

DEPARTMENT OF AGRICULTURE

Plant Industries Section

Statutory Authority: Title 3 Delaware Code, Chapter 11 Sections 1102, 1103 and 1106

Title 29 Del. C.

Administrative Code: Title 3: 800 Plant Industries: 804 Rules and Regulations for Spotted Lanternfly

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In Re: EMERGENCY RULE

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Final Order

FOR SPOTTED LANTERNFLY

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WHEREAS, the Department of Agriculture (the “Department”) has been charged by the Delaware legislature pursuant to 3 Del. C. § 1102(a) with the power to “adopt reasonable regulations to implement and carry out the purposes of this chapter to eradicate, repress and prevent the spread of plant pests (i) within the State, (ii) from within the State to points outside the State, and (iii) from outside the State to points within the State.”; and

WHEREAS, the Department published proposed regulations (the “Proposed Regulations”) in the February 1, 2019 edition of the Register of Regulations to establish for the plant pest, spotted lanternfly, appropriate quarantine restrictions, permitting process, and discovery and suppression measures within the State of Delaware that provided for a public comment period through March 4, 2019; and

WHEREAS, the Secretary finds that adoption of an emergency regulation to eradicate, repress and prevent the spread of the plant pest Spotted Lanternfly (i) within the State, (ii) from within the State to points outside the State, and (iii) from outside the State to points within the State must occur on an emergency basis in order to properly protect the agricultural interests of the State from damage resulting from the transport of spotted lanternfly eggs until such time as the Proposed Regulations become effective; and

WHEREAS, the Secretary will accept, consider and respond to petitions by any interested person for the reconsideration or revision of this regulation by addressing the same to the attention of Plant Industries Section, Department of Agriculture, 2320 South DuPont Highway, Dover, Delaware 19901; and

WHEREAS, in accordance with the provisions of 29 Del. C. § 10119(3), this Order shall be effective for 120 days from the date of execution and may be renewed once for a period not exceeding 60 days; and

WHEREAS, a copy of this Order will be submitted to the Registrar for publication in the next issue of the Delaware Register of Regulations.

NOW, THEREFORE, IT IS ORDERED this 28th day of February, 2019 that the following “Rules and Regulations for Spotted Lanternfly” shall take effect immediately.

804 Rules and Regulations for Spotted Lanternfly

1.0 Authority

These regulations are promulgated pursuant to the authority of Sections 1102, 1103 and 1106 of Title 3 of the Delaware Code.

2.0 Purpose

- 2.1 Spotted Lanternfly, *Lycorma delicatula*, is a new pest to the United States and has been detected in Delaware. This is a dangerous insect to forests, ornamental trees, orchards, and grapes and is not native to Delaware or the United States. It is not yet widely prevalent or distributed within or throughout Delaware, but it has been found in numerous locations since its first appearance in Delaware in 2017.
- 2.2 The Spotted Lanternfly has been determined by the Department to be dangerous and destructive to the agriculture, horticulture, and forests of the State of Delaware and is hereby declared a “dangerously injurious plant pest.” Therefore, the importation of any living life stage of the Spotted Lanternfly and Regulated Articles that may carry or spread the pest is prohibited except as outlined in this regulation.
- 2.3 These regulations govern the establishment of quarantine restrictions, permitting process, and discovery and suppression of the plant pest, Spotted Lanternfly, within the State of Delaware. The Plant Industries Administrator or designee shall have the authority to administer these regulations and shall be solely responsible for making the determinations required herein. These regulations have been developed to eradicate, repress, and prevent the spread of the plant pest, Spotted Lanternfly, (i) within the State, (ii) from within the State to points outside the State, and (iii) from outside the State to points within the State.

3.0 Definitions

- 3.1 The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

“Control (of a pest)” means to curb or hold in check and includes, but is not limited to, abatement, containment, eradication, extermination or suppression.

“Dangerously injurious plant pest” means a plant pest that constitutes a significant threat to the agricultural, forest or horticultural interests of this State, or the State's general environmental quality.

