

NEBRASKA ADMINISTRATIVE CODE

TITLE 25 NEBRASKA ADMINISTRATIVE CODE, CHAPTER 13

NEBRASKA DEPARTMENT OF AGRICULTURE

BUREAU OF PLANT INDUSTRY

PLANT PROTECTION AND PLANT PEST ACT REGULATIONS

November, 2007 Amendment

NEBRASKA ADMINISTRATIVE CODE

TITLE 25 - NEBRASKA DEPARTMENT OF AGRICULTURE-
 BUREAU OF PLANT INDUSTRY
 CHAPTER 13 - PLANT PROTECTION AND PLANT PEST ACT REGULATIONS

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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.

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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 ~~as defined in the Nebraska Noxious Weed Control Act, Neb. Rev. Stat. §2-953 §§2-945.01 to 2-968., and the rules and regulations adopted and promulgated under it.~~

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 work shall mean inspecting, traveling to do inspections, sampling, transporting samples, surveying, trapping, and any other work performed in preparation for a phytosanitary or export certificate, a compliance agreement, or maintaining a compliance agreement,

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whether or not a phytosanitary or export certificate is actually issued or a compliance agreement is actually entered into.

~~001.13~~ 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.

~~001.14~~ 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 Plant Pest Act, the regulations adopted and promulgated under it, and the Nebraska Department of Agriculture's inspection program.

~~001.15~~ 001.16 Soil shall mean that material occupying or originating from the outermost part of the earth's crust.

~~001.16~~ 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.

~~001.17~~ 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 ~~1990~~ 2004, published by the American Association of Nurserymen, Inc., 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.

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003 Fees for Licensing, Inspection, and Reinspection of Growers and Collectors.

003.01 The fees charged for licensing, inspection of growers and collectors, and reinspection are authorized by Neb. Rev. Stat. §§2-1080, 2-1092, 2-1093, 2-1094, 2-1095, 2-10,102, and 2-10,116.01 of the Act.

003.01A Persons required to obtain a grower's license shall make application to the Department prior to March 15, or any person making initial application prior to the beginning of distribution and shall be charged an inspection fee based on acreage. Persons who file an application on or after April 15, initial applications not received prior to beginning distribution or growers whom require a reinspection shall pay, in addition to the acreage, a late fee assessed by using the mileage rate and inspection time rate, as set below in 25 NAC 13-003.01B.

003.01B The following rates shall be used in determining inspection and reinspection costs of growers and collectors:

003.01B1 Mileage charge - ~~\$0.24~~ \$0.42 per mile.

003.01B2 Inspection time - ~~\$15.00~~ \$24.00 per hour.

003.01B3 Inspection time shall include the driving time to and from the location in addition to the time spent conducting the inspection.

003.01B4 Acreage charge - \$25.00 per acre for the first acre or fraction thereof and \$5.00 per acre thereafter.

003.01B5 If grower or collector inspection fees are more than one month late, an additional penalty fee of 20% of the total fees due will be added on for each month the fees are late.

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004 Fees for Licensing and Reinspection of Dealers and Brokers.

004.01 The licensing fee, late fee, and reinspection fee for dealers and brokers is authorized by Neb. Rev. Stat. §§2-1077, 2-1097, 2-1098, 2-1099, 2-10,100, 2-10,100.01, and 2-10,116.01 of the Act.

004.01A Dealers who desire to distribute nursery stock in Nebraska shall obtain a dealers license. Persons shall submit a completed application provided by the Department, accompanied by the appropriate fee prior to December 31 of the following calendar year, or any person making initial application prior to beginning distribution.

004.01B An annual license fee of \$100.00 shall be assessed for dealers. An annual license fee of \$100.00 shall be assessed for brokers.

004.01C The delinquent fee shall be \$20.00 per month for each month delinquent, not to exceed \$100.00.

004.01D If a reinspection of a dealer is necessary, they shall be assessed a fee based on mileage and inspection time.

004.01D1 Mileage charge - ~~\$0.24~~ \$0.42 per mile.

004.01D2 Inspection time - ~~\$15.00~~ \$24.00 per hour.

004.01D3 Inspection time shall include the driving time to and from the location in addition to the time spent conducting the inspection.

005 Inspection of Dealers, Growers, Collectors, and Optional Inspections.

005.01 The inspection of dealers, growers, collectors and optional inspection of nursery stock and the associated reports issued are authorized by Neb. Rev. Stat. §§2-1091, 2-1092, 2-1093, 2-1094, 2-1095, 2-1096, 2-1097, 2-1098, 2-10,100, 2-10,101, 2-10,102, 2-10,103, 2-10,105, and 2-10,115 of the Act.

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005.01A Nursery stock 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.

