

RULE 5.10 Practice of Law

An administrative law judge shall not practice law, with or without compensation.

RULE 5.11 Appointments to Governmental Positions

An administrative law judge shall not accept appointment to a governmental committee, commission, or other position, except with prior approval of the Director of the Office of Administrative Law.

CANON 6**AN ADMINISTRATIVE LAW JUDGE SHALL NOT RECEIVE COMPENSATION FOR QUASI-JUDICIAL AND EXTRAJUDICIAL ACTIVITIES****RULE 6 Compensation for Quasi-Judicial and Extrajudicial Activities**

(A) Except as otherwise provided in (B) below, an administrative law judge shall not receive compensation for quasi-judicial and extrajudicial activities permitted by this Code, but may receive reimbursement of actual expenses that the judge reasonably incurred for travel, food, and lodging, provided that the source or amount of such reimbursement, or the location of the activity, does not give the appearance of influencing the judge in the exercise of judicial duties or otherwise create an appearance of impropriety.

(B) Upon notice to, and approval by, the Director of the Office of Administrative Law, an administrative law judge may receive compensation for teaching at law schools or colleges, provided that the source of the payment does not give the appearance of impropriety.

CANON 7**AN ADMINISTRATIVE LAW JUDGE SHALL REFRAIN FROM POLITICAL ACTIVITY****RULE 7 Political Activity**

(A) An administrative law judge shall not engage in any political activity, including, but not limited to:

- (1) Holding membership or office in a political organization;
- (2) Making speeches for a political organization or candidate, or publicly endorsing a candidate for public office;
- (3) Attending political functions that are likely to be considered as political in nature; or
- (4) Soliciting funds, paying an assessment, or making a contribution to a political organization or candidate, or purchasing tickets for political party dinners or other functions.

(B) An administrative law judge shall resign from office when the judge becomes a candidate for an elective public office or is nominated thereto.

Commentary: The proscription against membership in a political organization does not prohibit an administrative law judge from registering with a political party to vote.

Applicability

All administrative law judges, including temporary assignment administrative law judges and administrative law judges on recall, shall comply with the Code of Conduct for Administrative Law Judges.

AGRICULTURE**(a)****DIVISION OF PLANT INDUSTRY****Spotted Lanternfly Quarantine****Adopted New Rules: N.J.A.C. 2:20-10**

Proposed: August 20, 2018, at 50 N.J.R. 1903(a).

Adopted: September 26, 2018, by the State Board of Agriculture and Douglas H. Fisher, Secretary, Department of Agriculture.

Filed: September 27, 2018, as R.2018 d.190, **without change**.

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

Effective Date: September 27, 2018.

Expiration Date: January 25, 2025.

Summary of Public Comment and Agency Response:

COMMENT: Jean Public stated that the lanternfly would not be in America or New Jersey if our trade was more closely monitored. These invasive insects, plants, and animals that we are bombarded with that are hurting our native environment. The fact is if we can't keep out these invasives, we need to rethink our trade policies. They come in with the products. Endless invasives come in with shipments from foreign countries and we don't have agencies that are doing the job or protecting our America species. We spend billions with USDA Ag and they have the duty and responsibility to keep out these invasive species. Obviously, they are failing at this job and the State Ag Department isn't doing any better. We are swamped with invasive fungus as well, invasive viruses, etc. It's clear that these agencies are not doing the job. Their grade should be f minus for their effectiveness for their salaries and budget. We need to hire people who can do the job, obviously the present staff is negligent. Telling us about it after the lanternfly is here is not good enough. It shows inability to do the job. We need to rethink why we are inviting endless invasive species into New Jersey and why we let some of them get by being sold in nurseries just to prop up the ag businesses.

RESPONSE: The Department of Agriculture (Department) notes the commenters concerns. However, the comment falls outside of the scope of the rule, which institutes a quarantine to protect the State from an invasive species which has recently been confirmed within the State. The Spotted Lanternfly was originally discovered in Pennsylvania, but is now known to be in Pennsylvania, New Jersey, Delaware, and Virginia. The method by which the Lanternfly was introduced to our environment has not been determined. The Department had been conducting delimiting surveys along the Delaware River to monitor for the plant pest's introduction into the State and had also conducted community outreach to raise awareness by the public to notify the Department of possible Spotted Lanternfly sightings.

