Agency Name: Clemson University - State Crop Pest Commission

Statutory Authority: 46-9-40

Document Number: 4808

Proposed in State Register Volume and Issue: 42/1

House Committee: Regulations and Administrative Procedures Committee

Senate Committee: Agriculture and Natural Resources Committee

120 Day Review Expiration Date for Automatic Approval: 03/24/2019

Final in State Register Volume and Issue: 42/5

Status: Final

Subject: Plant Nursery Regulations

History: 4808

By Date Action Description Jt. Res. No. Expiration Date

- 01/26/2018 Proposed Reg Published in SR

- 03/27/2018 Received by Lt. Gov & Speaker 03/24/2019

S 03/27/2018 Referred to Committee

H 04/03/2018 Referred to Committee

S 04/17/2018 Resolution Introduced to Approve 1172

S 05/03/2018 Approved by: Ratification No. 174

- 05/25/2018 Effective Date unless otherwise

 provided for in the Regulation

Document No. 4808

**CLEMSON UNIVERSITY**

**STATE CROP PEST COMMISSION**

CHAPTER 27

Statutory Authority: 1976 Code Section 46-9-40

27-160. Plant Nursery Regulations.

27-161. Nursery Registration.

27-162. Nursery Dealer.

27-163. Nursery Stock Shipment.

27-164. Penalties.

**Synopsis:**

The State Crop Pest Commission proposes to provide clarifying language regarding the regulation of nursery plant shipments and fees for nursery dealers in South Carolina in response to recent statutory amendments made to the enabling legislation in the 2017 legislative session.

The Notice of Drafting was published in the *State Register* on November 24, 2017.

**Instructions**:

Replace and add new text to Regulation 27-160. Plant Nursery Regulation as listed below.

Replace and add new text to Regulation 27-161. Nursery Grower Certification Process as listed below.

Replace and add new text to Regulation 27-162. Nursery Dealer Certification Process as listed below.

Replace and add new text to Regulation 27-163. Nursery Stock Shipment as listed below.

Replace and add new text to Regulation 27-164. Penalties as listed below.

**Text:**

27-160. Plant Nursery Regulation.

A. Definitions

 (1) Application: The process of notifying the Department of Plant Industry that certification is needed and fulfilling all other Department requirements associated therewith.

 (2) Certification: The successful completion of the Application, Inspection, and Registration processes by the Nursery Grower or Nursery Dealer as required by the Department in order to obtain a Nursery Grower or Nursery Dealer Certificate.

 (3) Department: The Department of Plant Industry (DPI).

 (4) Director: The Director, Regulatory and Public Service Programs, Clemson University.

 (5) Greenhouse: A building, room, or area, where the temperature and/or climate is maintained and is used for growing, propagating and/or maintaining nursery stock for sale.

 (6) Infestation: The presence of any plant pests which is regarded as injurious or noxious.

 (7) Inspector: Any authorized employee or agent of the State Crop Pest Commission or any other person authorized by the Director to enforce the provisions of these regulations.

 (8) Inspection: The physical observation by the Department of Plant Industry to verify freedom of plant pests, condition of general environment, and compliance with all relevant State and Federal regulations and/or laws.

 (9) Location: Any place where nursery stock is grown, collected or distributed.

 (10) Nursery: Any place where nursery stock is either grown for sale or distributed.

 (11) Nursery Certificate Tag: A document issued by the Department which accompanies individual shipments of Nursery Stock and declares apparent freedom from major plant pests and compliance with all relevant state and federal quarantines.

 (12) Nursery Grower: Any person who grows Nursery Stock for sale or distribution.

(13) Nursery Grower Certificate: A document issued by the Department or the equivalent agency of another state, declaring that the Nursery Stock grown for sale or distribution and the Person named on the document have met all requirements of the Nursery Grower Certification Process.

(14) Nursery Grower Hobbyist: Any Nursery Grower who has less than $5,000 in gross annual sales. Hobbyists are exempt from registration fees.

 (15) Nursery Dealer: Any person not a Nursery Grower who buys Nursery Stock for resale and any Nurseryman who operates a sales lot separately from his nursery.

 (16) Nursery Dealer Certificate: A document issued by the Department, or the equivalent agency of another state, declaring that the Nursery Stock being sold and the Person named on the document have met all requirements of the Nursery Dealer Certification Process.

 (17) Nursery Dealer Hobbyist: Any Nursery Dealer having less than $10,000 in gross annual sales. Hobbyists are exempt from registration fees.

 (18) Nurseryman: Any Person engaged in the production or collection of nursery stock for sale or distribution.

 (19) Nursery Stock: All trees (fruit, nut, shade and ornamental), ornamental plants, turfgrass, bush fruits, buds, grafts, scions, vines, roots, bulbs, seedlings, slips, tissue culture or other portions of plants (excluding true seeds) grown, collected or kept for propagation, sale or distribution. Also includes any other plant or plant part included by the Director, if regulating its movement is necessary to control any plant pest.

 (20) Person: Individual, firm, corporation, partnership, association, state and federal agencies, schools, groups, or organizations.

