

Nursery, Greenhouse, Landscape Series

Ornamental Horticulture Businesses: Licenses

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Introduction

It is challenging enough to start your own business without the additional frustration and burden of figuring out which licenses, permits and requirements you need. This fact sheet will highlight some of the common requirements related to starting an ornamental horticulture business.

Arkansas State Plant Board
#1 Natural Resources Drive
Little Rock, AR 72205
501-225-1598

The Plant Board is a large state agency composed of several departments including the Feed and Fertilizer Division, Bureau of Standards Division, Seed Division, Pesticide Division and Plant Industry Division. Typically, an ornamental horticulture business will have contact with the **Pesticide Division** and the **Plant Industry Division**.

Pesticide Applicators' Issues

The Arkansas State Plant Board is responsible for testing, licensing and enforcement issues related to pesticide applicators. Most commercial horticulture businesses will purchase or apply **restricted use pesticides** and, therefore, are required to have a current Pesticide Applicator's License and receive periodic pesticide safety training. There are three categories of pesticide applicators: **private**, **commercial** and **non-commercial**. Issues related to this topic are covered at the Cooperative Extension Service website (<https://www.uaex.uada.edu/farm-ranch/pest-management/education-licensing.aspx>).

In most cases, nursery or greenhouse growers are considered private applicators when applying

chemicals on their own property. Private applicators are required to receive pesticide training, but issuance of the license does not require a written test. Individuals who require a commercial license (those who are *hired* to apply pesticides) or a non-commercial license (e.g., Extension agents, chemical company representatives) receive training and are required to take written tests before the license is issued. The Cooperative Extension Service is *NOT* involved in testing, licensing or enforcement issues but is involved in issues related to training and education.

The State Plant Board is also involved in enforcing federal Worker Protection Standards (WPS). Information about WPS can be found on the Arkansas Agriculture Department website (<http://www.agriculture.arkansas.gov/worker-protection-standards>) or from the Pesticide Educational Resource Collaborative (PERC) website (<http://www.pesticideresources.org/>).

The owner of an ornamental horticulture business will definitely be required to contact the **Plant Industry Division** with regard to specific **license** and **shipping issues**.

License Issues

Within the area of ornamental horticulture, there are four license categories that may be required for your business. These license categories are Nurseryman, Nursery Dealer, Nursery Landscape Contractor and Vegetable Grower. While the final determination as to which license is appropriate may require you to contact the Plant Board directly, there are several simple rules of thumb that can be used to help clarify which, if any, license is required.

| YES, a license is required if your business is: | NO, a license is not required if your business is: |
|--|--|
| Growing woody nursery stock | Selling or growing cut flowers |
| Selling woody nursery stock | Selling or growing bedding plants and herbs |
| Landscape installation | Landscape maintenance |
| Growing vegetable plants in native soil (NO if grown in soilless media) | Selling plants obtained from other vegetable plant growers |

Typically, *no* license of any type is required from the Plant Industry Division if you are growing or selling annuals/bedding plants, if you are growing or selling tropical or foliage plants, if you are growing or selling cut flowers (no roots) or if you are growing or selling seasonal potted flowering crops such as poinsettia, flowering mums, ornamental vegetables like cabbage and kale and florist azaleas (forced to flower at non-traditional times). The Plant Board also makes the final determination based on the type of plant you grow or sell. For a Nurseryman or Nursery Dealer license, your primary business must be involved with growing or selling plants that typically overwinter successfully in Arkansas (i.e., cold-hardy plants).

All businesses holding a plant license are inspected annually. When conducting an inspection, the general health of the plants is checked, including the presence of insect pests and diseases. Additionally, sales receipts from shipping nurseries are checked to make sure that all plants received came from licensed and inspected nurseries and that all quarantines have been met.

Specific forms, fees and requirements are associated with each license category. A Confidential Information Form must accompany any license application per Arkansas General Assembly Act 1163. Let's review what the four license categories cover.

