

PLANT PROTECTION AND PLANT PEST ACT

- Administration: This Act is administered by the Nebraska Department of Agriculture, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509; telephone: (402) 471-2394.
- Revisions: The provisions of this Act were revised during the 2013 session of the Nebraska Legislature.
- Rules: A regulation has been promulgated under this Act known as Title 25, Chapter 13, Nebraska Administrative Code - Plant Protection and Plant Pest Act Regulations.

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2-1072. Act, how cited. Sections 2-1072 to 2-10,117 shall be known and may be cited as the Plant Protection and Plant Pest Act.

2-1073. Public policy declaration. It is hereby declared to be the public policy of the State of Nebraska to protect and foster the health, prosperity, and general welfare of its people by preserving and protecting the plant industry. Because of the importance of the plant industry to the welfare and economy of the state and the damage which can result from the uncontrolled proliferation of plant pests, there is a need to impose standards and restrictions on the movement and care of plants within the state. The Department of Agriculture shall be charged with administering and enforcing such standards and restrictions through the Plant Protection and Plant Pest Act.

2-1074. Definitions, where found. For purposes of the Plant Protection and Plant Pest Act, unless the context otherwise requires, the definitions found in sections 2-1074.01 to 2-1089 shall be used.

2-1074.01. Biological control, defined. Biological control shall mean:

(1) The use by humans of living organisms to control or suppress undesirable animals, plants, or microorganisms which affect plants or plant pests; or

(2) The action of parasites, predators, pathogens, or competitive organisms on a host or prey population which affect plants or plant pests to produce a lower general equilibrium than would prevail in the absence of the biological control agents.

2-1075. Biological control agent, defined. Biological control agent shall mean a parasite, predator, pathogen, or competitive organism intentionally released by humans for the purposes of biological control with the intent of causing a reduction of a host or prey population.

2-1075.02. Certified seed potatoes, defined. Certified seed potatoes means seed potatoes which have been certified by a certification entity recognized by the department to certify that the seed potatoes are free of regulated plant pests.

2-1075.03. Certification inspection of Nebraska-grown nursery stock, defined. Certification inspection of Nebraska-grown nursery stock shall mean an inspection performed pursuant to section 2-1095.

2-1076. Collector, defined. Collector shall mean any person who only gathers wild plants for the purpose of distribution.

2-1078. Department, defined. Department shall mean the Department of Agriculture.

2-1078.01. Director, defined. Director shall mean the Director of Agriculture or his or her designated employee, representative, or authorized agent.

2-1079. Distribute, defined. Distribute shall mean selling, exchanging, bartering, moving, or transporting; offering to sell, exchange, barter, move, or transport; holding nursery stock for sale, exchange, or barter; acting as a broker; or otherwise supplying. Distribute shall not include moving or transporting on contiguous real estate that is owned, leased, or controlled by the same person.

2-1079.01. Distribution location, defined. Distribution location shall mean each place nursery stock is offered for sale or sold and shall also include all locations of a vehicle from which nursery stock is offered for sale or sold directly. Distribution location shall not include each location from which an order is made by a purchaser ordering by mail, telephone, or facsimile transmission but shall include the location where such orders are received within the state.

2-1079.02. Genetically engineered plant organism, defined. Genetically engineered plant organism shall mean an organism altered or produced through genetic modification from a donor, vector, or recipient organism using recombinant deoxyribonucleic acid techniques.

2-1079.03. Grow, defined. Grow shall mean to produce a plant or plant product, by propagation or cultivation, including, but not limited to, division, transplant, seed, or cutting, generally over a period of one year or greater. Grow does not include transferring nursery stock from one container to another or potting bare-root nursery stock, if the stock will be distributed within twelve months.

2-1080.01. Harmonization plan, defined. Harmonization plan shall mean any agreement between states, or a state or states and the federal government, designed to limit the spread of a plant pest into or out of a designated area.

2-1081. Nuisance plant, defined. Nuisance plant shall mean any plant not economically essential to the welfare of the people of Nebraska, as determined by the department, and which may serve as a favorable host of plant pests or may be detrimental to the agricultural interests of the State of Nebraska.

2-1082. Nursery, defined. Nursery shall mean any property where nursery stock is grown, propagated, collected, or distributed and shall include, but not be limited to, private property or any property owned, leased, or managed by any agency of the United States, the State of Nebraska or its political subdivisions, or any other state or its political subdivisions where nursery stock is fumigated, treated, packed, or stored by any person.

2-1083. Nursery stock, defined. Nursery stock shall mean all botanically classified hardy perennial or biennial plants, trees, shrubs, and vines, either domesticated or wild, cuttings, grafts, scions, buds, bulbs, rhizomes, or roots thereof, and such plants and plant parts for, or capable of, propagation, excluding plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, potatoes, or seeds of any such plant.

2-1083.01. Nursery stock distributor, defined. Nursery stock distributor shall mean any person involved in:

- (1) The acquisition and further distribution of nursery stock;
- (2) The utilization of nursery stock for landscaping or purchase of nursery stock for other persons;
- (3) The distribution of nursery stock with a mechanical digger, commonly known as a tree spade, or by other means;
- (4) The solicitation of or taking orders for sales of nursery stock in the state; or
- (5) The growing and distribution of nursery stock or active involvement in the management or supervision of a nursery.

