

REGULATIONS RELATING TO THE INSPECTION OF NURSERIES

SECTION I. STATUTORY AUTHORITY

This rule is established by the Agency of Agriculture, Food and Markets pursuant to 6 V.S.A. § 4029(a) and 6 V.S.A., § 1 (a) (10).

SECTION II. DEFINITIONS

1. "Agency" means the Vermont Agency of Agriculture, Food and Markets.
2. "Approved facsimile" means a card, placard or certificate, issued or approved by the, Secretary identifying the holder, stock, or shipment as properly licensed or certified by the Agency pursuant to 6 V.S.A. Chapter 206 and these rules.
3. "Collecting" means cutting, gathering, rooting, severing, injuring, destroying, removing or carrying away any plants taken from the wild, or parts thereof, for the purpose of selling or offering for sale.
4. "Nursery" means all lands, premises and buildings on or in which nursery stock is grown, transported, or offered for sale.
5. "Nursery dealer" means any person who buys, sells, or distributes nursery stock for commercial gain.
6. "Nursery grower" means any person engaged in growing, propagating, or production of nursery stock for commercial gain.
7. "Nursery license" means the license issued to nursery dealers or nursery growers under 6 V.S.A. § 4024.
8. "Nursery stock" means all woody or herbaceous shrubs, trees, plants and vines, including bulbs and rhizomes as well as buds, grafts, scions and other parts capable of propagation whether wild, cultivated or grown under artificial covering or artificial conditions. This definition does not include cut flowers or seeds.
9. "Operate a nursery" means to conduct, for commercial gain, any or all of the activities associated with the preparation, sale or installation of nursery stock. Such activities include, but are not limited to, planting, cultivation, transportation, installation, treatment or display of nursery stock, and removal from the wild of plants with the intention of commercial gain.
10. "Person" means any individual, partnership, corporation or other business entity.

11. "Secretary" means the Secretary of the Agency of Agriculture, Food and Markets or his or her designee.

SECTION III. LICENSES AND CERTIFICATES ISSUED BY THE VERMONT AGENCY OF AGRICULTURE.

1. Nursery Dealer's License.

(a) Every nursery dealer or grower, as defined in Section II of these rules and 6 V.S.A. § 4021, who purchases, sells or installs nursery stock in this state shall annually apply for and receive a nursery license from the Secretary, on forms provided by the Secretary.

(b) A nursery dealer's license shall be issued by the Secretary only after receipt of the completed forms and payment in full of applicable fees as established in statute at the time of application.

Fee exempt persons shall include not-for-profit organizations engaging in plant sales for fund-raising purposes as long as raising or selling nursery stock or plants is not the primary purpose of the organization (e.g. Churches, schools, municipalities, conservation commissions, civic organizations, etc.).

It shall be a violation of the provisions of these rules to operate a nursery without having been issued such license.

Nursery dealer's licenses shall be valid for one year, from May 1 to April 30, inclusive.

(c) Any person soliciting orders for, or selling, delivering or installing nursery stock shall have in his or her possession his or her nursery dealer's license or that of the nursery on whose behalf such activities are conducted. For the purposes of this subsection, the following approved facsimiles shall be acceptable:

(i) a legible photocopy or other exact reproduction of the license;

(ii) a card, approved as to form by the Secretary, containing the nursery dealer's name, address, license number and expiration date; or

(iii) the appearance on a receipt, packing ticket, way bill, manifest or other documentation normally presented or available to the customer, of the nursery dealer's name, address, license number and expiration date.

(d) Shipments of nursery stock accompanied by a valid certificate of inspection, as required by 6 V.S.A. § 4025 and Section III 2. of these rules, shall be exempt from the requirements of Subsection 1. (b) of this section.

(e) Any person who has been issued a certificate of inspection under 6 V.S.A. § 4023 and Section III 2. of these rules shall automatically be issued a nursery dealer's license,

pending receipt of licensing fee as appropriate.

