

DEPARTMENT OF AGRICULTURE

Plant Industry Division

RULES PERTAINING TO THE ADMINISTRATION AND ENFORCEMENT OF THE COLORADO NURSERY ACT

8 CCR 1203-5

PART 1.0 DEFINITIONS

- 1.1 "Balled and burlapped nursery stock (B&B)" means nursery stock that has been removed from the growing site with a ball of soil, containing root and surrounded with burlap or other similar material to hold the soil in.
- 1.2 "Balled and potted nursery stock" means that nursery stock that has been removed from the growing site with a ball of soil, containing the root and placed in a container.
- 1.3 "Bare root nursery stock" means nursery stock that has been removed from the growing site with the root system substantially free of soil.
- 1.4 "Bedding plants" means any non-perennial herbaceous plant produced in flats, small pots or trays intended for transplanting in the garden, or landscape.
- 1.5 "Bench packed nursery stock" means bare root nursery stock with the roots packed in a growing medium mixture and encased in burlap or other material or placed in a container to hold the growing medium in place.
- 1.6 "Blend" means a combination of varieties of the same species of turfgrass in any percentages.
- 1.7 "Container grown nursery stock" means nursery stock that has been planted and grown in a container with the root system in soil or other potting mixture capable of sustaining normal plant growth.
- 1.8 "Etiolated growth" means bleached and unnatural growth resulting from the exclusion of sunlight.
- 1.9 "Fibrous roots" means an early stage of root growth producing numerous, extensively branched roots.
- 1.10 "Girdling" means a physical injury caused by a foreign object, such as, but not limited to, a rope or guy wire that compresses the outer surface of a plant stem or trunk deeply enough to constrict the cambium around the plant's entire circumference in a manner that significantly impairs the viability of the plant by restricting the flow of fluids through the xylem or phloem.
- 1.11 "Girdling root" means a root that encircles the root ball and contacts the stem above the root system.

- 1.12 "In-ground fabric bag-grown nursery stock" means nursery stock that has been planted in a fabric bag with the root system in soil or in any other potting mixture capable of sustaining normal plant growth; and that in turn has been field planted while in the bag.
- 1.13 "Mixture" means a combination of two or more different species (kinds) of turfgrasses.
- 1.14 "Mechanical injury" means injury done to a plant by abiotic causes or physical damage that leads to deviation from normal growth such as, but not limited to, injury caused by equipment, chemicals, cold, lightning, water stress, wind, or hail.
- 1.15 "Named blend or mixture" means the sales name given to a particular blend or mixture of turfgrass by the grower.
- 1.16 "Packaged nursery stock" means bare root nursery stock packed with the roots in peat or other moisture-retaining material encased in plastic film or in any other material designed to hold the moisture-retaining material in place.
- 1.17 "Plantable container" means a container that when planted in the soil, will allow root penetration within one growing season.
- 1.18 "Primary bud" means the most vigorous bud at a node.
- 1.19 "Weeds" means any plant species other than species labeled in accordance with § 35-26-104 (1), C.R.S., and 4.2 of these rules.

PART 2.0 NURSERY STOCK SPECIFICATIONS

2.1 DECIDUOUS TREES

ROOT SPREAD - BARE ROOT TREES

Bare root trees shall have a minimum root spread as follows:

<u>Caliper</u>	<u>Min. Root spread</u>
Greater than 1/2 in. up to 3/4 in.	12 in.
Greater than 3/4 in. up to 1 in.	16 in.
Greater than 1 in. up to 1 1/4 in.	18 in.
Greater than 1 in. up 1/4 to 1 1/2 in.	20 in.
Greater than 1 in. up 1/2 to 1 3/4 in.	22 in.
Greater than 1 in. up 3/4 to 2 in.	24 in.
Greater than 2 in. up to 2 1/2 in.	28 in.
Greater than 2 1/2 in. up to 3 in.	32 in.
Greater than 3 in. up to 3 1/2 in.	38 in.

2.2 DECIDUOUS SHRUBS

ROOT SPREAD - BARE ROOT SHRUBS

Bare root shrubs shall have a minimum root spread as follows:

<u>Height of Plant</u>	<u>Min Root Spread</u>
Greater than 18 in. up to 24 in.	10 in.
Greater than 2 ft. up to 3 ft.	11 in.
Greater than 3 ft. up to 4 ft.	14 in.
Greater than 4 ft. up to 5 ft.	16 in.
Greater than 5 ft. up to 6 ft.	18 in.

2.3 ROSE GRADES

GENERAL

The standards specified apply only to field-grown roses when sold bare root, or individually wrapped and packaged, or in cartons.

Roses shall be graded by number and caliper of canes.

As used in the grading specifications below, "strong cane" means a cane that is healthy, vigorous, and fully developed so that it is hardened-off throughout. The caliper of the cane shall be measured not higher than 4 inches from the bud union.

- A. Hybrid Tea, Tea, Grandiflora, Floribunda Rugosa Hybrids, Hybrid Perpetuals, Moss, and climbing roses

Grade No. 1- At least three strong canes measuring at least 5/16 inch in caliper, branched not higher than 3 inches from the bud union.

Grade No. 1 1/2- At least two strong canes measuring at least 5/16 inch in caliper, branched not higher than 3 inches from the bud union.

Grade No. 2- At least two canes, one of which shall be a strong cane measuring at least 5/16 inch in caliper. The second shall be at least 1/4 inch in caliper, branched not higher than 3 inches from the bud union.

- B. Polyantha, shrub, landscape and low growing Floribunda Roses

Grade No. 1- At least three strong canes measuring at least 1/4 inch in caliper, branched not higher than 3 inches from the bud union.

Grade No. 1 1/2- At least two strong canes measuring at least 1/4 inch in caliper, branched not higher than 3 inches from the bud union.

Grade No. 2- At least two canes, one of which shall be a strong cane measuring at least 1/4 inch in caliper.

PART 3.0 CONDITION OF NURSERY STOCK

3.1 MECHANICAL INJURY

Nursery stock shall not be sold with any kind of mechanical injury including but not limited to girdling, which significantly impairs the viability of the plant.