2-1084. Person, defined. Person shall mean any body politic or corporate, society, community, the public generally, any individual, partnership, limited liability company, joint-stock company, or association, or any agent of any such entity.

2-1084.01. Place of origin, defined. Place of origin shall mean the county and state where nursery stock was most recently grown for a period of not less than one cycle of active growth.

2-1085. Plant, defined. Plant shall mean any plant, plant product, plant part, or reproductive or propagative part of a plant, plant product, or plant part including, but not limited to, trees, shrubs, vines, forage and cereal plants, fruit, seeds, grain, wood, or lumber. This shall include all growing media, packing material, or containers associated with the plants, plant parts, or plant products named in this section.

2-1086. Plant pest, defined. Plant pest shall mean any insect, arthropod, nematode, mollusk, fungus, bacteria, virus, mycoplasma, parasitic plant, physiological disorder, or other infectious agent which can directly or indirectly injure or cause damage or a pathological condition to plants.

2-1087. Property, defined. Property shall mean any real estate or personal property, including any vessel, automobile, aircraft, rail car, other vehicle, machinery, building, dock, nursery, orchard, or other place where plants are grown or maintained or the contents of such place.

2-1088. Rules and regulations, defined. Rules and regulations shall mean rules and regulations adopted and promulgated by the department pursuant to the Plant Protection and Plant Pest Act.

2-1089. Wild plants, defined. Wild plants shall mean nursery stock from any place other than a nursery.

2-1090. State Entomologist; position created; duties. There is hereby created in the department and under the direction of the Director of Agriculture the position of State Entomologist. Such person shall be a graduate of a recognized university with a major, or its equivalent, in entomology, plant pathology, or an equivalent biological science and have not less than two years of experience in such field and administrative work. It shall be the duty of the State Entomologist through the Plant Protection and Plant Pest Act to protect the interest of Nebraska as stated in section 2-1073, to regulate the distribution of plants, and to assist exporters of plants in meeting the requirements imposed by other states or countries.

2-1091. Enforcement of act; department; powers. For the purpose of enforcement of the Plant Protection and Plant Pest Act or any rule or regulation, the department may:

- (1) Enter at reasonable times and in a reasonable manner without being subject to any action for trespass or damages, if reasonable care is exercised, all property where plants are grown, packed, held prior to distribution, or distributed to inspect all plants, structures, vehicles, equipment, packing materials, containers, records, and labels on such property. The department may inspect and examine all records and property relating to compliance with the act. Such records and property shall be made available to the department for review at all reasonable times;
- (2) In a reasonable manner, hold for inspection and take samples of any plants and associated materials which may not be in compliance with the act;
- (3) Inspect or reinspect at any time or place any plants that are in the state or being shipped into or through the state and treat, seize, destroy, require treatment or destruction of, or return to the state of origin any plants in order to inhibit or prevent the movement of plant pests throughout the state;
- (4) Obtain an inspection warrant in the manner prescribed in sections 29-830 to 29-835 from a court of record if any person refuses to allow the department to inspect pursuant to this section;

- (5) Issue a written or printed withdrawal-from-distribution order and post signs to delineate sections not marked pursuant to subsection (3) of section 2-1095 or sections of distribution locations and to notify persons of any withdrawal-from-distribution order when the department has reasonable cause to believe any lot of nursery stock is being distributed in violation of the act or any rule or regulation;
- (6) Apply for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the act or the rules and regulations. The district court of the county where the violation is occurring or is about to occur shall have jurisdiction to grant such relief upon good cause shown. Relief may be granted notwithstanding the existence of any other remedy at law and shall be granted without bond;
- (7) Issue a quarantine or establish a quarantine area;
- (8) Cooperate and enter into agreements, including harmonization plans, with any person in order to carry out the purpose of the act;
- (9) Establish a restricted plant pest list to prohibit the movement into the state of plant pests not known to occur in Nebraska and to prohibit the movement of those plant pests present in the state but known to be destructive to the plant industry;
- (10) Issue European corn borer quarantine certificates, phytosanitary certificates, and export certificates on plants for individual shipment to other states or foreign countries if those plants comply with the requirements or regulations of such state or foreign country or issue quarantine compliance agreements or European corn borer quarantine certification licenses;
- (11) Inspect plants that any person desires to ship into another state or country when such person has made an application to the department for such inspection. The inspection shall determine the presence of plant pests to determine the acceptance of the plants into other states or countries. The department may accept the inspections of laboratories authorized by the department or field inspectors of the department;
- (12) Certify plants or property to meet the requirements of specific quarantines imposed on Nebraska or Nebraska plants. The quarantine certification requirements shall be set forth in the rules and regulations;
- (13) Until increased or decreased by rules or regulations, assess and collect fees set forth in section 2-1091.02 for inspections, services, or work performed in carrying out subdivisions (8) and (10) through (12) of this section. Inspection time shall include the driving to and from the location of the inspection in addition to the time spent conducting the inspection, and the mileage charge shall be for the purpose of inspection. Any fee charged to the department relating to such subdivisions shall be paid by the person requesting the inspection, services, or work. The department may, for purposes of administering such subdivisions, establish in rules and regulations inspection requirements, standards, and issuance, renewal, or revocation of licenses, certificates, or agreements necessitated by such subdivisions;
- (14) Conduct continuing survey and detection programs on plant pests to monitor the population or spread of plant pests;
- (15) Issue, place on probation, suspend, or revoke licenses issued or agreements entered into pursuant to the act or deny applications for such licenses or agreements pursuant to the act; and
- (16) Issue orders imposing administrative fines or cease and desist orders pursuant to the act.

