

**PROPOSED REGULATION OF THE DIRECTOR OF
THE STATE DEPARTMENT OF AGRICULTURE**

LCB File No. R251-03

January 23, 2004

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-8, 11, 14-19, 26 and 33, NRS 555.243; §§9, 10, 12, 13, 20-25 and 27-32, NRS 555.243 and 555.2485.

Section 1. Chapter 555 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this regulation.

Sec. 2. *“Balled nursery stock” means nursery stock that is removed from its growing site with a ball of soil that:*

- 1. Encloses an intact portion of the root system of the nursery stock; and*
- 2. Unless the nursery stock is removed from its growing site by a mechanical digger, is encased in burlap, a wire basket or other similar material that holds the root ball in place.*

Sec. 3. *“Business location” means any location in this state where a person conducts business as a dealer of nursery stock.*

Sec. 4. *“Business record” means any document generated in the course of the conduct of business as a dealer of nursery stock that is relevant to ascertain compliance with NRS 555.235 to 555.249, inclusive, or NAC 555.100 to 555.235, inclusive, and sections 2 to 13, inclusive, of this regulation. The term includes, without limitation, an invoice, inspection certificate, quarantine certificate, phytosanitary certificate and shipping manifest.*

Sec. 5. *“Etiolated growth” means plant growth that is bleached, whitened, weak or elongated, usually as a result of insufficient light.*

Sec. 6. *“Packaged” means any plant or plant part packed in moisture-retaining material that is wrapped and sealed in plastic or other material to hold the contents in place.*

Sec. 7. *The Director interprets the phrase “ornamental plants intended for indoor decorative purposes,” as used in NRS 555.236, to mean plants that are cultivated exclusively for indoor use.*

Sec. 8. 1. *A person who wishes to conduct business as a dealer of nursery stock must submit a separate application for each business location.*

2. *An applicant for a license to conduct business as a dealer of nursery stock shall provide all the information required on the application form provided by the Director, including, without limitation:*

(a) The name of the applicant;

(b) The name and mailing address of the business under which the applicant intends to conduct business and the telephone and facsimile numbers and e-mail address, if any, of the business;

(c) The physical address and the telephone and facsimile numbers and e-mail address, if any, of the location where business is conducted;

(d) The physical address of the location where the business records are maintained; and

(e) The primary type of business and nursery stock to be sold.

Sec. 9. *A person who knowingly submits incomplete, fraudulent or deceptive information to the Director to obtain a license to conduct business as a dealer of nursery stock shall, after notice and hearing, for each violation pay an administrative fine in accordance with the following:*

1. *For the first violation, \$150.*

2. *For the second violation, \$250.*
3. *For the third and any subsequent violation, \$500.*

Sec. 10. *1. A licensee who uses a service vehicle to deliver or install nursery stock shall:*

- (a) Have a copy of the license in the vehicle; or*
- (b) Display the name and license number of the business on each side of the vehicle as set forth in subsections 2 and 3.*

2. The name and license number of the business displayed on a service vehicle must be:

- (a) The same as the name and license number on the license; and*
- (b) Displayed using letters and numerals that are:*
 - (1) Plain and legible;*
 - (2) At least 2 inches in height; and*
 - (3) In a color that contrasts with the color of the service vehicle.*

3. The license number of the business displayed on a service vehicle must be preceded by the letters "NSDL."

4. A licensee who violates this section shall, after notice and hearing, for each violation pay an administrative fine in accordance with the following:

- (a) For the first violation, \$75.*
- (b) For the second violation, \$200.*
- (c) For the third and any subsequent violation, \$300.*

Sec. 11. *A person who conducts business as a dealer of nursery stock shall maintain a business record for not less than 3 years after the record is generated.*

Sec. 12. *A person who falsifies an inspection certificate or phytosanitary certificate shall, after notice and hearing, for each violation pay an administrative fine in accordance with the following:*

- 1. For the first violation, \$200.*
- 2. For the second violation, \$300.*
- 3. For the third and any subsequent violation, \$500.*