2. Nursery Inspection Certificate.

(a) The secretary, as he or she deems necessary, may inspect nursery stock in the possession of a nursery grower or nursery dealer licensed under this rule or any place within the state where nursery stock is grown, collected, stored, sold, offered for sale, or distributed. After the inspection of a licensed nursery grower or nursery dealer, the secretary may issue an inspection certificate. The certificate shall be valid from the date of issuance through April 30 of the year following issuance, so long as the Secretary does not rescind, suspend, amend or revoke it pursuant to Section IV of these regulations.

(b) The Secretary shall charge a fee for any inspection of a nursery grower or nursery dealer that is not licensed under Section III (1) (a) of these rules. The Secretary shall charge a fee for an inspection of a nursery dealer or nursery grower licensed under Section III (1) (a) of these rules, provided that the initial inspection of a licensed nursery grower or nursery dealer in any calendar year shall be at no cost. The amount of the inspection fee shall be the same fee as that charged for a nursery dealer's license as required by Section III (1) (b) of these rules. The secretary shall not charge an inspection fee when responding to consumer complaints or for technical assistance under 6 V.S.A. § 1036 for the management of plant pests, as that term is defined at 6 V.S.A. § 1030.

3. Special Certification.

(a) The Secretary may issue a certificate certifying that nursery stock has been grown under special conditions or has been tested by a recognized procedure which has established that stock as being free from any or all of the following diseases, pests or conditions:

(i) certain viruses, fungi, bacteria or other organisms;

(ii) specific diseases or deficiencies; or

(iii) any other conditions which require, in the opinion of the Secretary, special certification.

(b) The Secretary may assess growers who request this additional or special certification a fee for the inspection and/or certification. This fee shall not be greater than is necessary, in the judgment of the Secretary, to meet all expenses incurred in making the inspection and/or certification.

SECTION IV. POWERS OF THE SECRETARY.

1. Suspension or revocation of licenses and certificates.

(a) The Secretary may amend, suspend or revoke any license or certificate issued under

the authority of 6 V.S.A. Chapter 206 and these rules for failure of the holder to comply with any of the provisions of that chapter or the rules promulgated thereunder.

(b) In the event the Secretary has reason to believe that the activities or conditions of any person or facility licensed or certified under the authority of 6 V.S.A. Chapter 206 or the rules promulgated thereunder may pose an immediate and substantial threat to human or animal life or health, to the environment, or to other nursery dealers, he or she may suspend any license or certificate pending inquiry, for no longer than fifteen (15) days, providing that opportunity for a hearing is given prior to the end of such period. If the person affected by such suspension cannot attend a hearing within that fifteen day period, the suspension shall remain in effect until the date of such hearing. Following a hearing, if the Secretary determines that reinstatement of the suspended license or certificate might pose a threat to human or animal life or health, to the environment, or to other nursery dealers, the Secretary may issue an order continuing the suspension until such time as the problem is corrected, or may revoke or amend the license or certificate in question.

2. Placement Of Restrictions, Requirements Or Conditions Upon Licenses Or Certificates.

(a) The Secretary may place reasonable restrictions, conditions or requirements upon any license or certificate issued under the authority of 6 V.S.A. Chapter 206 or these rules. The Secretary may take any or all of the following into consideration when imposing such restrictions, conditions or requirements:

(i) previous history of pest and disease conditions at a given facility;

(ii) degree of compliance of persons or facilities with prior orders or recommendations;

(iii) potential for physical or economic harm resulting from any activity or condition;

(iv) proximity of the nursery or nursery stock in question to human or animal habitation, environmentally sensitive areas, sensitive plant populations or other nursery dealers or nursery stock; or

(v) any other conditions which the Secretary considers to be significant.

