NEBRASKA ADMINISTRATIVE CODE

TITLE 25 NEBRASKA ADMINISTRATIVE CODE, CHAPTER 13

NEBRASKA DEPARTMENT OF AGRICULTURE

PLANT PROTECTION AND PLANT PEST ACT REGULATIONS

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NEBRASKA ADMINISTRATIVE CODE

TITLE 25 - NEBRASKA DEPARTMENT OF AGRICULTURE

CHAPTER 13 - PLANT PROTECTION AND PLANT PEST ACT REGULATIONS

NUMERICAL TABLE OF CONTENTS

SUBJECT	STATUTORY AUTHORITY	CODE SECTION
Definitions	§§2-1072 to 2-10,117	001
American Standard for Nursery Stock Adopted	§§2-1072 to 2-10,117	002
Fees for Licensing, Inspection, and Reinspection of Nursery Stock Distributors	§§2-1072 to 2-10,117	003
Fees for Certification of Nebraska-grown Nursery Stock	§§2-1072 to 2-10,117	004
Inspection of Nursery Stock Distributors and Optional Inspections	§§2-1072 to 2-10,117	005
Storage or Display of Nursery Stock	§§2-1072 to 2-10,117	006
Standards for Viability of Nursery Stock Distributed	§§2-1072 to 2-10,117	007
Labeling and Shipment of Nursery Stock	§§2-1072 to 2-10,117	008
Inspection and Certification of Plants and Plant Products for Export	§§2-1072 to 2-10,117	009
Compliance with European Corn Borer Quarantines Maintained in Other States of the United States	§§2-1072 to 2-10,117	010

JUL 0 2 2015

NUMERICAL TABLE OF CONTENTS (CONT.)

SUBJECT	STATUTORY AUTHORITY	CODE SECTION
Agreements for Compliance with Quarantines (Other than European Corn Borer Quarantines) Maintained in Other States	§§2-1072 to 2-10,117	011
Importation and Distribution of Live Plant Pests Biological Control Agents and Soils	§§2-1072 to 2-10,117	012
Assessment of Administrative Fines	§§2-1072 to 2-10,117	013
Administration	§§2-1072 to 2-10,117	014
Fine Assessment Schedule Tables	§§2-1072 to 2-10,117	015
Planting of Certified Seed Potatoes	§§2-1072 to 2-10,117	016
Publication Adopted	§§2-1072 to 2-10,117	017
Annotation	§§2-1072 to 2-10,117	018

JUL 0 2 2015

NEBRASKA ADMINISTRATIVE CODE

TITLE 25 - NEBRASKA DEPARTMENT OF AGRICULTURE

CHAPTER 13 - PLANT PROTECTION AND PLANT PEST ACT REGULATIONS

ALPHABETIC TABLE OF CONTENTS

SUBJECT	STATUTORY AUTHORITY	CODE SECTION
Administration	§§2-1072 to 2-10,117	014
Agreements for Compliance with Quarantines (Other than European Corn Borer Quarantines) Maintained in Other States	§§2-1072 to 2-10,117	011
American Standard for Nursery Stock Adopted	§§2-1072 to 2-10,117	002
Annotation	§§2-1072 to 2-10,117	018
Assessment of Administrative Fines	§§2-1072 to 2-10,117	013
Compliance with European Corn Borer Quarantines Maintained in Other States of the United States	§§2-1072 to 2-10,117	010
Definitions	§§2-1072 to 2-10,117	001
Fees for Certification of Nebraska-grown Nursery Stock	§§2-1072 to 2-10,117	004
Fees for Licensing, Inspection, and Reinspection of Nursery Stock Distributors	§§2-1072 to 2-10,117	003
Fine Assessment Schedule Tables	§§2-1072 to 2-10,117	015

JUL 0 2 2015

ALPHABETICAL TABLE OF CONTENTS (CONT.)

SUBJECT	STATUTORY AUTHORITY	CODE SECTION
Importation and Distribution of Live Plant Pests Biological Control Agents and Soils	§§2-1072 to 2-10,117	012
Inspection and Certification of Plants and Plant Products for Export	§§2-1072 to 2-10,117	009
Inspection of Nursery Stock Distributors and Optional Inspections	§§2-1072 to 2-10,117	005
Labeling and Shipment of Nursery Stock	§§2-1072 to 2-10,117	008
Planting of Certified Seed Potatoes	§§2-1072 to 2-10,117	016
Publication Adopted	§§2-1072 to 2-10,117	017
Standards for Viability of Nursery Stock Distributed	§§2-1072 to 2-10,117	007
Storage or Display of Nursery Stock	§§2-1072 to 2-10,117	006

JUL 0 2 2015

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TITLE 25 - DEPARTMENT OF AGRICULTURE

Chapter 13 - PLANT PROTECTION AND PLANT PEST ACT REGULATIONS

001 Definitions.

001.01 The definitions of terms contained in the Plant Protection and Plant Pest Act shall apply to such terms when used in these regulations.

001.02 "Act" shall mean the Plant Protection and Plant Pest Act, Neb. Rev. Stat. §§2-1072 to 2-10,117.

001.03 Balled and burlapped shall mean nursery stock which has been removed from the growing site with a ball of soil, containing a portion of the undisturbed root system, left intact and encased in burlap or other similar material to hold the soil in place. This shall also include nursery stock which has been removed from the growing site by a mechanical digger, containing the root system, left intact but not necessarily encased in burlap or other similar material.

001.04 Balled and potted shall mean nursery stock which has been removed from the growing site with a ball of soil, containing the root system, left intact and placed in a container other than listed in 25 NAC 13-001.03.

