permit fees will be specified in each quarantine order.

(6) Permits may require bonding, the amount of which will be determined by the risk associated with such a permit.

(7) If no permit is specified, then the quarantined item in question cannot be imported, exported, transported, or moved into, through, out of, or within Montana, without specific written authorization by the department.

4.12.1305 INSPECTIONS

(1) The department may inspect at any time, without notice, any business, location, conveyance, or records relating to such a business, location, or conveyance of:

(a) Any individual, business, distributor, or shipper that sends a notice of import and the receiver of such imports.

(b) Any permit holder or anyone who has had a permit in the previous 24 months.

(c) Any person involved in the import or export of any plant, plant matter, plant part, plant product, or other regulated article subject to a quarantine.

(d) Any location that has, grows, propagates, processes, distributes, sells, trades, barters, uses, or gives away a plant, plant matter, plant part, or plant product subject to a quarantine.

(2) Inspections are only for the purposes of investigating compliance with these rules and to ensure the department's quarantines are effective.

(3) The department may conduct inspections on any person, place, or item if the department has reason to believe it contains material in violation of a quarantine.

(4) The department may recover actual costs of inspections.

4.12.1306 COMPLIANCE AGREEMENTS

(1) The department may enter into a compliance agreement with any person.

(2) Compliance agreements may be used to meet quarantine requirements that facilitate import, export, handling, and movement of quarantine articles or items.

(3) Anyone who enters into a compliance agreement with the department must be able to demonstrate that they can meet or exceed all state and applicable federal requirements and must:

(a) Have good standing with the department.

(b) Not have an outstanding or past due account for any department program, service, or area of authority.

(c) Have all required licenses and/or registrations for all department programs and services.

(d) Not have any record of violation pertaining to a quarantine.

(e) Not have a record of any violation within any statute, administrative rule, procedure, or policy for which the department has authority and jurisdiction that:

(i) has occurred within the last two years; or

(ii) is a repeat violation, occurring during the past five years.

(f) Not have a record of any violation with any statute, administrative rule, procedure, or policy, within any state, that parallels a responsibility under the proposed compliance agreement.

(g) Have had no permit, agreement, or other authority rescinded, suspended, revoked, or terminated for cause.

(h) Meets all education, training, certification, accreditation, or other requirement to perform proposed activities or services.

(4) The department may require a bonded compliance agreement for certain activities.

(5) The department may charge a fee for a compliance agreement. The fee will be specific to the type and scope of the compliance agreement actions or services.

(6) The department may recognize and grant reciprocal agreements with other units of government provided the above conditions are met both in Montana and the state in which the person resides.

(7) All compliance agreements are subject to department oversight and may be subject to audit or inspection to ensure conformance with all compliance agreement conditions.

(8) All compliance agreements may be canceled by the department at any time.

4.12.1307 VIOLATIONS AND PENALTIES

(1) Violation Schedule	1st Offense	Subsequent Offense
(a) Selling, distributing, propagating, rearing, planting, releasing, moving, or transporting a regulated article without a permit or compliance agreement.	$2,500	$5,000
(b) Knowingly bringing plants, plant matter, propagative plant parts, plant products, or any associated material into the state that is diseased, infected, or infested whether it is quarantined or not.	- - - - $2,500	- - - - $5,000