2-1091.01. Nursery stock distributor license; application; contents; fees; licensee duties; nursery stock; requirements; license; posting; lapse of license.

(1) A person shall not operate as a nursery stock distributor without a valid license issued by the department. Any person validly licensed as a grower, a dealer, or a broker under the Plant Protection and Plant Pest Act as it existed on the day before September 6, 2013, shall remain validly licensed until December 31, 2013.

(2) Each nursery stock distributor shall apply for a license required by subsection (1) of this section on forms furnished by the department due on January 1 for the current license year. Such application shall include the full name and mailing address of the applicant, the names and addresses of any partners, limited liability company members, or corporate officers, the name and address of the person authorized by the applicant to receive notices and orders of the department as provided in the Plant Protection and Plant Pest Act, whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity, the location of the operation, and the signature of the applicant. A person distributing greenhouse plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, shall not be required to obtain a license but may do so pursuant to section 2-10,105.

(3) A nursery stock distributor license shall expire on December 31 of each year unless previously lapsed or revoked.

(4) All applications shall be accompanied by a license fee for the first acre on which nursery stock is located. If the nursery stock distributor does not have physical possession of nursery stock, the nursery stock distributor shall pay a license fee based on one acre. Additionally the applicant shall pay an acreage fee for each additional acre on which nursery stock is located. The license fees are set forth in section 2-1091.02. If the applicant has distributed nursery stock prior to applying for a license, the applicant shall pay an additional administrative fee as set forth in section 2-1091.02.

(5) All nursery stock distributed by a nursery stock distributor shall be only sound, healthy nursery stock that is reasonably capable of growth, labeled correctly, free from injurious plant pests, and stored or displayed under conditions which maintain its vigor as provided in the rules and regulations. Any fee charged to the department for diagnostic services or shipping costs shall be paid by the nursery stock distributor.

(6) A valid copy of the nursery stock distributor's license shall be posted in a conspicuous place at the distribution location.

(7) A nursery stock distributor shall obtain a license for each distribution location.

(8) Each applicant for a nursery stock distributor license shall furnish a signed written statement that such person will acquire and distribute only nursery stock which has been distributed by a person who is duly licensed pursuant to the act or approved by an authorizing agency within the state of origin recognized by the department.

(9) Every nursery stock distributor shall continually maintain a complete and accurate list with the department of all sources from which nursery stock is received.

(10) Each nursery stock distributor shall keep and make available for examination by the department for a period of three years an accurate record of all transactions conducted in the ordinary course of business. Records pertaining to such business shall at a minimum include the names of the persons from which nursery stock was received, the receiving date, the amount received, and the variety and place of origin of the nursery stock received and all documents accompanying each shipment indicating compliance with state or federal requirements and quarantines.

(11) A nursery stock distributor license shall lapse automatically upon a change of ownership, and the subsequent owner must obtain a new license. The nursery stock distributor license shall lapse automatically upon a change of location, and such

licensee must obtain a new license. A licensee shall notify the department in writing at least thirty days prior to any change in ownership, name, or address. A nursery stock distributor shall notify the department in writing before there is a change of the name or address of the person authorized to receive notices and orders of the department. When a nursery stock distributor permanently ceases operating, he or she shall return the license to the department.

2-1091.02. Fees; department; powers. (1) License fees for the Plant Protection and Plant Pest Act due on January 1, 2014, shall be the amount in column A of subsection (3) of this section.

(2) The license fees due January 1, 2015, and each January 1 thereafter shall be set by the director on or before July 1 of each year. The director may raise or lower such fees each year to meet the criteria in this subsection, but the fee shall not be greater than the amount in column B of subsection (3) of this section. The same percentage shall be applied to each category for all fee increases or decreases. The director shall use the fees in column A of subsection (3) of this section as a base for future fee increases or decreases. The director shall determine the fees based on estimated annual revenue and fiscal year-end cash fund balances as follows:

(a) The estimated annual revenue shall not be greater than one hundred seven percent of program cash fund appropriations allocated for the Plant Protection and Plant Pest Act; and

(b) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of program cash fund appropriations allocated for the act.

(3) License Fees.

License Fees	A	B
Nursery stock distributor license as set forth in section 2-1091.01 for the first acre	\$115	\$140
Fee for additional acres	\$5.00 per acre	\$6.00 per acre
Distributing without obtaining a nursery stock distributor license fee	25% of the fee per month up to 100% of the license fee	

(4) Other fees for the Plant Protection and Plant Pest Act under subsection (5) of this section in effect on January 1, 2014, shall be the amount in column A of such subsection. The department may increase or decrease such fees by rules or regulations adopted and promulgated by the department. Such increases shall not result in fees greater than the amount in column B of subsection (5) of this section.

(5) Other Fees.

