

## NIPM Item #2

### CALIFORNIA LICENSE TO SELL NURSERY STOCK

A license to sell nursery stock shall be obtained from the Secretary of Food and Agriculture before any sales are made.

The license is issued to the person operating the business where nursery stock is sold. The LICENSE IS NOT TRANSFERABLE to another person. The fee for a new license is due at the time any change in ownership occurs.

The LICENSE TO SELL NURSERY STOCK is issued for a 12-month period. There are four such 12-month periods: January through December; April through March; July through June; and October through September. New licenses are issued for the license period commencing nearest to the date of receipt of the application.

The LICENSE must be RENEWED no later than the 10th day of the first month of the licensee's license period. If the fee is not received by the date, the license is forfeited and thereafter can be renewed only upon payment of penalty in the form of a registration fee, or upon receipt of a signed statement that no nursery stock was sold from the first day of the license period to the date regular fee was paid.

The MINIMUM FEE FOR LICENSE is \$150. It is required for each branch sales yard, store or sales location which is owned and operated in the state. A location where nursery stock is grown or assembled for distribution directly to customers is a branch sales yard, store or sales location and requires an additional license.

In addition, an ACREAGE FEE is required for land in excess of one acre used in the production, storage or sale of nursery stock. The acreage fee established by the Secretary may not be less than \$25 or more than \$900. In calculating the acreage fee, the total acreage of all branch sales and growing-grounds shall be used. The acreage fee does not apply to those licensees whose gross income from the production of cut flowers and cut ornamentals are 75 percent or greater of the gross income of their nursery.

### Extracts from Food and Agricultural Code

#### Definitions and General Provisions

**38.** "Person" means any individual, partnership, association, corporation, limited liability company, or any organized group of persons whether incorporated or not.

**44.** "Sell" includes offer for sale, expose for sale, possess for sale, exchange, barter, or trade.

**5005.** "Nursery stock" means any plant for planting, propagation, or ornamentation.

**5006.** "Pest" means any of the following things that is, or is liable to be, dangerous or detrimental to the agricultural industry of the state:

- (a) Any infectious, transmissible, or contagious disease of any plant, or any disorder of any plant which manifests symptoms or behavior which the director, after investigation and hearing, finds and determines is characteristic of an infectious, transmissible, or contagious disease.

(b) Any form of animal life.

(c) Any form of vegetable life.

**5007.** "Plant" includes any part of a plant, tree, plant product, shrub, vine, fruit, vegetable, seed, bulb, stolon, tuber, corm, pip, cutting, scion, bud, graft, or fruit pit.

**5008.** "Shipment" means any article or thing which is, may be, or has been transported from one place to another place.

**5009.** "Horticultural product" means those products as stated in Group Number 18 of the Standard Industrial Classification Manual which are grown under cover or outdoors, including bulbs, flowers, shrubbery, florist greens, fruit stock, floral products, nursery stock, ornamental plants, potted plants, roses, seed, sod, fruits, food crops grown in greenhouses, vegetables, and horticultural specialties not otherwise specified.

**5010.** Agricultural or farm products include any horticultural product.

**53303.** "Decorative plants" means indoor plants which are commonly grown and sold in movable containers, and which are not adapted for cultivation out of doors because of climatic conditions and natural peculiarities of habit or growth and because of the purpose of their cultivation.

### **Part 3: Chapter 1. Nursery Stock – Licenses**

#### **Article 1. General Provisions**

**6701.** The director may publish in pamphlet form, as often as he deems necessary, a list of all persons that are licensed pursuant to this chapter. The pamphlet may also contain such additional information as the director deems advisable concerning the enforcement of laws and regulations which pertain to nursery stock.

#### **Article 2. Issuance and Renewal of Licenses**

**6721.** It is unlawful, for any person, except a person who is expressly exempt pursuant to Section 6742 or 6743, to sell any nursery stock unless such person holds a valid license which is issued pursuant to this chapter.

**6722.** Except as provided in Section 6761, the director, upon receipt of the total license fee which is established pursuant to Section 6723, shall issue a license to sell nursery stock for the appropriate period as established pursuant to Section 6724 to any person that sells or seeks to sell plants, as defined in Section 5007, for planting, propagation, or ornamentation. Plants for ornamentation shall include cut flowers and cut greens. The applicant shall further satisfy the director of his character and good faith in seeking to carry on the business of selling nursery stock.

#### **6723.**

(a) The secretary shall establish the minimum license fee at an amount not to exceed one hundred eighty dollars (\$180).