Federal Standards Statement

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

Full text of the adopted new rules follows:

SUBCHAPTER 10. SPOTTED LANTERNFLY**2:20-10.1 Definitions**

As used in this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Agent" means a representative of the New Jersey Department of Agriculture or the United States Department of Agriculture, or any individual under contract with the Department or USDA to apply pesticide treatments or otherwise.

"APHIS" means the United States Department of Agriculture Animal and Plant Health Inspection Service.

"Checklist" or "Spotted Lanternfly Checklist" means a document prepared by the Department and is available at <https://www.state.nj.us/agriculture/divisions/pi/prog/spottedlanternfly.html>.

"Department" means the New Jersey Department of Agriculture.

"Eradication" means the elimination or removal of a pest from a defined geographic area.

"Exposed" means a determination by an inspector to be at risk for spreading Spotted Lanternfly.

"Infestation" means the presence of Spotted Lanternfly in any life stage.

"Inspector" means any person officially designated by the Department or APHIS, authorized to enforce the provisions of this subchapter.

"Move" means to ship, carry, transport, offer for shipment, receive for shipment, or allow to be transported by any means.

"Movement" means the act of shipping, carrying, transporting, offering for shipment, receiving for shipment, or allowing to be transported by any means.

“Notice of Infestation–Treatment Order” means an official written order issued by the Department specifying conditions found, actions the recipient shall carry out, and a specified time frame by which the order must be complied with, pursuant to N.J.A.C. 2:20-10.5.

“Person” means an individual, partnership, association, firm, corporation, limited liability corporation, State agency, municipality or other governmental unit or agency, or any other legal entity.

“Plant” means any part of a plant, tree, aquatic plant, plant product, shrub, vine fruit, rhizome, sod, vegetable, seed, bulb, stolon, tuber, corm, pip, cutting, scion, bud, graft, or fruit.

“Quarantined area” means any area designated as a quarantined area in accordance with N.J.A.C. 2:20-10.5.

“Regulated article” means any article listed under N.J.A.C. 2:20-10.3.

“Regulated fruit, regulated plant, regulated seed, regulated tree” means any fruit, plant, seed, or tree defined as a regulated article under N.J.A.C. 2:20-10.3.

“Secretary” means the Secretary of the New Jersey Department of Agriculture.

“Spotted Lanternfly” means *Lycorma delicatula*.

“Treatment Order” or “Order” means any Notice of Infestation–Treatment Order as set forth in N.J.A.C. 2:20-10.6.

“Tree of Heaven” means any life stage of the plant *Ailanthus altissima*.

“USDA” means the United States Department of Agriculture.

2:20-10.2 Spotted Lanternfly declared a nuisance

The State Board of Agriculture declares that the Spotted Lanternfly, a dangerously injurious insect and plant pest not known to be native to New Jersey, that damages nursery stock, agricultural crops, and the environment of the State, to be a nuisance.

2:20-10.3 Regulated articles

(a) The Spotted Lanternfly, along with any material or object that may carry or spread the dangerously injurious insect, are considered regulated articles and shall not be moved out of, or within, the quarantined area, unless done in accordance N.J.A.C. 2:20-10.7.

(b) Regulated articles include:

1. Any living life stage of the Spotted Lanternfly;
2. Plants and plant parts, which include, but are not limited to, live or dead trees, nursery stock, budwood, green lumber, firewood, logs, perennial plants, garden plants, agricultural produce, stumps, roots, branches, mulch, composted and uncomposted chips, bark, and yard waste;
3. Outdoor industrial and construction materials and equipment, concrete barriers or structure, stone, quarry material, ornamental stone or concrete, construction, landscaping, and remodeling waste;
4. Packing materials, such as wood crates or boxes;
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, or trucks or vehicles not stored indoors;
6. Means of conveyance of any type, whether utilized for movement of the materials previously listed, or personal use, and any trailers, wagons, or other means of conveyance, and equipment attached thereto; or
7. Any other articles, 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.