Other Fees	A	B
Certification fee for nursery stock growing acres as set forth in section 2-1095	Included in license fee	
Late applications for certification of nursery stock growing acres	\$24 per hour \$0.42 per mile	\$27 per hour \$0.50 per mile
Reinspections or requested inspections for nursery stock	\$24 per hour \$0.42 per mile	\$27 per hour \$0.50 per mile
Phytosanitary or export certificates set forth in section 2-1091	\$30 per certificate and \$7 for taking an application by telephone	\$40 per certificate and \$10 for taking an application by telephone
Phytosanitary or export certificate inspections and reinspections	\$24 per hour \$0.42 per mile	\$27 per hour \$0.50 per mile
European corn borer quarantine certification license set forth in section 2-1091	\$50 per license, annually	\$65 per license, annually
European corn borer certificate	\$6.25 for packet of 25	\$10.00 for packet of 25
Quarantine compliance agreements as set forth in section 2-1091	\$50 per agreement annually	\$65 per agreement annually
Quarantine compliance agreement inspections and reinspections	\$24 per hour \$0.42 per mile	\$27 per hour \$0.50 per mile

(6) Any fee remaining unpaid for more than one month shall be considered delinquent and the person owing the fee shall pay an additional administrative fee of twenty-five percent of the delinquent amount for each month it remains unpaid, not to exceed one hundred percent of the original amount due. The department may waive the additional administrative fee based upon the existence and extent of any mitigating circumstances that have resulted in the late payment of such fee. The purpose of the additional administrative fee is to cover the administrative costs associated with collecting fees, and all money collected as an additional administrative fee shall be remitted to the State Treasurer for credit to the Plant Protection and Plant Pest Cash Fund.

2-1095. Nursery stock distributors; nursery stock; certification inspection; application; distribution; restrictions; treatment or destruction of stock; department; powers.

(1) All nursery stock distributors that distribute any nursery stock that they grow shall apply for an additional inspection for the certification of the Nebraska-grown nursery stock as provided in this section. The nursery stock distributor shall apply for such certification inspection of the Nebraska-grown nursery stock as part of the application for the nursery stock distributor license described in section 2-1091.01.

(2)(a) Applications for certification inspection of Nebraska-grown nursery stock that are due on January 1 pursuant to section 2-1091.01 and are not received prior to February 1 and initial applications not received prior to beginning of distribution shall be considered delinquent. Such applications shall have an inspection fee as set forth in section 2-1091.02.

(b) Inspection time shall include the driving time to and from the location of the inspection in addition to the time spent conducting the inspection, and the mileage charge shall be for the purpose of inspection.

(3) Each nursery stock distributor shall post signs delineating sections of all growing areas. A section shall be not larger than five acres.

(4) All growing areas within the state shall be inspected by the department at least once per year for certification and compliance with the Plant Protection and Plant Pest Act.

(5) Following the certification inspection of Nebraska-grown nursery stock, the department shall provide a copy of the plant inspection report to the nursery stock distributor specifying any area of the nursery from which nursery stock cannot be distributed or any plants which may not be distributed as nursery stock. When deemed necessary to maintain compliance with the purposes of the Plant Protection and Plant Pest Act, the department shall require the nursery stock distributor to withdraw from distribution any variety or amount of nursery stock. A reinspection may be conducted by the department at the nursery stock distributor's request and cost. The department may also reinspect to determine compliance with the act. To determine the cost of any reinspection, the department shall use fees as outlined in subsection (2) of this section. The nursery stock distributor shall comply with the recommendations of the department as to the treatment or destruction of nursery stock.

(6) The department may require the treatment or destruction of any nursery stock that is infested or infected with plant pests, nonviable, damaged, or desiccated to the point of not being reasonably capable of growth.

(7) Any nursery stock on which a withdrawal-from-distribution order has been issued shall be released for distribution only by authorized department employees or after written permission has been obtained from the department. Each nursery stock distributor shall promptly report to the department, in writing, the amount and type of plants treated or destroyed under requirements on withdrawal-from-distribution orders. The department may withhold a license or certification of Nebraska-grown nursery stock until conditions have been met by the nursery stock distributor as specified in the plant inspection report or any other order issued by the department. A certification of Nebraska-grown stock may be issued covering portions of the nursery which are not infested or infected if the nursery stock distributor agrees to treat, destroy, or remove as specified by the department those plants found to be infested or infected.

2-10,102. Collectors; nursery stock distributor's license required; inspection. Collectors shall be required to obtain a nursery stock distributor's license and shall be required to apply for an additional inspection for the certification of the collected nursery stock as provided in section 2-1095. All collected nursery stock shall be labeled as such.

2-10,103. Nursery stock distributor; duties. A nursery stock distributor shall:

(1) Comply with the Plant Protection and Plant Pest Act and the rules and regulations:

(a) In the care of nursery stock;
(b) In the distribution of nursery stock including nursery stock that has been withdrawn from distribution;
(c) Regarding treatment or destruction of nursery stock as required by a withdrawal-from-distribution order;
(d) In maintaining the nursery stock in a manner accessible to the department;
and

(e) In the payment of license fees;
(2) Comply with any order of the director issued pursuant to the act;
(3) Not distribute nursery stock obtained from an unlicensed nursery stock distributor;
(4) Not allow the license to be used by any person other than the person to whom it was issued; and
(5) Not interfere with the department in the performance of its duties.