001.05 Bare root shall mean nursery stock which has been removed from the growing site with the root system substantially free of soil.

001.06 Bench balled shall mean nursery stock which has been removed from the growing site with the root system substantially free of soil, then packaged in soil or growing medium to form a ball, and wrapped in burlap or similar material to hold the contents in place.

001.07 Container grown shall mean nursery stock which has been planted in a container with the root system in soil or other growing medium capable of sustaining normal plant growth. The nursery stock has become established in the container and exhibits a well-rooted condition as evidenced by the medium ball remaining intact when removed from said container.

001.08 Etiolated growth shall mean plant growth which is bleached or whitened and elongated usually as the result of the exclusion of light.

001.09 Greenhouse plants shall mean plants grown in an enclosed environment and the growing medium has been processed to exclude indigenous plant pests.

001.10 Noxious weeds shall mean those plants designated by the Director as noxious weeds pursuant to the Nebraska Noxious Weed Control Act, Neb. Rev. Stat. §§2-945.01 to 2-968.

001.11 Packaged shall mean bare root nursery stock packed with the roots in moisture retaining material which is wrapped and sealed in plastic or other material to hold the contents in place.

001.12 Phytosanitary or export certificate shall mean federal Phytosanitary Certificate, State Phytosanitary Certificate, Export Certificate, Processed Plant Products Certificate, Phytosanitary Certificate for Reexport, or any other similar documents as they may apply.

001.13 Phytosanitary inspection shall mean inspecting, traveling to do inspections, sampling, transporting samples, surveying, trapping, reviewing labeling and records, and any other work performed in preparation for a phytosanitary or export certificate, a compliance agreement, or maintaining a compliance agreement, or any other similar document, whether or not a phytosanitary or export certificate is actually issued or a compliance agreement is actually entered into.

001.14 Potted shall mean nursery stock which has been planted in a container with the roots in soil or other growing medium which has not become established as described in 25 NAC 13-001.07.

001.15 Recognized authorizing agency shall mean an agency whose laws, regulations, and inspection, certification and licensing program and standards are essentially equivalent to, and meet the requirements of the Plant Protection and

JUL 0 2 2015

Plant Pest Act, the regulations adopted and promulgated under it, and the Nebraska Department of Agriculture's inspection program.

001.16 Soil shall mean that material occupying or originating from the outermost part of the earth's crust.

001.17 Viability shall mean capable of germination or living and developing under normal growing conditions into a plant which would be typical in height, spread, caliper, dimension, condition, quality and age of plant of that species.

001.18 Weed shall mean any plant species other than the plant species as labeled.

002 American Standard for Nursery Stock Adopted.

002.01 The *American Standard for Nursery Stock*, copyright 2004, published by the American Nursery and Landscape Association, an organization known as American Hort, shall be used by the Department in determining standards and grades of nursery stock when not in conflict with the Act. A copy of the publication is attached and incorporated herein by reference and is hereby adopted and promulgated and may be used. The publication is available upon request to the Department.

003 Fees for Licensing and Reinspection of Nursery Stock Distributors.

003.01 The licensing fee, late fee, and reinspection fee for nursery stock distributors is authorized by Neb. Rev. Stat. §§2-1091.01, 2-1091.02 and 2-1095 of the Act.

003.01A Nursery stock distributors who desire to distribute nursery stock in Nebraska shall obtain a nursery stock distributors license for each location from which they distribute nursery stock. Persons shall submit a completed application provided by the Department, accompanied by the appropriate fee prior to beginning distribution and prior to January 1, each year thereafter.

003.01B Nursery stock distributors shall pay an annual license fee in the amount set pursuant to the provisions of §2-1091.02 of the Act.

003.01C If a reinspection of a nursery stock distributor is necessary, the nursery stock distributor may be assessed a fee based on mileage and inspection time.

003.01C(1) Mileage charge - $0.42 per mile.

JUL 0 2 2015

003.01C(2) Inspection time - $24.00 per hour.

003.01C(3) Inspection time shall include the driving time to and from the location in addition to the time spent conducting the inspection.

003.01D Any fee more than one month late shall have an additional fee of 25% of the total fees due assessed for each month the fees are late, not to exceed 100% of the original amount due.

004 Fees for Certification of Nebraska-Grown Nursery Stock.

004.01 The fees charged for certification of Nebraska-grown nursery stock are authorized by Neb. Rev. Stat. §§2-1091.02, 2-1095, and 2-10,102 of the Act.

004.01A Persons required to obtain a certification of Nebraska-grown nursery stock shall make application to the Department prior to the beginning of distribution and prior to January 1, each year thereafter.

004.01B Applications for certification inspection of Nebraska-grown nursery stock that are due on January 1 and are not received prior to February 1 and initial applications not received prior to beginning of distribution shall pay for inspection costs as set out in 004.01D.

004.01C Nursery stock distributors who require a reinspection for the certification of Nebraska-grown nursery stock, shall pay for inspection costs as set out in 004.01D.

004.01D The following rates shall be used in determining inspection and reinspection costs:

004.01D(1) Mileage charge - $0.42 per mile.

004.01D(2) Inspection time - $24.00 per hour.

004.01D(3) Inspection time shall include the driving time to and from the location in addition to the time spent conducting the inspection.

004.01D(4) If fees are more than one month late, an additional fee of 25% of the total fees due will be added on for each month the fees are late, not to exceed 100% of the original amount due.

JUL 0 2 2015

005 Inspection of Nursery Stock Distributors and Optional Inspections.

005.01 The inspection of nursery stock distributors and optional inspection of nursery stock or other plants and the associated reports issued are authorized by Neb. Rev. Stat. §§2-1091, 2-1091.01, 2-1095, 2-10,102, 2-10,103, 2-10,105, and 2-10,115 of the Act.