(c) Bringing a quarantined regulated article into the state without a required permit.	- - $2,500	- - $5,000
(d) Failure to obtain a permit.	$1,000	$5,000
(e) Failure to have a required permit or other required document with a quarantined item.	- - $1,000	- - $5,000
(f) Failure to provide required notification.	- $1,000	- $5,000
(g) Failure to follow any required safeguard not resulting in harm.	- $1,000	- $5,000
(h) Failure to follow any required safeguard that resulted in harm.	$2,500	$5,000
(i) Failure to keep required records.	- $1,000	- $5,000
(j) Failure to release or allow access to records pertaining to a quarantine, order, permit, or compliance agreement.	- - - $2,500	- - - $5,000
(k) Falsifying any record or document related to a quarantine, order, permit, or compliance agreement, including, but not limited to all sales, handling, shipping, transporting, importing, and exporting and any invoice, bill of lading, permit, seal, or certificate.	- - - - - - $2,500	- - - - - - $5,000
(l) Interfering with or preventing an inspection or investigation.	- $2,500	- $5,000
(m) Failure to be in compliance with a quarantine requirement.	- $2,500	- $5,000
(n) Noncompliance with any state or federal quarantine, order, permit condition or requirement, or compliance agreement that did not cause harm.	- - - $2,500	- - - $5,000
(o) Noncompliance with any state or federal quarantine, order, permit condition or requirement, or compliance agreement that caused harm.	$5,000	$5,000
(p) Any other violation of the Quarantine Act or these rules that did not cause harm.	$2,500	$5,000

(q) Any other violation of the Quarantine Act or these rules that caused harm.	$5,000	$5,000

(2) Violation of a quarantine permit, import permit, or compliance agreement may result in suspension of a permit or compliance agreement or denial of a future request for a permit or compliance agreement.

(3) Anyone who violates these rules is acting negligently, if not intentionally, and is liable for all harm they cause and may be liable for all costs associated with, but not limited to, trapping, monitoring, surveying, analysis, testing, containment, eradication, control, management, disposition, destruction, restoration, and other measures deemed necessary by the department.

(4) At the department's discretion, each continued day of violation can be a separate offense.

4.12.1308 PLANT HEALTH QUARANTINES

(1) All quarantines are listed by the name of the quarantine and references the quarantine order number. The order will specify the name of the quarantine and describe the plant pest(s), regulated articles, and regulations, e.g., notifications, inspections, sampling, certifications, required permit(s), safeguards, and any other requirements.

(2) Quarantine orders are available from the department by accessing the department's web site at www.agr.mt.gov or by requesting a copy of the order by writing, e-mailing, or faxing a request to the Department of Agriculture at P.O. Box 200201, Helena, MT 59620-0201; agr@mt.gov; or (406) 444-5409.

(a) The department may charge actual costs of printing, copying, and mailing copies of a quarantine rule or order.

(3) The following is the current list of long-term quarantines:

(a) European Pine Shoot Moth (EPSM) (Rhyacionia bouliana). See Order MTQ-2008-01.

(b) Late Blight Quarantine (Phytophthora infestans). See Order MTQ-2008-02.

(c) Japanese Beetle (Popillia japonica Newman). See Order MTQ-2008-03. Intrastate Quarantine.

(d) Japanese Beetle (Popillia japonica Newman). See Order MTQ-2013-01. Interstate Quarantine.

4.12.1405 OTHER NURSERY FEES

(1) All fees for services are payable upon receipt of a billing statement. The department may assess a collection fee of 18% annual percentage rate, or assess a minimum fee of $25, whichever is greater, for any payment amount not received on or before the last regular business day of each month. The department may require past due payment of fees prior to providing inspection services. The fees shall be as follows:

(a) Annual clean plant and indexing certification, pursuant to 80-7-108, MCA, is $250.

(b) Services:

(i) heat treatment certificates: $10; and

(ii) other documents of quarantine compliance: $10.

(c) The department charges for mileage, lodging, per diem, and an hourly rate for certain services to recover costs for expenses that exceed the fees established in (1)(a), (b), and (c). These charges are as follows:

(i) actual cost of trapping, survey, and treatment materials when requested by public or private persons when related to export certification or nursery stock certification; and

(ii) hourly charge - $44 per hour with a one-hour minimum.

(d) Charges for lodging, meals, and mileage will be computed in accordance with rates established in 2-18-501, MCA.

4.12.1407 RIGHT TO HOLD NURSERY STOCK FOR INSPECTION--CONDEMNATION OF PRODUCTS

(1) All condemnation orders issued by the department are subject to appeal pursuant to the provisions of the Montana Administrative Procedure Act (Title 2, chapter 4, MCA) and the procedural rules of the department (ARM Title 4, chapter 2) .