2-10,103.01. Nursery stock distributor; disciplinary actions; procedures. (1) A nursery stock distributor may be placed on probation requiring such person to comply with the conditions set out in an order of probation issued by the director or be ordered to cease and desist from failing to comply or be ordered to pay an administrative fine pursuant to section 2-10,103.02 after:

(a) The director determines the nursery stock distributor has not complied with section 2-10,103;

(b) The nursery stock distributor is given written notice to comply and written notice of the right to a hearing to show cause why the specified order should not be issued; and

(c) The director finds that issuing the specified order is appropriate based on the hearing record or the available information if the hearing is waived by the nursery stock distributor.

(2) A nursery stock distributor may be suspended after:

(a) The director determines the nursery stock distributor has not complied with section 2-10,103;

(b) The nursery stock distributor is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be suspended; and

(c) The director finds that issuing an order suspending the license is appropriate based on the hearing record or the available information if the hearing is waived by the nursery stock distributor.

(3) A license may be immediately suspended and the director may order the nursery stock distributor's operation to cease prior to hearing when:

(a) The director determines an immediate danger to the public health, safety, or welfare exists; and

(b) The nursery stock distributor receives written notice to comply and written notice of the right to a hearing to show cause why the suspension should not be sustained. Within fifteen days after the suspension, the nursery stock distributor may request in writing a date for a hearing and the director shall consider the interests of the nursery stock distributor when the director establishes the date and time of the hearing, except that no hearing shall be held sooner than is reasonable under the circumstances. When a nursery stock distributor does not request a hearing date within such fifteen-day period, the director shall establish a hearing date and notify the nursery stock distributor of the date and time of such hearing.

(4) A license may be revoked after:

(a) The director determines the nursery stock distributor has committed serious, repeated, or multiple violations of any of the requirements of section 2-10,103;

(b) The nursery stock distributor is given written notice to comply and written notice of the right to a hearing to show cause why the license should not be revoked; and

(c) The director finds that issuing an order revoking the license is appropriate based on the hearing record or on the available information if the hearing is waived by the nursery stock distributor.

(5) Any nursery stock distributor whose license has been suspended shall cease operations until the license is reinstated. Any nursery stock distributor whose license is revoked shall cease operating until a new license is issued.

(6) The director may terminate a proceeding to suspend or revoke a license or subject a nursery stock distributor to an order of the director described in subsection (1) of this section at any time if the reasons for such proceeding no longer exist. A license which has been suspended may be reinstated, a person with a revoked license may be issued a new license, or a nursery stock distributor may no longer be subject to the director's order if the director determines that the conditions which prompted the suspension, revocation, or order of the director no longer exist.

(7) Proceedings to suspend or revoke a license or subject a nursery stock distributor to an order of the director described in subsection (1) of this section shall not preclude the department from pursuing other civil or criminal actions.

2-10,103.02. Administrative fine; collection; use. (1) The director may issue an order imposing an administrative fine on any person who has violated any provision, requirement, condition, limitation, or duty imposed by the Plant Protection and Plant Pest Act or rules and regulations adopted and promulgated pursuant to the act in an amount which shall not exceed one thousand dollars for each violation. A violation means each action which violates any separate or distinct provision, requirement, condition, limitation, or duty imposed by the act or such rules and regulations. In determining whether to impose an administrative fine and, if a fine is imposed, the amount of the fine, the director shall take into consideration (a) the seriousness of the violation, (b) the extent to which the person derived financial gain as a result of his or her failure to comply, (c) the extent of intent, willfulness, or negligence by the person in the violation, (d) the likelihood of the violation reoccurring, (e) the history of the person's failure to comply, (f) the person's attempts to prevent or limit his or her failure to comply, (g) the person's willingness to correct violations, (h) the nature of the person's disclosure of violations, (i) the person's cooperation with investigations of his or her failure to comply, and (j) any factors which may be established by the rules and regulations.

(2) The department shall remit administrative fines collected under the act to the State Treasurer on a monthly basis for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(3) Any administrative fine imposed under the Plant Protection and Plant Pest Act and unpaid shall constitute a debt to the State of Nebraska which may be collected by lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The lien shall attach to the real estate of the violator when notice of such lien is filed and indexed against the real estate in the office of the register of deeds or county clerk in the county where the real estate is located.

2-10,103.03. Cease and desist order; hearing. Whenever the director has reason to believe that any person has violated any provision of the Plant Protection and Plant Pest Act or any rule or regulation, an order may be entered requiring the person to appear before the director to show cause why an order should not be entered requiring such person to cease and desist from the violation charged. Such order shall set forth notice of such hearing. Hearings shall be conducted as provided in section 2-10,103.04. After such hearing, if the director finds such person to be in violation, he or she shall enter an order requiring the person to cease and desist from the specific act, practice, or omission which violated the act.

2-10,103.04. Notice or order; service; notice; contents; hearings; procedure; new hearing. (1) Any notice or order provided for in the Plant Protection and Plant Pest Act shall be personally served on the person holding the nursery stock distributor license, the person named in the notice, or the person authorized by the person holding the nursery stock distributor license to receive notices and orders of the department or shall be sent by certified mail, return receipt requested, to the last-known address of the person holding the nursery stock distributor license, the person named in the notice, or the person authorized to receive such notices and orders. A copy of the notice and the order shall be filed in the records of the department.

(2) Any notice to comply provided for in the act shall set forth the acts or omissions with which the person holding the nursery stock distributor license or the person named in the notice is charged.