(b) The secretary may fix the minimum license fee at an amount that is less than one hundred eighty dollars (\$180) and may adjust the license fee if, after investigation and due notice, the secretary finds that the cost of administering this

division and Chapter 5 (commencing with Section 53301) of Division 18, which relate to nursery stock, can be defrayed from revenues derived from the license fee in combination with those sums as provided by Sections 435 and 5822.

(c) Both of the following amounts shall be added as an additional license fee to the license fee established pursuant to subdivisions (a) and (b):

(1) An equal sum for each branch sales yard, store, or sales location that is owned and operated by the applicant in the state.

(2) (A) An acreage fee in an amount to be established by the secretary for land used in the production, storage, or sale of all nursery stock, except as provided in subparagraph (B), in excess of one acre, which the secretary determines is necessary to carry out this part and any portion of this code that relates to nursery stock. The total acreage fee shall not be less than twenty-five dollars (\$25) nor more than nine hundred dollars (\$900) for each licensee. The acreage fee shall be calculated using as a basis the total of the acreage at all locations where nursery stock is produced, stored, or sold. (B) Subparagraph (A) does not apply to those licensees whose gross income from the production of cut flowers and cut ornamentals is 75 percent or greater of the gross income of their nursery.

(d) As to all the fees, the secretary may require payment of prorated amounts when necessary in the issuance of new licenses for branch sales yards, stores, or sales locations to persons already licensed pursuant to the licensing periods established in Section 6724.

**6724.** There shall be four licensing periods as follows: January through December, April through March, July through June, and October through September. The fees for the renewal of the license for the foregoing periods shall be paid by the 1st day of the first month of the licensee's license period. If the renewal license fee is not paid prior to the 11th day of the first month of the licensee's license period, for the 12-month period ensuing, the license to sell nursery stock is forfeited.

**6725.** Any person whose license to sell nursery stock has been forfeited shall not be issued a renewal license except upon written application to the department.

**6726.** Except as otherwise provided in Section 6727, the application for renewal of a license shall be accompanied by the following sums:

(a) If no part of the minimum license fee has been paid, a sum which is equal to the minimum license fee and a restoration fee in an amount that is equal to the minimum license fee.

(b) If a part of the minimum license fee has been paid, an amount which is a sum equal to any portion of the minimum license fee which is unpaid on the 11th day of the first month of the licensee's license period and a restoration fee in an amount which is equal to the unpaid portion of the minimum license fee.

**6727.** No restoration fee is required of any person whose application for renewal of a license is accompanied by his signed statement that prior to the date of his application and payment of the minimum license fee he has not sold any nursery stock during any part of the license period for which he applies for renewal of the license. The director also may accept, at his discretion, the licensee's affidavit that the minimum license fee was not

paid within the time limits specified in Section 6724 for reasons beyond the licensee's control.

**6728.** The director shall not refund more than one-half of the minimum license fee to any person who applies for a license to sell nursery stock and who later decides not to engage in the sale of nursery stock. No portion of the minimum license fee shall be refunded to any person who is denied a license pursuant to Section 6761.

### **Article 3. Exemptions**

**6741.** A person is not required to pay any license fee if all of the following facts exist:

- (a) The person's sales of plants amount to less than one thousand dollars (\$1,000) within any one fiscal year.
- (b) The person has reported to the commissioner his or her intention to make those sales.
- (c) All plants which are sold by the person are of his or her own production, and are sold for planting within the county in which the plants were grown.

**6742.** Any person that sells seeds and does not sell or ship any other kinds of nursery stock is exempt from the license requirements of this chapter.

**6743.** Any retail florist or other person that sells plants at retail for indoor decorative purposes only is exempt as to such plants from the license requirements of this chapter.

**6744.** Any person that sells cut Christmas trees is exempt from the license requirements of this chapter.

### **Article 4. Refusal, Revocation and Suspension**

**6761.** The director, after investigation and hearing, may refuse to issue or renew a license, or may suspend or revoke a license, if he determines that the licensee or the applicant has done any of the following:

- (a) Has willfully refused to comply with the laws and regulations relative to nursery stock, or to any pest which might be carried by nursery stock.
- (b) Was intentionally guilty of fraud or deception in the procurement of the license.
- (c) Has been guilty of fraud or misrepresentation in the handling or sale of nursery stock.
- (d) Has failed to maintain nursery stock produced or sold by him in accordance with the standards of cleanliness which are prescribed by the director.
- (e) Has failed to comply with any lawful order which is issued by the director or commissioner.

**6762.** Any proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code. The director shall have all the powers which are granted in such chapter.