005.01A Nursery stock or other plants being inspected for an optional nursery stock distributor's license shall be accessible during regular business hours to the Department for inspection. Weeds or other growth which hinders a proper inspection shall be grounds to suspend or withhold any license or be cause for a reinspection.

005.01A(1) Each nursery stock distributor or person requesting an inspection shall post sign markers which delineate sections of nursery stock. A section shall be no larger than five acres.

005.01B Inspection reports for certification of Nebraska-grown nursery stock issued to nursery stock distributors or persons requesting an inspection shall contain a list of plants inspected and the plant pests found at the time of inspection. Withdrawal-from-distribution orders shall be considered part of the inspection reports. The withdrawal-from-distribution order shall contain a list of plants withdrawn from distribution and the location of the plants. The Department may post signs to delineate sections withdrawn from distribution. These signs must remain in place until an authorized person from the Department removes them, or the Department authorizes, in writing, permission to allow the grower to remove the signs.

005.01C Inspection reports issued to nursery stock distributors or persons requesting an inspection shall outline the violations involved and corrective actions to be taken including withdrawal-from-distribution orders which would specify nursery stock or other plants being inspected for an optional nursery stock distributor's license that could not be distributed from a certain area.

006 Storage or Display of Nursery Stock.

006.01 Nursery stock shall not be displayed or stored in contact with concrete, asphalt, or other similar hard-surfaced areas unless moisture-retaining or heat-reducing material has been provided. Roots shall be protected from excessive heat, drying, and other adverse conditions. The authority to set regulations for the storage or display of nursery stock by nursery stock distributors is found in Neb. Rev. Stat. §§2-1091.01, 2-1095 and 2-10,103 of the Act.

JUL 0 2 2015

006.01A Balled and burlapped nursery stock shall be kept moist at all times and in a moisture retaining material at a depth sufficient to cover approximately 75% of the ball.

006.01B Bare root nursery stock shall be kept under conditions of temperature, light, and moisture to retard etiolated or other abnormal growth and maintain viability. Moisture shall be supplied to the root system by high humidity conditions in storage or by covering the roots with moisture retaining material. The roots of healed-in-stock shall be covered by moisture retaining material.

006.01C Bench balled nursery stock shall be kept moist at all times and in a moisture retaining material at a depth sufficient to cover approximately 75% of the ball.

006.01D Container grown, potted, and balled and potted nursery stock shall be kept and displayed under conditions of temperature, light, and moisture sufficient to maintain the viability and vigor of the nursery stock. Potting medium shall be maintained at a depth sufficient to cover all roots of the plants.

006.01E Packaged nursery stock shall be stored and displayed under conditions of temperature and light that will retard etiolated growth or other abnormal growth and ensure adequate moisture.

007 Standards for Viability of Nursery Stock Distributed.

007.01 All nursery stock distributed by nursery stock distributors and those requesting optional inspections shall meet the following standards of viability. That stock not meeting those minimum standards of viability shall not be offered for distribution. The authority to set viability standards for nursery stock distributed is found in Neb. Rev. Stat. §§2-1091.01, 2-1095, 2-10,102, 2-10,105, and 2-10,116 of the Act.

007.01A Woody stemmed deciduous stock shall have a moist, green cambium in the stems and branches and shall have viable buds or normal green, unwilted growth. Etiolated growth from individual buds shall not be more than four inches.

007.01B Rose bushes shall have a moist, green cambium in each cane at least six inches above the graft. Etiolated growth from individual buds shall not be more than four inches.

007.01C Balled and burlapped nursery stock shall have a moist, green cambium in the stems and branches and shall have viable buds or normal

JUL 0 2 2015

green, unwilted growth. Etiolated growth from individual buds shall not be more than four inches. Balled and burlapped nursery stock shall have secure earth balls that shall meet or exceed the size specified by the *American Standard for Nursery Stock*.

007.01D Herbaceous perennials shall not be wilted or in such condition indicative of subnormal viability.

007.01E Colored waxes or other materials used to coat the aerial parts of the plants, that change the appearance of the plant surface so as to prevent adequate inspection, are prohibited.

007.01F Nursery stock with plant pest infestations or serious damage as a result of plant pest infestations shall not be distributed.

007.01G Nursery stock distributed by nursery stock distributors and those with optional inspections shall not contain actively growing weeds.

007.01H Nursery stock environmentally or mechanically damaged or damaged by animals shall not be distributed if normal growth and development would be inhibited. Examples include, but are not limited to, cultivator damage, deer damage, rabbit damage, hail damage, sunscald, and frost cracks. Nursery stock will be ordered destroyed if 40% or greater of the cambium layer of the trunk or crown is damaged. If 20 to 40% of the cambium layer of the trunk or crown is damaged, nursery stock may be withdrawn from distribution.

007.01I Nursery stock shall not be distributed with plastic burlap. All other non-decomposing material enclosing balls of soil and all nursery stock bound with plastic rope shall be untied when active growth begins. Rope used to tie up the branches of trees shall be removed when active growth begins.

008 Labeling and Shipment of Nursery Stock.

008.01 The proper labeling and record keeping of nursery stock distributed or received by nursery stock distributors and those with optional inspections is authorized by Neb. Rev. Stat. §§2-1091.01, 2-10,106, 2-10,108, and 2-10,116 of the Act.