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; and
3. Mercer.

(b) The Secretary of Agriculture may temporarily designate any nonquarantined area in New Jersey as a quarantined area, if the Secretary has reason to believe that the Spotted Lanternfly is present based on positive confirmation of any life stage of this insect by the Department, or by agents of the USDA APHIS.

2:20-10.5 Right of access

(a) Duly authorized representatives of the Department, the USDA, or their agents may enter upon any lands or premises, public or private, within the State, for the purpose of conducting necessary inspections and surveys for Spotted Lanternfly, for the removal and treatment of condemned host trees, to undertake eradication measures for the Spotted Lanternfly, and to determine compliance.

1. Prior to carrying out any treatment procedure, the Department shall notify the property owner in writing with a Notice of Infestation–Treatment Order. Any agent of the Department or USDA is authorized to enter the premises during reasonable hours to carry out the eradication or control measures.

2. Pursuant to any Notice of Infestation–Treatment Order, and any addendums thereto, the property owner shall take the following treatment actions:

- i. The property owner shall allow control procedures to occur to eliminate any life stage of the Spotted Lanternfly on the property;
- ii. Control procedures may include tree banding, pesticide application, or removal of any Tree of Heaven, or any combination thereof, to reduce the available host of the Spotted Lanternfly and to decrease the population of Spotted Lanternfly. All control procedures shall conform with methods approved by the Department and USDA Animal and Plant Inspection Services Plant Protection and Quarantine, in addition to all applicable Federal, State, and municipal laws and ordinances;
- iii. Control work shall be performed by a contractor under agreement with the USDA APHIS to carry out the necessary control procedures on the owner’s property;
- iv. Property owners may be requested by the Department to remove and dispose of host trees, such as Tree of Heaven. The cost of any such removal shall be the responsibility of the property owner; and
- v. The obligation of the property owner to allow control of the Spotted Lanternfly by State- or Federally contracted licensed pesticide applicators shall continue, so long as the Spotted Lanternfly exists on the property.

(b) The Department will continue to survey and monitor all properties within the quarantine areas set forth in N.J.A.C. 2:20-10.4, and any other areas identified within the State as having Spotted Lanternfly, until such quarantine area is rescinded. The Department, USDA, or its agents may enter onto any premises within the quarantine areas or any Notice of Infestation–Treatment Order, or any subsequent addendums thereto, to survey, collect samples, investigate, determine compliance, and carry out eradication or control measures, where necessary. Persons interfering with or obstructing the Department or an inspector or agent in the conduct of inspections, surveys, treatments, and removals for Spotted Lanternfly shall be subject to the sanctions provided by N.J.S.A. 4:7-13, 14, and 18, incorporated herein by reference.

2:20-10.6 Notification of Infestation–Treatment Order

A written Notice of Infestation–Treatment Order shall be issued to the affected property owner, by the Secretary of Agriculture, following positive confirmation of the Spotted Lanternfly by the Department or USDA. All host plant material specified in the order must be treated or eliminated to eradicate Spotted Lanternfly in a manner approved by the Secretary of Agriculture, which may include destruction of trees.

2:20-10.7 Restrictions on movement and conditions of movement

(a) No person may move any Spotted Lanternfly, plant material, or regulated articles containing any life stage of the Spotted Lanternfly, which are subject to the requirements of Spotted Lanternfly quarantine, outside the quarantine areas designated in N.J.A.C. 2:20-10.4, unless in compliance with the requirements set forth in this section.

(b) Members of the general public who move any regulated articles inside the quarantine area or to outside of the quarantine area shall be required to complete a Spotted Lanternfly Checklist prior to movement of any regulated article(s).

1. The Spotted Lanternfly Checklist shall be provided by the Department at the following web address: <https://www.state.nj.us/agriculture/divisions/pi/prog/spottedlanternfly.html>.