005.01A1 Each grower shall post sign markers which delineate sections of nursery stock. A section shall be no larger than five acres.

005.01B Inspection reports issued to growers 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 dealers shall outline the violations involved and corrective actions to be taken including withdrawal-from-distribution orders which would specify nursery stock 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 dealers and growers is found in Neb. Rev. Stat. §§2-1096 and 2-10,101 of the Act.

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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 dealers, growers, collectors, 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. §§2-1096, 2-1097, 2-1098, 2-10,101, 2-10,102, 2-10,103, 2-10,105, and 2-10,116 of the Act.

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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 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 dealers, growers, collectors, 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.

007.01J Any plant not meeting the above criterion may be pruned to remove dead or damaged branches and canes or etiolated growth and may then be distributed.

008 Labeling and Shipment of Nursery Stock.

008.01 The proper labeling and record keeping of nursery stock distributed or received by dealers, growers, collectors, brokers 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:

008.01A1 Correct common name or botanical name;
and

008.01A2 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.

008.01A2a Place of origin labels may be in code, provided the Department is given access to the code.

008.01B Dealers, growers, collectors, brokers, and those with optional inspections shall maintain and make documents available to the Department for three years shipment records, packing slips, and other records of:

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008.01B1 The name and address of any person from which nursery stock was received and the receiving date;

008.01B2 The name and quantity of the contents;

008.01B3 The place of origin and documentation required by any state or federal quarantine; and

008.01B4 A license or its equivalent issued by the recognized authorized agency stating that the nursery from which the nursery stock originates has been inspected.

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, the shipment must include the proper documentation and compliance labeling of any applicable federal or state quarantine.

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.

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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 foreign countries have quarantines, requirements, and regulations that must be met before a plant or plant product may be imported into their country. Nebraska plants and plant products would not be admissible into the 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 originate shipments from Nebraska to a 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, 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:

009.01C1 An inspection of the plants or plant products intended for export under a phytosanitary or export certificate and if necessary; or

009.01C2 Field inspections of growing plants to determine presence or absence of plant diseases; or

009.01C3 Laboratory diagnosis for presence or absence of plant diseases; or

009.01C4 Observation and evaluation of procedures and facilities utilized in handling plants and plant products; or

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009.01C5 Review of USDA, Federal Grain Inspection Service (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 foreign country and the USDA/APHIS requirements. The requirements of the destination countries shall be met by the applicant.

009.01E The Department shall assess ~~the following fees for fees to cover the costs of phytosanitary inspection work. the inspection, service and work performed in carrying out the issuance of a phytosanitary or export certificate.~~ The inspection fee shall include ~~be assessed on~~ mileage and inspection time.

009.01E1 Mileage charge ~~-\$0.24~~ \$0.42 per mile.

009.01E2 Inspection time - ~~\$15.00~~ \$24.00 per hour.

009.01E3 Inspection time shall include the driving time to and from the location in addition to the time spent conducting the phytosanitary inspection work.

009.01E4 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.

009.01E5 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:

009.01E5a Any university or college needing a phytosanitary or export certificate for academic research purposes;

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009.01E5b Any agency, board, or commission of the state of Nebraska; and

009.01E5c Any licensed grower requesting a phytosanitary or export certificate for nursery stock shipments.

009.01E6 Any application made to the Department by telephone shall be assessed an additional fee of \$7.00.

009.01E7 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.

009.01E8 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:

009.01F1 Failure of the plants or plant products to meet quarantine, regulations, and requirements imposed by the country for which the phytosanitary or export certificate is being requested.

009.01F2 Failure to completely or accurately provide the information requested on the application form.

009.01F3 Failure to ship the exact plants or plant products which were inspected and approved.

009.01F4 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 United States. A number of states have imposed and maintain a quarantine prohibiting the introduction of this pest into their state. States with a quarantine in effect are Arizona, California, ~~Florida~~, Hawaii, Idaho, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and the Canadian provinces of Alberta and British Columbia. The quarantines maintained by these states and provinces prevent the shipment of Nebraska grown corn, sorghums, broomcorn, and sudan seeds, 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, sorghums, broomcorn, or sudan seeds 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 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

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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:

010.01D1 Inspection of facilities and equipment.

010.01D2 Inspection of grain shipments.

010.01D3 Observation and evaluation of procedures utilized in handling and inspecting grain shipments, and issuing European Corn Borer Certificates.

010.01E The Department shall issue a European Corn Borer Quarantine Inspection Certificate to those facilities which have 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 Inspection Certificate has been issued to the facility.

010.01F The Department shall assess the following fees for the issuance of a European Corn Borer Quarantine Inspection Certificate and European Corn Borer Certificates.

