

## EXPRESS TERMS

Part 150 of Title 1 of NYCRR is repealed and a new Part 150 is added to read as follows:

### PART 150

#### VOLUNTARY PROGRAM FOR THE PRODUCTION OF VIRUS-TESTED PLANT MATERIALS

##### Section 150.1. Definitions.

For the purpose of this Part the following words, names and terms shall be construed to mean:

- (a) Applicant. Any person who files an application for participation in the voluntary program for virus-tested plants established in this Part.
- (b) Certification program. The comprehensive process established, authorized, and executed by the Department to prevent or minimize the introduction or reintroduction of diseases in planting stock, as identified in this Part.
- (c) Certified block. A group of plants registered in the certification program, propagated from G1, G2, or G3 level plant material, managed as one unit at an isolated site, and consisting of certified plant material destined to be sold to nursery customers.
- (d) Certified plant material. Plant material that has met the requirements, and which has been approved for certification under the certification program, and destined for delivery to nursery customers.
- (e) Commissioner. The Commissioner of the New York State Department of Agriculture and Markets, or the Commissioner's duly authorized representative.
- (f) Department. The New York State Department of Agriculture and Markets.
- (g) Generation, Generation level, or G level. The degree to which plant stock is related to the original virus-tested plant material.

(h) Generation 1 or G1. The original mother plants tested for viruses of concern, found free of viruses of concern, and grown under specific conditions to prevent infection or reinfection.

(i) Generation 2 or G2. Plant material propagated from G1 stock, and grown under specific conditions to prevent infection or reinfection.

(j) Generation 3 or G3. Plant material propagated from G1 or G2 stock, and grown under specific conditions to prevent infection or reinfection. A G3 block is used to increase the population of virus-tested stock plants to supply certified plant material.

(k) Index. To test for virus infection by making a graft with tissue deriving from the plant to be tested to an indicator plant, or by other means of inoculation.

(l) Inspector. An employee of the Department authorized by the Commissioner to inspect, and certify the production of virus-tested plant materials under this Part.

(m) Mother plant. Plant material used as a source for propagation material.

(n) Off-types. Plants of a variety, or rootstock genotype apparently different from the variety or rootstock genotype specified on a corresponding application for participation in the certification program.

(o) Person. An individual, organization, corporation, partnership, public authority, county, town, village, city, municipal agency or public corporation, or any other legal entity, other than the Department, or its respective authorized agents including the United States Department of Agriculture.

(p) Plant material. Any plants, trees, cuttings, grafts, scions, rootstock, rhizomes, buds, seedlings, and/or other plant parts.

(q) Registered block. A group of plants registered in the certification program, consisting of either G1, G2, or G3 level plant material managed as one unit at an isolated site.

(r) Test, tested or testing. Official examination, other than visual, used to determine if viruses of concern are present, or used to identify viruses. Such examination may include biological indexing, serological, molecular procedures, or other methods approved by the Department.

(s) Virus of concern. A virus or other virus-like pathogen that causes economic damage and/or loss to plants and/or fruit production in any way.

(t) Virus-infected. Infected by a virus of concern, or manifesting symptoms or behavior characteristic of a virus disease.

(u) Virus-tested. Tested and found free of viruses of concern.

#### Section 150.2. Voluntary program.

The New York State Department of Agriculture and Markets, pursuant to Agriculture and Markets Law sections 18, 164 and 167, establishes the following voluntary program for the production of virus-tested plant materials within the State of New York.

(a) A nursery may apply to participate in a certification program on a form prescribed, or authorized by the Department, which shall require, at a minimum, that the applicant provide the row number and plant location of any and all G1, G2, G3 and certified blocks. If the Commissioner grants such application, an applicant shall be deemed a registration holder; the G1, G2, and G3 blocks identified in the application shall be deemed registered; and any plant material in a certified block shall be deemed certified.

(b) Application period. New applications shall be made during the month of January of the year in which the applicant seeks to be eligible for participation. The Department may, in its sole discretion, accept applications outside the prescribed period.