(3) A notice of the right of the person holding the nursery stock distributor license or the person named in the notice to a hearing provided for in the act shall set forth the time and place of the hearing except as otherwise provided in subsection (3) of section 2-10,103.01. A notice of the right of the person holding the nursery stock distributor license or the person named in the notice to such hearing shall include notice that the right of the person holding the nursery stock distributor license or the person named in the notice to a hearing may be waived pursuant to subsection (5) of this section. A notice of such right to a hearing shall include notice of the potential actions that may be taken against the person holding the nursery stock distributor license or the person named in the notice.

(4) The hearings provided for in the act shall be conducted by the director at a time and place he or she designates. The director shall make a final finding based upon the complete hearing record and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-10,103.01, the director shall sustain, modify, or rescind the order. All hearings shall be in accordance with the Administrative Procedure Act.

(5) The person holding the nursery stock distributor license or the person named in the notice shall be deemed to waive the right to a hearing if such person does not

come to the hearing at the time and place set forth in the notice described in subsection (3) of this section without requesting the director at least two days before the designated time to change the time and place for the hearing, except that before an order of the director becomes final, the director may designate a different time and place for the hearing if the person shows the director that the person had a justifiable reason for not coming to the hearing and not timely requesting a change in the time and place for such hearing. If the person holding the nursery stock distributor license or the person named in the notice waives the right to a hearing, the director shall make a final finding based upon the available information and issue an order. If the director has suspended a license pursuant to subsection (3) of section 2-10,103.01, the director shall sustain, modify, or rescind the order.

(6) Any person aggrieved by the finding of the director shall have ten days from the entry of the director's order to request a new hearing if such person can show that a mistake of fact has been made which affected the director's determination. Any order of the director shall become final upon the expiration of ten days after its entry if no request for a new hearing is made.

2-10,104. Foreign distributor; reciprocity; department; reciprocal agreements. (1) Any person residing outside the state and desiring to solicit orders or distribute nursery stock in Nebraska may do so if:

(a) Such person is duly licensed under the nursery laws of the state where the nursery stock originates and the laws of that state are essentially equivalent to the laws of Nebraska as determined by the department; and

(b) Such person complies with the Plant Protection and Plant Pest Act and the rules and regulations on all nursery stock distributed in Nebraska.

(2) The department may cooperate with and enter into reciprocal agreements with other states regarding licensing and movement of nursery stock. Reciprocal agreements with other states shall not prevent the department from prohibiting the distribution in Nebraska of nursery stock which fails to meet the minimum criteria for nursery stock of Nebraska-licensed nursery stock distributors.

2-10,105. Optional inspections; nursery stock distributor's license; optional issuance.

(1) Optional inspections of plants may be conducted by the department upon request by any persons desiring such inspection. A fee as set forth in subsection (2) of section 2-1095 shall be charged for such an inspection.

(2) Any person who desires a nursery stock distributor's license for any greenhouse plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, may apply for such license to the department. The inspection of such plants shall conform to the same requirements that apply to the inspection of nursery stock as set forth in section 2-1095. For persons who grow or distribute both nursery stock and greenhouse plants grown for indoor use, annual plants, florist stock, cut flowers, sod, turf, onions, or potatoes, or seeds of any such plant, one license shall be issued if the annual inspection of such plants is conducted concurrently with the nursery stock inspection and the other requirements of the Plant Protection and Plant Pest Act are met. If a reinspection trip is required, the applicant shall be assessed a reinspection fee as outlined in subsection (2) of section 2-1095.

2-10,106. Importation and distribution; labeling requirements; exception; department; powers. (1) It shall be unlawful for any person, including any carrier transporting nursery stock, to bring into or cause to be brought into Nebraska any nursery stock

unless such shipment is plainly and legibly marked with a label showing the name and address of the consignor and consignee, the nature and quantity of the contents, the place of origin, and the license or its equivalent issued by the recognized authorizing agency stating that the nursery from which the nursery stock originates has been inspected.

(2) It shall be unlawful for any person to distribute in Nebraska nursery stock for the purpose of resale in Nebraska without meeting the labeling criteria stated in this section.

(3) The requirements of this section shall not apply to nursery stock distributed to the final consumer at a distribution location where a valid nursery stock distributor's license has been conspicuously posted.

(4) The department may cause to be held for inspection any plants, regardless of proper labeling according to the Plant Protection and Plant Pest Act, if there is reason to believe they are infested or infected with plant pests. Such plants shall be held only for a period of time reasonable for proper inspection and any treatment deemed necessary by the department. The department shall not be held responsible for costs incurred by treatment or delay.

(5) In carrying out this section, the department may intercept or detain any person or property including vehicles or vessels reasonably believed to be carrying any plants or any other articles capable of carrying plant pests. The department may hold for treatment, destroy, or otherwise dispose of any plants, if found infested or infected with plant pests, at the owner's cost.