008.01A All nursery stock distributed in Nebraska shall be individually labeled to include:

008.01A(1) Correct common name or botanical name; and

JUL 0 2 2015

008.01A(2) Place of origin of nursery stock except that container grown or potted nursery stock of one gallon or less is not required to have an individual place of origin label.

008.01A(2)(a) Place of origin labels may be in code, provided the Department is given access to the code.

008.01B Nursery stock distributors and those with optional inspections shall maintain and make documents available to the Department for three years shipment records, packing slips, and other records including:

008.01B(1) The name and address of any person from which nursery stock was received and the receiving date;

008.01B(2) The name and quantity of the contents;

008.01B(3) The place of origin and documentation required to prove compliance with any applicable state or federal quarantine or certification requirement; and

008.01B(4) A license or its equivalent issued by the recognized authorized agency stating that the nursery from which the nursery stock originates has been inspected and the nursery stock certified.

008.01C All collected nursery stock shall be labeled as collected.

008.01D When grade classifications are declared, they shall be in accordance with those adopted pursuant to 25 NAC 13-002 in addition to the requirements in Neb. Rev. Stat. §2-10,106 of the Act.

008.01E When nursery stock is distributed in a group or bundle of the same species and variety, a label on the group or bundle shall be an adequate label and shall include the requirements in Neb. Rev. Stat. §2-10,106 of the Act.

008.01F When nursery stock is from a quarantined area or area identified as infested and requiring certification as part of a recognized harmonization plan or similar program, the shipment must include the proper documentation and compliance labeling of any applicable federal or state quarantine or other certification requirement.

008.01G When nursery stock is distributed to the final customer and planted, the label may be omitted if the information required in 25 NAC 13-008.01A for that nursery stock is listed on the invoice or receipt.

JUL 3 3 2015

009 Inspection and Certification of Plants and Plant Products for Export.

009.01 The inspection of plants and plant products for export, the issuance of phytosanitary or export certificates, and fees assessed is authorized in Neb. Rev. Stat. §§2-1091 and 2-10,110 of the Act.

009.01A Most states and foreign countries have quarantines, requirements, and regulations that must be met before a plant or plant product may be imported into their state or country. Nebraska plants and plant products would not be admissible into the receiving state or foreign country unless those shipments were inspected and certified by the appropriate plant regulatory agency.

009.01B An exporter of plants or plant products desiring to ship plants, plant products or associated materials from Nebraska to a state or foreign country requiring a phytosanitary or export certificate shall submit an application to the Department. The application shall be made on forms provided or approved by the Department.

009.01C The Department shall conduct inspections of plants, plant products, associated materials or facilities for persons that have applied for or intend to apply for a phytosanitary or export certificate from the Department. Inspections shall include one or more of the following:

009.01C(1) An inspection of the plants, plant products or associated materials intended for export under a phytosanitary or export certificate and if necessary; or

009.01C(2) Field inspections of growing plants to determine presence or absence of plant diseases, weeds or other plant pests; or

009.01C(3) Laboratory diagnosis for presence or absence of plant diseases, weed seed, nematodes or other plant pests; or

009.01C(4) Observation and evaluation of procedures and facilities utilized in handling plants and plant products; or

009.01C(5) Review of the United States Department of Agriculture Federal Grain Inspection Service (USDA/FGIS) Official Export Grain Inspection Certificate logs.

009.01D The Department may issue a phytosanitary or export certificate if the plants or plant products satisfactorily meet the requirements of the importing state or foreign country and the United States Department of

JUL 0 2 2015

Agriculture and Plant Health Inspection Service (USDA/APHIS) requirements. The requirements of the destination state or country shall be met by the applicant.

009.01E The Department shall assess fees to cover the costs of phytosanitary inspection work. Any fee more than one month late shall have an additional fee of 25% of the total fees due assessed for each month the fees are late, not to exceed 100% of the original amount due. The inspection fee shall include mileage and inspection time.

009.01E(1) Mileage charge - $0.42 per mile.

009.01E(2) Inspection time - $24.00 per hour.

009.01E(3) Inspection time shall include the driving time to and from the location in addition to the time spent conducting the phytosanitary inspection work.

009.01E(4) Except as provided in 25 NAC 13-009.01E5, a fee of $30.00 shall be assessed for each phytosanitary or export certificate issued in addition to any other charges as described in 25 NAC 13-009.01E6, 25 NAC 13-009.01E7 and 25 NAC 13-009.01E8.

009.01E(5) A fee of $10.00 shall be assessed for each phytosanitary or export certificate issued, in addition to any other charges as described in 25 NAC 13-009.01E6, 25 NAC 13-009.01E7 and 25 NAC 13-009.01E8 for the following applicants:

009.01E(5)(a) Any university or college needing a phytosanitary or export certificate for academic research purposes;

009.01E(5)(b) Any agency, board, or commission of the state of Nebraska; and

009.01E(5)(c) Any licensed nursery stock distributor requesting a phytosanitary or export certificate for nursery stock shipments.

009.01E(6) Any application made to the Department by telephone shall be assessed an additional fee of $7.00.

009.01E(7) Any fee charged to the Department by the United States Department of Agriculture for the issuance of a phytosanitary or export certificate shall be paid by the applicant.

JUL 0 2 2015

009.01E(8) Any fee charged to the Department by a laboratory for diagnostic services or any shipping costs related to phytosanitary inspection work shall be paid by the applicant.

009.01F The Department shall refuse the issuance of a phytosanitary or export certificate for any of the following reasons:

009.01F(1) Failure of the plants, plant products or associated materials to meet quarantine requirements, regulations, or other phytosanitary measures imposed by the state or country for which the phytosanitary or export certificate is being requested.

