

CHAPTER 4.1-22 NURSERIES

4.1-22-01. Definitions.

In this chapter, except as otherwise provided:

1. "Certificate of inspection" means a document issued or authorized by the commissioner stating nursery stock is practically free from damaging pests.
2. "Commissioner" means the agriculture commissioner or the commissioner's designee.
3. "Grower" means any person that takes a reproductive part of nursery stock and increases the size and development of the stock for at least one full growing season. A grower includes a person producing nursery stock from tissue culture.
4. "Infested" means infected with a quantity of pests or so exposed to a quantity of pests that it would be reasonable to believe potential for harm or threat to the health of the host nursery stock exists.
5. "Nonhardy" means plant species, varieties, and cultivars that will not survive climatic conditions in North Dakota.
6. "Nursery" means any place where nursery stock is propagated, grown, or offered for sale.
7. "Nursery stock" means all trees, shrubs, woody vines and their parts that are capable of propagation or growth, except seed. Only plants intended for outdoor planting are considered nursery stock.
8. "Pest" means any invertebrate animal, pathogen, parasitic plant, or other similar organism that can cause damage to nursery stock.
9. "Place of business" means each separate location from which nursery stock is being offered for sale.
10. "Viable nursery stock" means nursery stock that is capable of living and accomplishing the purpose for which it is grown, whether for foliage, flowers, fruit, or special use.

4.1-22-02. Administration - Rulemaking authority.

The commissioner shall administer this chapter. The commissioner may adopt rules under chapter 28-32 to implement this chapter.

4.1-22-03. Authority for inspection.

The commissioner shall inspect all nursery stock being grown in North Dakota at least once each year and may enter and inspect any nursery or place of business during normal business hours.

4.1-22-04. Authority for abatement - Removal from sale.

After giving notice to the owner or the owner's agent, the commissioner may destroy, treat, or remove from sale, at the owner's expense, any nursery stock offered for sale found to be not viable, not accompanied by a certificate of inspection, not labeled correctly, or infested with a pest.

4.1-22-05. Certification of nursery stock.

The commissioner shall issue a certificate of inspection annually for nursery stock grown in licensed nurseries within the state found to be practically free from damaging pests. Certificates expire on December thirty-first each year unless canceled at an earlier date. Certification may be withheld by the commissioner when nursery stock is infested with a pest or if weeds or other objects prevent an adequate inspection of the nursery stock. All nursery stock being offered for sale within the state must be from officially inspected sources. A copy of a certificate of inspection from the state of origin must accompany each commercial lot or shipment of nursery stock that is transported into or offered for sale within North Dakota. All copies of the North Dakota certificate of inspection required for shipping purposes must be approved by the commissioner.

4.1-22-06. Nursery license - Fee.

A person may not sell nursery stock without a license issued by the commissioner. Licenses expire on December thirty-first each year unless revoked at an earlier date. An application for renewal of license with any additional information required by the commissioner must be submitted and accompanied by a fee of fifty dollars on or before December thirty-first each year. A separate license is required for each place of business. A fee of ten dollars must be submitted for each additional license, other than the principal place of business. A license may not be issued to a grower unless the grower has first been issued a certificate of inspection.

4.1-22-07. Labeling and standards for nursery stock.

A person may not sell or offer for sale any nursery stock not labeled in accordance with the international code of nomenclature for cultivated plants with the complete correct botanical or approved recognized common name. All nonhardy trees and shrubs, as determined by the commissioner, must be labeled "nonhardy in North Dakota". All nursery stock offered for sale or distribution must be in a viable condition and must be stored and displayed under conditions that will maintain its viability. Materials used to coat the aerial parts of the plant which change the appearance of the plant surface to prevent adequate inspection are prohibited.

4.1-22-08. Misrepresentation.

A person may not misrepresent the name, age, origin, grade, variety, quality, or hardiness of any nursery stock being offered for sale.

4.1-22-09. Reciprocal agreements.

The commissioner may enter reciprocal agreements with officers of other states for the recognition of official licenses and inspection certificates.

4.1-22-10. Exemptions.

The commissioner may exempt certain nursery stock, nurseries, or persons from all or part of the provisions of this chapter. Exemptions from licenses and fees may include:

1. Persons growing and propagating nursery stock for research or experimental purposes;
2. Soil conservation districts selling nursery stock for the prevention of soil and wind erosion or other conservation plantings; and
3. Persons growing nursery stock for noncommercial purposes or that the commissioner designates as exempt.

4.1-22-11. Penalties - Criminal - Civil - License revocation or nonrenewal.

1. It is a class B misdemeanor for any person to violate this chapter, or any rules adopted under this chapter.
2. Any person who violates any provision of this chapter, or rule adopted under this chapter, is subject to a civil penalty not to exceed five hundred dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing under chapter 28-32.
3. The department may maintain, in accordance with the laws of this state, an appropriate civil action in the name of the state against any person violating this chapter or rules adopted under this chapter.
4. The commissioner may refuse to grant a license to any person found guilty of repeated violations of this chapter or rules adopted under this chapter, or to any person who has failed to pay an adjudicated civil penalty for violation of this chapter within thirty days after a final determination that the civil penalty is owed.