2-10,107. Nuisance plants; department; powers. Any person owning or controlling property shall keep such property free from all species of plants declared by the department to be nuisance plants. If the department determines that any species or variety of plant is a nuisance plant and that such plant should be eradicated in order to safeguard the agricultural interests of the state, the department shall give public notice of proposed eradication by publication in one or more newspapers of general circulation throughout the area over which such nuisance plant exists, designating the species or variety in question, the proposed eradication area, and the reasons for the eradication. Such notice shall designate a place and time for a public hearing at which all interested parties may be heard. After such hearing has been held, the department may cause to be served by first-class mail individual notices upon the owner of record of such land at that person's last-known address stating (1) that the species or variety of plant is a nuisance plant and (2) that the department is authorized to destroy or order the destruction of such plant. It shall be the duty of every person affected by the notice to use measures of arrest and control required of such person by the instructions of the department.

2-10,108. Plant pests; department; powers. (1) Whenever the department finds that there exists, in any other state, territory, country, or part thereof, any plant pests detrimental to the agricultural interests of the state and that the control, eradication, retarding, or prevention of such pests is necessary to protect the plant industry of the state, the department may impose and enforce a quarantine prohibiting the transportation into, within, or through Nebraska of such pests. Quarantine enforcement shall apply to any plants or any other property capable of carrying such plant pests regardless of whether the plants are distributed by a person holding a valid license or its equivalent issued by an authorizing agency within the state of origin recognized by the department. Nursery stock and all other plants shall be subject to any quarantine measures deemed necessary by the department.

(2) When it has been determined that an area of the state is infected or infested with plant pests which may be detrimental to the agricultural interests of the state, such area may be quarantined by the department. Under such quarantine the department may restrict or prevent the movement or transportation of any plants or any other property capable of carrying such plant pests originating in or having been maintained in any area infested or infected with such plant pests. Public notice of any quarantine shall be given by the department by publication in one or more newspapers in circulation within the area of the state affected by such order.

(3) Any plants or other property moved or transported in violation of a quarantine imposed pursuant to this section may be seized, treated, destroyed, or returned to the state of origin without compensation by the department.

2-10,109. Withdrawal-from-distribution order; issuance. If the department finds that plants are distributed in violation of the Plant Protection and Plant Pest Act, the department may issue a written or printed withdrawal-from-distribution order to the person in charge of such plants for the protection of the public health, safety, or welfare and may enforce such order. Such an order shall specify the nature of each violation and the precise action required to bring the plants into compliance with the applicable provisions of the act. Such an order shall advise the person that he or she may request an immediate hearing before the department on the specified violation.

The department may issue a withdrawal-from-distribution order on plants that are perishable, even if the result of such order will bring about the involuntary disposal of such items, when, in the opinion of the person issuing such order, no alternative course of action would sufficiently protect the public health, safety, or welfare under the circumstances.

2-10,110. Implementation or enforcement agreements authorized. The department may cooperate and enter into agreements with the United States Department of Agriculture or any other federal or state agency in the implementation or enforcement of the Plant Protection and Plant Pest Act and the 1944 Organic Act of Congress, as amended, on October 1, 1988.

2-10,111. Costs; liability. (1) All costs associated with treating, seizing, or destroying any plant or issuing and enforcing any withdrawal-from-distribution order for any plant, which plant is in violation of the Plant Protection and Plant Pest Act or the rules and regulations adopted and promulgated pursuant to the act, shall be the responsibility of the person in possession of the plant. The department shall be reimbursed by the person in possession of the plant for the actual cost incurred by the department in enforcing the act or such rules and regulations.

(2) All costs related to enforcement of the act and such rules and regulations shall be the responsibility of the person violating the act. The department shall be reimbursed by persons violating the act or such rules and regulations for the actual cost incurred by the department in enforcing the act.

(3) The department shall not be liable for any costs incurred by any person due to any departmental actions relating to the enforcement of the act or such rules and regulations.

2-10,112. Excess fees; disposition. If the department determines that any fee has been erroneously collected or computed, the department shall credit the excess amount collected or paid to any fees then due and owing from the person under the Plant Protection and Plant Pest Act. Any remaining balance may be refunded to the person by whom it was paid.

2-10,113. Foreign nursery stock; foreign soil or plant pests for research or educational purposes; biological control agent or genetically engineered plant organism; permit requirements; trade secrets; confidentiality. (1) Any person receiving any shipment of nursery stock from any foreign country that has not been inspected and released by the United States Department of Agriculture at the port of entry shall notify the department of the arrival of such shipment, its contents, and the name of the consignor. Such person shall hold the shipment unopened until inspected or released by the department.

(2) No person shall import or cause to be brought into Nebraska any soils or plant pests or distribute within the state any nonindigenous plant pests to be used in the open environment for research purposes or other educational uses without permission from the department.

(3) No person shall import or cause to be brought into Nebraska or distribute within the state any nonindigenous biological control agent or genetically engineered plant organism to be used in the open environment without a permit as set forth in rules and regulations. Such rules and regulations may provide for reasonable exemptions from permit requirements. A permit shall not be required under this section if a permit has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., or any regulations adopted and promulgated pursuant to such act.

An application for a permit shall include information regarding where the biological control agent or genetically engineered plant organism will be released and any other information required by the department. An application for a permit to import or distribute an arthropod to be used as a biological control agent shall be accompanied by a voucher specimen. Permits may be issued only after the department determines that the proposed shipment or use will not create sufficient hazard to warrant the refusal of a permit. Sufficient hazard shall include, but not be limited to, a substantial hazard to the environment or to plant or animal life not intended to be affected by the agent or organism. The department may rely upon the findings of interested federal agencies or any experts that the department may deem appropriate in making a determination about the threat posed by such agents or organisms. The department may also request confidential business information.