3.2 CONTAINER GROWN NURSERY STOCK

GENERAL

All container grown nursery stock shall be kept and displayed under conditions of temperature, light and moisture sufficient to maintain the continuing viability and vigor of the stock. Container grown nursery stock shall not be sold or offered for sale in a root bound condition as evidenced by roots that have grown around the circumference of the container's interior in a horizontal circular manner that adversely affects the viability of the plant.

NON-PLANTABLE CONTAINER

Nursery stock grown in a non-plantable container shall be established in the container and shall exhibit a well-rooted condition as evidenced by the presence of visible fibrous roots sufficient to keep the soil ball intact when removed from the container.

PLANTABLE CONTAINER

Nursery stock grown in a plantable container shall be placed in a container of a size adequate to contain the root system. Root systems for nursery stock grown in plantable containers shall conform to descriptions given under 2.1 and 2.2 of these rules.

3.3 BARE ROOT NURSERY STOCK

GENERAL

Packaged and unpackaged bare root nursery stock shall be kept and displayed under conditions of temperature and moisture sufficient to maintain the continuing viability and vigor. Such bare root nursery stock shall also be kept and displayed under conditions that will prevent etiolated or otherwise abnormal growth. Evergreens shall not be sold as bare root stock, except seedlings and transplants 12 inches or under.

WAXING

Colored waxes or other materials that coat the aerial parts of the plant and change the appearance of the plant surface in a manner that prevents adequate inspection are prohibited.

3.4 BALLED NURSERY STOCK

GENERAL

All balled nursery stock shall be kept and displayed under conditions of temperature, light and moisture sufficient to maintain the continuing viability and vigor of the stock.

BALLED AND BURLAPPED NURSERY STOCK

Balled and burlapped nursery stock shall be kept and displayed with the soil ball 75 percent covered by a moisture-retaining material such as soil, straw, sawdust, shrink wrap or mulch that will prevent desiccation of the root system and handled in such a manner that the soil ball will not become broken or loose. Balled and burlapped nursery stock with broken or loose soil balls shall not be offered for sale. Balled and burlapped nursery stock shall not be sold or offered for sale with girdling roots.

BALLED AND POTTED STOCK

Balled and potted nursery stock shall be kept and displayed in such a manner that the soil ball will not become broken or loose. Balled and potted nursery stock with broken or loose soil balls shall not be offered for sale.

3.5 TURFGRASS SOD

SPECIFICATIONS

Turfgrass sod shall be free of prohibited weeds, as specified in 9.0, and of the following grass species, except when any of these species is labeled for sale purposes in accordance with § 35-26-104(3), C.R.S., and Rule 4.2:

1. Bentgrass (*Agrostis* spp. – except in pure stands)
2. Bluegrass, rough (*Poa trivialis*)
3. Quackgrass (*Agropyron repens*)

and shall contain no more than three plants of any other weed, as defined in 1.19, per 36 square feet of sod. Each 36 square feet of sod that is sold containing more than three plants of any other weed shall constitute a separate violation of these rules.

DISPLAY CONDITIONS

Harvested turfgrass sod shall, when offered for sale, be kept and displayed in such a manner that will maintain the continuing viability of the sod.

3.6 BENCH PACKED NURSERY STOCK

Bench packed nursery stock shall be kept and displayed with the roots surrounded by a moisture-retaining material such as soil, straw, sawdust or mulch in a manner that will prevent desiccation and encased in burlap or other material or placed in a container to hold the growing medium in place. Bench packed nursery stock shall be kept and displayed under conditions of temperature, light and moisture sufficient to maintain the continuing viability and vigor of the nursery stock. Root systems for bench packed stock shall conform to descriptions given under 2.1 and 2.2 of these rules. Evergreens shall not be sold as bench packed stock.

3.7 IN-GROUND FABRIC BAG-GROWN NURSERY STOCK

In-ground fabric bag-grown nursery stock shall be kept and displayed under conditions of temperature, light and moisture sufficient to maintain the continuing viability and vigor of the stock. The bags shall be surrounded by a moisture retaining material to prevent desiccation of the root systems.

PART 4.0 SPECIAL LABELING REQUIREMENTS

4.1 BENCH PACKED NURSERY STOCK

Bench packed nursery stock shall bear a special label to read as follows:

BENCH PACKED NURSERY STOCK

This plant has been removed from the growing site in a bare root condition. A growing medium mixture has been packed around the roots.

This label shall be printed on a separate tag that is securely attached to each item of bench packed nursery stock when offered for sale.

4.2 TURFGRASS SOD

A seller of turfgrass sod shall state on the sales contract, invoice or bill of lading the genus and species, common name or named blend or mixture of turfgrasses involved in the transaction. Each different lot of harvested turfgrass sod shall, when offered for retail sale, be identified by a sign stating the genus and

species, common name or named blend or mixture as stated on the sales contract, invoice or bill of lading from the grower.

4.3 IN-GROUND FABRIC BAG-GROWN NURSERY STOCK

In-ground fabric bag-grown nursery stock shall bear a special label to read as follows:

FABRIC BAG-GROWN NURSERY STOCK

The root system of this plant must be removed from the bag, with the soil ball intact, before planting.

This label shall be printed on a separate tag that is securely attached to each item of in-ground fabric bag-grown nursery stock when offered for sale.

4.4 COLLECTED NURSERY STOCK

Any plant collected from its original native habitat shall bear a special label that reads as follows:

COLLECTED NURSERY STOCK

This plant has been gathered from its original native habitat and was not grown in a nursery.

This label shall be printed on a separate tag that is securely attached to each item of collected nursery stock when offered for sale.

PART 5.0 FEES

5.1 INSPECTION FEES - ACTUAL COST

A charge of forty-five dollars (\$45.00) per hour per inspector for actual inspection time shall be collected to defray the costs of inspections made pursuant to the statute. The minimum charge for each inspection made shall be the charge of one hour of inspection time.

5.2 REGISTRATION FEES

The annual fee for a registration as required by § 35-26-106(1), C.R.S., shall be one hundred seventy dollars (\$170.00) for each place of business.