Nurseryman: This license is required if over 50 percent of your gross plant sales are involved with the actual production or growing of nursery stock (does not include vegetables, non cold-hardy plants and annuals). This license is approved following a site visit by a nursery inspector. Fees include the base fee plus a fee based on production acreage. Technically, you do not need this license until you actually sell your nursery product; however, many people find this license essential when purchasing wholesale plants from other sources. For a Nurseryman's license, request Form 501.

Nursery Dealer: The key is the word "dealer." Are you primarily a dealer/retailer or a producer/grower? If greater than 50 percent of your gross plant sales are from selling woody or hardy perennial plants that are purchased for resale, you are classified as a dealer. Each physical selling location is required to have a Nursery Dealer license. For example, Jim's Nursery Company has two locations. Location A is primarily a growing site but does have minimal walk-in retail sales. Location B is located 30 miles away, with the primary function being retail sales. Jim's Nursery

Company would be required to have two licenses from the Plant Board. Location A would be required to have a Nurseryman license and Location B a Nursery Dealer license. Grocery stores and mass merchandisers that sell any amount of woody nursery stock are required to have a Nursery Dealer's license for each physical location. The Nursery Dealer license requires a basic fee plus a fee based on acreage. An inspection by a nursery inspector is not required before issuance of the license. For a Nursery Dealer's license, request Form 505.

Vegetable Grower: This license applies to those businesses whose primary business is the production of vegetable or strawberry plants grown in media containing native soil, not the fruits. Vegetable plants grown in soilless substrates are exempt. Plants such as ornamental kale and cabbage are not considered in this category. Brokers of vegetable plants are also *NOT* required to have this license. A licensed vegetable grower is required to conspicuously tag each flat or tray to show the grower's Arkansas permit number, the name and address of the grower, number of plants and the variety. Fees are assessed based on a specific rate per flat or tray. For a Vegetable Grower's license, request Form 307.

Landscape Contractors: This license is required when landscape installation is your primary plant business function. A landscape contractor is also allowed to have a minimal "heel yard" or plant holding area without the need for a Nurseryman's license. The total license fee includes a base fee and may include an additional fee depending on the size of a holding area. For a Landscape Contractor's license, request Form 505-A.

Businesses (including Landscape Contractors) performing commercial construction jobs totaling \$20,000 or more, labor and materials, need to obtain a license from the Contractors Licensing Board. Contact them at 4100 Richards Road, North Little Rock, AR 72117, 501-372-4661 (<http://www.aclb.arkansas.gov/>).

Stop Sale Authority: The Plant Board also has the authority to impose a "stop sale" order (Form 160) if they feel the plant material being sold or grown is of poor quality. Plants identified under this order can be released back into the trade if the issue is resolved. This requires an inspection and Form 161.

Plant Shipment Issues

In general, when involved with the transportation of plant material within Arkansas or across state borders, you need to be aware of issues related to specific quarantines, federal and state noxious weed lists and phytosanitary requirements. The Arkansas State Plant Board is the agency that is involved in monitoring and enforcing many of these important rules. To facilitate certain shipping requirements, plant businesses may enter into a compliance agreement with the Plant Board. A compliance agreement may eliminate the need for individual inspections of specific shipments.

Shipment or transport of plants *within* Arkansas: The primary issue to be concerned with when transporting container or balled-and-burlapped

plants is the Federal Imported Fire Ant Quarantine (<https://www.agriculture.arkansas.gov/imported-fire-ants1>). Many counties in Arkansas are included in the quarantine area. If you have a horticulture business in one of the affected counties and you plan to transport plant material out of the quarantine area, you are required to have your plant material inspected to certify that it is not affected or you must treat your plants. The inspection is conducted by a nursery inspector from the Plant Industry Division of the Plant Board. Plant material shipped within the quarantine area is not regulated. A complete description of this problem and requirements for transport are described in University of Arkansas Cooperative Extension Service fact sheet *FSA7053, The Federal Imported Fire Ant Quarantine* (<https://www.uaex.uada.edu/publications/PDF/FSA-7053.pdf>).

