
LAWS, REGULATIONS, GUIDES, ETHICS AND PROFESSIONALISM

Part I: Federal Guides For The Nursery Industry

Code of Federal Regulations The Federal Register

Introduction

These Federal Trade Commission "Guides For The Nursery Industry" are designed to foster and promote the maintenance of fair competitive conditions in the interest of protecting industry, trade and the public. Adherence to the Guides will assist the industry members in avoiding acts or practices, which suppress competition, restrain trade or in any way unlawfully injure the public.

The Guides published below are excerpted from the Code of Federal Regulations, Title 16 – Commercial Practices, Chapter 1, Section 18.0 to 18.8.

Section 18.0: Definitions

Industry products. As used in this part, the term industry products includes all types of trees, small fruit plants, shrubs, vines, ornamentals, herbaceous annuals, biennials and perennials, bulbs, corms, rhizomes, and tubers which are offered for sale or sold to the general public. Included are products propagated sexually or asexually and whether grown in a commercial nursery or collected from the wild state. Such products are customarily used for outdoor planting. Not included are florists' or greenhouse plants solely for inside culture or use and annual vegetable plants.

Industry Members – Any person, firm cooperation, or organization engaged in the sale, offering for sale, or distribution in commerce of industry products, as defined above.

Lining-out Stock – Includes all plant material coming from propagating houses, beds, or frames, and young material such as seedlings, rooted or non-rooted cuttings, grafts or layers, of suitable size to transplant either in the nursery row or in containers for "growing on."

Nursery-propagated – Reproduced and grown under cultivation, including reproduced and grown under cultivation from plants, seeds, or cuttings lawfully collected from the wild state.

Propagated – Reproduced from seeds, cuttings, callus or other plant tissue, spores, or other propagules under a controlled environment that is intensely manipulated by human

intervention for the purpose of producing selected species or hybrids.

{44 FR 11177, Feb. 27, 1979, as amended at 59 FR 64549, Dec. 14, 1994}

Section 18.1: Guide 1 – Deception (General)

- A. It is an unfair or deceptive act by practice to sell, offer for sale, or distribute industry products by any method or under any circumstance or condition that misrepresents directly or by implication to purchasers, or prospective purchasers, the products with respect to quantity, size, grade, kind, species, age, maturity, condition, vigor, hardiness, number of times transplanted, growth ability, growth characteristics, rate of growth or time required before flowering or fruiting, price, origin or place where grown, or any other material aspect of the industry product.
- B. The inhibition of this section shall apply to every type of advertisement or method of representation, whether in newspaper, periodical, sales catalog, circular, by tag, label or insignia, by radio or television, by sales representatives, or otherwise.
- C. Among practices inhibited by the foregoing are direct or indirect representations:
 1. That plants have been propagated by grafting or bud selection methods, when such is not the fact.
 2. That industry products are healthy, will grow anywhere without the use of fertilizer, or will survive and produce without special care, when such is not the fact.
 3. That plants will bloom the year round, or will bear an extraordinary number of blooms of unusual size or quality, when such is not the fact.
 4. That an industry product is a new variety, when in fact it is a standard variety to which the industry member has given a new name.

5. That an industry product cannot be purchased through usual retail outlets, or that there are limited stocks available, when such is not the fact.
6. That industry products offered for sale will be delivered in time for the next (or any specific) seasonal planting when the industry member is aware of factors which make such delivery improbable.
7. That the appearance of an industry product as to size, color, contour, foliage, bloom, fruit, or other physical characteristic is normal or usual when the appearance so represented is in fact abnormal or unusual.
8. That the root system of any plant is larger in depth or diameter than that which actually exists, whether accomplished by excessive packaging material, or excessive balling, or other deceptive or misleading practice.
9. That tublets are bulbs.
10. That an industry product is a rare or unusual item when such is not the fact.

Section 18.2: Guide 2 – Deception Through Use of Names

- A. In the sale, offering for sale, or distribution of an industry product, it is an unfair or deceptive act or practice for any industry member to use a name for such product that misrepresents directly or by implication to purchasers or prospective purchasers, its true identity.
- B. Subject to the foregoing:
 1. When an industry product has a generally recognized and well-established common name, it is proper to use such name as a designation therefore, either alone or in conjunction with the correct botanical name of the product.
 2. When an industry product has a generally recognized and well-established common name, it is an unfair or deceptive act or practice for an industry member to adopt and use a new name for the product unless such new name is immediately accompanied by the generally recognized and well-established common name, or by the correct botanical name, or by a description of the nature and properties of the product which is of sufficient detail to prevent confusion and deception of purchasers or prospective purchasers, as to the true identity of the product.
 3. When an industry product does not have a generally recognized and well-established common name, and a

name other than the correct botanical name of the product is applied thereto, such other name shall be immediately accompanied by either the correct botanical name of the product, or a description of the nature and properties of the product which is of sufficient detail as to prevent confusion and deception of purchasers and prospective purchasers, as to the true identity of the product.

