

Readopt with amendments Agr 2500, effective 11/21/08 (Document #9323), to read as follows:

CHAPTER Agr 2500 NURSERY AND NURSERY STOCK

Statutory Authority: RSA 433:22

PART Agr 2501 NEW HAMPSHIRE ADMINISTRATIVE NURSERY REQUIREMENTS

Agr 2501.01 Statement of Purpose. The division of plant industry of the New Hampshire department of agriculture, markets & food is charged with the function of nursery stock inspection and regulation under the immediate supervision of the state entomologist and commissioner of agriculture. The purpose of these rules is to clarify the procedures and methods *used for licensure and issuance of export certificates, and used by* inspectors of the division of plant industry in dealing with infections, diseases, and insect pests of nursery stock.

Agr 2501.02 Definitions. In addition to the definitions in RSA 433:21, the following shall apply:

(a) "Certificate of Origin" means a document authorized or prepared by a duly authorized federal or state regulatory official that affirms, declares, or verifies that an article, nursery stock, plant, product, shipment, or any other officially regulated article originated from the location as stated.

(b) "Disposal" means disposed of in an appropriate manner that will not allow the pest to survive or spread. Disposal shall be witnessed or approved by a state inspector. Methods may include, but be not limited to: encapsulating the plant(s) in plastic bags and disposing of the plant material in one of the following ways: trash pickup, discarding, open burning, incineration, or burial of infested nursery stock.

(c) "Federal phytosanitary certificate" means a document prepared by a duly authorized federal or state regulatory official that affirms, declares, or verifies that nursery stock, plant, product, shipment, or any other officially regulated article meets the phytosanitary requirements of the import country.

(d) "Invasive species" means all plant, insect and fungal species that any person or persons are prohibited from collecting, transporting, selling, distributing, propagating, or transplanting, including all of their cultivars and varieties as prohibited under RSA 430:53, III.

(e) "Landscape" means any person involved in the practice of buying, transporting, planting, cultivating, or selling nursery stock for landscape purposes.

(f) "License" means an official document issued by the NH department of agriculture, markets & food to nurseries which attests that said nursery and nursery stock is in

compliance with all state regulations and valid, which is from January 1st through December 31st of each year.

(g) "Nursery" means any location where plants with roots are propagated, grown, stored, or sold. These include, but are not limited to, nurseries, garden centers, greenhouses, landscape facilities, florists, roadside dealers, supermarkets, and stores.

(h) "Nurseryman" means any person who owns, leases, manages, or is in charge of a nursery for the purpose of selling or offering nursery stock for sale.

(i) "Nursery stock" means any woody or herbaceous plant material being offered for sale. Woody plant material includes, but is not limited to: ornamental and fruiting trees, shrubs, vines, and all viable parts of these plants; and any other plant or plant part designated by the commissioner. Herbaceous plant material includes, but is not limited to: annuals, perennials, bulbs, tubers, root stock, or any other type of plant or plant part designated by the commissioner. Nursery stock does not include cut Christmas trees, wreaths, seeds, dried herbs, vegetables, cut flowers, or such plant products.

(j) "Person"- means any individual, governmental entity, firm, partnership, corporation, company, society, association, or any organized group of persons whether incorporated or not, and every officer, agent, or employee thereof.

(k) "Plant dealer" means any person, firm, partnership, association, or corporation not a grower or an original producer of nursery stock in New Hampshire who buys, acquires, or receives on consignment nursery stock for the purpose of re-selling, transporting, or otherwise disposing of the stock.

(l) "Sell or offer for sale" means to offer for sale, expose for sale, possess for sale, exchange, barter, or trade. This includes, but is not limited to nurseries, wood-using industries, persons, or landscapers.

(m) "Quarantine tags, labels, and certificates" means documents bearing a statement addressing specific insects, arthropod pests and/or plant diseases.

(n) "State exterior quarantine" means a quarantine regulation adopted by a noninfested state to prevent or delay the introduction of a pest into the state.

(o) "State interior quarantine" means a quarantine regulation adopted against a pest to prevent spread of the pest within state borders.

(p) "State phytosanitary certificate" means a document prepared by a duly authorized state regulatory official that affirms, declares, or verifies that nursery stock, plant, product, shipment, or any other officially regulated article meets phytosanitary requirements of the state or any US territory where the shipment is being sent.

Agr 2501.03 Licensing.

(a) Any nurseryman, plant dealer, or landscaper that temporarily or permanently retains nursery stock in his or her possession shall obtain a plant dealer license on forms provided by the NH department of agriculture, markets & food.

(b) The license shall be valid for one-year beginning on January 1 and ending on December 31 of the following year, unless the NH department suspends the plant dealer license pursuant to RSA 433:35.

(c) The application shall include the following:

- (1) Name, mailing address, physical address, and telephone number of the business;
- (2) The number of square feet/acres of nursery stock;
- (3) The number of square feet of greenhouses;
- (4) Statement of fee exemption, if applicable, pursuant to (f) below;
- (5) Indication of type of business;
- (6) Signature of owner/manager; and
- (7) Furnish a signed, written statement attesting that the applicant shall acquire and further distribute only nursery stock obtained from a certified and/or licensed grower or dealer, or approved by the authorizing agency within the state of origin.

(d) The annual fee for a plant dealer license shall be \$25.

(e) The license fee shall accompany the application. Payment shall be made by check, money order, or cash, payable to the Treasurer, State of New Hampshire.