Emerald Ash Borer is an invasive beetle that kills ash trees. The entire state of Arkansas is under a quarantine for EAB, and this affects the nursery/landscape industry. No species of ash (*Fraxinus*) nursery stock of any size can leave a quarantined area to an area outside of the quarantine. Ash nursery stock can be transported from a quarantined state to another quarantined state, depending on the receiving state. It is best to call the Plant Board in these cases and they can check if the other state has any additional requirements. Other conditions of the EAB quarantine apply to ash cut logs with bark, ash lumber that has not been kiln dried and any hardwood firewood unless it has been kiln dried and certified.

Shipment or transport of plants or plant products (including bulbs, tubers, seeds) into Arkansas: A great deal of plant material sold in Arkansas is transported in from states such as Tennessee, Alabama, Louisiana and Oregon. The Plant Board requires that all incoming shipments should be accompanied by a Plant Inspection Tag from the originating state which indicates that the shipment meets all state and federal shipping requirements. Plants listed on the state (<http://www.agriculture.arkansas.gov/noxious-weeds>) or federal (https://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/downloads/weedlist.pdf) noxious weed lists may *not* be transported into the state. In particular, Arkansas does not allow shipments into the state for any species of *Lythrum* (Loosestrife), giant salvinia (*Salvinia molesta*), Cogongrass (*Imperata cylindrica*) and Japanese blood grass (*I. cylindrica* var. *rubra*; including 'Red Baron') and water hyacinth (*Eichornia crassipes*). Shipment of plants into Arkansas from states affected by Japanese beetle and gypsy moth will require that the originating nursery has properly inspected and treated plant material before shipment.

Shipment or transport of plants or plant products out of Arkansas: Prior to shipping plant material out of Arkansas, you should contact the Plant Board to determine if you need to have your plant material inspected. Based on the telephone conversation, a determination can be made whether a phytosanitary certificate or a plant inspection tag is required. The nursery inspector can advise you as to specific requirements for the state or country you intend to ship into.

General Business, Employee, Tax, License Issues

In addition to these plant-specific license issues, your business will likely need to obtain specific licenses or permits from local and state governments. The following are some general topics that may apply to your business. These should only serve as guidelines.

You may also wish to gain assistance from the Arkansas Small Business and Technology Development Center (ASBTDC) in Little Rock at 1-501-683-7700 or on the web (<http://asbtdc.org/>). ASBTDC also has regional offices in Arkadelphia, Fayetteville, Jonesboro, Magnolia, Monticello and Russellville.

Local/City Requirements

Privilege or Business License. A business license must be obtained before you open for business. This license may be obtained from your *city clerk's office* or the *county clerk's office* if the business is located outside the city limits. In general, you should check on the zoning status of your business *before* obtaining the licenses since it is contingent upon zoning approval. Check the telephone directory for the *zoning/planning commission* in your city.

County Requirements

Doing Business As (DBA) Certificate. A DBA certificate, which is obtained from the *county clerk's office*, is required for any general partnership or sole proprietorship doing business in the county. The records are open to the public, so you should check before you pick a business name to make sure the name is not currently being used. This is also the office that you should contact when you are going out of business or changing the name of the business. The certificate must be notarized.

Business Property Assessment. This county assessor's office is responsible for assessing your business property. When purchasing an existing business, contact this office to make sure there are no back taxes due. If you are purchasing an existing business, you must assess at the time of the purchase. You must also itemize leased equipment, but the owner of the equipment will pay the tax.

The deadline for assessing is May 31. Taxes may be paid from the first working day of March through October 10 without penalty.