PART 6.0 REQUIREMENTS FOR COLLECTORS

6.1 EVIDENCE OF AUTHORIZATION FOR COLLECTION OF NURSERY STOCK

Evidence of authorization to have collected any and all nursery stock held or offered for sale shall consist of the following information:

Bill of sale or other document attesting to sale of trees, shrubs or other nursery stock, issued by the owner of a property, either private or public, from which the nursery stock was collected; or

Written contract or agreement between a collector and a property owner authorizing the collection of nursery stock from the property.

PART 7.0 STANDARDS AND FEES FOR QUALIFICATION OF NURSERY STOCK INSPECTORS

7.1 DEMONSTRATION OF KNOWLEDGE

Persons who seek to contract with the Department of Agriculture to perform nursery stock inspections shall demonstrate knowledge suitable to perform inspections of nursery stock concerning plant viability, root systems, insect pests, plant diseases, plant identification and other aspects of nursery stock. Such persons shall also demonstrate knowledge of the requirements of the Colorado Nursery Act and its rules. Such knowledge shall be demonstrated by successfully passing an examination, written and/or oral, administered by the Department of Agriculture.

7.2 FEE FOR QUALIFYING

Persons who seek to contract with the Department of Agriculture to perform nursery stock inspections shall pay actual cost for time spent by Department personnel and for material utilized in qualifying such persons.

PART 8.0 ENFORCEMENT OF PROHIBITED WEED RULES BY LOCAL GOVERNMENT ENTITIES

8.1 AUTHORITY TO CONDUCT INSPECTIONS

The Commissioner may authorize individual counties, weed districts and other local governmental entities to conduct nursery stock inspections as provided for in § 35-26-103, C.R.S., for the limited purpose of enforcing Part 9.0 of these Rules pertaining to the sale of prohibited weeds.

8.2 AUTHORITY TO ISSUE STOP SALE ORDERS

The Commissioner may authorize individual counties, weed districts and other local governmental entities to issue stop sale orders as provided for in § 35-26-105(2), C.R.S., for the limited purpose of enforcing Part 9.0 of these Rules pertaining to the sale of prohibited weeds.

8.3 STANDARDS FOR QUALIFICATION OF LOCAL GOVERNMENTAL ENTITIES TO ENFORCE PROHIBITED WEED RULES

- A. Any local governmental entity wishing to conduct prohibited weed inspections or issue stop sale orders as an agent of the Commissioner to enforce Part 9.0 of these Rules shall submit an application in the form and manner prescribed by the Commissioner.
- B. Each applicant shall submit a list of the names of all employees who will perform such work and, if the application is approved, inform the Commissioner of any subsequent changes to that list within 10 days of such change. All listed employees must be able to demonstrate, to the satisfaction of the Commissioner:
 - i. Sufficient scientific knowledge to identify the species listed as prohibited weeds in Part 9.0; and
 - ii. Sufficient legal knowledge to conduct inspections and issue stop sale orders for the purpose of enforcing Part 9.0 in accordance with the Colorado Nursery Act and its associated Rules.
- C. The decision to grant or deny an application from a local governmental entity for authority to enforce Part 9.0 rests solely within the discretion of the Commissioner. Nothing in these Rules shall obligate the Commissioner to grant any application if the Commissioner determines that such decision would not serve the interests of the Department.

8.4 MEMORANDUM OF AGREEMENT

Once an application is granted by the Commissioner, the local governmental entity that submitted it shall be required to enter into a Memorandum of Agreement specifying the terms and conditions under which the entity, through its designated employees, is authorized to perform such work. At any time thereafter, the Commissioner or the local governmental entity may terminate the Memorandum of Agreement for any reason by giving written notice to the other party.

8.5 FINANCIAL AND LEGAL RESPONSIBILITY

There shall be no charge for any inspection conducted by a local governmental entity acting under the Commissioner's authority in accordance with this Part 8.0. All costs incurred by a local governmental entity in conducting such inspections shall be the sole and exclusive responsibility of that entity. No Memorandum of Agreement entered into under this Part 8.0 shall create or impose any financial or legal responsibility or obligation on the State of Colorado or any of its employees for any action taken by any signatory local governmental entity or its employees.

9.0 PROHIBITED WEEDS

The following plant species shall not be sold as nursery stock within the State of Colorado or contaminate nursery stock as evidenced by plants or plant parts visible above the ground in nursery stock prepared for sale within the State of Colorado:

ORNAMENTAL VARIETIES

- Bouncingbet (*Saponaria officinalis*)
- Chinese clematis (*Clematis orientalis*)
- Common St. Johnswort (*Hypericum perforatum*)
- Common tansy (*Tanacetum vulgare*)
- Cypress spurge (*Euphorbia cyparissias*)
- Dame's rocket (*Hesperis matronalis*)
- Giant salvinia (*Salvinia molesta*)
- Hydrilla (*Hydrilla verticillata*)
- Myrtle spurge (*Euphorbia myrsinites*)
- Orange hawkweed (*Hieracium aurantiacum*)
- Oxeye daisy (*Chrysanthemum leucanthemum*)
- Purple loosestrife (*Lythrum salicaria* and *L. virgatum*)
- Russian-olive (*Elaeagnus angustifolia*)
- Saltcedar (*Tamarix parviflora* and *T. ramosissima*)
- Scentless chamomile (*Matricaria perforata*)
- Yellow toadflax (*Linaria vulgaris*)

OTHER VARIETIES

- Absinth wormwood (*Artemisia absinthium*)
- African rue (*Peganum harmala*)
- Bohemian knotweed (*Polygonum x bohemicum*)
- Bulbous bluegrass (*Poa bulbosa*)
- Black henbane (*Hyoscyamus niger*)
- Black henbane (*Hyoscyamus niger*)
- Bull thistle (*Cirsium vulgare*)
- Camelthorn (*Alhagi pseudalhagi*)
- Canada thistle (*Cirsium arvense*)
- Chicory (*Cichorium intybus*)
- Common burdock (*Arctium minus*)
- Common crupina (*Crupina vulgaris*)
- Common mullein (*Verbascum thapsus*)
- Common teasel (*Dipsacus fullonum*)
- Corn Chamomile (*Anthemis Arvensis*)
- Cutleaf Teasel (*Dipsacus Laciniatus*)