Section 18.4: Guide 4 – Size and Grade Designations

- A. In the sale, offering for sale, or distribution of industry products, it is an unfair or deceptive act or practice for an industry member to use any term, designation, number, letter, mark or symbol, as a size or grade designation for any industry product in a manner or under any circumstance that misrepresents directly or by implication to purchasers or prospective purchasers, the actual size or grade of such products.
- B. Under this section industry members offering lining-out stock for sale shall specify conspicuously and accurately the size and age of such stock when failure to do so may misrepresent directly or by implication such stock to purchasers or prospective purchasers.
- C. Nothing in this section is to be construed as inhibiting the designation of the size or grade of an industry product by use of a size or grade designation for which a standard has been established which is generally recognized in the industry when the identity of such standard is conjunctively disclosed, the product qualifies for the designation under such standard, and no deception of purchasers or prospective purchasers results in the use of such designation.

NOTE: It is the consensus of the industry that the grade and size standard set forth in the current edition of American Standard for Nursery Stock, ANSI Z60.1, as approved by the American National Standard Institute, Inc., is generally recognized in the industry, and that use of the size and grade designation therein set forth, in accordance with the requirements of the standard for the designations, in the marketing of industry products to which such standard relates, will prevent deception and confusion of purchasers and prospective purchasers of such products.

{44 FR 11177, Feb. 27, 1979, as amended at 59 FR 64549, Dec. 14, 1994}

Section 18.5: Guide 5 – Deception as to Blooming, Fruiting, or Growing Ability

In the sale, offering for sale, or distribution of industry products, it is an unfair or deceptive act or practice for any industry

member to misrepresent directly or by implication, to purchasers or prospective purchasers, as to the ability of such products:

- A. To bloom, flower, or fruit within a specified period of time.
- B. To produce crops within a specified period of time, or to give multiple crops each year, or to produce crops in unfavorable climatic regions.
- C. To bear fruit through self-pollination.
- D. To grow, flourish, and survive irrespective of the climatic conditions, the care exercised in or after planting, or the soil characteristics of the locality in which they are to be planted.

Note 1: Under this section, when flower bulbs are of such immaturity as not reasonably to be expected to bloom and flower the first season of their planting, such fact shall be clearly and conspicuously disclosed in all advertisements and sales promotional literature relating to such products. Provided, however, that such disclosure need not be made when sales are confined to nurseries and commercial growers for their use as planting stock.

Note 2: Under this section, in order to avoid deception of purchasers and prospective purchasers thereof, when rose bushes have been used in a greenhouse for the commercial production of cut flowers, they shall be tagged or labeled so as to clearly, adequately and conspicuously disclose such fact, and such tags and labels shall be so attached thereto as to remain thereon until consummation of consumer sale. A similar disclosure shall be made in all advertising and sales promotional literature relating to such products. And when, by reason of such previous greenhouse use or their condition at the time of removal there from or their handling during or subsequent thereto, there is probability that such rose bushes will not satisfactorily thrive and produce flowers when replanted outdoors, or will satisfactorily thrive and produce flowers outdoors only if given special treatment and attention during and after their replanting, such fact shall also be clearly, conspicuously, and non-deceptively disclosed in close conjunction with, and in the same manner as, the aforesaid required disclosure that such products have been used in a greenhouse for the commercial production of cut flowers.

Section 18.6: Guide 6 – Plants Collected from the Wild State

It is an unfair or deceptive act or practice to sell, offer for sale, or distribute industry products collected from the wild state without disclosing that they were collected from the wild state. Provided, however, that plants lawfully collected from the wild state may be designated as “nursery-propagated”.