3. Stop-Sale Orders.

(a) The Secretary, upon finding plant pests (as defined at 6 V.S.A. § 1030) present in a nursery or in nursery stock, may issue a stop-sale order against such plants and/or pests. Plants placed on stop-sale shall be conspicuously tagged, either individually or in blocks, provided that such infested stock is clearly separable from non-infested stock, and that such physical separation is effected and maintained. Any issuance of a stop-sale order shall be confirmed in writing by the Secretary within seven days. Such confirmation shall state the following:

- (i) the reason for the issuance of the stop-sale order;
- (ii) a description of the nursery stock placed on stop sale;
- (iii) recommended control measures, if any; and
- (iv) the date upon which such order became effective.

(b) Stop-sale tags may not be removed from nursery stock except by written permission of the Secretary or upon the authorized disposal of the infested stock in a manner acceptable to the Secretary.

(c) It shall be a violation of this section to sell, install or otherwise distribute nursery stock which has been placed on stop sale.

(d) The Secretary may restrict or restrain the transportation of any nursery stock which has been placed on stop-sale, or may prescribe conditions under which such nursery stock may be transported.

4. Treatment Or Destruction Of Infested Plants.

(a) If, upon inspection of a nursery or any nursery stock, the Secretary finds any diseased or infested stock, he or she may order the plants, either individually or in blocks, to be:

- (i) placed on stop sale in accordance with Section IV 3. of these rules;
- (ii) treated in a particular manner; or
- (iii) destroyed according to the Secretary's instructions.

5. Entry Onto Business Premises By Secretary.

(a) The Secretary, in furtherance of his or her duties under 6 V.S.A. Chapter 206 or the rules promulgated thereunder, may enter the business premises of any person licensed or certificated under that chapter and regulations for the purposes of inspecting nursery stock, facilities, equipment or business records, or to take samples as may be required. Such entry onto business premises shall be made during normal business hours, or at other times for which the Secretary may make arrangements.

6. Reciprocal Issuance Of Licenses And Certificates.

(a) The Secretary may enter into reciprocal agreements with officials of other states and federal agencies, and may grant licenses and certificates on a reciprocal basis, provided that:

- (i) Certification and licensing standards are substantially the same as those required by Vermont;
 - (ii) The person licensed or certificated knows and abides by Vermont's nursery inspection law and rules;
 - (iii) The person or facility licensed or certificated pays any and all applicable fees; and
 - (iv) The person or facility is properly licensed by a state which has a reciprocal agreement with Vermont.
- (b) Revocation or suspension of any certificate or license by the state or federal authority which originally issued such certificate or license shall result in the immediate suspension of the reciprocally-issued certificate or license pending investigation by the Secretary. Reinstatement of the certificate or license by the state or federal authority which revoked or suspended it shall effect reinstatement of the reciprocally-issued certificate or license.

7. Additional Powers.

- (a) In addition to the authority conferred by these rules, the powers of the Secretary include all statutory authority vested in the Secretary, now and in the future, to enforce state nursery inspection laws and rules.

SECTION V. TRANSPORTATION OF NURSERY STOCK.

1. Shipment of Nursery Stock Grown Within Vermont.

(a) Whenever a nursery dealer ships or delivers any nursery stock grown within this state, he or she shall include with each shipment a copy of the inspection certificate issued by the Secretary, or a reasonable facsimile which satisfies the requirements of Section III of these rules. Such certificate or facsimile shall state that the nursery has been inspected and approved as required by 6 V.S.A. Chapter 206 and these rules, and that the nursery stock is believed to be free from injurious pests or plant diseases.

(b) Each shipment transported or caused to be transported without proper certification, as required by Subsection 1. (a) of this section shall be deemed to be a separate violation.

2. Transportation Of Nursery Stock Into Vermont For Sale.

(a) Nursery stock transported into this state for sale, distribution or installation shall be accompanied by a valid certificate of inspection or a reasonable facsimile, or other certification accepted by the Secretary, from the state from which the consignment comes or from a United States Government inspector, stating that the nursery stock is believed to be free of injurious pests or plant diseases. The certificate shall contain the name and mailing address of the consignor.