009.01F(2) Failure to completely or accurately provide the information requested on the application form or other required information necessary to determine the product meets entry requirements of the receiving state or country.

009.01F(3) Failure to ship the exact plants or plant products which were inspected and approved.

009.01F(4) Failure to pay any fees or costs due the Department.

010 Compliance with European Corn Borer Quarantines Maintained in Other States of the United States.

010.01 Inspection of facilities or equipment, the issuance of certificates and the fees assessed associated with the compliance to the European corn borer quarantines of other states are authorized in Neb. Rev. Stat. §§2-1091 and 2-10,110 of the Act.

010.01A Statement of Purpose - The European corn borer (Ostrinia nubilalis) is an insect found statewide in Nebraska and causes severe damage to various plants. However, this insect is not distributed across the entire United States. There are states and a Canadian province which have imposed and maintain a quarantine for this pest. The quarantines maintained by these states and provinces prevent the shipment of Nebraska grown corn, sorghum, broomcorn, and sudan grass, unless such shipments have been duly certified to have been treated in a manner that would exclude the live larvae of the European corn borer.

010.01B Any grain distribution facility desiring to originate shipments of corn, sorghum, broomcorn, or sudan grass to states maintaining European corn borer quarantines may apply for an inspection of their facilities and equipment by the Department. An application shall be made on forms

JUL 0 2 2015

provided by the Department. After enrollment in the program, it shall be the responsibility of the facility manager or the facility's appointed person to review the screening and loading process of quarantine commodities.

010.01C When conducting inspections of grain distribution facilities, the Department shall be guided by the requirements of those states and provinces maintaining quarantines. The requirements of the destination state or province shall be met. The Department shall maintain current information with respect to the quarantine requirements of the individual states and provinces and shall make available such information to the grain distribution facilities within the state.

010.01D The Department shall conduct inspections of the grain distribution facilities upon initial request to enter into the European corn borer quarantine program. After initial enrollment into the program, periodic inspections shall be conducted. Inspections may include one or more of the following:

010.01D(1) Inspection of facilities and equipment.

010.01D(2) Inspection of grain shipments.

010.01D(3) Observation and evaluation of procedures utilized in handling and inspecting grain shipments, and issuing European Corn Borer Certificates.

010.01D(4) Review of completed European Corn Borer certificates.

010.01E The Department shall issue a European Corn Borer Quarantine Certification License to those facilities which have submitted an application, met the requirements of those states and provinces maintaining quarantines and paid the annual fee. The certificate shall be valid for one year after issuance unless revoked sooner by the Department. European Corn Borer Certificates may not be sold to a person until the European Corn Borer Quarantine Certification License has been issued to the facility.

010.01F The Department shall assess the following fees for the issuance of a European Corn Borer Quarantine Certification License and European Corn Borer Certificates. Any fee more than one month late shall have an additional fee of 25% of the total fees due assessed for each month the fees are late, not to exceed 100% of the original amount due.

010.01F(1) The annual fee for the issuance of a European Corn Borer Quarantine Certification License shall be $50.00 and is due upon application.

JUN 2 2 2015

010.01F(2) The cost for each European Corn Borer Certificate shall be 25 cents. The certificates are sold in pads of 25 for $6.25 a pad.

010.01G The Department may revoke a European Corn Borer Quarantine Certification License and recall, without reimbursement, any outstanding European Corn Borer Certificates issued under the License for any of the following reasons:

010.01G(1) Failure to completely and accurately provide the information requested on the application, or failure to carry out the assurances set forth therein.

010.01G(2) Failure to pay any fees or costs due the Department.

010.01G(3) Failure to maintain facilities and equipment in the manner prescribed by the Department.

010.01G(4) Failure to conduct inspections of grain shipments in the manner prescribed by the Department.

010.01G(5) Failure to utilize the grain handling and inspection procedures prescribed by the Department.

010.01G(6) Failure to issue European Corn Borer Certificates in the manner prescribed by the Department.

010.01H In addition to the revocation and recall provisions of these regulations for European Corn Borer Quarantine Certification License or European Corn Borer Quarantine Certificates, the Department may pursue any enforcement action provided for in the Act including issuing an administrative fine.

011 Agreements for Compliance with Quarantines (Other than European Corn Borer Quarantines) Maintained in Other States.

011.01 Inspection of plants, plant products, associated materials, facilities, or equipment, the issuance of compliance agreements and the fees associated with the compliance of plant pest quarantines (other than European corn borer quarantines) of other states are authorized in Neb. Rev. Stat. §§2-1091 and 2-10,110 of the Act.

011.01A The Department may enter into compliance agreements with any person or facility in order to meet the certification requirements of the

JUL 0 2 2015

receiving state. A compliance agreement shall be valid for one year unless revoked sooner.

011.01B The Department shall conduct phytosanitary inspections upon initial request to enter into a compliance agreement, to determine if the certification requirements of the receiving state can be met. After initial issuance of a compliance agreement, periodic phytosanitary inspections shall be conducted, to confirm the requirements of the compliance agreement continue to be met.

011.01C When conducting phytosanitary inspections, the Department shall be guided by the certification requirements of the destination states. The Department shall notify firms under compliance agreement if a destination state's quarantine requirements change.

011.01D An applicant shall submit a completed application provided by the Department, accompanied by the appropriate fee. Any fee more than one month late shall have an additional fee of 25% of the total fees due assessed for each month the fees are late, not to exceed 100% of the original amount due.

011.01D(1) An annual compliance agreement fee of $50 per compliance agreement shall be assessed and is due upon application or renewal.

011.01D(2) The Department shall assess fees to cover the costs of compliance agreement phytosanitary inspection work, including mileage and inspection time.

