

FINAL STATEMENT OF REASONS
DEPARTMENT OF FOOD AND AGRICULTURE
SUBMISSION OF REGULATIONS PERTAINING TO

Spotted Lanternfly Exterior Quarantine

Title 3 California Code of Regulations Section 3287

Update of Initial Statement of Reasons

The Initial Statement of Reasons has been updated for clarity, in response to comments from the public, and to correct errors.

Subsection (b) "Definitions" has changed multiple definitions. Now "Compliance Agreement", "Exposed to the environment", "Infestation", "Infested Area", "Move; movement", "Reproducing Population", have all been added or updated to add further clarity to the text of the regulation. "Decontaminate" has been removed as the term is limiting in definition. In (b) (1) the initial statement of reasons incorrectly describes the compliance agreement as being between a person and the Department, not a state department so the text "state plant regulatory agency, such as a" was added to make this clear. The definition of "Decontaminate", b (3) has been removed as the term did not need defining within the regulation. The definition of "Exposed to the environment" was added as the definition needed to be limited to the outdoors and not any environment. In (b) (4) the term "Infestation" the initial statement of reasons did not provide enough detail to correctly define the term, now it elaborates on what evidence is required for an infestation and that the Department can designate what an infestation is as well as determine it as

such. In (b) (5) the term “Infested area” in the initial statement of reasons did not correctly define the areas that could be declared infested, and what data would be used. It also now allows the Department to remove a quarantine when an infestation is no longer present. In (b) (7) the terms “Move; movement” in the initial statement of reasons did not correctly define these terms, the definition limited the term to infested areas when they can mean any movement regardless of area. In (b) (9) the term “Permit” the initial statement of reasons incorrectly capitalized state plant regulatory agency; since this term refers to any state plant regulatory agency it should not be capitalized. In (b) (10) the initial statement of reasons incorrectly used “and” instead of the word “or” in the list and omitted reference to “any organized group of persons whether incorporated or not”. In (b) (13) the term “Reproducing Population” in the initial statement of reasons did not include that a reproducing population could include viable egg masses or two living adults within a county with one year; without these definitions the text omits information that could prevent infestations.

The initial statement of reasons incorrectly described changes to subdivision (c) as changes to subdivision (c)(1). Subsection (c) “Area Under Quarantine” no longer lists current states under quarantine, as it was decided that since the infestation will change, the regulation should be able to cover new areas quickly and allow for areas to be removed when the infestation is no longer present. Subsection (c) now lists what qualifies as an area under quarantine and establishes that the Department of Food & Agriculture (Department) will maintain a current online map of these areas. This allows the

Department to adapt rapidly to any new infestations and provides a resource for current information.

The initial statement of reasons incorrectly described changes to subdivision (c) as changes to subdivision (d) (7). Subsection (d) (7) “Articles and Commodities” no longer lists types of rigid containers, as this description does not encompass all types of rigid containers.

The initial statement of reasons incorrectly described changes to subdivision (d) (8). This section did not properly describe what the California State Plant officer would consider when determining risk of an article, object, material, or means of conveyance spreading spotted lanternfly. Without this description there was not a clear expectation for the public to understand how decisions would be made. Factors listed are whether the article, object, material, or means of conveyance originated from an infested area and whether it was exposed outdoors at a time favorable to spotted lanternfly oviposition. If the article, object, material, or means of conveyance originated from an infested area there is a risk the spotted lanternfly could have flown into or on it. If it was exposed outdoors at a time favorable to spotted lanternfly oviposition there could be an egg sac attached somewhere to the object, material, or means of conveyance. Both of these increase the risk of spotted lanternfly being released into the state.

The initial statement of reasons incorrectly described changes to subdivision (e). Subsection (1) “Restrictions” has been removed as items from non-infested areas are already not under quarantine. Subsection (1) is now “Certificate of Treatment”, it was subsection (2), and the last sentence has been removed; the information it contained is

now slightly condensed in the section. The treatment is now “performed” instead of “conducted” as this is the term used within the subsection. The last sentence has been removed; it states that “the authorized state agricultural official shall monitor all treatments and procedures performed under a compliance agreement” whereas the previous sentence says an authorized state agricultural official or the shipper under a compliance agreement with the authorized state agricultural official will be performing the treatment; the information does not need to be stated twice.

The initial statement of reasons incorrectly described changes to subdivision (e) (2) as changes to subdivision (e) (3). In the first sentence “shall move through” is now “is moved into” to add certainty to the statement. Examples are furnished of how an article can be completely covered; offering examples of how an article can be covered provides more details for the public. The sentence “Alternatively, the article(s) may be completely covered to prevent exposure to the pest.” has been removed because the sentence has been replaced with a new sentence containing this information in more detail.

The initial statement of reasons incorrectly described changes to subdivision (e) (3) as changes to subdivision (e) (4). The word “provides” is changed to “has,” since the conveyance being described would have a data report.

The initial statement of reasons incorrectly described changes to subdivision (e) (4) as changes to subdivision (e) (5). The description “as determined by the nature or intended

purpose of the article and confirmed by the shipper. This includes” is removed; this was incorrect and should not have been in the document.