2. The signed checklist shall remain with the regulated article(s).

3. Upon request by the Department, a copy of the signed checklist shall be provided to the Department within three calendar days by the person possessing the regulated article.

(c) Persons moving regulated materials for business purposes from, or into, the quarantine area shall be required to:

1. Undertake training on the Spotted Lanternfly. The owner, manager, supervisor, or other person(s) with authority to bind the entity and train other employees (hereinafter "designated employee(s)") shall take training provided by either by the Department, the Pennsylvania Department of Agriculture, Penn State Cooperative Extension, Rutgers Cooperative Extension, or others who have participated in a "Train the Trainer" course approved and recognized by the Department, and shall have passed an examination administered by an employee or agent of the Department or the Pennsylvania Department of Agriculture, demonstrating they have an understanding and knowledge of the pest and of the procedures necessary to prevent the spread of the pest.

i. Upon successful completion of the training and passing the required test, the designated employee(s) shall be responsible for training other employees of that entity and documenting such training.

ii. In conjunction with taking the examination, the designated employee(s) shall record, preserve, maintain, and provide to the Department, as needed, at a minimum, the following information:

(1) The name, telephone number, and e-mail address of the designated employee taking the required test;

(2) The legal name, address, business telephone number, and e-mail address of the primary business location;

(3) The number of vehicles and conveyances utilized; and

(4) An attestation that the person shall comply with all requirements of this subchapter.

2. The Secretary may request, in writing, additional information, if necessary, for evaluating the potential risk to the State.

3. 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. 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.

4. 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 being moved within or out of the quarantine area. A record of such inspection shall be kept and recorded as set forth in N.J.A.C. 2:20-10.9.

5. 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 domestic environment during storage or transportation.

6. Any stage of living life cycle(s) of the insect, Spotted Lanternfly, found during any inspection, and/or other debris, off-fall, or by-products, 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. Burning shall be done in accordance with laws and rules governing air quality and where buried, such burial shall comply with all laws and rules governing water quality. 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.

(d) 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 under (c) above. Copies of such permits may be e-mailed to SLF-plantindustry@ag.nj.gov, or mailed to:

Division of Plant Industry
New Jersey Department of Agriculture
PO Box 330
Trenton, New Jersey 08625-0330

(e) Persons moving regulated materials for business purposes exclusively within the quarantine area shall be required to:

1. Treat, process, inspect, or dispose of regulated articles received and stored in a manner that complies with the methods of treatment described in (e)2 below.

2. Any stage of living life cycle(s) of the Spotted Lanternfly found during the inspection, and/or other debris, off-fall, or by-products, 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. Burning shall be done in accordance with laws and rules governing air quality and where buried, such burial shall comply with all laws and rules governing water quality. 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.

3. Regulated articles must be shipped within five days of inspection, processing, or treatment and safeguarded in such a manner, such as storage inside an enclosed building or shrink wrapping, as to prevent infestation.

2:20-10.8 Other movement provisions for businesses

(a) 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:

1. The points of origin and destination are outside of the quarantine area established by N.J.A.C. 2:20-10.4 and are indicated on a waybill accompanying the regulated article.

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.

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, the covering shall be inspected, decontaminated, or destroyed.

4. The regulated article, including the vehicle and conveyance, is moved directly through the quarantine area without stopping, except for refueling, for traffic control devices, or emergency conditions, and has been stored, packed, or handled only at locations outside the quarantine area.

(b) 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 this subchapter, or a Department-approved permitting process or other program carried out by the state of origin.

2:20-10.9 Recordkeeping

(a) Documentation of required inspections and compliance measures taken when shipping regulated articles, including vehicles and conveyances within or outside of 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.

(b) Documentation shall be kept listing each individual training as a designated employee as set forth in N.J.A.C. 2:20-10.7(c)1.

(c) 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.

(d) Inspection, treatment, and mitigation records, including dates and outcomes, shall be kept in accordance with this section.

(e) Records are to be maintained for a minimum of two years with copies provided to the Department upon request.