



# Model Nursery Law

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## **Document Overview:**

- Introduction and Summary
- Suggested Structure for a Nursery Law
- Suggested General Text for a Nursery Law
- Specific State Examples

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## **Introduction and Summary**

The purpose of this document is to provide State Plant Regulatory Officials with a working tool that may be utilized in the development of a new Nursery Law or to provide recommendations for updating an existing law. Based on a comparative review, the basic components are consistent with similar state laws. This document outlines those components considered to be essential to the development of a comprehensive Nursery Law and is consistent with many similar state statutory authorities. Each State Plant Regulatory Official, in cooperation with program and legal staff, will need to evaluate to determine if additional sections or components might be needed in order to address specific issues in their individual state programs.

Individual states may vary in the adoption and administration of their plant pest and nursery regulatory programs. Broadly, states adopt either separate plant pest and nursery laws or utilize the plant pest law as the enabling authority for the development of pursuant nursery regulations. This document relates specifically to the development of the nursery law. The National Plant Board has also provided model text for the plant pest law.

## **Suggested Model Nursery Law Structure.**<sup>i</sup>

- .01 Title**  
The purpose of this section is to outline and provide the official citation for the statutory authority.
- .02 Background and Purpose**  
The purpose of this section is to provide a brief overview of the background and need for the statutory authority
- .03 Definitions**  
The purpose of this section is to provide those core definitions, as determined by the individual state, critical to the interpretation of the authority.
- .04 Promulgation of Regulations**  
The purpose of this section is to provide authorization for the establishment of regulations needed to fully implement the statutory authority.
- .05 Nursery Licensing Requirements**  
The purpose of this section is to provide authorization for the governing body to establish licensing of nurseries, exemptions and reciprocity with other states.
- .06 Annual Inspection**  
The purpose of this section is to provide authorization for the governing body to inspect licensed nurseries and their plants and associated materials.
- .07 National Nursery Stock Cleanliness Standard**  
The purpose of this section is to establish cleanliness standards by which nursery stock can be moved from one location to another.
- .08 Nursery Stock Certification, Shipping Permits**  
The purpose of this section is to establish what criteria must be met to move nursery stock from one location to another.
- .09 Quarantine Pests / Pests of Concern**  
The purpose of this section is to provide authorization for appropriate regulatory actions directed against nursery stock and associated materials.
- .10 Labeling and Advertising**  
The purpose of this section is to require nursery stock to be labeled accurately and truthfully.
- .11 Fees**  
The purpose of this section is to provide authorization for the governing body to impose fees on licensed nurseries.

**.12 Violations, Criminal / Civil Penalties**

The purpose of this section is to provide detailed criminal and civil actions that may be taken in the event of a violation.

**Suggested General Text for a Nursery Law**

**.01 Title**

This title may be cited as the “Nursery Law.”

**.02 Background and Purpose**

Nursery stock can harbor and vector plant pests and diseases. Unregulated production and shipping of nursery stock presents an unacceptable risk to the State’s agricultural, forestry, and horticultural interests and to the State’s general environmental quality. Therefore, it is necessary to ensure that nurseries produce healthy plants and that nursery stock shipped to other nurseries, brokers and out-of-state customers meets the national nursery stock cleanliness standard.<sup>ii</sup>

**.03 Definitions<sup>iii</sup>**

The following terms shall, for purposes of this law, be defined as follows:

(1) Annual Inspection – A required inspection that occurs at least once a year unless the nursery is operating under a compliance agreement associated with a systems approach to nursery certification, or the Secretary has determined that a different risk-based schedule is adequate to ensure that nursery stock meets the National Nursery Stock Cleanliness Standard.<sup>iv</sup>

(2) Best Management Practices (BMPs) – Processes and actions based on the best available science that provide the most cost-effective and efficacious way to address an issue, such as preventing or reducing pest and pathogen problems.<sup>v</sup>