Dalmatian toadflax, broad-leaved (*Linaria dalmatica*)
 Dalmatian toadflax, narrow-leaved (*L. genistifolia*)
 Diffuse knapweed (*Centaurea diffusa*)
 Downy brome (*Bromus tectorum*)
 Dyer's woad (*Isatis tinctoria*)
 Elongated mustard (*brassica elongata*)
 Eurasian watermilfoil (*Myriophyllum spicatum*)
 Field bindweed (*Convolvulus arvensis*)
 Giant knotweed (*polygonum sachalinense*)
 Giant reed (*Arundo donax*)
 Halogeton (*Halogeton glomeratus*)
 Hoary cress (*Cardaria draba*)
 Houndstongue (*Cynoglossum officinale*)
 Japanese knotweed (*Polygonum cuspidatum*)
 Johnsongrass (*Sorghum halepense*)
 Jointed goatgrass (*Aegilops cylindrica*)
 Leafy spurge (*Euphorbia esula*)
 Mayweed chamomile (*Anthemis cotula*)
 Meadow knapweed (*Centaurea pratensis*)
 Mediterranean sage (*Salvia aethiopis*)
 Medusahead (*Taeniatherum caput-medusae*)
 Moth mullein (*Verbascum blattaria*)
 Musk thistle (*Carduus nutans*)
 Perennial pepperweed (*Lepidium latifolium*)
 Perennial sowthistle (*Sonchus arvensis*)
 Plumeless thistle (*Carduus acanthoides*)
 Poison hemlock (*Conium maculatum*)
 Puncturevine (*Tribulus terrestris*)
 Quackgrass (*Elytrigia repens*)
 Redstem filaree (*Erodium cicutarium*)
 Rush skeletonweed (*Chondrilla juncea*)
 Russian knapweed (*Acroptilon repens*)
 Scotch thistle (*Onopordum acanthium* and *O. tauricum*)
 Sericea lespedeza (*Lespedeza cuneata*)
 Spotted knapweed (*Centaurea maculosa*)
 Spurred anoda (*Anoda cristata*)
 Squarrose knapweed (*Centaurea virgata*)
 Sulfur cinquefoil (*Potentilla recta*)
 Tansy ragwort (*Senecio jacobaea*)
 Velvetleaf (*Abutilon theophrasti*)
 Venice mallow (*hibiscus trionum*)
 Wild caraway (*Carum carvi*)
 Wild proso millet (*Panicum miliaceum*)
 Yellow nutsedge (*Cyperus esculentus*)
 Yellow starthistle (*Centaurea solstitialis*)

PART 10.0 REQUIRED RECORDS

10.1 BUSINESS RECORDS

Any persons engaged in the business of selling nursery stock in this state shall keep records of all shipments of nursery stock imported from outside this state and from quarantined areas within this state. These records shall be kept for a minimum of three years and shall be made available to the Department of Agriculture upon request. Such records shall include the following information:

date stock was received; name and address of business from which stock was purchased; kind and type of nursery stock (including common name, or genus and species names); amount of nursery stock received; container size, tree caliper, tree height, or root ball size; and point of origin inspection document.

11.0 Reserved

12.0 Statements of Basis, Specific Statutory Authority and Purpose

The statements of basis and purpose for some rule changes are no longer in the Department files and are presumably in the state archives.

12.1 August 26, 1983 – Effective August 26, 1983

Emergency Regulation

This rule adopted pursuant to the authority granted the commissioner of agriculture under Title 35, Section 111, C.R.S. 1973, as amended.

House Bill No. 1242 became law on July 1, 1983. It mandates that the commissioner shall establish a minimum charge per inspection, determine the cost of inspections and establish the charge therefore by rule or regulation. Inspections may not be performed until this charge is established. The nursery law mandates that each nursery be inspected at least once a year. The season of the year dictates that these inspections be made in September when trees are still in leaf and actively growing. If this emergency regulation is not adopted at this time, inspections may not be performed until after October 30. Approximately one hundred twenty nursery inspections must be made. These inspections provide consumer protection and make it possible for Colorado nurserymen to export their stock into other states. The immediate adoption of rule 26-5.1 is imperatively necessary for the preservation of public health, safety and welfare, and compliance with the requirements of the Administrative Procedures Act would be contrary to the public interest.

12.2 August 26, 1983 – Effective October 30, 1983

These regulations are adopted pursuant to the authority granted the commissioner of agriculture under Title 35, Section 111, C.R.S. 1973, as amended.

The purpose of these regulations is to protect consumers of the state of Colorado and to prevent the spread of weeds by regulating labeling of the weed content in turfgrass sod, to protect consumers by standardizing measurement methods for machine-dug trees, and to set fees for inspections required by the Colorado Nursery Act.

12.3 January 28, 1987 – Effective March 30, 1987

Section 35-26-106, C.R.S., as amended, mandates that the commissioner shall, by rule or regulation, establish a charge for the actual cost incurred in making inspections. Costs have increased since the original fee of fifteen dollars per hour was established in 1983. It has therefore become necessary to increase the fee to eighteen dollars per hour, based on current costs, to meet this mandate.

12.4 August 27, 1987 – Effective October 30, 1987

Section 35-26-106, C.R.S., states the maximum inspection fee per inspection, which is one hundred fifty dollars, effective July 1, 1987. There is no need to state this maximum in the regulations since it is in the statute. This Section also requires that the commissioner shall, by rule or regulation, establish a license fee for each place of business, not to exceed one hundred dollars. The combination of license and inspection fees received annually must cover the complete cost, direct and indirect, of the nursery licensing and inspection program. It is anticipated that there may be a ten percent dropoff in the number of licensees from the previous year because of homeowners, not in business, who buy licenses to get wholesale prices and businesses which handle a very small amount of nursery stock and may stop selling it. Based on this reduced number of licensees and taking into consideration projected inspection fee revenue, a license fee of sixty dollars should provide the needed revenue.