011.01D(2)(a) Mileage charge - $0.42 per mile.

011.01D(2)(b) Inspection Time - $24.00 per hour.

011.01D(2)(c) Inspection time shall include driving time to and from the location in addition time spent conducting the compliance agreement phytosanitary inspection work.

011.01D(3) Any fee charged to the Department by a laboratory for diagnostic services or any shipping costs related to compliance agreement phytosanitary inspection work shall be paid by the applicant.

011.01E The Department may refuse the issuance of, or revoke, a compliance agreement for any of the following reasons:

JUL 0 2 2015

011.01E(1) Failure of the plants or plant products to meet quarantine requirements or regulations, or other phytosanitary measures imposed by the state for which the compliance agreement is being requested.

011.01E(2) Failure to completely or accurately provide to the Department the information requested on the application form, or other required written documentation and information as needed in order to determine if the product meets the entry requirements of the receiving state.

011.01E(3) Failure to follow the terms of the compliance agreement. This includes not shipping the exact plants or plant products which were certified under the compliance agreement.

011.01E(4) Failure to pay any fees or costs due the Department.

012 Importation and Distribution of Live Plant Pests, Biological Control Agents and Soils.

012.01 The regulation of importation of plant pests, biological control agents, and soils is authorized under Neb. Rev. Stat. §2-10,113.

012.01A Persons desiring to import nonindigenous biological control agents or genetically engineered plant organisms to be used in the open environment are required to obtain a permit prior to shipment from the Department.

012.01A(1) Permits issued shall be valid for the period of time specified.

012.01A(2) Exemptions to 25 NAC 13-012.01A are:

012.01A(2)(a) Those nonindigenous biological control agents, or genetically engineered plant organisms which have received a permit issued by the United States Department of Agriculture and Plant Health Inspection Service (USDA/APHIS) and were approved by the Department.

012.01A(2)(b) Those biological control agents which have received the United States Environmental Protection Agency product registration under section 3 of the Federal Insecticide Fungicide and Rodenticide Act; and

012.01A(2)(c) Honey bees of the species Apis mellifera.

JUL 0 2 2015

012.01B Regulations for obtaining permission from the Department for the shipment of plant pests, nonindigenous biological control agents, or soils.

012.01B(1) All shipments shall be in sturdy escape-proof containers.

012.01B(2) Each shipment shall be accompanied by a copy of the Department's written authorization of the shipment and a label identifying the shipment.

012.01B(3) Any shipment which is not authorized by this section shall be destroyed after the Department has been notified or returned to the shipment's point of origin.

012.01B(4) The containment of plant pests utilized for research, analysis, or other educational purposes shall comply with safety standards for laboratory and greenhouse set out in Safeguard Guidelines for Containment of Plant Pests Under Permit by the United States Department of Agriculture and Plant Health Inspection Service, Plant Protection and Quarantine (USDA/APHIS PPQ, APHIS) 81-61, June, 1983.

013 Assessment of Administrative Fines. If any person fails to comply with the Act and the regulations adopted and promulgated pursuant to the Act, the Department may impose an administrative fine pursuant to Neb. Rev. Stat. §2-10,103.02 and this section.

013.01 In addition to the definitions set forth in 25 NAC 13-001, the following shall apply to this section:

013.01A LEVEL OF VIOLATION shall mean the alleged violation is a first or subsequent violation.

013.01B FIRST VIOLATION shall mean the alleged violator has not been found by an order of the Director or any court, or by the violator's own admission in a settlement agreement, to have committed a violation of the Act or these regulations in the three years immediately preceding the date of the alleged violation.

013.01C SUBSEQUENT VIOLATION shall mean the alleged violator has committed the same violation of the Act or these regulations one or more times within the three years immediately preceding the date of committing the current alleged violation as determined by an order of the Director or any court, or the alleged violator has entered into a settlement agreement admitting to the facts establishing the previous violation.

JUL 0 2 2015

013.01D BASE FINE shall mean the amount of the administrative fine set by regulation for a particular violation of the Act or these regulations prior to any adjustments for gravity or size of the operation.

013.02 When it is determined that an administrative fine is an appropriate penalty for a violation of the Act or these regulations, the actual amount of such administrative fine shall be calculated by determining the base fine and making the necessary adjustments for gravity and the size of business as set forth in this section. An alleged violator shall be subject to the assessment of a fine for each violation, but may not be fined for any lesser included violations arising out of the same act, if the alleged violator has been fined for the greater violation. The Department may, however, issue any fine at the statutory maximum for any egregious violation. The base fines established for the specific violations are as follows:

013.02A Distributing nursery stock without a nursery stock distributor license or receiving nursery stock for further distribution from any person who has not been duly licensed or approved under the Act.

013.02A(1) Base fine for a first violation is $600.

013.02A(2) Base fine for a subsequent violation is $1,000.

013.02B Using any license issued by the Department after it has been revoked or expired, while the licensee was under suspension or for purposes other than those authorized by the Act.

013.02B(1) Base fine for a first violation is $600.

013.02B(2) Base fine for a subsequent violation is $1,000.

013.02C Fraudulently using any certificate, license or similar document issued by the Department, falsifying information provided on an application or other document submitted to the Department or allowing a license to be used by any person other than the person to whom it was issued.

013.02C(1) Base fine for a first violation is $600.

013.02C(2) Base fine for a subsequent violation is $1,000.

013.02D Moving any regulated article into the state from a quarantined area or area identified by the Department in a harmonization plan of any other state when such article has not been treated or handled as provided by the requirements of the quarantine or harmonization plan.

JUL 0 2 2015

013.02D(1) Base fine for a first violation is $600.