(3) Compliance Agreement – Any written agreement between a person and a regulatory agency to achieve compliance with any set of requirements being enforced by the Department.<sup>vi</sup>

(4) Critical Control Point (CCP) – A step in the nursery production cycle, based on risk analysis, where best management practices could be used to reduce or eliminate pest risk.<sup>vii</sup>

(5) Department – The State of (*your State’s name*) Department of Agriculture including, but not limited to, its officers, inspectors, employees, agents, or representatives.<sup>viii</sup>

(6) Distribute – To sell or give away, offer to sell or give away, display, or hold

for sale or giving away; or to ship, hold for shipment, or deliver or release for shipment.

(7) Effective Control – When referring to non-quarantine pests, means eliminating or reducing a plant pest to the point of an acceptable economic and/or environmental risk.<sup>ix</sup>

(8) National Nursery Stock Cleanliness Standard – Nursery stock that is free from quarantine pests and pests of concern, and has all non-quarantine plant pests under effective control meets the national nursery stock cleanliness standard and is eligible for nursery stock certification (shipping permits).<sup>x</sup>

(9) Non-Quarantine Pests – Pests that don't pose an unacceptable economic or environmental risk.<sup>xi</sup>

(10) Nursery License – A document issued by the Department authorizing a person(s) to engage in a nursery or nursery related business at a particular location under a specified business name.<sup>xii</sup>

(11) Nursery Stock – Means any plant for planting, propagation, or ornamentation, including but not limited to: all plants, trees, shrubs, vines, perennials, grafts, cuttings, and buds that may be sold for propagation, whether cultivated or wild, and all viable parts of these plants.<sup>xiii</sup>

(12) Person(s) – An individual, partnership, corporation, company, society, association, government agency, or other legal entity.<sup>xiv</sup>

(13) Pests of Concern – Means a non-quarantine pest that is not known to occur in the state or which has a limited distribution within the state and has the potential to negatively impact nursery stock health, or pose an unacceptable economic or environmental risk.<sup>xv</sup>

(14) Plant Pest – The egg, pupal and larval stages as well as any other living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, viroids, phytoplasmas or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.<sup>xvi</sup>

(15) Quarantine Pest – A pest of potential economic or environmental importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.<sup>xvii</sup>

(16) Sell or Sale – Offering, exposing, or possessing for sale, exchange, barter, or

trade.

(17) Shipping Permit or Certificate of Inspection – A sticker, stamp, imprint, or other document that accompanies nursery stock shipped intrastate or interstate documenting that the originating nursery is licensed and its nursery stock has passed its annual inspection or has met the requirements of an approved systems approach for nursery certification program, and produces nursery stock that meets the National Nursery Stock Cleanliness Standard.<sup>xviii</sup>

(18) Systems Approach – The application of different pest risk management measures, at least two of which act independently but with cumulative effect, to apply the appropriate level of phytosanitary protection.<sup>xix</sup>

(19) Systems approach nursery certification program – A means of meeting the requirements of the state or an importing state that integrates two or more phytosanitary measures that are independent of each other and which may include phytosanitary measures that are dependent on each other. Such measures may be applied at any time(s) in the production cycle from pre-planting through transportation and distribution for the purpose of effectively managing pest risk.<sup>xx</sup>

### **.03 Promulgation of Regulations**

The Department may adopt reasonable regulations to implement and carry out the purposes and enforcement of this law.

### **.04 Nursery Licensing Requirements**

(1) License Required. Any person engaged directly with the sale of nursery stock is required to inform the Department of the existence of their operation and to obtain a Nursery License prior to initiating business operations.

Person(s) are required to obtain a Nursery License for each of their businesses or sale/retail locations where multiple businesses or sales/retail locations exist.

Person(s) are required to renew their Nursery License each year (*or as required by the Department*), that they remain in operation. A Nursery License Application must be filed with the Department on forms provided by the Department. Licenses issued by the Department shall be prominently displayed at the business location.