12.5 May 20, 1988 – Effective June 30, 1988

Section 35-26-111 authorizes and directs the commissioner to promulgate such rules and regulations as he may deem necessary and proper for the furtherance and enforcement of the provisions of the Colorado Nursery Act. Section 35-26-104(2) states that the grade or size shall meet the specifications established by rules or regulations. Members of the 1986-87 Nursery Advisory Committee made suggestions for changes to existing ball size requirements that they felt were warranted, based on their experience as growers and sellers of nursery stock in this state. They particularly felt that separate specifications were needed for collected aspen trees, since their root systems are different from most other deciduous trees, especially in that they are shallower. The Department of Agriculture agrees with these suggestions and adopts same as also reflecting the position of the Department of Agriculture. Examples of the different types of trees are included at the top of each type chart, rather than at the end of all the charts, in order to make the charts easier to interpret.

12.6 October 18, 1991 – Effective November 30, 1991

The following rules are hereby promulgated under the authority of the Colorado Nursery Act, Sections 35-26-101 to 115, C.R.S. (1984 and 1990 Supp. as amended by Senate Bill 91-65). They deal with four different sections, including changes to two sections and creating two new sections.

The ball size specifications for bench packed stock are given in two different sections of the Rules and Regulations, due to an error made at an earlier time. The most appropriate specifications are found in subsection 26-3.6, which refers to specifications for bare root stock. This more closely applies to bench packed stock than the specification given in subsection 26-2.13, which refers to specifications for balled and burlapped stock. Bench packed stock is bare root stock with the roots packed in a growing medium mixture and is not dug with root system and soil ball intact as is balled and burlapped stock. Subsection 26-2.13 is therefore repealed.

Inspection fees are raised from eighteen dollars per hour to twenty dollars per hour to cover increases in the cost of performing inspections. Amendments to the Colorado Nursery Act changed the word license to registration. This requires the establishing of a registration fee to take effect on January 1, 1992. This fee is raised from the most recent license fee, sixty dollars, to seventy-five dollars to cover increasing costs of administering the program.

The Colorado Nursery Act specifies that rules and regulations be promulgated to give requirements concerning evidence of authorization to have collected nursery stock in the possession of nursery stock collectors. A new section 26-6.0, is created to serve this purpose.

Also specified by the Colorado Nursery Act are rules to establish minimum standards for the qualification of individuals who are authorized to make inspections as agents of the Commissioner who are not employees of the Department of Agriculture. A new section, 26-7.0, is created, requiring that persons seeking to contract with the Department shall demonstrate knowledge to meet the minimum standard by

successfully passing an examination. The Colorado Nursery Act states that the Commissioner may charge a fee for qualifying such persons as inspectors. Section 7.0 establishes that fees shall be set to cover all costs of qualifying such persons.

12.7 September 17, 1993 – Effective October 30, 1993

The following rules are hereby promulgated under the authority of the Colorado Nursery Act, pursuant to Section 35-26-111, C.R.S. (1984). They deal with balling and burlapping specifications.

The statement is made in subsection 26-2.11, dealing with ball diameters for nursery grown stock, that ball diameters shall be measured six inches below the soil line on stock dug by a mechanical spade. This statement is amended to add the word “original” to define “soil line”. The original soil line is at the trunk. The edges of the ball may be tapered off and measuring from the edge would give a different depth than from the original soil line at the trunk.

The table in Section 26-2.11, Type 2, is amended to give required minimum ball diameters in relation to height or caliper for trees in this type, such as pine and spruce. Caliper represents a more accurate indicator of tree growth than does height, for coniferous evergreen trees of this type.

12.8 January 19, 1995 – Effective March 2, 1995

The following rule is hereby promulgated under the authority of the Colorado Nursery Act, pursuant to Section 35-26-111, C.R.S. (1984) and Section 35-26-106(3), C.R.S. (1994 Supp.)

This rule sets the charge per hour per inspector for inspections made pursuant to the statute. The statute requires that actual cost incurred in making inspections be determined and a charge therefore be established. Actual costs have increased since the most recent charge was established. A new charge for inspections is therefore established in amendments to this rule.

12.9 September 8, 1995 – Effective October 30, 1995

This amendment to the rules and regulations is adopted pursuant to the Colorado Nursery Act, § 35-21-111, C.R.S. (1984).

The purpose of this amendment to the rules and regulations is to adopt such rules and regulations as necessary for the furtherance and enforcement of the Colorado Nursery Act, specifically, to define the terms sell, offer for sale and sale as those terms are utilized in the Colorado Nursery Act and the rules and regulations thereto.

12.10 February 17, 1998 – Effective March 30, 1998

These amended rules are adopted pursuant to § 35-26-111, C.R.S. (1997) and pertain to the furtherance and enforcement of the provisions of the Colorado Nursery Act, § § 35-26-101 through 115, C.R.S. (1997).

The purposes of these amended rules are to: establish specifications for in-ground fabric bag-grown stock; to increase the fee charged for inspections; and to address the statewide concerns about noxious weeds raised by the Colorado Noxious Weed Act, § § 35-5.5-101 through 119, C.R.S. (1997) and the rules promulgated thereto.

12.11 September 23, 1999 – Effective November 30, 1999

These amendments are adopted pursuant to § § 35-26-106(1) and 106(3) and § 35-26-111, C.R.S. (1999) and pertain to the registration fee, the inspection fee and the furtherance and enforcement of the provisions of the Colorado Nursery Act, § § 35-26-101 through 114, C.R.S. (1999).

The purposes of these amendments are to: update the provisions pertaining to field-grown roses to reflect current industry standards and; increase the registration fee and the inspection fee to defray the direct and indirect costs of carrying out the purposes of the Colorado Nursery Act and these rules.

12.12 October 30, 2002 – Effective January 30, 2003

Statutory Authority:

These amendments to the permanent rules are adopted by the Colorado Commissioner of Agriculture (Commissioner) pursuant to his authority under the Nursery Act (the “Act”) at section 35-26-111, C.R.S.