(c) The Commissioner may set fees in an amount that will defray the costs of administering the certification program, in whole or in part. An applicant shall remit the required fee no later than the date set by the Commissioner, and communicated to the applicant during the application process.

(d) A nursery shall remain in the certification program until such time as its registration is revoked, pursuant to subdivision (e) of this subsection, or until the registration holder voluntarily surrenders its registration in writing.

(e) A nursery's registration may be revoked, in the sole discretion of the Department, if:

(1) any requirements of this Part are not met; or

(2) any plant in the blocks registered by an applicant is found virus-infected unless, in the opinion of the Department, the remainder of the plantings in such blocks can be adequately protected by treatment or by removal, and destruction of all plants in the infected area, or by other means approved by the Department; or

(3) the plant material is off-type; or

(4) testing facilities, indicator plants, or assays used for virus testing are not available in sufficient quantity; or

(5) the required fees pursuant to subdivision (c) of this subsection have not been paid.

(f) The Department retains the right to discontinue this certification program, upon notice to all persons participating in this certification program, and shall not be liable for any incurred costs, damages, or other harm arising from such discontinuation.

Section 150.3. Plantings.

Responsibility of registration holder.

(a) Location of plantings. Each planting shall be located within the State of New York, in an area where contamination by soil-borne viruses of concern is not likely to occur, and previously approved by the Department. Each planting shall be located at a required distance sufficiently isolated from blocks that are of a different generation level to prevent or minimize infection or reinfection of viruses of concern. Generation 1, Generation 2, Generation 3, and certified plant material may only be grown in a block that has been previously registered with the Department.

(b) Treatment of planting areas. The Department may require treatment with an approved nematicide pursuant to any applicable state and federal pesticide registrations in each of the following planting areas to control nematodes of concern.

(1) Generation 1 (G1) block. The registration holder shall treat soil in a G1 block using a manner approved by the Department before planting virus-tested plant material.

(2) Generation 2 (G2) block. The registration holder shall survey soil in a G2 block for the presence of soil-borne pests including nematodes which transmit viruses of concern and, if detected, treat in a manner approved by the Department before planting of virus-tested plant material.

(3) Generation 3 (G3) block. The registration holder shall survey soil in a Generation 3 (G3) block for the presence of soil-borne pests including nematodes which transmit viruses of concern and, if detected, treat in a manner approved by the Department before the planting of plant material.

(4) Certified block. The registration holder shall, if required by the Department, survey soil in a certified block for the presence of soil-borne pests including nematodes which transmit viruses of concern and, if detected, treat in a manner approved by the Department before the planting of plant material.

(c) Eligibility for plantings.

(1) Generation 1 (G1) block. Planting in a Generation 1 (G1) block shall be permitted, if the registration holder provides evidence satisfactory to the Department that plant material to be planted within the block has been tested in a manner approved by the Department, and is free from viruses of concern.

(2) Generation 2 (G2) block. Planting in a Generation 2 (G2) block shall be permitted, if the registration holder provides evidence satisfactory to the Department that plant material to be planted within the block originate from either: a Generation 1 (G1) block approved by the Department; a New York State Generation 2 (G2) block; from a Generation 2 block grown outside of New York State approved by the Department; or shall have an equivalent known history approved by the Department. The Department, in its sole discretion, may allow plants to be considered Generation 2 (G2), and planted into Generation 2 (G2) blocks based on testing for known viruses of concern.

(3) Generation 3 (G3) block. Planting in a Generation 3 (G3) block shall be permitted if the registration holder provides evidence satisfactory to the Department that plant material to be planted within the block originate from either: a New York State Generation 2 (G2) block; from a Generation 3 block grown outside of New York State approved by the Department; or shall have an equivalent known history approved by the Department. The Department, in its sole discretion, may allow plants to be considered Generation 3 (G3), and planted into Generation 3 (G3) blocks based on testing for known viruses of concern as determined by the Department.

(4) Certified block. Planting in a certified block shall be permitted, if the registration holder provides evidence satisfactory to the Department that source plants originate from either: a New York State Generation 2 (G2) block; a New York State Generation 3 (G3) block; a Generation 2 (G2) or Generation 3 (G3) block grown outside New York, and approved by the Department.

