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Plant Pest Act

Article 15. – PLANTS AND PLANT PRODUCTS

Kansas Administrative Regulations

4-15-4. Live plant definition: exclusions. The following shall be excluded from the definition of live plant in K.S.A. 2-2113, and amendments thereto: (a) Field and forage crops; (b) seeds of any kind; (c) cut flowers and cut greenery not used for propagation; and (d) fruits and vegetables used for food or feed. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2113, as amended by L. 2011, ch. 72, sec. 1; effective Oct. 18, 2002; amended May 18, 2012.)

4-15-5. Live plant dealer license fee. The fee for a live plant dealer license shall be \$80. (Authorized by K.S.A. 2010 Supp. 2-2126; as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2120; as amended by L. 2011, ch. 72, sec. 6; effective Oct. 18, 2002; amended June 5, 2009; amended, T-4-11-21-11, Nov. 21, 2011; amended March 23, 2012.)

4-15-6. Plant pest emergency response fund fee. In addition to the license fee specified in K.A.R. 4-15-5, each licensed live plant dealer shall pay a fee of \$5, which shall be deposited in the plant pest emergency response fund. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11, and K.S.A. 2010 Supp. 2-2129, as amended by L. 2011, ch. 72, sec. 13; implementing K.S.A. 2010 Supp. 2-2129, as amended by L. 2011, ch. 72, sec. 13; effective Oct. 18, 2002; amended March 23, 2012.)

4-15-7. Live plant dealer licensing exemptions. (a) Any live plant dealer who does not import live plants from outside the state of Kansas, does not export live plants from the state of Kansas, and has annual gross receipts from the distribution of live plants that are less than \$10,000 shall be exempt from the licensing requirements.

(b) Each live plant dealer seeking to claim the licensing exemption shall submit annually on a form furnished by the department an application specifying the applicant's basis for claiming exemption from licensing requirements. If the secretary finds that an applicant meets the criteria specified in subsection (a), the applicant shall be exempt from licensing requirements.

(c) Each live plant dealer exempt from licensing requirements shall be subject to all quarantines and the regulated nonquarantine pest freedom standards established in K.A.R. 4-15-10. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp.

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2-2120, as amended by L. 2011, ch. 72, sec. 6; effective Oct. 18, 2002; amended May 6, 2005; amended May 18, 2012.)

4-15-8. Fees for the inspection of live plants, plant products, bees, beekeeping equipment, and regulated articles. (a) Inspection services may be provided upon request to any person who owns or possesses live plants, plant products, bees, beekeeping equipment, or regulated articles. The person shall pay inspection fees of \$30 per hour plus mileage expenses. Inspection fees shall include hourly fees for travel time and time spent on-site.

(b) On-site hourly fees shall be calculated from the inspector's time of arrival until completion of the inspection, excluding breaks, meals, and any time not directly associated with conducting the inspection. A quarter-hour minimum shall be assessed, and the total on-site inspection time shall be rounded to the nearest quarter-hour.

(c) Hourly fees for travel time shall consist of actual driving time, excluding breaks, meals, and any time not directly associated with traveling to and from the inspection site. The total travel time shall be rounded to the nearest quarter-hour. If multiple inspections are completed at different locations, travel time shall be apportioned between inspections using the method for calculating and apportioning mileage fees specified in this regulation. If mileage fees are reduced to reflect a distance less than the distance actually travelled, travel time shall be reduced by a percentage equal to the percentage of reduction in the number of miles actually travelled.

(d) Mileage to the inspection site shall be calculated from one of the following locations as applicable on the date the inspection is conducted, whichever is less:

- (1) The inspector's official station;
- (2) the last location at which a requested inspection was conducted; or
- (3) the last location at which the inspector incurred lodging expenses.

(e) The person for which the last requested inspection is conducted on any day shall pay mileage fees for the return trip to the inspector's official station or the location at which the inspector incurs lodging expenses, whichever is less.

(f) Mileage fees shall be calculated using the actual miles driven by the inspector or the adjusted miles if reduced pursuant to this regulation. The rate per mile shall be the private vehicle mileage reimbursement rate fixed by the secretary of administration.