(b) The Secretary may accept inclusion of the consignor on a list of certified nursery dealers compiled by the state in which the shipment originates as certification under this section, provided that the shipment is identified by the name and mailing address of the consignor and a statement that the consignor is currently included on such list.

SECTION VI. DISEASED OR INFESTED STOCK.

1. Nursery Inspection.

(a) Only sound, healthy nursery stock which will maintain its vigor shall be offered for sale, distribution or installation in this state. Whenever the Secretary has reason to believe that any nursery in the state has introduced, installed, sold or offered for sale diseased or infested stock, the commissioner shall inspect that nursery. If, upon inspection, the Secretary finds any diseased or infested stock, he or she may order the plants, either individually or in blocks, to be:

(i) put on stop sale;

(ii) treated in a particular manner; or

(iii) destroyed according to the Secretary's instructions.

2. Appeals.

(a) Any person issued any order under 6 V.S.A. § 4027 (a) or under Subsection 1. of this section may appeal that order to the Secretary within 15 days after receiving that order. The appeal shall be made in writing and shall state any grounds and designate the plants or stock subject to the order.

SECTION VII. QUARANTINES.

1. Vermont State Quarantines.

State quarantine regulations on the following are effective on all nursery stock and shall apply to the quarantine-regulated areas and restrictions of the USDA Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs:

(a) Scleroderris;

(b) Pine Shoot Beetle;

(c) Hemlock Woolly Adelgid; and

(d) Noxious Weeds.

2. Federal Quarantines.

Federal (USDA) quarantine regulations on the following are effective on all nursery stock originating in Vermont, and apply to all of Vermont:

- (a) Gypsy Moth;
- (b) Japanese Beetle; and
- (c) Pine Shoot Beetle.

SECTION VIII SPECIAL CERTIFICATION REQUIREMENTS FOR DECIDUOUS FRUIT TREES, SMALL FRUIT PLANTS AND NURSERY STOCK

1. Definitions

- (a) "Foundation block" means an isolated planting of registered nursery stock maintained to serve as the primary source of propagating material for participating nurserymen.
- (b) "Nuclear block" means a planting of virus-indexed trees, small fruit plants or nursery stock, maintained and continuously protected from virus reinfection in a screenhouse, screened greenhouse or tissue culture to serve as a source of propagating material for the foundation block.
- (c) "Nursery increase block" means a planting of nursery stock, originating from registered seed and scion sources, used for increasing registered plants.
- (d) "Index" means testing a plant for virus infection by means of inoculation from the plant to be tested to an indicator plant or by other standard immunological technique.
- (e) "Indicator plant" means any woody or herbaceous plant used for detecting virus.
- (f) "Off-type" means different from the variety or cultivar listed on the application for registration or certification.
- (g) "Registered nursery stock" means a plant used as a propagation or seed source that has a history of negative virus indexing and inspection by an approved state or federal agency or commercial facilities.
- (h) "Scion block" means a planting of registered nursery stock maintained by a commercial nursery grower to serve as a source of propagating material.
- (i) "Seed block" means a planting of registered nursery stock maintained by a commercial nursery grower to serve as a seed source.
- (j) "Virus-infected" means presence of a virus(es) in a plant or plant part.
- (k) "Virus-like" means a disorder of unknown cause displaying symptoms which are

possibly due to virus infection.

2. Requirements

(a) Application for Special Certification shall be made to the Secretary on or before February 1 of each calendar year. Participation in this program shall be voluntary and may be withdrawn at the option of the applicant.

(b) The applicant shall be responsible, subject to approval by the Agency, for the selection of the location and proper maintenance of registered plantings being grown under the provisions of this program. The applicant shall be responsible for maintaining the identity of all nursery stock entered in this program in a manner approved by the Agency.