Sec. 13. *1. A dealer of nursery stock shall not sell nursery stock that is damaged by an environmental or mechanical condition if the damage is:*

- (a) Likely to inhibit normal growth and development;*
- (b) To the branches of the nursery stock and cannot be corrected with selective pruning; or*
- (c) To the cambium layer of the trunk of the nursery stock and is not less than 50 percent of the circumference of the trunk.*

2. As used in this section, “environmental or mechanical condition” includes, without limitation:

- (a) Transportation and handling;*
- (b) Frost cracking;*
- (c) Pruning;*
- (d) Sunscald;*
- (e) The roots of the nursery stock being abnormally pot-bound; and*
- (f) Girdling of the roots.*

3. A licensee who violates this section shall, after notice and hearing, for each violation pay an administrative fine in accordance with the following:

- (a) For the first violation, \$100.*

(b) For the second violation, \$300.

(c) For the third and any subsequent violation, \$500.

Sec. 14. NAC 555.100 is hereby amended to read as follows:

555.100 As used in NAC 555.100 to 555.235, inclusive, *and sections 2 to 13, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 555.101 to 555.109, inclusive, *and sections 2 to 6, inclusive, of this regulation* have the meanings ascribed to them in those sections.

Sec. 15. NAC 555.101 is hereby amended to read as follows:

555.101 “Bare-root nursery stock” means any plant for transplanting ~~[which is dug without taking a mass of soil with the roots.]~~ *that is removed from a growing site if its root system is substantially free from soil.*

Sec. 16. NAC 555.103 is hereby amended to read as follows:

555.103 “Containerized stock” means any plant ~~[which is potted]~~ *that is planted in a container* in soil or ~~[a]~~ *in another* growing medium ~~[.]~~ *that is capable of sustaining normal plant growth.*

Sec. 17. NAC 555.106 is hereby amended to read as follows:

555.106 A pest is “eradicated” if it has been subjected to ~~[a treatment known to be 100 percent lethal to all stages of the pest or has been subjected to]~~ *pest* control practices, and repeated inspections under favorable conditions have failed to reveal the pest. The number of repeated inspections will be determined by the Director in accordance with scientific knowledge of the pest involved.

Sec. 18. NAC 555.109 is hereby amended to read as follows:

555.109 ~~["Under"]~~ *A pest is "under* effective control" ~~[means the use of a program to control a common pest by using any available method, including, but not limited to, a program of sanitation and application of proper pesticides that results in]~~ *if it has been subjected to pest control practices, and an inspection reveals* no more than a few of the ~~[type of pest being controlled existing]~~ *pests* on no more than a few plants in the block or lot of nursery stock.

Sec. 19. NAC 555.120 is hereby amended to read as follows:

555.120 For the purposes of reporting classes of nursery stock, the following classifications must be used:

1. Deciduous ~~[trees/shade]~~ *and evergreen* trees;
2. ~~[Evergreens;]~~ *Coniferous evergreens;*
3. Vines;
4. Small fruits;
5. ~~[Bulbs;]~~ *Vegetative propagative materials, including, without limitation, bulbs, corms, rhizomes and* tubers;
6. Deciduous *and evergreen* shrubs;
7. Roses;
8. Fruit trees;
9. ~~[Bedding stock; and]~~ *Annual bedding stock;*
10. Sod ~~[H]~~;
11. *Perennials;*
12. *Vegetable plants; and*
13. *Seed.*

Sec. 20. NAC 555.130 is hereby amended to read as follows:

555.130 1. Nursery stock sold or offered for sale must be labeled plainly and legibly with the correct *botanical or commonly accepted* name ~~[and with the]~~, *or both. If nursery stock is sold by* grade or size ~~[when so required by regulation.]~~, *the grade or size must appear on the label and be determined as set forth in the American Standard for Nursery Stock, as adopted by reference pursuant to NAC 555.200.* Nursery stock on display for sale may be labeled by a suitable sign on a block of stock of the same kind and species.