013.02D(2) Base fine for a subsequent violation is $1,000.

013.02E Distributing nursery stock which has been withdrawn from distribution.

013.02E(1) Base fine for a first violation is $600.

013.02E(2) Base fine for a subsquequent violation is $1,000.

013.02F Distributing nursery stock that is not free from quarantined or other regulated plant pests.

013.02F(1) Base fine for a first violation is $600.

013.02F(2) Base fine for a subsequent violation is $1,000.

013.02G Planting seed potatoes in violation of 25 NAC 13-015.03 or distributing biological control agents or genetically engineered plant organisms without a permit, if a permit is required by the Act.

013.02G(1) Base fine for a first violation is $600.

013.02G(2) Base fine for a subsequent violation is $1,000.

013.02H 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.

013.02H(1) Base fine for a first violation is $600.

013.02H(2) Base fine for a subsequent violation is $1,000.

013.02I Failing to comply with an order of the Director or violating an agreement with the Department entered pursuant to the Act.

013.02I(1) Base fine for a first violation is $600.

013.02I(2) Base fine for a subsequent violation is $1,000.

013.02J Failing to maintain a complete and accurate list with the Department of all sources from which nursery stock is obtained.

JUL 0 2 2015

013.02J(1) Base fine for a first violation is $400.

013.02J(2) Base fine for a subsequent violation is $800.

013.02K Failing to comply with a withdrawal-from-distribution order.

013.02K(1) Base fine for a first violation is $400.

013.02K(2) Base fine for a subsequent violation is $800.

013.02L Distributing nursery stock not labeled correctly.

013.02L(1) Base fine for a first violation is $400.

013.02L(2) Base fine for a subsequent violation is $800.

013.02M Failing to pay all fees required by the Act or the rules and regulations promulgated pursuant to the Act.

013.02M(1) Base fine for a first violation is $400.

013.02M(2) Base fine for a subsequent violation is $800.

013.02N Distributing nursery stock that is not sound, healthy, and reasonably capable of growth.

013.02N(1) Base fine for a first violation is $400.

013.02N(2) Base fine for a subsequent violation is $800.

013.02O Failing to keep and make available for examination by the Department all books, papers, and other information necessary for the enforcement of the Act.

013.02O(1) Base fine for a first violation is $400.

013.02O(2) Base fine for a subsequent violation is $800.

013.02P Failing to maintain nursery stock in a manner accessible to the Department.

013.02P(1) Base fine for a first violation is $400.

013.02P(2) Base fine for a subsequent violation is $800.

JUL 0 2 2015

013.02Q Failing to post a nursery stock distributor's license in a conspicuous place at the distribution location.

013.02Q(1) Base fine for a first violation is $120.

013.02Q(2) Base fine for a subsequent violation is $400.

013.02R Failing to report to the Department in writing the amount and type of plants treated or destroyed under the requirements of a withdrawal-from-distribution order or other compliance requirement of a withdrawal-from-distribution order.

013.02R(1) Base fine for a first violation is $120.

013.02R(2) Base fine for a subsequent violation is $400.

013.02S Distributing nursery stock that is not stored or displayed under conditions which maintain its vigor according to the standards set forth in 25 NAC 13-006.

013.02S(1) Base fine for a first violation is $120.

013.02S(2) Base fine for a subsequent violation is $400.

013.02T Distributing nursery stock containing actively growing weeds.

013.02T(1) Base fine for a first violation is $120.

013.02T(2) Base fine for a subsequent violation is $400.

013.02U Failing to delineate sections of nursery stock with sign markers.

013.02U(1) Base fine for a first violation is $120.

013.02U(2) Base fine for a subsequent violation is $400.

013.02V Violating any other provision of the Act or the rules and regulations promulgated pursuant to the Act.

013.02V(1) Base fine for a first violation is $120.

013.02V(2) Base fine for a subsequent violation is $400.

JUL 0 2 2015

013.03 Gravity adjustment criteria. The base administrative fine may be changed by considering the gravity of harm of the violation and the gravity of misconduct of the person committing the violation. The specific numerical value will be assigned to each category as set forth in the following charts:

013.03A Gravity of harm.

Violation	Circumstances	Value
Department's Ability to Enforce the Act	Violation significantly interfered with Department's ability to enforce the Act.	5
	Violation moderately interfered with Department's ability to enforce the Act.	3
	Violation slightly interfered with Department's ability to enforce the Act.	1
	Violation did not interfere with Department's ability to enforce the Act.	0
Harm to Plant Industry	Actual harm which is both serious and widespread to plant industry.	5
	Actual harm which is either serious or widespread to plant industry.	4
	Potential serious or widespread harm to plant industry.	3
	Minor actual harm to plant industry.	2
	Minor potential harm to plant industry.	1
	No potential harm to plant industry.	0
Extent of Distributor's Violations	Violations so widespread and pervasive the quality of all plants controlled by the distributor is affected.	5
	Numerous and widespread violations greatly affecting the quality of distributor's operation.	4
	Moderately widespread violations moderately affecting the quality of the distributor's operation.	3
	Less widespread violations, slightly affecting the quality of the distributor's operation.	2
	Only a few minor violations, not affecting the quality of the distributor's operation.	1
	No violations affecting the quality of the distributor's operation.	0

JUL 0 2 2015

013.03B Gravity of misconduct. For the purposes of this subsection prior violation means a violation which was committed within the last three years.