(c) Location of plantings

(i) Each planting location shall be subject to approval by the Agency and shall be in an area having minimal risks for spread of infectious pests by drainage, flooding, irrigation or any other means.

(ii) A scion block shall be located not less than 300 feet from any nonregistered plant of the same genera. Volunteer or wild plants of the same genera within 500 feet (greater, if practical) shall be eradicated. Broad leaf weed control programs must minimize their occurrence within the block.

(iii) The sources of the scion block nursery stock shall have originated from the foundation block or nuclear block maintained by state or federal agencies or approved commercial facilities.

3. Certification Procedures

(a) Nursery Stock being grown for "Vermont Premium" certification shall consist of rootstocks and scions originating from foundation blocks. Plants will be tested for those viruses where techniques have been established.

(b) Nursery stock being grown for "Vermont Select" shall consist of plants produced from registered scion block and nonregistered seed sources; or have only had virus-testing on a few viruses known to infect specific nursery stock.

(c) All special certified nursery stock must have been produced in artificial soil, pasteurized soil, or on soils that received a preplant nematicide or were sampled by an approved agency prior to planting and found to be free from virus vector nematodes.

(d) All nursery stock meeting the requirements of this program when sold shall have the variety and or interstock and rootstock designated where applicable.

4. Establishment and Maintenance of Plantings

(a) Plantings entered in this program shall be kept in a thrifty growing condition and pests shall be effectively controlled. Suitable precautions shall be taken in cultivation, irrigation, movement and use of equipment, and in other farming practices to guard against spread of soil-borne pests to plants entered in this program.

5. Eligibility

(a) Any kind or variety of deciduous fruit tree, small fruit plant or other nursery stock, when approved by the Agency, is eligible for entry into this program as provided in this outline. To be acceptable for certification or to be eligible for any planting entered in this program, a plant shall have been tested and not found to be virus-infected or off type.

6. Inspection and Testing Procedures

(a) Inspection and sampling of nursery stock shall be done under the supervision of the Agency.

(b) Testing of plant material shall be done by Universities or businesses approved by the Agency. Approved labs shall use Immunological tests, Genetic Assays , Indexing, or Molecular procedures to test for viruses known to occur in the Northeast. Results of tests shall be sent directly to the Agency of Agriculture with copy to applicant.

7. Tagging and Identity

(a) Tagging - The Agency will authorize the use of official tags for the identification of nursery stock or seed that meet the requirements of this program.

(b) Identity - Any person selling Vermont special certified nursery stock is responsible for the identity of the stock bearing each tag and for such nursery stock meeting requirements. Persons issued tags authorized by the program shall account for stock produced and sold and keep records as may be necessary.

8. Refusal, Suspension or Cancellation of Registration or Certification

(a) Registration or certification may be refused, suspended or cancelled for any plants in part or all of a planting if:

(i) The requirements of these regulations have not been met;

(ii) The plant is found to be virus-infected or off-type including but not limited to differences caused by disorders of genetic origin;

(iii) A registered plant is found virus-infected and it is determined that plants propagated from it also are liable to be infected;

(iv) Any violation of the 6 V.S.A. Chapter 206 or any section of these rules;

(v) For any reason the identity of a plant becomes uncertain or has not been properly maintained; or

(vi) Failure to have a Agency approved virus testing facility conduct testing.

SECTION X. PENALTIES.

Pursuant to 6 V.S.A. § 4029, any person who violates any provision of 6 V.S.A. Chapter 206 or the rules promulgated thereunder shall be fined not more than \$ 100.00 for the first offense and not more than \$ 500.00 for each subsequent offense. In addition, the Secretary may seek and obtain preliminary and permanent injunctive relief for any violation of the provisions of 6 V.S.A. Chapter 206 or the regulations promulgated thereunder, and administrative penalties as specified in 6 V.S.A. § 15.

Statutory Authority: 6 V.S.A. § 4029