State Requirements

Department of Finance and Administration
1509 W. 7th St.
Little Rock, AR 72201
501-682-7104
<https://portal.arkansas.gov/agency/departments-of-finance-administration/>

Prior to applying for a sales and use tax permit, you must have obtained your privilege or business license mentioned above. Application for this permit also involves a small non-refundable fee. New businesses must pay their taxes monthly for the first

year of operation, after which the timing of payments will be reviewed. All retail businesses and some service businesses should have a sales and use tax permit. Use tax must be paid on any tangible personal property purchased out of state.

Prior to purchasing an established business, check the status of the tax credit liability. The current owner should provide you with a current statement from the Sales and Use Tax department of the Arkansas Department of Finance and Administration.

The Sales and Use Tax department has a website (https://atap.arkansas.gov/?_ga=2.202658392.839527285.1525375631-291419764.1525375631) with a good section on frequently asked questions.

Personnel Issues

Withholding Taxes

Federal: You need to obtain an Employer Identification Number (EIN) from the United States Internal Revenue Service ([https://irs-tax.gov.com/?gclid=fghfhv&utm_term=%20irs%20%20ein&kw=%20irs%20%20ein&utm_keyword=%20irs%20%20ein&utm_source=Google-Adwords-2017&utm_campaign=Google-Adwords-2018&utm_custom\[website\]=irs-tax-id.org-2](https://irs-tax.gov.com/?gclid=fghfhv&utm_term=%20irs%20%20ein&kw=%20irs%20%20ein&utm_keyword=%20irs%20%20ein&utm_source=Google-Adwords-2017&utm_campaign=Google-Adwords-2018&utm_custom[website]=irs-tax-id.org-2)) at least 4 to 6 weeks prior to hiring.

Arkansas: After obtaining an EIN, you should register with the state for a state withholding report.

Withholding Tax Branch
Department of Finance and Administration
Ledbetter Building
P.O. Box 9941
Little Rock, AR 72203
501-682-2212
<http://www.dfa.arkansas.gov/offices/incomeTax/withholding/Pages/default.aspx>

State Unemployment Insurance

After obtaining your EIN, call the Arkansas Department of Workforce Services (<https://www.workforce.arkansas.gov/Tax21/Home.aspx?ReturnUrl=%2fTax21%2f>) to register it with them. This office will set up an account for you and establish an insurance rate. The insurance will be paid quarterly.

Arkansas Department of Workforce Services
#2 Capitol Mall
Little Rock, AR 72201
501-682-2121
<https://www.dws.arkansas.gov/>

Worker's Compensation

Worker's compensation insurance is required by law if your business has three or more employees or if you are a subcontractor.

You may obtain this insurance through your own insurance agent.

Arkansas Workers' Compensation Commission
324 Spring St.
Little Rock, AR 72203
501-682-3930
<http://www.awcc.state.ar.us/>

Labor Laws

You may contact these offices with questions concerning minimum wage, overtime and child labor laws.

Arkansas: State labor laws apply to businesses employing four or more people and with gross sales under \$500,000.

Arkansas Department of Labor
10421 W. Markham
Little Rock, AR 72205
501-682-4500
<http://www.labor.arkansas.gov/>

Federal:

U.S. Department of Labor -
Employment Standards
Wage & Hour Division
Danville Bldg. II
10810 Executive Cntr. Dr.
Suite 220
Little Rock, AR 72211
501-221-4600

Migrant Labor

Migrant labor is a critical issue in agriculture. Employers interested in hiring alien workers (non U.S. citizens) must first seek approval from the Arkansas Department of Labor (alien certification: 501-683-2372). The employer must certify that they have made job offers to qualified U.S. citizens before they can hire aliens.

Information related to hiring migrant workers can be obtained from the Bureau of Citizenship and Immigration Services (BCIS), formerly INS, in Fort Smith and Memphis. These offices and the BCIS website (<https://www.uscis.gov/>) can help an employer with compliance issues. There is also a toll-free number (1-800-375-5283) with a service called "ask immigration" to handle such questions.

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