 (21) Plant Pest: Any living stage of insects, mites, nematodes, slugs, animals, protozoa, snails or other invertebrate animals, bacteria, weeds, fungi, other parasite plants or their reproductive parts, or viruses, or organisms similar to or allied with the foregoing, including genetically engineered organisms or infectious substances which directly or indirectly may injure or cause disease or damage in plants or their parts or processed, manufactured, or other products of plants, and which may be a serious agricultural threat to the State, as determined by the Director.

 (22) Quarantine: Limitations by the Department on the free movement of plant pests, animals, plants, equipment, machinery, goods, genetically engineered organisms, or means of transportation, or all of the foregoing, considered by the Department to be reasonably necessary to prevent the spread of a plant pest.

 (23) Registration: The determination of the regulated fee schedule category and the collection of applicable fees by the Department.

 (24) Turfgrass: The top layer of earth comprised of grass leaf blades, stolons, thatch, and roots grown for commercial harvesting and sale as sod, sprigs, or any other part thereof, excluding seed.

27-161. Nursery Grower Certification Process.

 Nursery Grower Certificates are required for all Nurseries defined as Nursery Growers. The Nursery Grower Certification Process requires successful completion of the Application, Inspection, and Registration sections below for all Nursery Growers.

 A. Application

 To obtain a Nursery Grower Certificate, application must first be made to the Department. First time and expired Nursery Growers requesting a Nursery Grower Certificate must notify the Department for Application information. Nurseries with a current Nursery Grower Certificate will automatically receive renewal information from the Department annually.

 B. Inspection

 All applicants in South Carolina must be inspected *at least annually* by the Department. Inspection must reveal that the Nursery possesses acceptable environmental conditions and that the Nursery Stock is sufficiently free from Plant Pests as determined by the Inspector. All inspections, announced or otherwise, shall be performed to ensure compliance with these regulations and all other applicable state and federal regulations and laws. Should the Nursery Stock not be made available for annual inspection or if the inspection reveals unacceptable environmental conditions and/or Plant Pests at an unacceptable level, the Nursery Grower Certificate may be revoked until the situation is corrected per the guidelines of the Department.

 C. Registration

 All Nursery Growers in South Carolina are subject to Registration and applicable fees by the Department unless exempt elsewhere in this regulation. Nursery Grower registration fees shall be on a graduated scale. All Nursery Grower Certificates expire annually. If Nursery Stock is grown at more than one location by the same Nursery Grower, the fees shall be based upon the nursery's aggregate number of acres and/or greenhouse square footage in production of the nursery. In cases where the Nursery consists of a combination of greenhouses, turfgrass, and other nursery stock acreage, a single license fee must be assessed at the higher rate of the three categories.

 The following annual Nursery Grower Registration fee schedule is in effect:

 (1) Nursery stock (except turfgrass) with a production acreage of 10 or less; greenhouses with less than 6,000 square feet; or a turfgrass production acreage of 250 or less shall be $75.00.

 (2) Nursery stock (except turfgrass) with a production acreage of 11 to 25; greenhouses with 6,000 to 30,000 square feet; or a turfgrass production acreage of 251 to 500 shall be $125.00.

 (3) Nursery stock (except turfgrass) with a production acreage of 25 or more; greenhouses with more than 30,000 square feet; or a turfgrass production acreage of 501 or more shall be $ 200.00.

 Nursery Growers who produce transplants or seedlings grown solely for the purpose of being distributed for production of agricultural commodities must complete Registration with the Department but are exempt from nursery registration fees. If Nursery Stock is grown in conjunction with the aforementioned category of plants, the Nursery will remain subject to the fee schedule of this section.

 Nursery Grower Hobbyists are required to produce sales records to the Department upon request and will remain subject to all other requirements of this section.

 The Forestry Commission and governmental and nonprofit organizations which are not in the business of commercial sale of nursery stock are exempt from the fees required by registration, but will remain subject to all other requirements of this section. All persons selling cut Christmas trees from November to January who are not otherwise required to adhere to this section are exempt from the requirements of this section.

27-162. Nursery Dealer Certification Process.

 Nursery Dealer Certificates are required for all Nurseries defined as Nursery Dealers. The Nursery Dealer Certification Process requires successful completion of the Application, Inspection, and Registration sections below for all Nursery Dealers.

 A. Application

 To obtain a Nursery Dealer Certificate, application must first be made to the Department. The Nursery Dealer Certificate application requires a list of all nursery stock sources and all South Carolina sales locations. A separate Nursery Dealer Certificate is required for each sales location. Nursery Stock Sources must be verified by the Department as being certified/licensed nurseries or dealers in their state of origin. All Nursery Dealers with a current Nursery Dealer Certificate will automatically receive renewal information from the Department annually.

 B. Inspection

 Inspections for Nursery Dealers holding a Nursery Dealer Certificate in South Carolina will be conducted, announced or otherwise, as deemed necessary by the Department. Inspection must reveal that the Nursery Dealer possesses acceptable environmental conditions and the Nursery Stock is sufficiently free from Plant Pests as determined by the Inspector. All inspections shall be performed to ensure compliance with these regulations and all other applicable state and federal regulations and laws. Should the nursery stock not be made available for inspection or if the inspection reveals unacceptable environmental conditions and/or Plant Pests at an unacceptable level, the Nursery Dealer Certificate may be revoked until the situation is corrected per the guidelines of the Department.