Section 18.8: Guide 8 – Deception as to Origin or Source of Industry Products

- A. It is an unfair or deceptive act or practice to sell, offer for sale, or advertise an industry product by misrepresenting directly or by implication the origin or source of such product to purchasers or prospective purchasers (e.g., by use of the term Holland to describe bulbs grown in the U.S.A.); provided, however, that when a plant has an accepted common name that incorporates a geographical term and such term has lost its geographical significance as so used, the mere use of such common names does not constitute a misrepresentation as to source or origin (e.g., "Colorado Blue Spruce," "Arizona Cypress," "Black Hills Spruce," "California Privet," "Japanese Barberry," etc.).
- B. It is also an unfair or deceptive act or practice to advertise, sell, or offer for sale an industry product of foreign origin without adequate and non-deceptive disclosure of the name of the foreign country from which it came, where the failure to make such disclosure would be misleading to purchasers or prospective purchasers.

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Part II: Minnesota Laws and Regulations Pertaining to Nursery Stock Minnesota Statute Chapter 18H: NURSERY LAW

Steven Shimek

The Minnesota Department of Agriculture (MDA) is responsible for the enforcement of Minnesota Statute Chapter 18H, the Nursery Law, revised 2005. The following is a summary of the important regulations that pertain to the nursery industry. A full and exact copy of the Nursery Law is available on the MDA's website: www.mda.state.mn.us/nursery or by calling 651-201-6619. The purpose of the Nursery Law is to prevent the introduction of pests into the state, to prevent the spread of plant pests within the state, and to provide for suppression and control of plant pests within the state of Minnesota.

Definition of Nursery Stock

Nursery stock means a plant intended for planting or propagation, including, but not limited to, trees, shrubs, vines, perennials, biennials, grafts, cuttings, and buds that may be sold for propagation, whether cultivated or wild, and all viable parts of these plants.

Nursery Stock Certificate Requirements

No person may offer for sale or distribute nursery stock as a nursery stock grower or dealer without first obtaining the appropriate nursery stock certificate from the Commissioner of Agriculture. Certificates are issued solely for these purposes and may not be used for other purposes. This certificate expires on December 31 of each year and must be renewed prior to January 1 of the following year.

Exemptions from the nursery law

Not-For-Profit Sales – An organization or individual may offer for sale certified nursery stock and be exempt from the requirement to obtain a nursery stock dealer certificate if sales are conducted by a nonprofit charitable, educational, or religious organization that:

1. Conducts sales or distributions of certified nursery stock on 14 or fewer days in a calendar year.

2. Uses the proceeds from its certified nursery stock sales or distribution for charitable, educational, or religious purposes.

Nursery Occasional Sales – An individual may offer nursery stock for sale and be exempt from the requirement to obtain a nursery stock dealer certificate if:

1. The gross sales of all nursery stock in a calendar year do not exceed \$2,000.
2. All nursery stock sold or distributed by the individual is intended for planting in Minnesota.
3. All nursery stock purchased or procured for resale or distribution was grown in Minnesota and has been certified by the Commissioner.
4. The individual conducts sales or distributions of nursery stock on ten or fewer days in a calendar year.

The Commissioner may prescribe the conditions of the exempt nursery sales under this Subdivision and may conduct routine inspections of the nursery stock offered for sale.

Nursery Stock Grower Certificate

A person that grows more than 50 percent of the nursery stock offered for sale in a certificate year is considered a nursery stock grower. Fees are based on the area of all acreage on which nursery stock is grown for certification.

Nursery Stock Dealer Certificate

A person that purchases more than 50 percent of what is sold, distributed, or installed in a certificate year is considered a nursery stock dealer. Fees are based on the dealer's gross sales of nursery stock per location during the preceding certificate year.

Re-inspection, Additional, or Optional Inspection Fees

If a re-inspection is required or an additional inspection is needed or requested, a fee will be assessed based on mileage and total inspection time as follows:

1. Mileage will be charged at the current United States Internal Revenue Service reimbursement rate.
2. Inspection time will be charged at the rate of \$50 per hour, including the driving time to and from the location in addition to the time conducting the inspection.

Inspection Required

All nursery stock growing sites in Minnesota must have had an inspection by the Commissioner during the previous 12 months and found apparently free from quarantine and regulated non-quarantine pests as well as significantly dangerous or potentially damaging plant pests. All nursery stock originating from out of state and offered for sale in Minnesota must have been inspected by the appropriate state or federal agency during the previous 12 months and found free from quarantine and regulated non-quarantine pests as well as significantly dangerous or potentially damaging plant pests.

The Sale of Viable Nursery Stock

No person may knowingly offer to distribute, advertise, or display nursery stock that is infested or infected with quarantine or regulated non-quarantine pests or significant dangerous or potentially damaging plant pests, including noxious weeds or nursery stock that is in a dying condition, desiccated, frozen, or damaged by freezing, or materially damaged in any way. All nursery stock must be kept and displayed under conditions of temperature, light, and moisture sufficient to maintain the viability and vigor of the nursery stock and conform to the current issue of the American Standard for Nursery Stock, ANSI Z60.1, published by the American Nursery and Landscape Association.