(2) Exemption. The department may exempt from the requirement to obtain a license any person whose business consists only of sales to the ultimate consumer and the total of such sales of nursery stock does not exceed \$(*fill in amount*) annually.<sup>xxi</sup>

(3) Reciprocity. Nurseries licensed in other states that do not have a physical presence in this state do not need a nursery license unless their state does not recognize nursery licenses from this state.<sup>xxii</sup>

**.05 Annual Inspection**

(1) After receiving the Nursery License Application, the Department or its representatives shall examine or inspect all plants, plant material, or nursery stock located or grown on the business location or any other applicable location.

The Department shall conduct the aforementioned inspection or examination yearly, or as directed by the Secretary (Director), or as required by a compliance agreement, at such time as it deems best, with or without notice.

The department shall have authority during business hours to inspect any object or place that might become infected or infested with plant pests, except private residences not serving as a business location. It shall be unlawful to deny access or offer resistance to the department, or hinder the department by misrepresenting or concealing facts or conditions.

**.06 National Nursery Stock Cleanliness Standard**

(1) Nursery stock that is free from quarantine pests and pests of concern, and has all non-quarantine plant pests under effective control<sup>xxiii</sup> meets the National Nursery Stock Cleanliness Standard.

Shipping privileges will be suspended or revoked or if the nursery falls below this standard and fails to take corrective action, or for any other reason fails to produce nursery stock that consistently meets this standard.

Compliance with this standard can be verified in either of two ways: shipping point inspection or through an approved systems approach.

**.07 Nursery Stock Certification, Shipping Permits**

(1) Nurseries that have passed their annual inspection or are successfully enrolled in a systems approach for nursery certification program and whose nursery stock meets the National Nursery Stock Cleanliness Standard are eligible for nursery stock certification (shipping permits).<sup>xxiv</sup>

Licensed nurseries may ship nursery stock to other nurseries, brokers, and out-of-state customers only if the nursery stock meets the National Nursery Stock Cleanliness Standard.

(a) Interstate Origin (Shipping Point) Inspection. Nurseries desiring to ship nursery stock to other states or countries should call the Department [*or their inspector*] to check on certification requirements of the receiving state or country. Shipping point inspections are often required.

(b) Systems Approach to Nursery Certification Alternative. Systems approaches, based on best management practices addressing critical control points in the nursery production cycle, may provide the basis for nursery stock certification and/or substitute for interstate origin (shipping point) inspections if during two

consecutive growing seasons, audits/inspections find the nursery meets the National Nursery Stock Cleanliness Standard, federal quarantines, and the phytosanitary requirements of receiving states. A current compliance agreement detailing the critical control points to be addressed by the nursery using best management practices is required between the nursery and the Department.

(c) Interstate Shipments. Any person(s) who ships nursery stock interstate or internationally by any means is encouraged to contact the Department to obtain the certifications required by the consignee's location.

(d) Shipments Coming into the State. When nursery stock is shipped into this State, every container, box, package, etc., shall be conspicuously labeled on the exterior with the name of the consignor, the state of origin, and the name of the consignee. The shipment shall have conspicuously affixed to its exterior, a Nursery Stock Certificate (shipping permit) from the state of origin showing that the originating nursery has been inspected by a qualified state or federal officer or the nursery stock has been produced under a systems approach to nursery certification and the nursery stock meets the National Nursery Stock Cleanliness Standard. It is the responsibility of both the consignee and consignor to examine all shipments for the presence of current and applicable nursery stock certifications.

#### **.08 Quarantine Pests / Pests of Concern**

(1) Stop Sale (or Hold) Orders. Upon discovery or notification of quarantine pest or pest of concern, the Department shall place a stop sale order or cleanup/destruction order on the infected/infested nursery stock. While under such an order it is an illegal action to sell, ship, transport, give away, or otherwise move, alter, or tamper with the nursery stock. The Department shall notify the person(s), owner(s), or the tenant(s) in possession of the nursery stock in question of the existence of the plant pest and advise them on acceptable mitigation methods.