Violation	Circumstances	Value
Compliance History	Two or more prior violations, either similar or unrelated to current violation.	3
	One prior violation similar to current violation.	2
	One prior violation unrelated to current violation.	1
	No prior violations.	0
Culpability	Knowing or willful violation.	5
	Violation resulting from faulty, careless, or negligent action.	3
	Violation was neither knowing or willful and did not result from faulty, careless, nor negligent action.	0
Failure to Take Remedial Efforts	Violator failed to cooperate with Department's investigation; and additionally, failed to notify the Department of the violation and failed to take reasonable and timely steps to correct the violation.	3
	Violator cooperated after the Department discovered the violation but failed to notify the Department of the violation **and** failed to take reasonable and timely steps to correct the violation.	2
	Violator cooperated after the Department discovered the violation but either failed to notify the Department of the violation **or** failed to take reasonable and timely steps to correct the violation.	1
Financial Gain	Violation has or would have resulted in financial gain for violator.	3
	No financial gain to violator as a result of violation.	0

JUL 0 2 2015

013.03C To determine the adjusted fine, the base fine shall be adjusted based on the total number of points calculated from 25 NAC 13-013.03A and 013.03B and multiplying the base fine by the gravity adjustment percentage of base value set forth below.

Adjustments for Gravity

Total Gravity Value	Adjustment
3 or below	25% of base value
4-6	50% of base value
7-10	75% of base value
11 or above	100% of base value

013.04 To determine the actual administrative fine, the adjusted fine as determined in 25 NAC 013.03C shall be multiplied by the appropriate value corresponding with the size of business criteria set forth below. In determining the amount of any fine, there shall be a rebuttal presumption that the gross revenue of any violator is over $600,000.

Size of Business Criteria

Gross Revenue	Multiplier Value
$0-25,000	0.2
$25,001-100,000	0.4
$100,001-250,000	0.6
$250,001-500,000	0.8
over $500,001	1.0

013.05 Nothing in these regulations shall prevent the Department from entering into a settlement agreement with any person violating the Act or these regulations which specifies a different fine or other compliance action.

014 Administration. These regulations shall be administered by the Nebraska Department of Agriculture, located in the State Office Building, Fourth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is P.O. Box 94756, Lincoln, Nebraska 68509-4756; telephone number (402) 471-2351.

JUL 0 2 2015

015 Planting of Certified Seed Potatoes.

015.01 In cooperation with the Department, the certification entity of seed potatoes in the state of Nebraska shall comply with the Memorandum of Understanding between the Nebraska Department of Agriculture and the United States Department of Agriculture Animal and Plant Health Inspection Service Plant Protection and Quarantine (USDA/APHIS PPQ) which as a part of the State National Harmonization Program for seed potatoes sets minimum standards for the certification of seed potatoes. A copy of the Memorandum of Understanding is attached and incorporated herein by reference and is hereby adopted and promulgated and may be used.

015.02 The Director recognizes that the Potato Certification Association of Nebraska is the certification entity in the state of Nebraska to certify that seed potatoes are free of regulated plant pests of seed potatoes.

015.03 A person may not plant seed potatoes in lots of one acre or more, for the purpose of distributing the crop to be harvested, unless the seed potatoes:

015.03A Have been certified by the Nebraska certification entity as meeting the standards of this state; or,

015.03A(1) Have been certified by another state or province having a similar seed potato quality assurance (certification) program, as determined by the Nebraska certification entity; or,

015.03A(2) Have been field inspected and approved by the Nebraska certification entity.

015.03B If the Director has reason to believe that seed potatoes meeting the requirements of this section are not available in sufficient quantities to fulfill planting needs, the Director may permit the planting of seed potatoes with a higher disease content, providing that bacterial ring rot and nematodes are not present in the seed potatoes, and that a serious disease threat is not posed.

015.04 All seed potatoes imported into this state by any person, from any state, territory, or country, must be accompanied by:

015.04A A health certificate to certify that the lot of seed potatoes was certified by another state or province, having a similar seed potato quality assurance (certification) program, as determined by the Nebraska certification entity; or,

JUL 0 2 2015

015.04B An official grade certificate describing the grade of the seed potatoes; and,

015.04C Any other document or certificate required for the importation into Nebraska of seed potatoes by the state, province, territory, or country of origin, including test results issued by a laboratory approved by the United States Department of Agriculture Animal Plant Health Inspection Service (USDA/APHIS).

015.05 In addition to the record keeping requirements listed under the Act and the Nebraska Potato Development Act, every person who plants one or more acres of potatoes shall maintain records indicating the acreage, varieties, and source of all seed potatoes planted. The records must be available for inspection by the Nebraska certification entity for a period of three years from the date of planting. Records are to include:

015.05A Proof of production in an accredited certification program;

015.05B Health certificate or official grade certificate;

015.05C Shipping point inspection;

015.05D Documentation on planting location in Nebraska;

015.05E Federal phytosanitary certificate (if coming from a foreign country);

015.05F State phytosanitary certificate (if the seed potatoes are a regulated article under any state or federal quarantine);

015.05G Proof of lab testing, is applicable;

015.05H Proof of application for re-certification, if applicable;

015.05I Proof of application for post-harvest test, if planted for re-certification: and,

015.05J Any other record needed to confirm origin, identity, or health of the seed potatoes.

JUL 0 2 2015

016 Publications Adopted. See Appendix A and Appendix B.

017 Annotation. Neb. Rev. Stat. §§2-1072 to 2-10,117.

APPROVED

JUL 02 2015

PETE RICKETTS
GOVERNOR

FILED
JUL 2 2015
BY SECRETARY OF STATE

APPROVED
DOUGLAS J. PETERSON
ATTORNEY GENERAL

JUN 22 2015

BY
ASSISTANT ATTORNEY GENERAL