Shipment of Nursery Stock into Minnesota

Plants, plant materials, or nursery stock distributed into Minnesota must be conspicuously labeled on the exterior with the name of the consignor, the state of origin, and the name of the consignee and must be accompanied by certification documents to satisfy all applicable state and federal quarantines. Proof of valid nursery certification must also accompany the shipment. It is the shared responsibility of both the

Consignee or receiver, and Consignor or shipper, to examine all shipments for the presence of current and applicable nursery stock certifications for all plant material from all sources of stock in each shipment.

Violations and Penalties

The following are violations of the Nursery Law:

1. Misrepresent, falsify, or knowingly distribute, sell, advertise, or display damaged, mislabeled, misrepresented, infested, or infected nursery stock.
2. Fail to obtain a nursery certificate as required by the Commissioner.
3. Fail to renew a nursery certificate, but continue business operations.
4. Fail to display a nursery certificate.
5. Misrepresent or falsify a nursery certificate.
6. Refuse to submit to a nursery inspection.
7. Fail to provide the cooperation necessary to conduct a successful nursery inspection.
8. Offer for sale uncertified plants, plant materials, or nursery stock.
9. Possess an illegal regulated commodity.
10. Violate or disobey a Commissioner's order.
11. Violate a quarantine issued by the Commissioner.
12. Fail to obtain phytosanitary certification for plant material or nursery stock brought into Minnesota.
13. Deface, mutilate, or destroy a nursery stock certificate, Phytosanitary Certificate, or Phytosanitary Pre-clearance Certificate, or other Commissioner mark, permit, or certificate.
14. Fail to notify the Commissioner of any uncertified plant shipment of plants, plant materials, or nursery stock.
15. Transport uncertified plants, plant materials, or nursery stock into Minnesota.

Conservation of Certain Wildflowers

No person shall distribute the state flower, Lady Slipper, (Cypripedium reginae), or any species of lady slipper (Cypripedieae), any member of the orchid family (Orchidaceae), any gentian (Gentiana), arbutus (Epigaea repens), lilies (Lilium), coneflowers (Echinacea), bloodroot (Sanguinaria canadensis), mayapple (Podophyllum peltatum), any species of Trillium, or lotus (Nelumbo lutea), which have been collected in any manner from any public or private property without the authorization from the Commissioner.

Collection of Wildflowers Without Sale – Wildflower collection from public or private land for the purpose of transplanting the plants to a person's private property and not offering them for immediate sale, requires the written permission from the property owner of the land on which the wildflowers are growing.

Collection With Intent to Sell or Distribute Wildflowers – The wildflowers listed above may be offered for immediate sale only if the plants are to be used for scientific or herbarium purposes. The wildflowers listed above must not be collected and sold commercially unless the plants are:

1. Growing naturally, collected, and cultivated on the collector's property.
2. Collected through the process described and transplanted and cultivated on the collector's property.

The collector must obtain a written permit from the Commissioner before the plants may be offered for commercial sale.

Sale of Certain Nursery Stock

MN Rule 1505.0780: Wild Nursery Stock – It shall be a violation of the Nursery Law to sell, offer for sale, or distribute nursery stock collected from a wild state unless it is so labeled. These labels must state, "Collected from the wild" and must remain on each plant or clump of plants while it is offered for sale and during the process of distribution. MDA issues locking labels upon certification. **Collected stock may be grown in nursery rows at least two (2) years and then offered for sale without such labeling.**

MN Rule 1505.0810: Care of Balled and Burlapped Nursery Stock Held for Sale – It shall be required that balled and burlapped nursery stock being held

for sale to the public be kept in sawdust, shingle tow, peat, or some other moisture-holding material not toxic to plants. This moisture-holding material must adequately cover and protect the ball of earth, which must be kept moist at all times.

MN Rule 1505.0820 Dormant Nursery Stock Held for Sale – It shall be required that dormant nursery stock being held for sale to the public be stored under conditions which will retard growth and protect its viability. This includes packaged stock.

Other chapters in this manual describe in more detail, the conditions required to prevent growth retardation and to protect viability. In this regard, the law does require that all bare root stock must have the roots covered with a moist packing material at all times unless it is stored in a refrigerated storage at 34-38^o F with the storage also humidified at 90-95 percent Relative Humidity. All roots must be wrapped in wet packing material such as straw, paper, shingle tow, moss, or sawdust during shipment or delivery and subsequently, until planted.

