Agency Name: Clemson University - State Crop Pest Commission

Statutory Authority: 46-9-40

Document Number: 4655

Proposed in State Register Volume and Issue: 40/8

House Committee: Regulations and Administrative Procedures Committee

Senate Committee: Agriculture and Natural Resources Committee

120 Day Review Expiration Date for Automatic Approval: 05/10/2017

Final in State Register Volume and Issue: 41/5

Status: Final

Subject: Plant Nursery Regulations

History: 4655

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

- 08/26/2016 Proposed Reg Published in SR

- 01/10/2017 Received by Lt. Gov & Speaker 05/10/2017

H 01/10/2017 Referred to Committee

S 01/10/2017 Referred to Committee

H 04/18/2017 Resolution Introduced to Approve 4137

- 05/10/2017 Approved by: Expiration Date

- 05/26/2017 Effective Date unless otherwise

 provided for in the Regulation

Document No. 4655

**CLEMSON UNIVERSITY**

**STATE CROP PEST COMMISSION**

CHAPTER 27

Statutory Authority: 1976 Code Section 46-9-40

27-160. Plant Nursery Regulations.

**Synopsis:**

 The State Crop Pest Commission proposes to update and add language regarding the regulation of nursery plant shipments and install fees for nursery dealers in South Carolina.

 A Notice of Drafting regarding the subject matter of the proposed regulation was published in the *State Register* on January 22, 2016.

**Instructions:**

Replace Regulation 27-160 as listed below.

Add Regulation 27-161 as listed below.

Add Regulation 27-162 as listed below.

Add Regulation 27-163 as listed below.

Add Regulation 27-164 as listed below.

**Text:**

27-160. Plant Nursery Regulations.

 A. Definitions

 (1) Application: The process of requesting services from the Department of Plant Industry.

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

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

 (4) 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.

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

 (6) 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.

 (7) 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.

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

 (9) Nursery: Any place where nursery stock is grown for sale.

 (10) Nursery Certificate: A required document issued by the Department or the equivalent agency of another state, declaring that the Nursery Stock grown for sale or distribution by the person named on the document has been inspected and registered.

 (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 Dealer: Any person not a grower of nursery stock who buys certified nursery stock for resale and any nurseryman who operates a sales lot separately from his nursery.

 (13) Nursery Dealer Certificate: A document issued by the Department, or the equivalent agency of another state, declaring that the nursery stock being sold by the person named on the document have been registered and the nursery stock sources have been verified to be certified/licensed nursery stock in their place of origin.

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

 (15) 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.

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

 (17) 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.

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

 (19) 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 Registration.

 A. Application

A Nursery Certificate is required for any person operating a Nursery in South Carolina. To obtain a Nursery Certificate, applications must be made to the Department. After the initial application, all Nurseries with a current Nursery Certificate will receive automatic renewal applications annually. Nurseries with an expired Nursery Certificate must submit a new application for a Nursery Certificate.

 B. Inspection

Following receipt of initial or renewal application, any nursery in South Carolina must be inspected *at least annually* by the Department. Inspection must reveal that the Nursery possesses good environmental conditions and the Nursery Stock is sufficiently free from Plant Pests. All inspections, announced or otherwise, shall be performed to ensure compliance with these regulations, and to identify and monitor any Plant Pests. Should inspection reveal poor environmental conditions and/or Plant Pests at an unacceptable level, the Nursery Certificate may be revoked until the situation is corrected per the guidelines of the Department.

 C. Registration

In addition to Application and Inspection, any person operating a Nursery in South Carolina must register with the Department. Nursery registration fees shall be on a graduated scale and all fees charged and collected shall be used by the Department to fund and support activities related to fulfilling the Department’s responsibilities regarding the regulation of the nursery industry in South Carolina. All Nursery Certificates expire annually. In cases where nursery stock is grown at more than one location by one nursery, the fees shall be based upon the nursery's aggregate number of acres 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 Registration fee schedule is in effect:

(i) Nursery stock (except turfgrass) production acres of 10 or less, greenhouses with less than 6,000 square feet, or turfgrass production acres of 250 or less: $75.00

(ii)) Nursery stock (except turfgrass) production acres of 11 to 25, greenhouses with 6,000 to 30,000 square feet, or turfgrass production acres of 251 to 500: $125.00

(iii) Nursery stock (except turfgrass) production acres of 25 or more, greenhouses with more than 30,000 square feet, or turfgrass production acres of 501 or more: $ 200.00

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.