(d) Maintenance of plantings. A registration holder shall:

- (1) ensure plants are kept in a vigorous growing condition; and
- (2) keep pests within accepted management levels as determined by the Department; and
- (3) take precautions when cultivating, irrigating, moving, using equipment, and/or other farming practices to guard against spread of soil-borne pests, and other hemipteran insect vectors to or within registered blocks; and
- (4) remove plants from registered blocks which have been determined to be off-type, as determined by the Department, and submitted application; and
- (5) ensure that plant materials are stored, heeled-in, and/or calloused in media, beds or storage areas in such manner as to maintain their identification, and to prevent exposure to vectors and viruses.

#### Section 150.4. Inspection and testing procedures.

(a) The Department shall:

- (1) Generation 1 (G1) blocks. Visually inspect each plant at least twice during each growing season, and test each plant in a manner approved by the Department at least once each year to ascertain the presence of known viruses of concern, except that each grapevine shall be inspected, and tested at least twice each growing season.
- (2) Generation 2 (G2) blocks. Visually inspect each plant at least once during each growing season, and test 25% of plants in a manner approved by the Department at least once each year to ascertain the presence of known viruses of concern, except that 25% of grapevines shall be tested each Spring, and 25% of grapevines tested each Fall. Each plant shall be tested at least once every four years.

(3) For Generation 3 (G3) blocks. Visually inspect each plant at least once during each growing season, and test 25% of plants in a manner approved by the Department at least once each year to ascertain the presence of known viruses of concern, except that 25% of grapevines shall be tested each Spring, and 25% of grapevines tested each Fall. Each plant shall be tested at least once every four years.

(4) For certified blocks. Visually inspect each block, and consider whether blocks should be tested in a manner approved by the Department, and at the sole discretion of the Department.

(b) Testing may be performed by the New York State Agricultural Experiment Station, or another laboratory approved by the Department. The results of the approved laboratory shall be final.

(c) The Department retains the right to conduct additional inspection and testing procedures as it deems necessary to prevent or minimize the infection or reinfection of plant materials.

#### Section 150.5. Identification.

(a) Notice of Plantings. The registered holder shall notify the Department before the planting, replanting, grafting, budding, re-budding, or removal of plants from registered blocks before the commencement of such activities. The Department shall acknowledge this notification in writing prior to start of work. Such notice to the Department shall specify the following information based on applicable block type:

(1) Generation 1 (G1) block. Identify each plant growing or originating in a manner approved by the Department, and indicate the variety, the rootstock (if appropriate), the year tested, and the plant identification number. The registration holder shall also identify each plant by row number, and plant location number.



(2) Generation 2 (G2) block. Identify each plant growing or originating in a manner approved by the Department, and indicate the variety, the rootstock (if appropriate), the year tested, and plant identification numbers. The registration holder shall also identify each plant by row number, and plant location number.

(3) Generation 3 (G3) block. Identify each plant growing, or originating in a manner approved by the Department, and indicate the variety, the rootstock (if appropriate), the year tested, and plant identification numbers. The registration holder shall also identify each plant by row number, and plant location number.

(4) Certified block. Identify each plant growing or originating in a manner approved by the Department. Plants grown in a certified block are eligible to be sold as New York State certified, virus-tested plants.

(b) The Department, in its sole discretion, may, after having received the notification required in subdivision (a) of this Section, conduct inspections, and grant approval or denial before plant material is planted, replanted, grafted, budded, re-budded, or removed from a registered block. A registration holder shall not plant, replant, graft, bud, rebud, or remove plants from a registered block unless he or she has been informed that the Department has either determined no inspection is necessary, and therefore no further approval is required; or unless the Department has conducted any inspections it deems necessary, and has informed the registration holder of its approval.

(c) Authority to label as certified. No person may represent plant material in advertisement, marketing, tags, or any other means as being New York State certified virus-tested plants, unless such person holds a registration issued pursuant to this Part.

Section 150.6. Compliance with other regulations.

Compliance with the regulations in this Part shall not relieve failure to comply with any additional applicable international, federal, state, county, regional or local law or regulation.