

AGRICULTURE

DIVISION OF PLANT INDUSTRY

Adopted Emergency New Rules and Concurrent Proposed Amendments: N.J.A.C.

2:20-10.4

Spotted Lanternfly Quarantine

Emergency New Rules Adopted and Concurrent Proposed Amendment Authorized:
August 25, 2021, by the State Board of Agriculture and Douglas H. Fisher, Secretary,
Department of Agriculture.

Filed: August 27, 2021

Gubernatorial Approval: August 27, 2021

Authority: N.J.S.A. 4:1-21.2, 4:1-21.5, 4:1-21.6 and 4:7-1 et seq.

Calendar Reference: See notice introduction below for explanation of exception to
calendar requirement.

Concurrent Proposal Number: PRN (to be determined)

Emergency Rules Effective Date: August 27, 2021

Emergency Rules Expiration Date: October 26, 2021

Submit written comments by _____, 2021 to:

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This amendment is adopted on an emergency basis and will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-6.5(b)). Concurrently, the provisions of this emergency adoption are proposed for readoption pursuant to the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted new rules will be effective upon acceptance for filing by the Office of Administrative Law (N.J.A.C. 1:30-6.5(d)), if filed on, or prior to, the expiration date of the emergency adopted new rules.

As this rulemaking involves an imminent peril subject to provisions of N.J.S.A. 52:14B-4(c), it is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)3.

The agency emergency adoption and concurrent proposal follows:

Summary

The New Jersey Department of Agriculture (“Department”) proposes amendments to N.J.A.C. 2:20-10, Spotted Lanternfly to respond to a situation of imminent peril and serious harm to the agricultural industries, environmental resources and residential areas of New Jersey, and to minimize further economic damage to the lumber, viticulture, nursery and tourism industries in the Northeastern United States by the Spotted Lanternfly, *Lycorma delicatula*. This insect was initially discovered in Berks County, Pennsylvania in 2014. Since then, it has been found in 14 counties in that Commonwealth. In 2018, emergency rules were adopted to quarantine Warren, Mercer, and Hunterdon counties. In February and March 2019, the Department confirmed the existence of the Spotted

Lanternfly in Burlington and Salem counties, and now proposes adding additional areas to the quarantine zone.

The New Jersey Department of Agriculture has determined this insect to be a dangerous insect that is destructive to the agriculture, horticulture and forest industries of New Jersey, and has declared a quarantine of this injurious insect pursuant to N.J.S.A. 4:1-21.5. The Spotted Lanternfly is indigenous to China, India, and Vietnam. It undergoes three stages of development: egg stage, nymphs, and adult. During both the nymph and adult stages, the Spotted Lanternfly sucks plant sap and sugars from a wide variety of tree species, native vines, wild grapes, small fruits, vegetables, herbs and especially Tree of Heaven, *Ailanthus altissima*. The insects are gregarious in nature, producing large volumes of “honeydew” excretions that allow the development of sooty mold, which covers plant tissues, reducing the photosynthetic ability of infested plants, resulting in the death of the plant.) These “honeydew” excretions also attract hornets, wasps and other stinging insects which aggregate to the area causing potential human health issues and nuisance.

The unabated spread of Spotted Lanternfly would seriously threaten agricultural industries and the environment of this State and related industries throughout the United States. The most effective method to eradicate this insect is to spot treat all life stages of the Spotted Lanternfly with general use pesticides, bark spray treatment, use of tree banding techniques on Tree of Heaven in the environment, and destroying egg masses which overwinter and hatch the following spring.

The purpose of the quarantine and regulations is to minimize the environmental and economic damage to the nursery, horticultural, fruit, vegetable, orchard and viticulture

industries that will be severely affected by infestations along with reducing the nuisance of honeydew excretions affecting the public wellbeing as well as the spread of this invasive to other states.

Proposed amendments to subchapter 2:20-10.4 would further enlarge the quarantine area by adding Morris, Monmouth, Middlesex, Essex and Union counties. In the proposed Quarantine expansion, populations of the Spotted Lanternfly have been identified in the environment within significant portions of the municipalities of the abovementioned counties. Due to these positive identifications by the United States Department of Agriculture (“USDA”) and state survey personnel, these counties are included in the quarantine area. The decision to quarantine by county was made based upon Spotted Lanternfly reporting protocols developed by the USDA Animal and Plant Inspection Services Plant Protection and Quarantine (“USDA APHIS PPQ”) as well as Pennsylvania’s approach, which utilizes counties as boundaries, as well as scientific data regarding the speed and ease in which the Spotted Lanternfly travels. It may be necessary to add additional counties in the future if the Spotted Lanternfly is detected in other counties.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments will have a positive social impact as they will slow and control the spread of the invasive plant pest, the Spotted Lanternfly. They will allow for the continued supply of quality agricultural crops to residents in New Jersey, and outside of the State, and will protect the environment from damage caused by this insect. The

Spotted Lanternfly is a good hitchhiker, especially in the nymph and adult stages, and it is easy for them to be transported on clothing or vehicles, to new, uninfested areas.

Not only does the Spotted Lanternfly pose a threat to agricultural industries in New Jersey, it also may be a nuisance to the general population. The “honeydew” excretions are attractive to hornets, wasps and other stinging insects which aggregate to the area causing potential human health issues and nuisance.

Economic Impact

Infestations of this foreign insect would negatively impact the overall \$1.1 billion agricultural industries of the state. The Spotted Lanternfly has the potential to degrade and destroy crops, which could cause considerable economic impact to the trade and marketing of New Jersey’s agricultural crops as well as to the viability of the New Jersey farming community. While exact numbers on how much the Spotted Lanternfly has negatively affected Pennsylvania crops and/or nursery stock are still being compiled and not available, it is reported that there has been a significant impact on the agricultural and logging industries within the Commonwealth.

