

**PROPOSED REGULATION OF
THE DIVISION OF AGRICULTURE OF
THE DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R228-97

January 26, 1998

EXPLANATION - Matter in *italics* is new; matter in brackets [] is material to be omitted.

AUTHORITY: §§2- 11, NRS 555.2485 and §§12-20, 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 11, inclusive, of this regulation.

Sec. 2. *“Notice of violation” means a nursery inspection report or an interview notice issued by the division which:*

- 1. Sets forth the statute or regulation that has been violated;*
- 2. Sets forth what must be done with the nursery stock found in violation; and*
- 3. Is signed by:*
 - (a) A representative of the division; and*
 - (b) The person who is in violation of the statute or regulation.*

Sec. 3. *“Notice of warning” means a written notice issued by the division which sets forth:*

- 1. The statute or regulation that has been violated; and*
- 2. Any action which must be taken by the person in violation to remedy the violation.*

Sec. 4. *“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.*

Sec. 5. *1. A notice of warning may be issued by the division for a first violation of any provision of chapter 555 of NRS or this chapter unless the violation was:*

(a) The failure to comply with the disposition statement on a notice of violation within the time allowed pursuant to the notice of violation; or

(b) An intentional violation that would:

(1) Defraud a consumer; or

(2) Cause the nursery stock to be unsuitable for its intended purpose.

2. An administrative fine will not be assessed with a notice of warning issued pursuant to this section.

Sec. 6. *A person who engages in the commercial production, holding, distribution, collection or selling of nursery stock without first obtaining a license from the administrator, 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. 7. *A person who prevents or interferes with the inspection of a nursery 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. 8. *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.*

Sec. 9. *A person who fails to label nursery stock in violation of NRS 555.247 shall, after notice and hearing, for each violation pay an administrative fine of \$250.*

Sec. 10. *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.*
2. *For the second violation, \$200.*
3. *For the third and any subsequent violation, \$300.*

Sec. 11. NAC 555.100 is hereby amended to read as follows:

555.100 As used in NAC 555.100 to 555.210, inclusive, *and sections 2 to 10, 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, 3 and 4 of this regulation*, have the meanings ascribed to them in those sections.

Sec. 12. 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 name [,] and with the grade or size when so required by regulation. 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 [or] *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.

(b) For the second violation, \$100.

(c) For the third and any subsequent violation, \$200.

Sec. 13. NAC 555.140 is hereby amended to read as follows:

555.140 1. Botanical or common names of nursery stock must be those listed in “Standard Plant Names,” [2nd ed.,] *Second Edition*, American Joint Committee on Horticultural Nomenclature, 1942, [Publisher,] *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* , [of *Nurserymen, Inc.*] 1250 I Street N.W., Suite 500, Washington D.C. [,] 20005, and registered with the national society devoted to the genus or groups involved, [such as] *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 [Association of Nurserymen.] *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.

Sec. 14. 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. 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.

(c) For the third and any subsequent violation, \$300.

Sec. 15. 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:

[1.] (a) All nurseries and nursery stock must be free of serious and economic pests and commercially clean of common pests.

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

[(a)] (1) A serious pest must be eradicated.

[(b)] (2) An economic pest must be intensively controlled.

[(c)] (3) A common pest must be under 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.

(b) For the second violation, \$100.

(c) For the third and any subsequent violation, \$200.

Sec. 16. 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.*

Sec. 17. 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, [it] *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.

Sec. 18. 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 ~~[him,]~~ *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.

Sec. 19. NAC 555.200 is hereby amended to read as follows:

555.200 *1.* The division hereby adopts by reference the ~~[1990]~~ *1996* edition of “American Standards for Nursery Stock,” together with any amendments or changes thereto which are found by the administrator to be suitable for ~~[Nevada]~~ *this state* pursuant to subsection 2. This publication is available from The American *Nursery and Landscape* Association , ~~[of Nurserymen, Inc.,]~~ 1250 I Street ~~[,]~~ N.W., Suite 500, Washington, D.C. 20005, for the price of ~~[\$10.]~~ *\$20.75*.

2. The administrator shall review each change or amendment to the ~~[1990]~~ *1996* edition of “American Standards for Nursery Stock” and determine whether it is suitable for ~~[Nevada.]~~ *this state*. Upon making a determination that such change or amendment:

(a) Is suitable, the administrator shall file one copy of it with the secretary of state, one copy with the state [librarian,] *library and archives administrator* and make at least one copy available for public inspection with the regulations of the division.

(b) Is unsuitable, the administrator shall file with the secretary of state and with the state [librarian] *library and archives administrator* a notice which states that it was disapproved for [Nevada] *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 division.

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.

Sec. 20. 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.

(b) For the second violation, \$100.

(c) For the third and any subsequent violation, \$200.