(2) Suspension/Revocation of Certificates (Shipping Permits). The Secretary (Director) is authorized to suspend or revoke shipping privileges for nurseries whose nursery stock as a whole or in part does not meet the national nursery stock cleanliness standard.

(3) Mitigation. The Secretary (Director) may order and direct that the infected/infested nursery stock be mitigated by whatever means necessary (including, but not limited to: destruction, confiscation, treatment, return shipment, or quarantine). The mitigation shall be conducted at the expense of the nursery or person and shall be without any form of compensation.

#### **.09 Labeling and Advertising**

(1) Nursery stock shall not be labeled or advertised with false or misleading information. This includes, but is not limited to: common name, scientific name, variety, place of origin, and growth habit.

A person(s) may not offer for sale, sell, give away, or in any way distribute plants, plant materials, or nursery stock, represented by some specific or special form of notation, including, but not limited to: 'free from', 'grown free of', unless such plants are produced under a specific program accepted by the Department to address the specific plant properties addressed in the special notation claim.

## **.10 Fees**

(1) License Fee. License fees for nurseries shall be established by the Department.<sup>xxv</sup>

(2) Temporary License Fee. The department may issue a temporary nursery license to a person intending to distribute certified nursery stock if the person is a non-profit, charitable, educational, or religious organizations for (*fill in a number*) or fewer consecutive days in a calendar year, and will use the proceeds for charitable, educational, or religious purposes.

(3) Inspection Fee. The Department may establish a schedule of fees related to certification activities such as annual inspections, point of origin inspections, phytosanitary inspections, and laboratory analyses.

(4) Fees for Special Services. The Department may establish a schedule of fees for nursery stock inspections and special services that may be performed by the Department for persons who are not required to obtain a nursery license.

(5) Systems Approach to Nursery Certification Cost Recovery. The Department may require reimbursement from a nursery for all costs associated with the development, implementation, approval, and verification of a Systems Approach for Nursery Certification Program.

## **.11 Violations, Criminal/Civil Penalties**

(1) A person who violates a provision of this statute is subject to a civil penalty imposed by the Department not to exceed \$(*fill in an amount*).<sup>xxvi</sup> Moneys from civil penalties recovered under this section are continuously appropriated to the Department for the administration and enforcement of the State's nursery laws.

The Secretary (Director) may refuse, suspend, or revoke a nursery license or certificate if the licensee or certificate holder has willfully violated the nursery law, intentionally engaged in fraud or misrepresentation, failed to maintain nursery stock according to pest freedom or cleanliness standards, failed to comply with a lawful order, or has unsatisfied criminal or civil penalties.

### **Specific State Examples**

A. Oregon Department of Agriculture, Chapter 571 — Nursery Stock; Licensed Crop and Christmas Tree Growers, Handlers and Dealers

[http://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2011ors571.html](http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors571.html)



B. Florida Department of Agriculture and Consumer Services, Division of Plant Industry, Rule Chapter 5B-2: Florida Nursery Stock and Certification Fee

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=5B-2>

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<sup>i</sup>*This document is designed to be a tool for you to use as you review your state nursery law. We have attempted to do some of the work for you. For purposes of consistency, 'State Department of Agriculture' and 'Secretary of Agriculture' are used throughout the document. You will need to change these terms to conform to the proper agency and title names used in your state. In addition, many states combine their plant pest and nursery laws into one. You may wish to make other changes; this is just a guide. Good luck!*

<sup>ii</sup>*This document is designed to be a tool for you to use as you review your state nursery law. We have attempted to do some of the work for you. For purposes of consistency, 'State Department of Agriculture' and 'Secretary of Agriculture' are used throughout the document.*

<sup>iii</sup>*Many of the terms referenced in this document are defined in the National Plant Board's Plant Quarantine, Nursery Inspection, and Certification Guidelines. That document is slated for revision in the near future and definitions in this model law may need to be adjusted to match.*