The amendments would place restrictions on property owners, cities and municipalities, nurserymen, farmers and other industries conducting business within those areas of New Jersey subject to the quarantine. Property owners in the quarantine areas whose properties are found to be infested would be required to pay for the cost of removal of Tree of Heaven and as such, may face economic impacts. Persons and entities which do business inside and outside of the quarantine areas would be required to take training to become knowledgeable about how to ensure they are not moving life stages of this insect to uninfested areas. As Spotted Lanternfly egg masses are not easy to identify and due to

the ability of the insect to “hitch hike” easily, members of the general public moving regulated articles from the quarantine area who carry a completed checklist will show that items have been inspected. In the past, with the gypsy moth, there were instances where people inadvertently moved egg masses to other areas of the country. The checklist will serve to inform members of the public about Spotted Lanternfly.

Nurseries, garden centers, farmers and general businesses within the quarantine area may not ship regulated articles outside the quarantine area without permits, compliance agreements or phytosanitary inspections which could cause delays in conducting routine business.

Prevention of further spread, and eradication, of the Spotted Lanternfly will protect forested residential and agricultural areas in the State of New Jersey from the damaging effects of this insect pest.

Federal Standards Statement

A Federal standards analysis is not required, since there are no applicable Federal standards that govern the Spotted Lanternfly.

Jobs Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on jobs within the State. Accordingly, no further analysis is required.

Agriculture Industry Impact

The proposed amendments will affect the routine business activities of agricultural and transportation industries conducting business within the counties under quarantine. Nurseries or garden centers within the quarantine area may not ship regulated articles outside the quarantine area without the possession of a permit issued by the New Jersey

Department of Agriculture or comply with the Department's regulations.

Regulatory Flexibility Analysis

The proposed amendments may impose compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No professional services are likely to be needed to comply with these rules, other than those provided by the Department or the United States Department of Agriculture ("USDA"), Animal and Plant Health Inspection Services ("APHIS"). Agricultural producers and transportation industries within the quarantine area may not move or ship regulated articles outside the quarantine area without a permit issued by Departments of Agriculture in other Spotted lanternfly infested states. Disposal of the Tree of Heaven may be done by professional tree service, by landowners themselves.

There will be a greater effect on arborists or tree removal businesses working within the quarantine area, which may only haul wood debris to State approved disposal facilities. These businesses will have to obtain either a permit issued by the New Jersey Department of Agriculture and comply with the Department's regulations.

However, should control measures need to be implemented, then the burden of undertaking Spotted Lanternfly remedial measures on crops may be imposed upon the individual agricultural businesses affected. This burden, of course, is in counterpoise to the overwhelming risks that the unabated spread of the Spotted Lanternfly would have upon the rest of New Jersey and North American agriculture.

Initial and annual costs for businesses are negligible. To comply, businesses must 1) assign one designated employee to complete the training course; 2) have this employee maintain records and train coworkers about quarantine procedures; 3) print copies of the

Spotted Lanternfly Checklist to be used by employees moving regulated articles in the quarantine area; and 4) keep records of all training, inspection, and related maintenance activities for two years. Some businesses may need to purchase additional tarps and covers for items that they transport in the back of open-bed pickup trucks. Paper costs will be minimal and variable depending on the number of employees using vehicles and transporting regulated articles. Recordkeeping will require minimal storage space. The Department considered how burdensome the training requirement might become if every employee were required to complete the course, so only one employee is required to take the official training course, and then will train others. The attendant costs of compliance will be less for small businesses due to the fact that they will generate less paper records and have fewer vehicles to inspect. Small businesses cannot be exempted from these rules or the Spotted Lanternfly will continue to spread.

The Department believes that the costs of compliance with the emergency adopted and concurrent proposed amendments depend on which life stage Spotted Lanternfly is detected, and the speed of which host tree removal and treatment is initiated in the infested areas. Delays in property treatment resulting in the spread of the insect to other trees and areas would affect the operation of the business and would be expected to have a disproportionately harsher impact on a small business with small resources.

The Department has provided no lesser or differing requirements based upon business size. The Department has determined that the proposed amendments represent the minimum standards necessary to protect against the potential endangerment to the agricultural and natural sources of the State that might result from the spread of Spotted Lanternfly.

Housing Affordability Impact Analysis

The proposed amendments will have no impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed amendment, repeal, and new rules would evoke a change in the average costs associated with housing because the rules relate to quarantines against the introduction and control of the Spotted Lanternfly in order to protect New Jersey's agricultural industry from highly injurious invasive pest threats.

Smart Growth Development Impact Analysis

The proposed amendments will have an insignificant impact on smart growth. There is an extreme unlikelihood that the emergency regulation and concurrent proposal would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because emergency regulation and concurrent proposal relate to quarantines against the Spotted Lanternfly, a plant pests recently discovered in the State, therefore, they do not impact smart growth.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the state. Accordingly, no further analysis is required.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 10. SPOTTED LANTERNFLY

2:20-10.4 Quarantine area

(a) By order of the State Board of Agriculture and pursuant to N.J.S.A. 4:1-21.5, in order to control the spread of the dangerously injurious insect, the Spotted Lanternfly, a menace to the State's agricultural industries, environment and residential areas of New Jersey, the following New Jersey counties are hereby quarantined in their entirety:

1. Warren;
2. Hunterdon;
3. Mercer;
4. Burlington;
5. Camden;
6. Gloucester;
7. Salem; [and]
8. Somerset[.];
- 9. Morris;**
- 10. Monmouth;**
- 11. Middlesex;**
- 12. Essex; and**
- 13. Union.**

(b) (no change)