Purpose:

The purpose of these amendments is to:

1. Add and delete plant species to/from the list of prohibited weeds that shall not be sold as nursery stock in Colorado.

Factual and Policy Issues:

The factual and policy issues encountered in proposing these amendments are as follows:

1. In 2001, the Colorado Department of Agriculture revised the state noxious weed list pursuant to 35-5.5-115 and added and deleted a number of newly recognized noxious weed species.
2. These species are required to be managed on lands of the State of Colorado.
3. The continued sale of these species as plant materials or as contaminants to plant materials presents a threat to the agricultural and environmental systems of Colorado.

12.13 March 9, 2006 – Effective May 30, 2006

Pursuant to the provisions and requirements of the Colorado Nursery Act to regulate the sale and distribution of nursery stock, and by authority of Title 35, Article 26, Section 111, and 35-26-103(3) CRS 2005, the following rules and regulations are hereby promulgated:

Statutory Authority:

These amendments to the permanent rules pertain to Part 2 “Grading of Nursery Stock”, new Part 8 “Enforcement Of Prohibited Weed Rules By Local Governmental Entities” and Part 9 Prohibited Weeds.

Purpose:

The purpose of this rulemaking is to update the specifications for balled and burlapped nursery stock balled to be consistent with the American Standard for Nursery Stock where appropriate, provide for enforcement of the prohibited weed rules by local governmental entities and update the prohibited weed list to mirror the Colorado noxious weed law.

Factual and Policy Issues:

The factual and policy issues encountered in the proposal of these permanent rules are as follows:

- (1) The American Standard for Nursery Stock as adopted by the American Nursery and Landscape Association has changed several of the standards for balled and burlapped nursery stock. In

order to facilitate interstate movement of nursery stock it is necessary to have similar standards between states as appropriate based on climatic conditions.

- (2) Some local governmental entities, primarily weed districts, have a vested interest in prohibiting the sale of weeds. Some of these entities wish to take an active role in inspecting and enforcing against nursery dealers that attempt to sell prohibited weeds as defined in part 9.0. Providing a mechanism to allow them to perform these functions is also advantageous to the Colorado Department of Agriculture. This process provides the ability to inspect and take action in remote areas that the Department may not be able to reach except a few times per year.
- (3) The noxious weed list has been modified to remove species considered native to Colorado or are so widespread that it is impossible to obtain statewide control. The prohibited weed list is being changed to parallel these changes.

12.14 November 19, 2009 – Effective December 30, 2009

Statutory Authority

These amendments to the rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Colorado Nursery Act (the “Act”), § 35-26-111 C.R.S.

Purpose

The purposes of these proposed rule amendments are as follows:

- 1) To increase the nursery registration fee from \$80 to \$90.
- 2) To require records be kept of all nursery stock imported into the State of Colorado.

Factual and Policy Basis Issues

The factual and policy issues encountered when developing these rules include:

- 1) The nursery fund balance has been near zero for the past two years. Revenue from registration fees has been flat and has not kept up with the increases in operating expenses such as personal services and fuel costs since the last increase. Although the program is a cash funded program, the revenue generated does not cover the actual costs of the program and therefore the program is subsidized by general funds.
- 2) The registration fee is capped in statute at \$100 (35-26-106(1) C.R.S.)
- 3) 35-26-106(1) C.R.S. provides that the Commissioner shall, by rule or regulation, establish a registration fee for each place of business.
- 4) The Colorado Nursery and Greenhouse Association supports this increase in the registration fee.
- 5) The average number of nursery registrations per year is 1,700. Therefore this increase will generate an increase in revenue of \$17,000 for the program.
- 6) Registration fees have not been increased since November 1999.
- 7) For several decades it has been known that movement of nursery stock is a primary mechanism of movement and introduction of plant pests. In recent years it has become very apparent that new plant pests are moving into the State on nursery stock. Japanese beetle is an excellent

example. It was introduced into a small area in the Denver Metro area and has now become established in two other areas. It is a significant pest in these locations. Emerald Ash Borer is another example of a devastating pest that has moved into many states in the east and mid-west but has not been found in Colorado yet.

- 8) In order to document stock that is moving into the state so that pest surveillance activities and inspections can be conducted in the most efficient manner possible, the nursery registrants that are importing stock need to be required to keep records that the Department can review.
- 9) 35-26-108(1)(b) C.R.S already provides that “At any time during regular business hours, the Commissioner shall have free and unimpeded access upon consent or upon issuing or obtaining an administrative search warrant to all records required to be kept at any reasonable time and may make copies of such records for the purpose of carrying out any provision of this article or any rule made pursuant to this article.”
- 10) A Japanese beetle quarantine is being proposed to lessen the pressure of Japanese beetles being transported into the state on nursery stock. These record keeping regulations will assist with enforcement of this quarantine.

12.15 February 8, 2011 – Effective March 30, 2011

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Colorado Nursery Act (the “Act”), § 35-26-111 C.R.S.

Purpose

The purposes of these proposed rule amendments are as follows:

- 1) To clarify record keeping requirements for all nursery stock imported into the State of Colorado.

Factual and Policy Basis Issues

The factual and policy issues encountered when developing these rules include:

- 1) In order to document stock that is moving into the state so that pest surveillance activities and inspections can be conducted in the most efficient manner possible, the nursery registrants that are importing stock need to be required to keep records that the Department can review.
- 2) 35-26-108(1)(b) C.R.S already provides that “At any time during regular business hours, the commissioner shall have free and unimpeded access upon consent or upon issuing or obtaining an administrative search warrant to all records required to be kept at any reasonable time and may make copies of such records for the purpose of carrying out any provision of this article or any rule made pursuant to this article.”
- 3) The industry often describes nursery stock on bill of lading by tree height and may not always use genus and species names. The changes proposed will accommodate current nursery practices.

12.16 February 15, 2013 – Effective March 30, 2013

Statutory Authority

These amendments to these rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under the Colorado Nursery Act (the “Act”), § 35-26-111 C.R.S.