2. ~~[To identify nursery stock being delivered or transported to any purchaser, at least one label bearing the correct botanical name, commonly accepted name or both, must be attached to each separate species or variety, except when delivered to the purchaser on the premises and sold from a block of stock labeled with a suitable sign.~~

~~—3.]~~ A person who fails to label or label correctly nursery stock in violation of this section shall, after notice and hearing, for each violation pay an administrative fine in accordance with the following:

- (a) For the first violation, ~~[\$50.]~~ \$75.
- (b) For the second violation, \$100.
- (c) For the third and any subsequent violation, \$200.

Sec. 21. NAC 555.150 is hereby amended to read as follows:

555.150 1. Only sound, healthy nursery stock stored or displayed under conditions which will maintain its vigor may be offered for sale. ~~[Nursery stock when sold must be living stock and not dead or in a dying condition, and must not be broken, frozen, damaged or abnormally pot bound. A dying condition includes, without limitation, any nursery stock weakened by drying, excessive heat or cold, or any other condition which makes it unable to grow satisfactorily when given reasonable care.~~

~~—2. Any deciduous fruit or nut tree must be free from twisted, crossed, frosted, broken or other defective roots, broken grafts and other defects which would interfere with the normal and proper development of the tree.~~

~~—3.]~~ 2. Any person who displays or stores nursery stock shall maintain the following standards:

(a) *Nursery stock must be maintained in a manner that will protect its roots from excessive heat, drying or other adverse conditions.*

(b) *The root ball of balled nursery stock must be kept moist at all times and in a moisture-retaining material at a depth sufficient to cover 75 percent of the ball.*

(c) *Bare-root nursery stock must be kept under conditions of temperature, light and moisture that retard etiolated or other abnormal growth and maintain viability. Moisture must be supplied to the root system, and the roots must be covered with moisture-retaining material.*

(d) *Containerized stock and potted balled nursery stock enclosed in a container must be kept and displayed under growing conditions of temperature, light and moisture sufficient to maintain viability and vigor. The potting medium must cover all the roots of the stock.*

(e) *Packaged nursery stock must be stored and displayed under conditions of temperature and light that will retard etiolated growth or other abnormal growth, ensure adequate moisture and prevent damage to the root system from excessive heat or cold.*

(f) *Woody-stemmed deciduous stock must have a moist, green cambium in the stems and branches and include viable buds or normal growth. Etiolated growth from individual buds must not be more than 4 inches long.*

(g) *Balled nursery stock must have a moist, green cambium in the stems and branches, include viable buds or normal growth and possess healthy, viable roots. Root balls must be*

firm and secure and meet or exceed the size specified in the American Standard for Nursery Stock, as adopted by reference pursuant to NAC 555.200.

(h) Nursery stock containers or root balls must be free from noxious weeds and commercially clean of common weeds.

3. A person who displays or stores nursery stock in violation of this section shall, after notice and hearing, for each violation pay an administrative fine in accordance with the following:

- (a) For the first violation, \$100.
- (b) For the second violation, ~~[\$200.]~~ **\$300.**
- (c) For the third and any subsequent violation, ~~[\$300.]~~ **\$500.**

Sec. 22. NAC 555.160 is hereby amended to read as follows:

555.160 1. Any person selling, delivering, offering for sale or growing nursery stock shall maintain the following standards of cleanliness for all nursery stock and for the premises on which any nursery stock is grown, held or offered for sale:

(a) All nurseries and nursery stock must be free of dangerously injurious pests and commercially clean of common pests.

(b) Infestations or infections of pests that may develop in nurseries or on nursery stock are subject to the following minimum requirements:

- (1) A dangerously injurious pest must be eradicated.
- (2) A common pest must be under effective control.

2. A person who violates this section shall, after notice and hearing, for each violation pay an administrative fine in accordance with the following:

- (a) For the first violation, ~~[\$50.]~~ **\$100.**

(b) For the second violation, ~~[\$100.]~~ **\$200.**

(c) For the third and any subsequent violation, ~~[\$200.]~~ **\$500.**

Sec. 23. NAC 555.170 is hereby amended to read as follows:

555.170 1. All nursery stock, plants, budwood, grafts, scions or any other plant part used for propagating purposes must be free of paraffin, wax or other coating, covering or material which, because of its opacity, thickness or color, interferes with or prohibits the free and unhampered examination and inspection of the aerial portion thereof.