010.01F1 The annual fee for the issuance of a European Corn Borer Quarantine Inspection Certificate shall be \$50.00.

010.01F2 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.

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010.01G The Department may revoke a European Corn Borer Quarantine Inspection Certificate for any of the following reasons:

010.01G1 Failure to completely and accurately provide the information requested on the application, or failure to carry out the assurances set forth therein.

010.01G2 Failure to pay any fees or costs due the Department.

010.01G3 Failure to maintain facilities and equipment in the manner prescribed by the Department.

010.01G4 Failure to conduct inspections of grain shipments in the manner prescribed by the Department.

010.01G5 Failure to utilize the grain handling and inspection procedures prescribed by the Department.

010.01G6 Failure to issue European Corn Borer Certificates in the manner prescribed by the Department.

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

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

011.01A Persons desiring to import live plant pests, biological control agents, or soils are required to obtain a permit prior to shipment from the Department.

011.01A1 Permits issued shall be valid for the period of time specified.

011.01B Exemptions to 25 NAC 13-011.01A are:

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011.01B1 Those live plant pests, biological control agents, or soils which have received a permit issued by the USDA/APHIS and were approved by the Department.

011.01B2 Those biological control agents which have received U.S. Environmental Protection Agency product registration under section 3 of the Federal Insecticide Fungicide and Rodenticide Act; and

011.01B3 Honey bees of the species Apis mellifera.

011.01C Regulations for the shipment of live plant pests, biological control agents, or soils under permit.

011.01C1 All shipments shall be in sturdy escape-proof containers; and

011.01C2 Each shipment shall be accompanied by a copy of the permit and a label identifying the shipment.

011.01C3 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.

011.01D The containment of plant pests utilized for research, analysis, or other educational purposes.

011.01D1 Safety standards for laboratory and greenhouse should be followed as written in Safeguard Guidelines for Containment of Plant Pests Under Permit by USDA/APHIS PPQ, APHIS 81-61, June, 1983.

012 Assessment of Administrative Fines. If any person licensed pursuant to the Act fails to comply with Neb. Rev. Stat. §2-10,103, the Department may impose an administrative fine pursuant to Neb. Rev. Stat. §§2-10,103.01 and 2-10,103.02 and this section.

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

012.01A Level of violation shall mean that the alleged violation is a first, second, or third or more violation.

012.01A1 A first violation occurs when the alleged violator has not been found by an order of the Director or by his or her own admission in a consent agreement to have committed the same alleged violation in the last three years.

012.01A2 A second violation occurs when the alleged violator has been found by an order of the Director or by his or her own admission in a consent agreement to have committed the same alleged violation once within the last three years of committing the current alleged violation.

012.01A3 A third violation occurs when the alleged violator has been found by an order of the Director or by his or her own admission in a consent agreement to have committed the same alleged violation at least two times within the last three years of committing the current alleged violation.

012.01B Median fine shall mean the fine to be assessed in the absence of aggravating factors or mitigating factors or when the aggravating factors and the mitigating factors are equally applicable.

012.01C Aggravating factors shall mean findings of fact which enhance the seriousness of a violation and indicate a larger fine than the median fine would be appropriate. Such factors include:

012.01C1 The potential for the violation to cause serious economic injury for persons or serious physical injury to plants.

012.01C2 The actual economic injury to persons or physical injury to plants.

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012.01C3 The alleged violator's intentional, willful, or negligent failure to avoid the violation.

012.01C4 The failure by the alleged violator to take steps to remedy the violation.

012.01C5 The similarity of the current alleged violation to previous violations that occurred within the last three years.

012.01C6 The alleged violator's financial gain from the violation.

012.01C7 The alleged violator's likeliness to repeat the violation.

012.01C8 The alleged violator's nondisclosure of the violation to the Department.

012.01C9 The alleged violator's failure to cooperate with the investigation of the Department.

012.01D Mitigating factors shall mean findings of fact which reduce the seriousness of the violation and indicate a smaller fine than the median fine would be appropriate. Such factors include:

012.01D1 The lack of potential economic injury to persons or physical injury to plants.

012.01D2 The lack of actual economic injury to persons or physical injury to plants.

012.01D3 The unintentional, nonwillful, or non-negligent nature of the violation.

012.01D4 The alleged violator's attempts to take remedial action regarding the violation.

012.01D5 The lack of previous similar violations within the last three years.

012.01D6 The lack of the alleged violator's financial gain from the violation.

012.01D7 The unlikelihood that the alleged violator would repeat the violation.

012.01D8 The alleged violator's disclosure of the violation to the Department.

012.01D9 The alleged violator's cooperation with the investigation of the Department, or related investigations, including entering into a consent agreement.