General: This is the first major update of the Rules Pertaining to the Administration and Enforcement of the Colorado Nursery Act since 1973. The update was conducted to reflect current industry changes, to remove unnecessary and unenforceable language and ensure that the rule is easily understood by the regulated community and CDA staff. These revisions incorporate changes as a result of the Department's Regulatory Efficiency Review process conducted in accordance with the Governor's Executive Order D 2012-002.

The purpose of these proposed rule amendments are as follows:

Delete definitions and statements that are duplicative; add definitions and wording to clarify the intent of the rule and enforceability; delete unnecessary or confusing language; delete grading standards that are unenforceable and considered 'best management practices'; correct grammar; add plant species to the list of prohibited weeds to parallel changes made to the current noxious weed act; and to change the title of the rule removing the word “regulation”.

Factual and policy basis issues encountered when developing these rules include:

Part 1.0

1. Definitions added:

- 1.4 “bedding plants” was added to clarify the CCR definition of nursery stock. Nursery stock is defined in the Act § 35-26-102(14), C.R.S., and '....does not mean ...bedding plants, annuals,...'
- 1.9 “fibrous roots” was added to clarify what “established in the container” means under rule 3.0 “condition of nursery stock”.
- 1.10 “girdling” was added to clarify that it constitutes a 'dead or dying condition' which is a prohibited act, § 35-26-105(a) C.R.S. The plants' conductive tissue, called cambium, contains the xylem and phloem in which fluids and nutrients are transported between the roots and foliage. Severing the cambium restricts and /or prevents the flow of these resources. Over time the plant dies from lack of fluids.
- 1.11 “girdling root” was added to help clarify a condition in which the woody plant is left in a container too long and the root begins to encircle the root ball or container. Over time it will cause the plant to die from lack of water and nutrients.
- 1.14 “mechanical injury” was added to define what the Department considers to be a mechanical injury and that it constitutes a “dead or dying condition” when it significantly impairs the viability of the plant.

2. Definitions deleted:

- 26-1.8 “potted stock” was deleted because the definition is adequately covered in 2.5 (specifications for balled and potted nursery stock), 2.4 (specifications for balled and potted nursery stock) and 3.2 (container grown nursery stock).
- 26-1.10 “prohibited weeds in turfgrass sod” is not a definition. Prohibited weeds are adequately covered in 3.5 “condition of nursery stock/turfgrass sod”.

- 26-1.16 the definition of “sell or offer for sale” can be found in the dictionary. It is also covered in the Act, § 35-26-106(1) C.R.S.

Part 2.0

1. Rules deleted:

- 26-2.3 “evergreens” was deleted because the specifications describe a specimen tree. Trees that are slightly less than specimen quality will still establish in the landscape as long as the root system is adequate.
- 26-2.6 “fruit trees” and 26-2.7 “fruit tree seedlings” were eliminated to reduce redundancy. Fruit trees and seedlings are included in root ball standards for deciduous trees (2.4).
- 26-2.8 “small fruits” was eliminated due to lack of necessity. Specifications listed did not have bearing on establishment.
- 26-2.9 “lining out stock” was eliminated because liners are rarely sold to the public, they are sold to professionals who know what quality is necessary.
- 26-2.10 “seedling trees and shrubs” was eliminated to reduce duplication. These specifications are taken care of in bare root, container and balled and burlapping standards.

2. Changes made:

- Changes to rules 2.1 and 2.2 were made to address current industry standards. The specifications previously listed are 'best management practices' which are not enforceable.
- Changes to rule 2.3 “rose grades” were made to correct grammar and increase clarity. Grade specifications were deleted for field grown miniature roses. These plants are not seen often in the trade in Colorado. Many miniature roses and tree roses are used as patio plants and gift plants and must be protected in the winter.
- 2.4 “specifications for balled and burlapped nursery stock” and 2.5 “specifications for balled and potted nursery stock” were changed to correct grammar; caliper measurements; and describing where the caliper will be measured was moved from 2.1.
- The deciduous tree specifications in 2.4 now include specifications for fruit trees, collected stock and small and large deciduous. The caliper specification greater than 9 inches was added.
- Upright coniferous section in 2.4 was edited to include upright juniper, arborvitae, pine, spruce, fir and collected stock. Height vs. caliper ratios were deleted for clarity and consistency, and improved enforcement.
- Eliminated spreading, semi spreading cone, broad upright evergreens to combine into one category “broadleaf evergreens”- most of these plants are shrubs in our climate ; height standards are more appropriately used, therefore caliper standards were eliminated.

- Eliminated ball diameters for collected nursery stock per advisory committee recommendations. Collected stock root balls will be treated the same as nursery grown stock. It is generally recognized that plants growing in their native state will sustain a much more severe shock when transplanted than the same kinds of plants when nursery grown. If collected material is moved, a considerably larger ball than that previously recommended is required, because the unrestricted root development and the varying conditions of soil in which such material is found.
- 2.16 combines slow and fast growing species to one specification; designations of greater than 4 feet were added and bag diameter was increased per advisory committee recommendation to that of 25% smaller than the correlating balled and burlapped specification.

Part 3.0

1. Rules deleted:

- 26-3.1 "insects and diseases" because this prohibition is adequately covered in § 35-26-105(1) (a) C.R.S. "prohibited acts- sale of insect and disease infested stock".

2. Rules added:

- 3.1 "mechanical injury" was added to prohibit sale of nursery stock damaged by injury such as girdling that might be caused by a foreign object or circling root that produces a visible indentation or wound that cuts into the trunk or stem deeply enough to constrict the plants conductive tissue in a manner that restricts or prevents the normal flow of fluids.

3. Changes made:

- 3.2 "container grown stock" was changed to correct grammar and add a statement and definition of root bound condition when it impairs the viability of the plant and to make it enforceable. Changes also were made to distinguish between plantable and non-plantable containers.
- 3.3 "bare root nursery stock", grammar was corrected and the statement "characteristic of species" was removed because it is unenforceable.
- 3.4 "balled nursery stock", the statement "characteristic of species" was removed because it is unenforceable. The rule was also changed to clarify what types of moisture retaining material and root ball conditions are acceptable for display and sale.
- 3.5 "turfgrass sod" was clarified to make percentage of weed species present easier to measure and enforce.
- 3.6 "benched pack nursery stock" was changed to define the term "bench packed" and moisture retaining material more thoroughly. The term "grow in a form characteristic of species" was removed because it is unenforceable.
- 3.7 "in-ground fabric bag" - "grow in a form characteristic of species" statement was removed because it is unenforceable.