(g) Any inspection, certification, diagnostic, or identification fee may be waived if the fee would be assessed against a state or local government agency. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2118, as amended by L. 2011, ch. 72, sec. 5; effective Oct. 18, 2002; amended May 6, 2005; amended May 18, 2012.)

4-15-9. Fees for the certification of live plants, plant products, bees, beekeeping equipment, and regulated articles. (a) If a state certificate is required for the entry of an inspected article into another state or a foreign country, the person needing certification shall pay one or more of the following, as applicable:

- (1) \$20 for a certificate for a commodity or article certified for domestic shipment;
- (2) \$50 for a certificate for a commodity or article certified for international shipment; or
- (3) 20 cents for each bale tag provided to satisfy a weed-free forage requirement.

(b) If a federal certificate is also required for the entry of an inspected article into another state or a foreign country, the associated fee shall be added to the amount specified in subsection (a).

(Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2118, as amended by L. 2011, ch. 72, sec. 5; effective Oct. 18, 2002; amended Feb. 2, 2007; amended May 18, 2012.)

4-15-9a. Live plant dealer; certificate of inspection. (a) Any live plant dealer may request a certificate of inspection to establish that the live plant dealer's live plants meet pest freedom standards.

(b) Each inspection pursuant to this regulation shall be conducted at a time chosen by the secretary to permit adequate inspection for the presence of plant pests giving consideration to the type of live plants inspected. If necessary due to the diversity of the live plants or for other reasons, multiple

inspections may be conducted by the secretary.

(c) If the live plants inspected meet pest freedom standards, a certificate of inspection may be issued by the secretary.

(d) Each certificate of inspection shall be valid for one of the following:

(1) A period beginning on October 1 of the year the inspection was conducted through September 30 of the following calendar year; or

(2) a lesser period that the secretary may determine based upon the request of the live plant dealer due to the growing season and distribution schedule for the live plants.

(e) Any request for a certificate of inspection may be denied and any certificate of inspection may be revoked by the secretary upon finding any of the following:

(1) An adequate inspection cannot be conducted.

(2) The live plant dealer's live plants do not meet pest freedom standards.

(3) Denial of the request for a certificate of inspection or revocation of the certificate of inspection is necessary to prevent or retard the spread of a plant pest that could cause economic or environmental harm. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2118, as amended by L. 2011, ch. 72, sec. 5; effective May 18, 2012.)

4-15-10. Pest freedom standards. (a) The pest freedom standards specified in this regulation shall apply to all live plants grown, sold, distributed, planted, transported, moved, or given away by a live plant dealer or the live plant dealer's designated agent. As used in this regulation, "possessed" shall include being grown, sold, distributed, planted, transported, moved, or given away.

(b) Live plants on which quarantine pests are present shall be prohibited from entering the state or being possessed within the state by live plant dealers or any live plant dealer's designated agent.

(c) Live plants on which regulated nonquarantine pests are present shall be prohibited from entering the state or being possessed within the state by live plant dealers or any live plant dealer's designated agent unless the live plants are within the limits as specified in this regulation.

(d) Live plants on which plant pests that are neither quarantine pests nor regulated nonquarantine pests are present may enter the state and be possessed by live plant dealers. These live plants shall remain subject to regulatory action if the secretary finds that action is necessary to prevent or retard the spread of a plant pest that could cause economic or environmental harm.

(e) Only live plants free of quarantine pests and within the limits for the presence of regulated nonquarantine pests may be certified as meeting pest freedom standards. When necessary for export, standards more stringent than those specified in this regulation may be utilized by the secretary to ensure compliance with all applicable quarantines and regulated nonquarantine pest freedom standards.

(f) The classes of regulated nonquarantine pests shall be the following, with the limits specified:

(1) For insects and arachnids that bore into live plants, scarab beetles, scale insects, and weevils, the number of infested plants shall be zero percent of the total number of plants in the lot, cultivar, or group of a single species of plant.