Federal Quarantines

The United States Department of Agriculture, Animal Plant Health Inspection Service, (USDA, APHIS) administers federal plant pest quarantines in cooperation with state regulatory officials. These quarantines are designed to facilitate the movement of regulated articles while preventing the spread of harmful plant pests from states or areas infested with plant pest problems to areas free of specific pests. Important quarantines affecting Minnesota include: Emerald Ash Borer, Gypsy Moth, Pine Shoot Beetle, Black Stem Rust on barberry, and Japanese Beetle. For specific information on these and other federal quarantines, contact USDA, APHIS in Minneapolis at 612-348-1657. The Federal Shield displayed in Figure 1 is issued by the USDA Animal Plant Health Inspection Service (APHIS) to nurseries indicating that the nursery stock has been inspected and that it meets specific quarantine requirements. Even though the shield indicates it satisfies state and federal requirements, additional certification documents and stamps for other specific quarantines or specific pest problems may be required depending on the state or country of origin and destination. Questions regarding certification requirements should be directed to the MDA (651-201-6619) or regulatory officials in the receiving state or country.

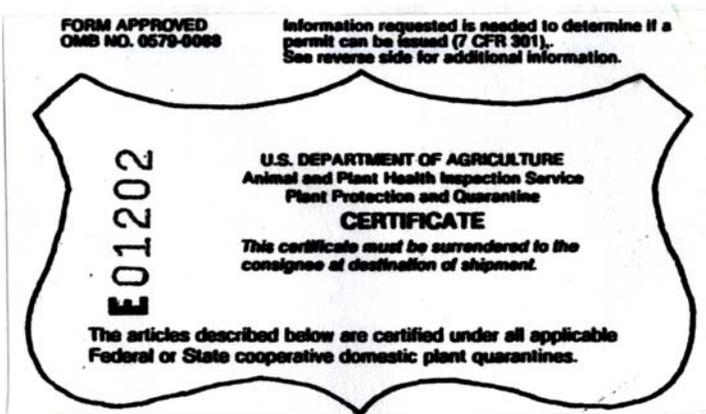


Figure 1. Federal stamp required on shipping documents for specific nursery stock to certify that it has been properly inspected for shipment.

Phytosanitary Certification

Nursery stock and plant material shipped internationally must be accompanied by a certificate indicating the stock meets all requirements of the receiving country. This certificate is called a **Phytosanitary Certificate** wherein “phyto” means plant, and “sanitary” means clean. This Phytosanitary Certificate is issued to verify that all necessary inspections, surveys, and testing have been done to meet these requirements. Soil surveys to certify freedom from soybean cyst nematode, and virus indexing of fruit trees are examples of some import requirements. A copy of a State of Minnesota Phytosanitary Certificate is shown in Figure 2.

MINNESOTA DEPARTMENT OF AGRICULTURE
DIVISION OF PLANT INDUSTRY
90 West Plato Boulevard
St. Paul, MN 55107
Phone: (612) 296-8507
FAX: (612) 296-7388

PHYTOSANITARY CERTIFICATE

THE PLANT PROTECTION ORGANIZATION OF:

FOR OFFICIAL USE ONLY

Place: _____

Date issued: _____

Date inspected: _____

No.: 14714

COPY

This is to certify that the plants, parts of plants or plant products described below or representative samples of them were thoroughly examined on the date shown above by an authorized representative of the Minnesota Department of Agriculture, Division of Plant Industry, and were found, to the best of their knowledge, to be substantially free from injurious diseases and pests; and that the consignment is believed to conform to the current phytosanitary regulations of the importing country both as stated in the additional declaration hereon and otherwise.

FUMIGATION OR DISINFECTION TREATMENT

Date: _____ Treatment: _____

Chemical and Concentration: _____ Duration and Temperature: _____

DESCRIPTION OF CONSIGNMENT

Name and address of the exporter: _____

Declared name and address of the consignee: _____

Name of commodity, quantity and botanical name: _____

Number and description of packages: _____

Distinguishing marks: _____

Place of origin: _____

Declared means of conveyance: _____ Declared point of entry: _____

ADDITIONAL DECLARATION



Name of Authorized Officer

Signature

Figure 2. Minnesota Department of Agriculture Phytosanitary Certificate.