(4) An applicant submitting information required by this section may mark clearly portions of data which in his or her opinion are trade secrets and submit the marked material separately from other material required to be submitted under this section. The department shall keep such material confidential and in a manner that makes it not accessible to anyone who does not need to have access to it in order to adequately protect the public health, safety, or welfare.

2-10,114. Agents or employees; liability of principal. In construing and enforcing the Plant Protection and Plant Pest Act, omission or failure of any individual acting for or employed by any other person or other principal within the scope of his or her employment or office shall in every case be deemed the act, omission, or failure of such person or other principal as well as that of the individual.

2-10,115. Violations; penalties; appeal of department order; procedure. (1) Any person shall be guilty of a Class IV misdemeanor for the first violation and a Class II misdemeanor for any subsequent violation of the same nature and in violation of the Plant Protection and Plant Pest Act if that person:

(a) Distributes nursery stock without a nursery stock distributor license issued under the Plant Protection and Plant Pest Act;

(b) Receives nursery stock for further distribution from any person who has not been duly licensed or approved under the act;

(c) Uses any license issued by the department after it has been revoked or has expired, while the licensee was under suspension, or for purposes other than those authorized by the act;

(d) Offers any hindrance or resistance to the department in the carrying out of the act, including, but not limited to, denying or concealing information or denying access to any property relevant to the proper enforcement of the act;

(e) Allows any plant declared a nuisance plant as outlined in section 2-10,107 to exist on such person's property or distributes any such plants or materials capable of harboring plant pests;

(f) Acts as a nursery stock distributor and:

(i) Fails to comply with provisions for treatment or destruction of nursery stock as required by withdrawal-from-distribution orders;

(ii) Distributes any quarantined nursery stock or nursery stock for which a withdrawal-from-distribution order has been issued;

(iii) Distributes nursery stock for the purpose of further distribution to any person in Nebraska not licensed as a nursery stock distributor; or

(iv) Fails to pay all fees required by the act and the rules and regulations;

(g) Distributes nursery stock which is not sound, healthy, reasonably capable of growth, labeled correctly, and free from injurious plant pests;

(h) Distributes plants which have been quarantined or are in a quarantined area;

(i) Violates any item set forth as unlawful in section 2-10,106;

(j) Distributes biological control agents or genetically engineered plant organisms without a permit if a permit is required by the act;

(k) Fails to keep and make available for examination by the department all books, papers, and other information necessary for the enforcement of the act;

(l) Violates any order of the director after such order has become final or upon termination of any review proceeding when the order has been sustained by a court of law; or

(m) Violates any other provision of the Plant Protection and Plant Pest Act.

(2) Any lot or shipment of plants not in compliance with the Plant Protection and Plant Pest Act, the rules and regulations, or both shall be subject to seizure on complaint of the department to a court of competent jurisdiction in the county in which such plants are located. If the court finds the plants to be in violation of the act, the rules and regulations, or both and orders the condemnation of the plants, such plants shall be disposed of in any manner deemed necessary by the department. In no instance shall the disposition of the plants be ordered by the court without first giving the claimant an opportunity to apply to the court for release of such plants or for permission to treat or relabel the plants to bring such plants into compliance with the act, the rules and regulations, or both.

(3) It shall be the duty of the Attorney General or the county attorney of the county in which any violation occurs or is about to occur, when notified by the

department of a violation or threatened violation, to pursue appropriate proceedings without delay pursuant to this section, subdivision (6) of section 2-1091, or subsection (3) of section 2-10,103.02 or any combination thereof.

(4) Any person adversely affected by an order made by the department pursuant to the Plant Protection and Plant Pest Act may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

2-10,115.01. Political subdivision; ordinance or resolution; restrictions. A political subdivision shall not enact an ordinance or resolution which is in conflict with the Plant Protection and Plant Pest Act.

2-10,116. Rules and regulations. The department shall have authority to adopt and promulgate such rules and regulations as are necessary to the effective discharge of its duties under the Plant Protection and Plant Pest Act. The rules and regulations may include, but shall not be limited to, provisions governing:

(1) The issuance and revocation of licenses as authorized by the Plant Protection and Plant Pest Act;

(2) The assessment and collection of license, inspection, reinspection, and delinquent fees;

(3) The withdrawal from distribution of nursery stock;

(4) The care, viability, and standards for nursery stock;

(5) The labeling and shipment of nursery stock;

(6) The issuance and release of plant pest quarantines and withdrawal-from-distribution orders;

(7) The establishment of a restricted plant pest list;

(8) The preparation, maintenance, handling, and filing of reports by persons subject to the act;

(9) The adoption of the American Association of Nurserymen's American Standard for Nursery Stock insofar as it does not conflict with any provision of the act;

(10) Factors to be considered when the director issues an order imposing an administrative fine; and

(11) The planting of certified seed potatoes in the state.

2-10,117. Plant Protection and Plant Pest Cash Fund; created; use; investment.

All money received from any source pursuant to the Plant Protection and Plant Pest Act shall be remitted by the department to the State Treasurer and by the State Treasurer credited to the Plant Protection and Plant Pest Cash Fund which is hereby created. The fund also shall include funds transferred pursuant to section 81-201.05. The fund shall be used by the department to aid in defraying the expenses of administering the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

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