2. A person who violates this section shall, after notice and hearing, for each violation pay an administrative fine of ~~[\$50.]~~ **\$100.**

Sec. 24. NAC 555.175 is hereby amended to read as follows:

555.175 1. If the age of nursery stock is stated on any advertisement, label or sign in connection with the sale or offering for sale or distribution of that stock, the age must be stated in years from the time at which the nursery stock was propagated. Each year must indicate the completion in autumn of one seasonal period of growth.

2. A person who violates this section shall, after notice and hearing, for each violation pay an administrative fine of ~~[\$50.]~~ **\$100.**

Sec. 25. NAC 555.190 is hereby amended to read as follows:

555.190 1. The Director may require by a written order that any nursery stock found infested or infected be isolated in a manner approved by the Director, and may specify that the infestation or infection be controlled or eradicated within a reasonable specified length of time.

2. A person who fails to control or eradicate the infestation or infection within the length of time specified by the written order in violation of this section shall, after notice and hearing, for each violation pay an administrative fine of ~~[\$50.]~~ **\$200.**

Sec. 26. NAC 555.200 is hereby amended to read as follows:

555.200 1. The Department hereby adopts by reference the 1996 edition of American Standard for Nursery Stock. ~~[, together with any amendments or changes thereto which are found by the Director to be suitable for this state pursuant to subsection 2.]~~

2. This publication is available from the American Nursery and Landscape Association, ~~[1250 I Street N.W., Suite 500,]~~ *1000 Vermont Avenue, N.W., Suite 300*, Washington, D.C. ~~[20005,]~~ *20005-4914*, for the price of ~~[\$20.75.~~

~~—2.— The Director shall review each change or amendment to the 1996 edition of American Standard for Nursery Stock and determine whether it is suitable for this state. Upon making a determination that such change or amendment:~~

~~—(a) Is suitable, the Director shall file one copy of it with the Secretary of State, one copy with the State Library and Archives Administrator and make at least one copy available for public inspection with the regulations of the Department.~~

~~—(b) Is unsuitable, the Director shall file with the Secretary of State and with the State Library and Archives Administrator a notice which states that it was disapproved for this state and which has a copy of the change or amendment attached, and shall make at least one copy of the notice and attachment available for public inspection with the regulations of the Department.~~

~~—3.— In addition to the standards adopted by reference pursuant to subsections 1 and 2, nursery stock if graded by size must have a well-developed root system.]~~ *\$15.00.*

Sec. 27. NAC 555.210 is hereby amended to read as follows:

555.210 1. All nursery stock when offered for sale or sold by grade or size classification must have securely attached in a conspicuous place to each piece of nursery stock or to each container thereof, if sold individually, or securely attached to each bundle or lot when bundled or

sold as a single lot of one kind, grade or size, a label plainly and legibly printed or written stating the grade or size of the nursery stock at the time it is sold or delivered. The designated grade or size statement must conform to the standards of grade or size classification approved for use in this state, and the label must not contain any word, character or device which obscures the meaning of this designation or statement as to grade and size.

2. A person who violates this section shall, after notice and hearing, for each violation pay an administrative fine in accordance with the following:

- (a) For the first violation, ~~[\$50.]~~ **\$100.**
- (b) For the second violation, ~~[\$100.]~~ **\$200.**
- (c) For the third and any subsequent violation, ~~[\$200.]~~ **\$300.**

Sec. 28. NAC 555.215 is hereby amended to read as follows:

555.215 A person who ~~engages in the commercial production, holding, distribution, collection or selling of~~ **sells** nursery stock without first obtaining a license from the Director, in violation of NRS 555.236, shall, after notice and hearing, for each violation pay an administrative fine in accordance with the following:

- 1. For the first violation, \$250.
- 2. For the second violation, \$500.
- 3. For the third and any subsequent violation, \$1,000.