(f) Fees required by Agr 2501.03(d) shall not apply to:

- (1) A person who is a nurseryman, dealer, or collector and who makes no more than \$3,000 in gross sales of all rooted plant material during the calendar year;
- (2) Any public or private arboretum operated not-for-profit which exchanges inspected nursery stock in limited quantities for experimental or permanent arboretum plantings;
- (3) New Hampshire State Forest Nursery; and

(4) Any landscape company that does not import out of state nursery stock, and does not temporarily or permanently store nursery stock.

(g) Every nurseryman/plant dealer shall continuously maintain with the NH department a complete and accurate list of all sources from which nursery stock is obtained.

(h) A nurseryman/plant dealer producing nursery stock for distribution, exchange, or sale shall hold a valid plant dealer license for each sales location.

(i) A plant dealer license shall not be transferable.

(j) A copy of the plant dealer's license shall be posted in a conspicuous place at the distribution location where it can be readily seen by an inspector.

(k) A nursery inspector shall inspect any nursery stock as determined necessary by the director.

(l) The director shall suspend a plant dealer license if, after considering the following factors, the director determines that prevention or removal of an infestation of dangerous insects or plant diseases cannot be assured:

(1) Failure to comply with all of the provisions of RSA 433:21-433:36;

(2) Failure to renew the plant dealer license;

(3) Violation of state and/or federal quarantines;

(4) Violation of a stop-sale order; or

(5) Failure to comply with state and/or federal invasive species laws.

Agr 2501.04 Inspections.

(a) When an inspector finds injurious plant pests or plant diseases present in a nursery or plant dealer's premises, greenhouse, or other place used for storage or sale of nursery stock, the inspector shall issue a stop-sale order to prevent the sale of such stock if the inspector determines that a stop-sale order is necessary to remove the threat posed by the pests or plant diseases and assure sound, healthy nursery stock for sale pursuant to RSA 433:30.

(b) Nursery stock placed on stop-sale shall be identified by the inspector, either individually or in blocks. Infested stock shall be separated from noninfested stock and that physical separation shall be effected and maintained by the nursery.

(c) The issuance of a stop-sale order shall state the following:

- (1) The reason for issuance of the stop-sale order;
- (2) A description of the nursery stock placed on stop-sale; and
- (3) The date upon which such stop-sale order became effective.

(d) Stop-sale ordered nursery stock shall not be moved from its location unless otherwise mandated by an inspector for isolation purposes, and shall not be sold until the following conditions have been met:

- (1) The nursery stock has been re-inspected and found to be apparently free from pests and diseases; and
- (2) The inspector provides a written statement releasing the stop sale ordered nursery stock.

Agr 2501.05 Quarantines.

(a) When injurious insect(s) and/or plant disease(s) are found in any geographic area, which pose a threat to natural, residential or commercial resources and/or commodities in New Hampshire, the commissioner shall establish an interior and/or exterior quarantine.

(b) The following quarantine measures shall be taken by the NH department of agriculture, markets & food:

- (1) Identify by scientific name the organism under quarantine;
- (2) Identify the quarantined counties;
- (3) Indicate the resource or commodity under quarantine; and
- (4) Specify restrictions on movement of host material or infected stock from quarantined areas.

Agr 2501.06 Violations.

(a) Any person who violates the provisions of this rule can be subject to the penalty provisions in RSA 433:32.

(b) It shall be a violation for any nurseryman/plant dealer who fails to apply for and obtain a plant dealer license prior to selling, distributing, trading, etc. any nursery stock.

(c) It shall be a violation to move, sell, distribute or ~~otherwise~~ destroy any nursery stock which has been placed on stop-sale without first notifying and receiving written approval from the NH department of agriculture, markets & food.

(c) It shall be a violation for any person who violates any internal or external state or federal quarantine.

Agr 2501.07 Export Certification.

- (a) Any nurseryman, plant dealer, landscaper, or person within the state of New Hampshire may apply for a federal or state phytosanitary certificate for plants and plant parts, in order to meet the plant health import requirements of other states and nations.***
- (b) The application for a federal or state phytosanitary certificate shall be made through the official federal phytosanitary certificate issuance and tracking system.***
- (c) The application shall include the following:***
 - (1) Name, and address of the applicant;***
 - (2) Name, address, and telephone number of the exporter;***
 - (3) Name and address of the recipient;***
 - (4) The approximate date of departure for the shipment;***
 - (5) The date and time when plants and plant parts can be made available for inspection;***
 - (6) The plant or plant part to be exported including quantities, and common and scientific names;***
 - (7) The commercial value of the shipment;***
 - (8) The means of conveyance of the shipment.***
- (d) The application for federal or state phytosanitary certification shall be submitted no less than one week prior to the requested inspection date.***
- (e) The per application fees for state or federal phytosanitary certificates collected by the state of New Hampshire shall be as follows:***
 - (1) There shall be no fee for a state phytosanitary certificate;***

- (2) The fee for federal phytosanitary certificates for shipments of less than \$1,250 in value shall be \$39.*
- (3) The fee for federal phytosanitary certificates for shipments of \$1,250 in value or greater shall be \$74.*
- (4) The fee to replace an issued federal phytosanitary certificate shall be \$8.*
- (f) Fees shall be collected at the time that the certificate is issued.*
- (g) Payment shall be made by credit card through the official federal phytosanitary certificate issuance and tracking system.*

APPENDIX

Provision of the Proposed Rule	Specific State or Federal Statute or Regulations which the Rule is Intended to Implement
Agr 2501.01-Agr 2501.02	RSA 433:21
Agr 2501.03	RSA 433:22, III, RSA 433:29-a
Agr 2501.04	RSA 433:29
Agr 2501.05	RSA 433:34
Agr 2501.06	RSA 433:29-a; RSA 433:30; RSA 433:32; RSA 433:34; RSA 433:35
Agr 2501.07	RSA 433:22, III, IV; RSA 433:25