“Department” means the State of Delaware Department of Agriculture and includes, but is not limited to, its officers, inspectors, employees, agents, or representatives.

“Designated employee” means the owner, manager, supervisor, or other person with authority to bind the entity and train other employees.

“Designee” means the person designated by the Plant Industries Administrator to act on their behalf.

“Eradicate” means the elimination or removal of a pest from a defined geographic area.

“Living Life Stage” means the entire life stage of the Spotted Lanternfly, including, but not limited to, adults, nymphs, or viable egg mass of Spotted Lanternfly.

“Person” means any individual, family, group, firm, association, business, company, corporation, entity or organization.

“Pest” means any biotic agent that is known to cause damage or harm to agriculture or the environment.

“Plant” means all plant parts, including whole plants, roots, scions, seeds and/or cuttings.

“Plant Pest” means, but is not limited to, any pest of plants, agricultural commodities, crop seed, farm products, horticultural products, nursery stock or noncultivated plants. This includes, but is not limited to, insects, snails, nematodes, fungi, viruses, bacterium, microorganisms, mycoplasma-like organisms, weeds, plants or parasitic higher plants.

“Regulated Articles” means the plant pest Spotted Lanternfly, along with any material or object that may carry or spread the Spotted Lanternfly as provided in subsection (5.1) of these regulations.

“Spotted Lanternfly” means the invasive insect having scientific name *Lycorma delicatula*.

4.0 Quarantine

4.1 A Spotted Lanternfly quarantine is established 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 Delaware, the following Delaware counties and/or zip code areas are hereby quarantined in their entirety:

4.1.1 Following zip code areas in New Castle County: 19702, 19703, 19707, 19711, 19801, 19802, 19803, 19805, 19807, 19809, and 19810.

4.2 The Plant Industries Administrator or designee shall have the authority to designate any nonquarantined area in Delaware as a quarantined area, if the Administrator has reason to believe that the Spotted Lanternfly is present based on positive confirmation of any living life stage of this insect by the Department, or by agents of the USDA APHIS.

4.3 The purpose of this quarantine is as follows:

4.3.1 To establish provisions to control and eradicate the plant pest Spotted Lanternfly.

4.3.2 To establish requirements and parameters under which individuals and persons may move Regulated Articles within and from the areas covered by this quarantine, and any future added areas.

4.3.3 To establish treatment provisions for all properties within the area subject to this quarantine, and any future added areas.

5.0 Regulated Articles and Limitations Imposed.

5.1 The plant pest Spotted Lanternfly and its eggs and nymphs can exist on and be spread through conveyance of any object to which it may attach are considered Regulated Articles under these Regulations. Regulated Articles may not be moved out of or within the quarantined area except in accordance with Section 6.0 of these regulations. The following list provides examples of Regulated Articles, but is not an all-inclusive list. Any object capable of carrying the plant pest, Spotted Lanternfly, shall be considered a Regulated Article under these Regulations:

5.1.1 Any living life stage of the Spotted Lanternfly.

5.1.2 Plants and plant parts: This shall include, but is not limited to, all live or dead trees, nursery stock, budwood, green lumber, firewood, logs, perennial plants, garden plants and produce, stumps, roots, branches, mulch, composted and uncomposted chips, bark, and yard waste.

5.1.3 Outdoor industrial and construction materials and equipment, concrete barriers or structures, stone, quarry material, ornamental stone or concrete, construction, landscaping and remodeling waste.

5.1.4 Packing materials, such as wood crates or boxes.

5.1.5 Outdoor household articles including recreational vehicles, lawn tractors and mowers, mower decks, grills, grill and furniture covers, tarps, mobile homes, tile, stone, deck boards, mobile fire pits, any equipment, trucks or vehicles not stored indoors.

- 5.1.6 Conveyances of any type, whether utilized for movement of the materials previously listed or personal use, and any trailers, wagons or other equipment attached thereto.
- 5.1.7 Any other article, materials or means of conveyance when it is determined by an inspector to present a risk of spread of any life stage of Spotted Lanternfly.