Hobbyist or backyard gardener mean any person selling nursery stock who has less than $5,000 in gross sales per calendar year and are exempt from the fees required by registration, but will remain subject to all other requirements of this section. Hobbyist and backyard gardeners are required to produce sales records to the Department upon request.

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.

 A. Application

A Nursery Dealer Certificate is required for any Nursery Dealer who buys certified nursery stock for resale in South Carolina with annual gross sales of $5,000 or more, and any person who operates a sales lot separately from their nursery in South Carolina with annual gross sales of $5,000 or more. 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 Dealers with annual gross sales of less than $5,000 may request a Nursery Dealer Certificate subject to approval by the Department. All Nursery Dealer Certificate application and inspection rules in this section still apply. Once all Nursery Stock Sources have been verified as being certified/licensed nurseries or dealers in their state of origin, a Nursery Dealer Certificate will be issued. Application must be made to the Department. All Nursery Dealers with a current Nursery Dealer Certificate will receive automatic renewal applications annually.

 B. Inspection

All Nursery Dealers holding a Nursery Dealer Certificate in South Carolina will be inspected, announced or otherwise, as deemed necessary by the Department. New Nursery Dealers in South Carolina, upon Nursery Dealer Certificate application approval, will be inspected by the Department within one year of the Nursery Dealer Certificate issuance date. Inspection must reveal that the Nursery Dealer possesses good environmental conditions and the Nursery Stock is sufficiently free from Plant Pests. Subsequent inspections, announced or otherwise, shall be performed to ensure compliance with these regulations, and to identify and monitor any Plant Pests. Should inspection reveal poor environmental conditions and/or Plant Pests at a level deemed unacceptable by the Department, the Nursery Dealer Certificate may be revoked until the situation is corrected per the guidelines of the Department.

 C. Registration

Any person operating a Nursery Dealer in South Carolina must register with the Department and produce sales records upon request. Nursery Dealer registration fees shall be on a graduated scale. All Nursery Dealer Certificates expire annually.

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

Nursery Dealer locations whose annual gross sales are $5,000 or less: $0.00.

Nursery Dealer locations whose annual gross sales are between $5,000 and $100,000: $50.00

Nursery Dealer locations whose annual gross sales are over $100,000: $100.00

27-163. Nursery Stock Shipment.

 A. Nursery Certificate Tags Application

Nursery and Nursery Dealer shipments of nursery stock within South Carolina for resale or outside of South Carolina must have attached a Nursery Certificate Tag. Nurseries and Nursery Dealers must have a current Nursery Certificate or Nursery Dealer Certificate and meet all relevant State and Federal requirements as determined by the Department before applying for Nursery Certificate Tags. Application 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 including individual sales, invoices, and/or transactions. Nursery Stock shipped in packages must have the Nursery Certificate Tag placed on the exterior of each package. 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 and punishable by law.

 C. Nursery Certificate Tags Acquisition and Cost

The Department provides two options for obtaining Nursery Certificate Tags.

 1. Department-printing on a cost reimbursement basis. A price list may be obtained from

the Department upon request.

 2. Self-printing of Nursery Certificate Tags may be approved upon written request and all costs associated with will be at the expense of the Nursery or Nursery Dealer.

 D. Out of State Nurseries and Nursery Dealers

 1. Out-of-state Nurseries shall not be required to attach a Department-issued Nursery Certificate Tag to shipments coming into this State, nor to file duplicate invoices of the nursery shipped (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 Tab, 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 and shall be deemed guilty of a misdemeanor and upon conviction shall be punished pursuant to 46-9-90.

**Fiscal Impact Statement:**

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

**Statement of Rationale:**

The reduction in some Nursery Regulation fees and shipping costs and addition of fees to the Nursery Dealer Registration category will continue to allow the Commission to enforce regulatory plant laws and protect the state’s agricultural industry, which includes working to decrease the introduction and spread of new and invasive pests and diseases in South Carolina through consistent inspections and surveys. Without implementation of the proposed regulations, the mandates of the commission cannot be sustained due to increasing numbers of inspections, surveys, and shipments provided to this industry sector and invasive pests may move in from other states putting the state’s agricultural resources at risk.