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Part III: Tree Care Registry

Minnesota Department of Agriculture

In 2003, Minnesota Governor Pawlenty signed into law legislation that requires companies and people who remove trees, limbs, branches, brush or shrubs for hire to register with the State of Minnesota. Through this legislation, companies and people must provide contact information which includes accurate up-to-date business name, address, and telephone number, and a complete list of all Minnesota counties in which they work. Further, tree care companies may also list within the Registry, employees who are currently certified arborists. The law further requires the Minnesota Department of Agriculture (MDA) to provide registered tree care companies with information on existing or potentially regulated forest pests within the state.

Registration as a company or person can be accomplished either in person, by mail or electronically at <http://www.mda.state.mn.us/tcr> or call MDA at 651-201-6095. Each person within a tree care company is not required to register; rather company registration covers all individuals within a company.

The threat of exotic tree pests is increasing and the potential affects on urban and rural forest is real. Numerous and serious exotic forest pests such as gypsy moth, emerald ash borer, and Asian long-horned beetle are inadvertently introduced into non-infested areas by the movement of infested wood, branches, logs and brush. Thus, prompt notification and communication with tree care companies and tree trimmers greatly enhances the capability of the Department of Agriculture to limit or restrict the movement of such infested material. Further, professional companies are considered a primary mechanism in the early detection and reporting of new invasive and exotic pests in Minnesota. The MDA uses the Tree Care Registry to inform companies where quarantines for gypsy moth and other exotic pests exist, the time period they are in effect, and other pertinent information to minimize the impact on tree care operations and further reduce the risk of inadvertent movement of exotic pests.

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Part IV: Buyers Guide for Importing Nursery Stock into Minnesota

Minnesota Department of Agriculture and Minnesota Nursery and Landscape Association

To facilitate pest-free shipments of nursery stock into Minnesota, the following guidelines have been developed by the Minnesota Nursery and Landscape Association (MNLA) and the Minnesota Department of Agriculture (MDA). These guidelines are intended for use in the process of importing nursery stock or related materials into Minnesota from other states or countries. These guidelines must be followed in order to:

1. Protect Minnesota's environment from the potentially devastating effects of regulated or exotic plant pests.
2. Protect Minnesota nursery, landscape, and related horticultural businesses from the costs associated with business disruption, pest control, and possibly eradication of regulated or exotic plant pests.

Screen and Select Product Sources Carefully

Be aware of regulated pest status in the states or counties of origin from which the stock is being purchased. Contact MDA for current information on regulated plants or pests. Purchase products from areas known to be free of regulated plant pests to reduce required regulations and restrictions.

When purchasing nursery stock or related materials through brokers, insist that they provide the state and country of origin for all products purchased. Ask each supplier about pest monitoring and/or control programs relative to their company for the stock being purchased. Select suppliers that use systems which ensure compliance with state and federal plant pest regulations and quarantines.

Ensure Product is Adequately Certified

At the time of ordering plant material or related products, indicate that proper state or federal certification will be required with all shipments as a condition of purchase. Inform suppliers that failure to provide proper certification at the time of shipment may void the transaction. Request written evidence

prior to shipment that stock purchased will be certified by state or federal authorities to be pest free at the time of shipment. **For federally regulated pests, a copy of a current nursery certification or license alone is not adequate.**

To minimize potential problems at the time of shipping, request sample documentation that will accompany each shipment from each vendor at the beginning of each new year. If there is any question regarding specific documentation required, **contact MDA (651-201-6619)**. Also request state and county of origin information as part of an order acknowledgement as this information is required by a Minnesota State Statute.

Require that **each shipment** of all products be accompanied by all necessary certification documentation. If possible, have the shipper forward such documentation via fax or email prior to receiving shipment. Lack of proper documentation should void a transaction. If any questions exist about the documents received from suppliers, **fax** them to **MDA (651-201-6108)** for review and approval.

Receiving, Handling, Storage, and Record Keeping

Upon receipt of nursery stock or related products, review certification documentation prior to unloading any part of the shipment. Certification documents must be dated the same year as the shipment or be valid based upon an expiration date. Growing season inspection reports may be dated up to 12 months earlier. If the products are not properly certified, contact the supplier prior to unloading. If certification is not possible, the shipment should be refused.

If federal quarantines are involved such as plants originating from eastern states for gypsy moth, southern states for fire ant, ash trees and any barberry plants. **A federal stamp or sticky label affirming that the plants meet all applicable state and federal quarantines is required on the shipping**

documentation. Do not accept shipment without this documentation or without the stamp as shown in Figure 1. Until the plants are unloaded, they are covered under interstate regulations. Call the USDA office at 612-725-1721 for assistance with any of this documentation.