6.0 Requirements for Movement of Regulated Articles Within or From a Quarantined Area

- 6.1 Individuals not conducting business, referred to as general members of the public, are not permitted to move Regulated Articles within or from the quarantine area without a checklist issued by the Department. Regulated articles include any vehicle or conveyance. The valid signed checklist shall accompany the Regulated Articles. The checklist is available from the Department's website and is to be completed by the individual seeking to move Regulated Articles.
- 6.2 A permit is required for any Person conducting business requiring the movement of any Regulated Article within or from the quarantine area.
 - 6.2.1 The movement of Regulated Articles without a Permit is prohibited. A person conducting business may not move any Regulated Article within or from the quarantine area without a Permit.
 - 6.2.2 Permit Process and Requirements. A Person required to obtain a permit for movement of Regulated Articles within or from the quarantine area shall comply with the following:
 - 6.2.2.1 Designated employees shall take training provided by the Department, University of Delaware Cooperative Extension, reciprocating state programs, or others, who have completed a Train the Trainer course approved by the Department. Designated employees shall have passed an examination, administered by an employee or agent of the Department, demonstrating they have an understanding and knowledge of the pest and of the procedures necessary to prevent the spread of the pest.
 - 6.2.2.2 Upon successful completion of the training and passing the required test, the designated employee shall be responsible for training other employees of that entity and documenting such training. Multiple employees in a business may take the training and examination if the business deems that necessary to build sufficient training capacity within their organization.
 - 6.2.2.3 In conjunction with taking the examination, the designated employee shall record, preserve, maintain and provide to the Department as needed, at a minimum, the following information:
 - 6.2.2.3.1 The name, telephone number, and e-mail address of the designated employee taking the required test.
 - 6.2.2.3.2 The legal name, address, business telephone number, and e-mail address of the business location or locations operating within the quarantine.
 - 6.2.2.3.3 The number of vehicles and conveyances utilized.
 - 6.2.2.3.4 An attestation that the permit holder shall comply with all requirements of this Regulation.
 - 6.2.2.4 Any employee responsible for driving any vehicle or conveyance, or handling, shipping, packaging or loading any Regulated Article shall be trained by a designated employee who has taken the training, and passed the exam.
 - 6.2.2.5 All Regulated Articles, including conveyances and vehicles, shall be inspected and all egg masses and other life stages of the Spotted Lanternfly shall be removed and destroyed prior to movement within or out of the quarantine area. A record of such inspection shall be kept and recorded.

- 6.2.2.6 Regulated articles, other than the vehicles and conveyances themselves, shall be packaged and safeguarded sufficiently, such as within a closed container, shrink wrap, tight tarp or similar covering, to maintain isolation from the environment during storage or transportation.
- 6.2.2.7 Any stage of living life cycle of the insect, Spotted Lanternfly, found during any inspection shall remain within the quarantine area, be placed in a separate area away from other Regulated Articles, and shall be processed, treated, burned, or buried, in accordance with all federal, state or local laws. Final disposal of Regulated Articles shall be in a manner that does not leave material that may be infected or allow movement of the Spotted Lanternfly.
- 6.2.2.8 The Department may request in writing, additional information from the permit holder, for the purpose of evaluating the potential risk to the State.