012.01E The type of the alleged violation shall mean the category of the violation as a type I, type II, or type III violation.

012.01E1 Type I violation shall mean the least serious violations and includes:

012.01E1a Failing to post a grower's or dealer's license in a conspicuous place at the distribution location.

012.01E1b 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.

012.01E1c Distributing nursery stock not labeled according to the standards set forth in 25 NAC 13-008.

012.01E1d 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.

012.01E1e Distributing nursery stock containing actively growing weeds.

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012.01E1f Failing to delineate sections of nursery stock with sign markers.

012.01E1g Violating Neb. Rev. Stat. §2-10,115(1) (m).

012.01E2 Type II violations shall mean moderately serious violations and includes:

012.01E2a Failing to maintain a complete and accurate list with the Department of all sources from which nursery stock is obtained.

012.01E2b Receiving nursery stock from a federal or state quarantined area without the proper quarantine certificates or documentation of quarantine compliance.

012.01E2c Failing to carry out treatment or destruction of nursery stock as ordered by the withdrawal-from-distribution order within 30 days.

012.01E2d Mislabeled nursery stock by using the wrong common name or botanical name.

012.01E2e Distributing nursery stock that is not sound, healthy, and reasonably capable of growth.

012.01E2f Failing to keep and make available for examination by the Department all books, papers, and other information necessary for the enforcement of the Act.

012.01E2g Failing to maintain nursery stock in a manner accessible to the Department.

012.01E3 Type III violations shall mean the most serious violations and includes:

012.01E3a Acquiring for distribution nursery stock from any person who has not been duly licensed under the Act.

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012.01E3b Using any license issued by the Department; after it has been revoked or has expired, while the license is under suspension, or, for purposes other than those authorized by the Act.

012.01E3c Allowing a license to be used by any person other than the person to whom it was issued.

012.01E3d Knowingly moving any regulated article into the state from a quarantined area of any other state when such article has not been treated or handled as provided by the requirements of the quarantine.

012.01E3e Distributing nursery stock which has been withdrawn from distribution.

012.01E3f Distributing nursery stock that is not free from quarantined plant pests.

012.01E3g Distributing biological control agents or genetically engineered plant organisms without a permit, if a permit is required by the Act.

012.01E3h Interfering with the Department in the performance of its duties.

012.01E3i Failing to comply with an order of the Director.

012.01F Consent agreement shall mean a written agreement between the Department and the alleged violator, setting forth an admission of the alleged violation and a consent to the assessment of a stated fine.

012.02 The amount of the fine assessed under this section shall be determined by the Director based on the type of violation, the level of violation, and whether or not facts exist to prove mitigating factors or aggravating factors.

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012.02A The Director shall determine the fine based on the fine assignment schedule tables as follows:

012.02A1 For type I violations, the Fine Assignment Schedule Table in 25 NAC 13-014.01 shall be used.

012.02A2 For type II violations, the Fine Assignment Schedule Table in 25 NAC 13-014.02 shall be used.

012.02A3 For type III violations, the Fine Assignment Schedule Table in 25 NAC 13-014.03 shall be used.

012.03 The Director shall apply the median fine unless mitigating factors or aggravating factors are found or when the aggravating factors or mitigating factors are equivalently cogent.

012.04 An alleged violator shall be subject to the assessment of a fine for each commission of a violation, but may not be fined for any lesser included violation, arising out of the same act, if the alleged violator has been fined for the greater violation.

013 Administration. These regulations shall be administered by the Nebraska Department of Agriculture, Bureau of Plant Industry, 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) 471-2394.

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014 Fine Assignment Schedule Tables.

014.01 Fine Assignment Schedule Table - Type I

Type I (Least Serious) Category of Violation

Level of Violation	Mitigated	Median	Aggravated
FIRST	\$20	\$40	\$60
SECOND	\$40	\$60	\$100
THIRD	\$80	\$120	\$200

014.02 Fine Assignment Schedule Table - Type II

Type II (Moderately Serious) Category of Violation

Level of Violation	Mitigated	Median	Aggravated
FIRST	\$50	\$100	\$200
SECOND	\$100	\$200	\$300
THIRD	\$200	\$300	\$400

014.03 Fine Assignment Schedule Table - Type III

Type III (Most Serious) Category of Violation

Level of Violation	Mitigated	Median	Aggravated
FIRST	\$100	\$200	\$300
SECOND	\$200	\$300	\$400
THIRD	\$300	\$400	\$500

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015 Publication Adopted. See Appendix A.

016 Annotation. Neb. Rev. Stat. §§2-1072 to 2-10,117 (Reissue
~~1991~~ 1997, Cum. Supp. ~~1994~~ 2006).