Sec. 29. NAC 555.221 is hereby amended to read as follows:

555.221 A person who prevents or interferes with the inspection of a nursery **or other business location** in violation of NRS 555.244 shall, after notice and hearing, for each violation pay an administrative fine in accordance with the following:

- 1. For the first violation, \$250.

2. For the second violation, \$500.
3. For the third and any subsequent violation, \$1,000.

Sec. 30. NAC 555.225 is hereby amended to read as follows:

555.225 A person who ships or receives nursery stock ~~without an inspection certificate~~ in violation of NRS 555.246 shall, after notice and hearing, for each violation pay an administrative fine ~~of \$250.~~ *in accordance with the following:*

1. *For the first violation, \$250.*
2. *For the second violation, \$350.*
3. *For the third and any subsequent violation, \$500.*

Sec. 31. NAC 555.231 is hereby amended to read as follows:

555.231 A person who fails to label *a shipment of* nursery stock in violation of NRS 555.247 shall, after notice and hearing, for each violation pay an administrative fine of \$250.

Sec. 32. NAC 555.235 is hereby amended to read as follows:

555.235 A person who fails to treat, keep under his control, destroy or ship out of this state any infected nursery stock in violation of NRS 555.248 shall, after notice and hearing, for each violation pay an administrative fine in accordance with the following:

1. For the first violation, ~~\$100.~~ *\$200.*
2. For the second violation, ~~\$200.~~ *\$300.*
3. For the third and any subsequent violation, ~~\$300.~~ *\$500.*

Sec. 33. NAC 555.104, 555.1076, 555.110 and 555.140 are hereby repealed.

TEXT OF REPEALED SECTIONS

555.104 “Decorative” defined. (NRS 555.236, 555.243) For the purposes of paragraph (a) of subsection 1 of NRS 555.236, a plant is “decorative” if it is commonly grown or sold in movable containers and is not adapted for cultivation out of doors because of climatic conditions and natural peculiarities of habit or growth, and because of the purpose of its cultivation.

555.1076 “Nursery stock” defined. (NRS 555.243) “Nursery stock” means any product of the soil, including, without limitation, agricultural or horticultural crops, seeds, plants, trees or shrubs and any part or manufactured product thereof.

555.110 Exemption of out-of-state nursery. (NRS 555.236, 555.243) An out-of-state nursery making wholesale deliveries of nursery stock to a licensed retail nursery in this state is exempt from the nursery licensing requirements of NRS 555.236, if:

1. The out-of-state nursery possesses a valid nursery license issued under authority of the state having jurisdiction over the registered place of business; and
2. The out-of-state nursery notifies the Director of the name and address of the consignee and the classification of all nursery stocks delivered by other than common carrier. The notice must be filed with the Director within 72 hours after time of delivery. Notice may be given to the following offices:

State Department of Agriculture

Division of Plant Industry

350 Capitol Hill Avenue

Reno, NV 89502-2923

State Department of Agriculture

Division of Plant Industry

Southern District Office

Mailroom Complex

Las Vegas, NV 89158

State Department of Agriculture

Division of Plant Industry

Eastern District Office

Eyer H. Boies Building

1351 Elm Street

Elko, NV 89801

State Department of Agriculture

Division of Plant Industry

1200 East Winnemucca Boulevard

Winnemucca, NV 89445

555.140 Botanical and common names; administrative fine. (NRS 555.243, 555.247, 555.2485)

1. Botanical or common names of nursery stock must be those listed in *Standard Plant Names*, Second Edition, American Joint Committee on Horticultural Nomenclature, 1942, published by J. Horace McFarland Company, Harrisburg, Pennsylvania, and any corrections, additions or changes thereto.
2. New plant names must be recognized by the American Nursery and Landscape Association, 1250 I Street N.W., Suite 500, Washington D.C. 20005, and registered with the national society devoted to the genus or groups involved, including, without limitation, the American Rose Society and the American Peony Society, or, for genera not represented by any national society, the registration must be made with the American Nursery and Landscape Association.
3. A person who labels or fails to label nursery stock in violation of this section shall, after notice and hearing, for each violation pay an administrative fine of \$50.