 C. Registration

 All Nursery Dealers in South Carolina are subject to Registration and applicable fees by the Department unless exempt elsewhere in this regulation. Nursery Dealer registration fees shall be on a graduated scale and Nursery Dealer Certificates expire annually. If Nursery Stock is sold at more than one location by the same Nursery Dealer, applicable Registration fees shall apply per location. Nursery Dealers must produce sales records to the Department upon request.

 The following annual Nursery Dealer Registration fee schedule is in effect:

 (1) Nursery Dealer locations for which annual gross sales equal $10,000.00 or less shall pay $0.00.

 (2) Nursery Dealer locations for which annual gross sales are between $10,001.00 and $100,000.00

shall pay $50.00.

 (3) Nursery Dealer locations for which annual gross sales are over $100,000.00 shall pay $100.00.

 Nursery Dealer Hobbyists are exempt from Registration fees, but are still subject to all other parts of this Regulation.

27-163. Nursery Stock Shipment.

 Nursery Stock shipment to and from Nursery Growers and Nursery Dealers in South Carolina must adhere to all requirements of this section. Nursery Certificate Tags, whether self-printed by the Nursery or pre-printed by the Department, must meet Department standards for issuance and use. Nurseries must have a current Nursery Grower Certificate or Nursery Dealer Certificate and meet the requirements of these regulations and all other applicable state and federal regulations and laws, as determined by the Department, before applying for Nursery Certificate Tags.

 A. Nursery Certificate Tags Request

 Nursery Grower and Nursery Dealer shipments of Nursery Stock must have attached a Nursery Certificate Tag. Requests for Nursery Certificate Tags must be made to the Department.

 B. Nursery Certificate Tags Usage

 A current Nursery Certificate Tag approved by the Department must accompany appropriate shipments of Nursery Stock. The usage of Nursery Certificate Tags for the shipment of Nursery Stock not meeting the requirements of this section is in violation of this section.

 C. Nursery Certificate Tags Acquisition and Cost

 Successful completion of the Certification Process and payment of applicable fees is required prior to any Nursery Certificate Tag issuance and/or use. The Department provides two options for obtaining Nursery Certificate Tags:

 1. Department-printing on a cost-reimbursement basis can be requested by the Nurseryman. Upon request, Nursery Certificate Tags will be printed by the Department and shipped to the Nurseryman. A price list may be obtained from the Department upon request.

 2. Self-printing of Nursery Certificate Tags may be approved upon written request to the Department and all costs associated with will be at the expense of the Nursery Grower or Nursery Dealer. Prior to approval of self-printing, Department requirements regarding language and symbol use, and size of tags used must be met.

 D. Out of State Nursery Growers and Nursery Dealers

 1. Nursery Growers and Nursery Dealers with all locations occurring outside of South Carolina shall not be required to attach a Department-issued Nursery Certificate Tag to shipments coming into this State, nor to file duplicate invoices of such shipment (except **Prunus** spp. – see below) nor to pay a Registration fee, provided like privileges are accorded South Carolina nurserymen when making shipments into other states.

 2. Each vehicle, package, box, bundle or container of nursery stock originating outside of South Carolina and being moved into South Carolina for customer delivery or for resale must have attached to it a valid Nursery Certificate Tag from the state or country of origin stating in effect that the nursery stock being moved has been inspected and certified by an authorized official as apparently free of Plant Pests. Any shipment of nursery stock entering South Carolina not accompanied by such a Nursery Certificate Tag shall be declared a public nuisance and may be returned to the shipper, treated, destroyed or otherwise disposed of by the Department. Any plants moving from outside of South Carolina, whether or not accompanied by a Nursery Certificate Tag, found infested with Plant Pests shall be declared a public nuisance and may be returned to the shipper, treated, destroyed or otherwise disposed of to the satisfaction of the Department.

 3. Nurseries growing peach, nectarine, or other **Prunus** spp. Nursery Stock for shipment to commercial growers in South Carolina must, in addition to being certified apparently free of insects and diseases in their state or country of origin, also file or mail an invoice to the Department at the time of shipment showing the following information: (1) name and address of shipper, (2) producer of stock, if different from shipper, (3) date of shipment, (4) name and address of purchaser, and (5) name and address of receiver, if different from purchaser.

27-164. Penalties.

Any person who violates the provisions of these regulations shall become subject to a stop sale, use, or distribution order pursuant to 46-33-100.

**Fiscal Impact Statement:**

There will be no increased cost to the State or its political subdivisions.

**Statement of Rationale:**

Clarification to certain terms and their applications are needed in order to effectively interpret recent changes to the enabling statute, which occurred during the 2017 Legislative session. These proposed updates should provide clarification and allow greater efficiency, by all affected parties subject to these plant nursery regulations.