(2) For diseases known as viruses, viroids, phytoplasmas, spiroplasmas, mycoplasmas, the genera or species of diseases caused by *Phytophthora* (a group of fungal diseases that infect various plants and plant parts), *Bursaphelenchus xylophilus* (pine wilt nematode), *Meloidogyne* (root knot nematodes), *Erwinia amylovora* (fire blight), *Agrobacterium tumefaciens* (crown gall), and bacterial species that can cause wilt disease, the number of infected plants shall be zero percent of the total number of plants in the lot, cultivar, or group of a single species of plant.

(3) For diseases known to cause wilts, galls, cankers, root rot, and crown rot, the number of infected plants shall be less than five percent of the total number of plants in the lot, cultivar, or group of a single species of plant.

(4) For plant parasitic nematodes, the number of infected plants with foliage affected or root systems stunted or underdeveloped shall be less than five percent of the total number of plants in the lot, cultivar, or group of a single species of plant.

(5) For foliar diseases of plants other than evergreens, the number of infected plants with more than 10 percent of the foliage affected shall be less than 15 percent of the total number of plants in the lot,

cultivar, or group of a single species of plant.

(6) For foliar diseases of evergreens, the number of infected plants with more than one percent of the foliage affected shall be less than five percent of the total number of plants in the lot, cultivar, or group of a single species of plant. (Authorized by K.S.A. 2010 Supp. 2-2126, as amended by L. 2011, ch. 72, sec. 11; implementing K.S.A. 2010 Supp. 2-2117, as amended by L. 2011, ch. 72, sec. 4; effective Oct. 18, 2002; amended May 18, 2012.)

4-15-11. Civil penalty; order. Each order assessing a civil penalty shall include the following: (a) A statement reciting each subsection of the act authorizing the assessment of a civil penalty;

(b) a statement of the factual basis for each violation alleged and a reference to each provision of the act or implementing regulation that the respondent is alleged to have violated;

(c) the amount of the civil penalty; and

(d) notice of the respondent's right to a hearing. (Authorized by K.S.A. 2007 Supp. 2-2126; implementing K.S.A. 2007 Supp. 2-2125; effective Oct. 18, 2002; amended July 18, 2008.)

4-15-13. Criteria to determine dollar amount of civil penalty. (a) A civil penalty of at least \$100.00 but not more than \$2,000.00 may be assessed by the secretary for each violation of the plant pest and agriculture commodity certification act, K.S.A. 2-2112 et seq., and amendments thereto, and the implementing regulations.

(b) In determining the amount of any civil penalty, the gravity of the violation shall be considered by the secretary. Factors to be considered shall include the following:

(1) The potential of the act to injure, endanger, or harm the health of any consumer, the general public, cultivated or native plant resources, or the environment;

(2) the severity of actual or potential harm or injuries;

(3) the respondent's history of compliance with the plant pest and agriculture commodity certification act, and amendments thereto, and the implementing regulations;

(4) any action taken by respondent to remedy the specific violation or to mitigate any adverse effects of the violation on public health, cultivated or native plant resources, or the environment as a result of the violation; and

(5) any misrepresentation or fraud involved in the violation. (Authorized by K.S.A. 2011 Supp. 2-2126; implementing K.S.A. 2011 Supp. 2-2125; effective Oct. 18, 2002; amended July 18, 2008; amended May 18, 2012.)

4-15-14. Informal settlement. (a) Any respondent may request a settlement conference if the respondent timely filed a written request for hearing. The request may be made before the prehearing conference.

(b) If a settlement is reached, the parties shall reduce the settlement to writing and present the proposed written consent agreement to the secretary. The consent agreement shall state that, for the purpose of the proceeding, the following conditions are met:

(1) The respondent admits the jurisdictional allegations and admits the facts stipulated in the consent agreement.

(2) The respondent neither admits nor denies the specific violations contained in the order.

(3) The respondent consents to the assessment of a stated civil penalty.

The consent agreement shall include all terms of the agreement and shall be signed by all parties or their counsel. (Authorized by and implementing K.S.A. 2007 Supp. 2-2126; effective Oct. 18, 2002; amended July 18, 2008.)