The possible introduction of exotic plant pests is a growing threat to the Nursery and Landscape businesses and to the environment. Prevention of this introduction via importation of plant material will require great care, and possibly changes to business practices. The potential costs associated with importation of these pests will more than justify an increased due diligence in the buying, shipping and receiving processes.



Figure 1. Federal stamp required on shipping documents for specific nursery stock to certify that it has been properly inspected for shipment.

Conduct visual inspections during unloading as much as possible. If a regulated plant pest is discovered, close the shipping container and notify the MDA at 651-201-6619 and/or USDA at 612-725-1721 for recommended action. Also contact the supplier immediately. It is strongly recommended that firms importing product from regulated areas conduct training for identification of regulated pests with all employees who will be in a position to find such a pest. Contact MDA for assistance with training materials and curriculum.

Maintain all shipping records including packing lists and certification documentation for each shipment received. Maintain these records in an orderly fashion for a minimum of two seasons. These records must be available for inspection by MDA or USDA as needed.

Maintain constant awareness among staff throughout the year to be on the watch for signs of regulated or unusual pests. Maintain proper cultural practices and chemical pest control measures if applicable to control these pests. Cooperate with MDA and/or USDA efforts, including trapping, to monitor and prevent the spread of these pests.

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Part V: Professionalism – Know the Law, Obey the Law

Bob Fitch

The Minnesota Nursery and Landscape Association encourages ethical business practices and high standards of professionalism. The following information is provided to assist Minnesota Nursery and Landscape businesses to be in compliance with the law and to operate in a highly ethical and professional manner.

Nursery Inspection Certificate

To sell or move nursery stock including trees, shrubs and perennials in Minnesota, all Growers and Dealers are required to obtain a Nursery Inspection Certificate from the Minnesota Department of Agriculture. Refer to Part II of this Chapter for details of the Minnesota Nursery Law.

Minnesota state law requires that all plants sold as nursery stock in the state must be inspected and certified. The Minnesota Department of Agriculture Nursery Inspection Program is designed to protect the state's environment and consumers from plant pests that may be inadvertently infected or infested with harmful organisms. Companies, including nursery stock growers, perennial growers, garden centers, landscape contractors, tree spade operators and all others selling or moving nursery stock such as trees, shrubs, or perennials, are required to have a nursery inspection certificate. **Contact the Minnesota Department of Agriculture at 651-201-6619 for additional information.**

Pesticide Applicators License

Minnesota state law requires that all persons applying pesticides commercially must have a Commercial Pesticide Applicator's License. The law also requires that anyone applying Restricted Use Pesticides (RUP) must have a Private, Non-Commercial or Commercial Applicator's License depending on the application site. **Contact the Minnesota Department of Agriculture at 651-201-6058 for additional information.**

MNDOT Rules and Regulations

For personnel with Commercial Drivers Licenses (CDL), there is an ever-changing series of regulations and requirements for drivers **and** companies. The Minnesota Department of Transportation has an easy-to-navigate website with fact sheets on nearly every trucking and transportation question. The agency's website can be found at:

<http://www.dot.state.mn.us/cvo/facts.html>.

The Minnesota Departments of Transportation and Public Safety provide classroom training designed to help companies and their drivers better understand the regulations, specific requirements, and how to operate legally as a motor carrier. Class room training offers an in-depth review of regulations and an opportunity to ask the trainer questions and receive answers in real time. It also allows networking with peers. More information on this training is available at the website listed above.

Phosphorus-Free Fertilizers

Minnesota state law prohibits the application of fertilizers containing phosphorus to lawns except when applying phosphorus as a starter nutrient when establishing new lawns via seeding or sodding; and except when an accredited soil test demonstrates a need for phosphorus fertilizer. Just as important as applying the right fertilizer to the right place and at the right time, is the incorporation of best management practices into all lawn care and landscape installation practices. Do not spread nutrients or pesticides on impervious surfaces. During the growing season, runoff water can contain phosphorus from partially decomposed grass clippings, tree leaves, tree seeds, dust deposition on hard surfaces, pet wastes, and other organic sources. Runoff from exposed soils on construction sites or over frozen ground such as spring snow melt or late season rainfall can also contribute to phosphorus inputs into bodies of water. Educate employees and customers about the significance of controlling soil erosion as well as controlling runoff from leaves, lawn clippings and other organic materials. **Contact**

the Minnesota Department of Agriculture at 651-201-6021 for additional information.