(2) All notices of condemnation of nursery stock or plant material given by the department shall be written and served either upon the owner, shipper, or person in charge. If no person is in charge of such stock, the department shall immediately notify the consignor at his address advising him of the action and in such case the consignor shall have three days to perfect an appeal as defined.

(3) The owner, shipper or person in charge of the condemned nursery may appeal the decision to the director of the department in writing. Such appeal must be perfected within twenty-four hours after the notice has been served if notice is delivered in person and three days if notification is made by mail. Condemned stock must, at the expense of the person perfecting the appeal, be immediately placed in quarantine until final action and determination of the appeal.

4.12.1409 QUARANTINE OF PLANT MATERIALS AND NURSERIES

(1) The director, or his representative, has the authority to establish and enforce a quarantine over any place where plant materials or nursery stock are grown, or kept that is infested with any injurious plant pest. The director, or his representative declaring such quarantine shall notify the owner or person in control of such place in writing of the establishment of the quarantine. The owner or person in control of quarantined place shall not ship or move or allow to be shipped or remove any, nursery stock or other material, except by written permission of the director, or his representative. The owner or person in control of any place may be permitted to use such nursery stock or plant material on the premises under the instructions of the director or his representative.

(2) All quarantine orders issued by the department are subject to appeal pursuant to the provisions of the Montana Administrative Procedure Act (Title 2, chapter 4, MCA) and the procedural rules of the department (ARM Title 4, chapter 2) .

4.12.1411 DEFINITIONS

(1) "Audit" means a systematic and independent examination to determine whether an auditee's activities conform with prescribed objectives.

(2) "Certification Program" means a comprehensive process established and authorized by a state or other governmental entity for the production of plants, plant materials, and propagative materials free of regulated pests and diseases. The

regulations of the program define the program participation, plant production, plant identification and labeling, and quality assurance requirements.

(3) "Department" means the Montana Department of Agriculture.

(4) "Indexing" means to determine the presence or absence of transmissible viruses or diseases in plants, plant materials, or propagative materials that may involve inspection, tests, and analysis.

(5) "Import permit" means an official document issued by a national or regional plant protection organization of the importing country authorizing importation of a commodity in accordance with specified phytosanitary measures.

(6) "International Standard for Phytosanitary Measures (ISPM)" means an international standard adopted by the Conference of FAO, the Interim Commission on Phytosanitary Measures or the Commission on Phytosanitary Measures, established under the International Plant Protection Convention.

(7) "NAPPO" means North American Plant Protection Organization.

(8) "National Plant Protection Organization (NPPO)" means official service established by a government to discharge the functions specified by the International Plant Protection Convention.

(9) "Official" means established, authorized, or performed by a national plant protection organization.

(10) "Pest" means any species, strain, or biotype of plant, animal, or pathogenic agent injurious to plants or plant products.

(11) "Phytosanitary Certificate" means the use of phytosanitary measures that prevent the introduction or spread of a quarantined pest, which leads to the issuance of a certificate attesting to those measures.

(12) "Regulated Pest" means a quarantine pest or a regulated nonquarantine pest.

(13) "Regional Standard for Phytosanitary Measures" means phytosanitary measures established by a regional Plant Protection Organization.

(14) "Test" means official examination, other than visual, to determine if pests are present or to identify pests or disease.

4.12.1439 CLEAN PLANT AND INDEXING CERTIFICATION

(1) Plant and plant propagative indexing is a systems- and audit-based program. Participation in clean plant and indexing certification programs is voluntary.

(2) The department will provide necessary services for certification of plant stock (plants and plant propagative materials) for the production and propagation of healthy, clean plant stock that meets certification requirements that support movement and state and international export of plants and propagative materials.

(3) The department is not responsible for disease, genetic disorders, off-type, failure of performance, mislabeling, or otherwise, in connection with these rules. No grower, nursery dealer, government official, or other person is authorized to give any expressed or implied warranty, or to accept financial responsibility on behalf of the department regarding these rules.