<sup>iv</sup>*NPB SANC, Mar. 2012.*

<sup>v</sup>*USNCP Oct. 2011.*

<sup>vi</sup>*See Appendix C/O/ (p. 36): Appendix G – Definition of Terms. 2. (p. 62) – QNSC Guidelines.*

<sup>vii</sup>*Based on: "A step at which control can be applied and is essential to prevent or eliminate a food safety hazard or reduce it to an acceptable level. The use of hazard analysis critical control point (HACCP) principles in food control." Report of an FAO Expert Technical Meeting, Vancouver, Canada, 12-16 Dec. 1994. FAO Food and Nutrition Paper No. 58. Rome, FAO/1995. USNCP Oct. 2011.*

<sup>viii</sup>*NPB Model Nursery Law, June 2000.*

<sup>ix</sup>*NPB Model Nursery Law, June 2000.*

<sup>x</sup>*Pest Freedom Standards are found in the Plant Quarantine, Nursery Inspection, and Certification Guidelines, Section IV(C)(4); NPB SANC Mar. 2012.*

<sup>xi</sup>*NPB SANC, Mar. 2012.*

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<sup>xii</sup> QNSC Guidelines See IV. C.6. (p. 23), Appendix C.I. (p. 38), and Appendix N.I. (p. 105) – QNSC Guidelines. The above definition is the one being used in Delaware, and is slightly different. Each state will have to make its own determination on this matter.

<sup>xiii</sup> QNSC Guidelines. The following definition of “nursery stock” is the federal definition taken from 7 USC §152 (U.S.C. Title 7 - AGRICULTURE, Chapter 8 - Nursery Stock and other Plants and Plant Products; check the following Internet site for the U.S.C. for Agriculture - <http://www.law.cornell.edu/uscode/7/ch8.html>): “For the purposes of this chapter the term “nursery stock” shall include all field-grown florists’ stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees or shrubs, and other plants and plant products for propagation, except field, vegetable, and flower seeds, bedding plants, and other herbaceous plants, bulbs, and roots.” (This is also the NAPPO definition for nursery stock.)

<sup>xiv</sup> 7 CFR 319.37-1, NPB SANC Mar. 2012.

<sup>xv</sup> NPB SANC Mar. 2012; e.g. boxwood blight. Not a quarantine pest, but highly contagious and damaging to boxwoods, so a pest of concern.

<sup>xvi</sup> 7 CFR 319.37-1.

<sup>xvii</sup> FAO, 1990; revised FAO, 1995; IPPC, 1997.

<sup>xviii</sup> Documents verifying compliance include shipping permits, certificates of inspection, certificates of quarantine compliance, and state phytosanitary certificates. NPB SANC Mar. 2012.

<sup>xix</sup> USNCP, Oct. 2011.

<sup>xx</sup> NPB SANC, Mar. 2012.

<sup>xxi</sup> e.g. farmers markets.

<sup>xxii</sup> All states except Wyoming recognize nursery licenses from other states.

<sup>xxiii</sup> QNSC Guidelines: “effective control means no more than a few individuals of any specific pest are found on no more than a few plants in the block or lot of nursery stock being inspected,” NPB SANC, Mar. 2012.

<sup>xxiv</sup> Pest Freedom Standards are found in the Plant Quarantine, Nursery Inspection, and Certification Guidelines, Section IV(C)(4), NPB SANC Mar. 2012.

<sup>xxv</sup> The cost of nursery licenses and associated fees varies by state. States that receive state general funds for their nursery inspection programs have lower cost licenses/fees than those that support their programs entirely through fees. Regulatory officials should consider building incentives into the license fee structure to encourage nurseries to adopt critical control point (CCP)-based nursery cleanliness programs.

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<sup>xxvi</sup> *Penalty provisions vary by state. Many states don't have civil penalty authority for their nursery law. If they don't, they probably wish they did. Include it if you can.*