Irrigation Landscape Lighting Installation

Minnesota state law requires that companies who install low voltage wiring as part of an irrigation system or landscape lighting system hold a Technology System Contactor License. Furthermore, each Technology System Contractor must have a licensed Power Limited Technician on staff.

Contact the Construction Codes and Licensing Division of the Minnesota Department of Labor and Industry at 651-284-5064, or go to <http://www.dli.mn.gov/cclid.asp> for additional information.

Rain Sensor Installation

Minnesota state law requires that all automatically operated irrigation systems shall have furnished and installed technology that inhibits or interrupts operation of the landscape irrigation system during periods of sufficient moisture. The technology must be adjustable either by the end user or the professional practitioner of landscape irrigation services. This common sense environmental law helps to conserve water and save money for property owners. Savings on water costs typically pays for the technology in two years or less on a residential system. For a commercial system, installation of rain sensing technology will cost more, but savings on water costs will pay for the technology in one or two rainfalls.

Anti-Trust Laws

MNLA's official policy relative to Anti-Trust discussion among Industry members states that the following topics or subjects are outside the scope of permitted discussions. All members should refrain from making remarks or references regarding the following topics:

1. Current or future prices; the only safe policy is to avoid any mention whatsoever of prices, even of past prices.
2. What constitutes a "fair" profit level.
3. Possible increases or decreases of prices.
4. Standardization or stabilization of prices.
5. Pricing procedures, including wholesalers' margins, markups, cost percentages, formulas or policies for arriving at prices, or brokers' fees or commissions.

6. Cash discounts.
7. Credit terms.
8. Allocation of markets.
9. Other restraints on distribution or competition.
10. Refusal to deal with a supplier because of its pricing or distribution practices.
11. Whether or not the pricing practices of any industry member or supplier are unethical or constitute an unfair trade practice.

Landscape Digging, Excavation and Operations

Safety Requirements – Prior to any digging or excavation in a landscape, call the Gopher State One Call for utility locations. In the metro area, **call the Gopher State One Call at 651-454-0002 or, outside the metro call toll free 800-252-1166.** Call at least 48 hours in advance of anticipated excavation. In the busy spring season, be aware that experience has shown that it can take even longer for markings to be obtained. Digging must begin within 96 hours or 4 days from the time the markings are placed. Both the 48-hour rule and 96-hour rules exclude Saturdays, Sundays and holidays.

After markings have been made, excavators are required to maintain a minimum horizontal, or side to side, clearance of two feet (24 inches) between an unexposed facility and the cutting edge or point of any power operated excavating or earth-moving equipment. For example, if the markings indicate a 6-inch pipe is buried, the no power dig, or the hand dig zone, is 54 inches wide calculated as 6 inches plus 24 inches on each side of the mark. If excavation is required within the hand dig zone, the excavation must be performed very carefully, with vacuum excavation or hand tools, and without damage to the utility or the undermining lateral support. Be aware that utility depths may vary due to installation practices, changes in the grade, erosion and other variables.

In the course of digging, if a utility line is exposed, it is the excavator's responsibility to inspect and support the utilities before backfilling. If damage is done to the utility line, it is the excavator's responsibility to immediately notify the utility owner directly.

Marketing and Labeling Container Plants

The dramatic increase of container plant sales over the past few years has gained the attention of state and related Weights and Measures Compliance Authorities. Consequently, these agencies have stepped up the surveillance and scrutiny of the nursery and landscape industry's marketing practices. These authorities have learned that some long-time practices in this industry regarding labeling and advertising of plants violate or ignore consumer information requirements.

The legal foundation for the required consumer information is found in Uniform Weights and Measures Law and the Uniform Packaging and Labeling Regulations. The National Conference on Weights and Measures (NCWM) maintains this model law and the implementing regulations. The National Institute of Standards and Technology (NIST) provides technical assistance in an advisory capacity.

The American Nursery and Landscape Association (ANLA) has developed guidelines and recommendations for compliance with these regulations. Although these guidelines are voluntary, strict compliance is strongly encouraged. The ANLA Guidelines summarize the regulations as follows:

1. The purpose of the law is to assist the consumer in comparing similar products by using uniform and consistent price and quantity information on the product package, or in advertising and signage.
2. The law applies only to retail sales of products to consumers and not to transactions between wholesale suppliers and retailers.
3. The required information provided on the label or signage must be accurate.
4. The required information provided must be easily accessible to the consumer.

The entire industry is strongly encouraged to comply with the spirit of this law by making all information about a product, accurate, easy for customers to find, easy to understand, and easy to use in making price and quantity comparisons.