(4) To qualify for export, plant stock must also meet import state and country requirements for freedom from specified regulated pests.

4.12.1442 APPLICANT AND CERTIFIED CLEAN PLANT AND INDEXING ENTITY RESPONSIBILITIES

(1) The applicant and certified individual or entities will:

(a) Be registered or licensed in appropriate areas, e.g., nursery licensure is required for all plant materials covered under the definition of nursery stock;

(b) Develop and submit for approval a written clean plant and indexing certification plan that addresses the required elements identified by the department;

(c) Select, establish, develop, and manage all facilities and plant and propagation areas to meet the standards and requirements of the clean plant and indexing certification program, which includes critical control points associated with the operation, e.g., cultivation, irrigation, movement, sanitation, equipment management and other farming practices;

(d) Maintain identity, registry, and plant health certificates of all plant materials associated with foundation, nuclear, generation, mother, scion, seed, rootstock, stool, increase, certified, and other qualified plant and plant propagative materials that are traceable;

(e) Comply with all indexing, testing, and analysis required following an approved schedule. Ensure all test results are made available directly to the department from the approved agency or laboratory;

(f) Notify the department of virus, disease, and pest issues that violate or could lead, if unabated, to violations of clean plant and indexing certification standards and threaten certification of plants, plant materials and propagation materials. Participants must follow approved pest management plan actions to address virus, disease, and pest issues or, when deemed necessary, instructions of the department;

(g) Make facilities, propagation and production areas as well as tests and analysis and other documents available for inspection and audits by the department, or its representative or USDA;

(h) Address identified issues and violations within an identified time frame that resolves the issue or violation necessary to meet clean plant and indexing certification requirements;

(i) Keep records necessary to document: clean plant and indexing certification requirements; plant material identity from introduction, import, or development through sale, distribution, movement, export, or disposition; inspection and audit records and findings; compliance issues and resolutions; and test and analysis results for a minimum of three years;

(j) Make application using a form provided by the department and pay application fees; and

(k) Pay certification identification marker fees (labels, tags, and other methods of identification).

4.12.1444 PHYTOSANITARY INSPECTION AND CERTIFICATION COSTS -- FEES

(1) All fees for services are payable upon receipt of a billing statement. The department may assess a collection fee of 18% annual percentage rate, or assess a minimum fee of $25, whichever is greater, for any payment amount not received on or

before the last regular business day of each month. The department may require past due payment of fees prior to providing inspection and certification services.

(2) Export certification fees shall be as follows:

(a) federal and state phytosanitary certificate:

(i) $105 for a noncommercial shipment, those shipments having a value that is less than $1,250; or

(ii) $180 for a commercial shipment having a value that is $1,250 or more;

(iii) $160 for a commercial produce shipment having a value that is $1,250 or more;

(iv) administrative and replacement user fees for each federal or state phytosanitary certification. Requests for export certification shall be made through a client-funded Phytosanitary Certification Information Tracking (PCIT) account; and

(v) certificate of Origin and Statement of Origin $150.

4.12.1445 NURSERY FEES

(1) The license fees for each location of a firm, nursery, or plant dealer are as follows:

Gross annual sales of nursery stock:	Fee:
not more than $5,000	$25
$5,001 to $75,000	$135
$75,001 to $150,000	$200
$150,001 to $250,000	$300
Over $250,000	$400

(2) A landscape service shall pay a license fee of $150. If the landscape service also sells nursery stock, it shall pay a license fee either as a landscape service or as a nursery, whichever is greater.

(3) A sod farmer shall pay a license fee of $220.

MONTANA NURSERY LAW

Chapter Review

A. When is a business required to have a nursery license? _____

_____

B. List four types of plants or plant materials that are not considered nursery stock:

1. _____ 2. _____

3. _____ 4. _____

C. How must nursery stock be labeled? _____

_____

D. Describe four practices that are prohibited with respect to the sale of nursery stock.

1. _____

2. _____

3. _____

4. _____