7.0 Issuance of Permit

- 7.1 Until the Department develops a permitting issuing process, submission to the Department of a valid permit issued by the Pennsylvania Department of Agriculture, or any other State issuing such permit for the Spotted Lanternfly, will be accepted in satisfaction of the elements required in subsection (6.2) above.
- 7.2 Upon receipt of all required information as outlined in subsection (6.2.2.3) above, and the successful completion of the training and testing requirements of this quarantine, the Department will:
 - 7.2.1 Issue a permit to the person that has successfully completed the testing and training, with sufficient copies to display in each business location and vehicle or conveyance.
 - 7.2.2 Authorize any designated employee compliant with subsection (6.2.2.1), and issued a permit in accordance with the provisions of this quarantine, to train other employees of the business or entity.
- 7.3 Maintenance of Permit
 - 7.3.1 Permits shall be valid for one year from the date of issuance, with extensions permissible upon notice by the Department. A permit shall be required until such time as the quarantine is rescinded by the Department.
 - 7.3.2 A permit holder shall, prior to or immediately upon a change of information, provide the Department with notice of and describe any change to permit information previously submitted.
- 7.4 Display of Permit and Certificate
 - 7.4.1 The permit issued to the person, business or other entity shall be displayed in a visible and conspicuous place at each business, entity, or individual location to which it was issued. A permit issued by the Department shall be placed in each vehicle or conveyance when being operated.
 - 7.4.2 Subcontractors and Agents
 - 7.4.2.1 A person required to have a permit shall assure any subcontractor or agent of that person has also obtained the proper permit and training as applicable, prior to subcontracting with that person or allowing that person to act as a subcontractor or an agent, for activity within the quarantine area.

8.0 Other Movement Provisions

- 8.1 A Regulated Article, including any vehicle or conveyance, may be shipped through the quarantine area if the Regulated Article and the vehicle and conveyance originates outside the quarantine area and all the following criteria are met:

- 8.1.1 The points of origin and destination are outside of the quarantine area established by the Department, and are indicated on a waybill accompanying the Regulated Article.
- 8.1.2 No point of origin is within an area of the State where the presence of the Spotted Lanternfly has been confirmed by a federal, state, or other regulatory agency.
- 8.1.3 If moving during the period of April through December, the Regulated Article is moved into the quarantine area in an enclosed vehicle or conveyance or is completely covered, such as by a tarp or full shrink wrapping, to prevent exposure to the Spotted Lanternfly. The covering must be kept on the Regulated Article until leaving the quarantine area and thereafter be inspected, decontaminated, or destroyed.
- 8.1.4 The Regulated Article, including the vehicle and conveyance, is moved directly through the quarantine area without stopping (except for refueling, traffic control devices, or emergency conditions) and has been stored, packed, or handled only at locations outside the quarantine area.
- 8.2 If any other area inside or outside of this State is determined by a federal, state or other regulatory agency to have the Spotted Lanternfly present, movement from that area into the State shall require a permit issued either under the provisions of these Regulations, Department approved permitting process or other program carried out by the State of origin.

9.0 Discovery and Suppression of Spotted Lanternfly

- 9.1 In order to prevent the introduction of or to control Spotted Lanternfly, the Department shall seek out this dangerously injurious plant pest within the State, issue orders for control measures it deems necessary, and apply regulatory provisions of Title 3, Chapter 11, §1103 of the Delaware Code.

10.0 Recordkeeping

- 10.1 Documentation of required inspections and compliance measures taken when shipping Regulated Articles, including vehicles and conveyances within or from the quarantine area, shall be kept by each individual, employee or person conducting activity within the quarantine area. These inspection records shall include recording of any living life stage finds and method utilized for destruction of the Spotted Lanternfly.
- 10.2 Documentation shall be kept listing each individual trained as a designated employee as set forth in subsection (6.2.2).
- 10.3 Incoming and outgoing shipment records are to detail the kind and quantity of Regulated Article shipped, shipper name, date of shipment, source or destination information, and corresponding inspection treatment and mitigation records.
- 10.4 Inspection, treatment and mitigation records, including dates and outcomes, shall be kept in accordance with this section.
- 10.5 Records are to be maintained for a minimum of two (2) years with copies provided to the Department upon request.

11.0 Violations

- 11.1 In accordance with the provision of 3 Del. C. §1108, and 3 Del. C. §1110, it shall be unlawful to violate or fail to comply with any provisions of these regulations and the person charged with a violation of these regulations shall be assessed a civil penalty, in accordance with 3 Del. C. §1110.
- 11.2 Revocation of a Permit: Any permit may be canceled orally or in writing by the Department whenever the Department determines that the holder of the permit has not complied with a provision of these regulations or permit requirements in Sections 6.0 and 7.0. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances allow.

SO ORDERED this 28th day of February, 2019.

SECRETARY OF AGRICULTURE

Michael T. Scuse

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