Part 4.0

1. Changes made:

- 4.2 was reworded to clarify how invoice, sales contract or bill of lading needs to be stated for proper labeling. Genus, species or common name is accepted.
- 4.3, the statements requiring certain font styles for labeling were deleted.

2. Rules added:

- 4.4 requires labeling of collected stock to inform CDA inspectors and purchasers that the stock was collected from original native habitat.

Part 8.0

8.3 “standards for qualifications of local government entities to enforce prohibited weed rules” was modified to correct grammar.

Part 9.0

“Prohibited weeds” were updated to parallel the changes made to the current noxious weed list. The changes also clarify that prohibited noxious weeds shall not contaminate nursery stock (including turfgrass).

Part 10.0

10.1 was reworded to clarify that all records must be made available upon request of CDA and that point of origin inspection documents also be made available.

12.17 February 12, 2014 – Effective March 30, 2014

Statutory Authority

These amendments to the rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under § 35-26-111 C.R.S. of the Colorado Nursery Act (the “Act”).

The purpose of these proposed rule amendments are as follows:

1. Delete Rule 2.4 Specifications for Balled and Burlapped Nursery Stock.
2. Delete Rule 2.5 Specifications for Balled and Potted Nursery Stock.
3. Delete Rule 2.6 Specifications for In Ground Fabric Bag Grown Nursery Stock.

Factual and Policy Basis issues encountered when developing these rules include:

1. Changes to Rules 2.4, 2.5, and 2.6 were made under the efficiency review process in 2012 of the Nursery Act to allow for consistency in enforcement.

2. During an information and education period, Nursery Industry from within and outside Colorado brought up concerns that the restrictions on root ball sizes made in 2.4, 2.5 and 2.6 were too strict and were prohibitive to many outside of the State of Colorado.
3. Two meetings were held with industry representatives and the CNGA Board of Directors to discuss the concerns of the industry.
4. No other states enforce root ball restrictions.
5. Root ball sizes were determined to be best management practices best suited for industry and market place adjustment and not regulatory enforcement. In order to be enforceable the root ball restrictions had to be narrow and were too restrictive to business.
6. The CNGA Board of Directors advised that CDA remove root ball restrictions from the Rules. Root ball restrictions are best management practices, too variable and unenforceable.

12.18 Adopted February 22, 2018 – Effective April 15, 2018

Statutory Authority

These amendments to the rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to his authority under § 35-26-111, C.R.S. of the Colorado Nursery Act (the “Act”).

The purpose of these proposed rule amendments are as follows:

1. Add a recordkeeping requirement for nursery stock purchased from quarantined areas within the state of Colorado.

The factual and policy issues encountered when developing these rules include:

1. In order to document stock that is moving from quarantined areas of the state and to conduct pest surveillance activities and inspections in the most efficient manner possible, nursery registrants that are importing stock must keep records from any origin so that the Department can review those records as needed.

12.19 Adopted June 12, 2019 – Effective July 30, 2019

Statutory Authority

These amendments to the rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to the authority under § 35-26-111 C.R.S. of the Colorado Nursery Act (the “Act”).

The purpose of these proposed rule amendments is as follows:

1. Change the inspection fee hourly rate from \$30.00/hour to \$45.00/hour.

The factual and policy issues encountered when developing these rules include:

1. The Colorado Department of Agriculture is required by § 35-26-106(3), C.R.S., to charge for the actual cost incurred in making inspections. Over time, the average personnel cost of an inspection has increased to approximately \$39/hour, while the operating costs associated with an

inspection (e.g., travel, fleet) have increased to almost \$24/hour. Although CDA has data to support an increase to approximately \$63/hour for the actual cost of an inspection, CDA is proposing to increase the cost to \$45/hour. This increase will allow CDA to defray the majority of the cost to perform inspections as part of the Nursery Program.

2. The inspection fee has not increased since 2009, and costs incurred to complete inspections have increased significantly over the past ten years. To allow the nursery program to function effectively and to implement program goals, CDA must raise fees associated with inspections.

12.20 Adopted September 17, 2019 – Effective October 30, 2019

Statutory Authority

These amendments to the rules are proposed for adoption by the Commissioner of the Colorado Department of Agriculture (“CDA”) pursuant to the authority under § 35-26-111, C.R.S., of the Colorado Nursery Act (the “Act”).

The purpose of these proposed rule amendments is as follows:

1. Increase the registration fee from \$90.00/year to \$170.00/year.

The factual and policy issues encountered when developing these rules include:

1. The Nursery Program is comprised of three main parts. The first is the registration of all persons engaged in the advertising for sale or selling of nursery stock. The second is risk-based inspections of nurseries, nursery dealers, and turf farms who import from Japanese beetle-quarantined areas. The third is issuance of inspection certificates without which export of Colorado nursery stock and live plant products to other states would be impossible. Through the registration, inspection, and certification process, the Nursery Program ensures that nurseries produce and distribute healthy plants.
2. CDA is required by § 35-26-106(1), C.R.S., to charge a registration fee for each separate nursery, store, stand, sales ground, lot, or any location from which nursery stock is being sold, offered for sale, or distributed. Although the cap for registration fees is set at \$300, the registration fee has been \$90 since 2009.
3. Costs incurred to administer the Program have increased significantly over the past ten years given inflation rates, year-to-year increases in wages, and other costs necessary for maintenance and implementation of the Program. Specifically, the cost of administering the Program over the past decade has increased approximately 35%. Current registration fees do not meet operational requirements. Because the registration fees account for 88% of the Program’s annual revenue, CDA has proposed an increase in annual registration fees to \$170, which will allow the Program to function effectively, meet Program goals, and better administer various Nursery Program components (e.g., enforcement of quarantines).