The initial statement of reasons incorrectly described changes to subdivision (e) (5) as changes to subdivision (e) (6). The word “sub” has been corrected to “subdivisions” which is more accurate. The descriptor “the appropriate” now describes the permit needed, and “a written” has been removed as a descriptor as all permits are written. Checklists have been added to the list of what can accompany materials, as the list includes them as well. The conditions that allow these regulated articles are then listed in the next subdivision.

The initial statement of reasons incorrectly described changes to subdivision (e) (4) (A). The statement “If any other area inside or outside of this state is determined by Federal, State, or another Regulatory Agency to be an infested area,” has been removed; instead, “an infested” is used to describe the area, as this term has already been defined and does not need to be defined again. The term “Master Permit” was included by accident and has been removed, the term is not applicable here and a Compliance Agreement is sufficient.

The initial statement of reasons incorrectly described changes to subdivision (e) (4) (B). The phrase “Phytosanitary Certificate covering regulated articles” has been changed to the title “Phytosanitary Certificate.” and “Any regulated commodity” which is more succinct and accurate. Also removed is “be issued by an authorizing official from the state of origin. Such regulated articles, subject to passing inspection, shall be allowed entry” and replaced with “subject to passing inspection, be allowed entry if accompanied by a valid

phytosanitary certificate” which is more accurate as the phytosanitary certificate would be issued by the infested area, which might not be the state of origin.

The initial statement of reasons incorrectly described changes to subdivision (e) (4) (C) 1. c. In a response to a comment inquiring how to handle needing the locations the materials are being imported to the following was added “The state will accept “various” under “names and addresses of the persons” and will accept “California” as the destination location.” On some occasions the seller may not know all the final destinations of the materials; this will allow them to complete the necessary forms.

The initial statement of reasons incorrectly described changes to subdivision (e) (4) (C) 2. The word “articles” has been removed and replaced with the correct term, “commodities”. The incorrect phrase “from origin to destination” has also been removed and replaced with “through all movement”.

The initial statement of reasons incorrectly described changes to subdivision (f) as changes to subdivision(e) (D). In the title “engaged in commercial activity” has been changed to “doing business” which encompasses more than commercial activity. The term “infested” replaces “where spotted lanternfly is known to be established” as that is specifically relevant to the regulation. In the second sentence, the following edits were made: “quarantine rule” replaces “regulation”, “an infested area with” replaces “quarantine area if accompanied by”, a checklist now must be valid and “issued by a state plant regulatory agency and it must be completed by the “person moving the article(s)” which

replaces “individuals” and “transporting the regulated article(s)”. These changes make the sentence clearer and, since all articles are regulated, the term needed removal. The sentence “The checklist may be issued by any state plant regulatory agency.” has been added to let the public know who may issue the checklist. The phrase “checklist must be signed by the individual” has been removed, as it may be signed by others, and the word “them” referring to the articles has been replaced by “the articles”, for clarity. The final sentence has been edited to make clear the title of the Department’s created checklist and to incorporate it by reference. This is required by law and will assist the public in finding the required document. The checklist features photos of the spotted lanternfly in various life stages, including egg masses, so the public can identify the pest. It then lists all applicable outdoor items and objects that need to be inspected, these items and objects have a high potential to be infested by the spotted lantern fly. These items can be checked off, and there is a section to list anything not included on the list. The final section requires the person moving the items and objects to list their name, email, date, address from which the items are being moved, and signature. The checklist would be cumbersome, unduly expensive, or otherwise impractical to publish in the CCR. Additionally, the checklist was made available upon request directly from the department.

An “Authority Cited and Reference” section has been added to the end of the regulation, as it was originally omitted.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF OCTOBER 2, 2020 TO NOVEMBER 16, 2020

Comment 1 from Joe Zoltowski Director, Division of Plant Industry; New Jersey Department of Agriculture

You list the entire states under quarantine for SLF, not all areas (counties) in those states are infested nor under internal state quarantines. So would suggest listing the actual quarantined counties by state and including Staten Island, New York state to the list?

Response: The Department has decided to no longer list current states under quarantine. It now lists what qualifies an area (at the level of county or state depending on the currently known infestation specificity) to be under quarantine and establishes that the Department will maintain a current online map of these areas. This allows the Department to adapt rapidly to any new infestations and provides a resource for current information.

Comment 2 from Deborah Hayes, Nursery Inspection Administrative Officer Plant Protection & Weed Management; Maryland Department of Agriculture:

I have questions regarding the specific requirement for a compliance agreement or phytosanitary certificate. The names and addresses of the persons to whom, and the locations to which the materials may be imported under the agreement. Does this requirement restrict sales/shipments only to businesses and individuals that can be identified at the drafting of a compliance agreement? No new sales or new customers

will be accepted outside of the creation and signing of a compliance agreement? No future expansion of sales or customer base is allowed? I ask because several MD nurseries are in compliance presently to market and sell various plant types to customers via the online markets in California. There is no way I can address future customer specifics regarding names and addresses of future sales. Would you clarify this requirement for me?

Response: The state will accept “various” under “names and addresses of the persons” and will accept “California” as the destination location on the compliance agreement or phytosanitary certificate.

SUMMARY AND RESPONSE TO COMMENT RECEIVED DURING THE MODIFIED TEXT NOTICE PERIOD OF FEBRUARY 24, 2021 TO MARCH 10, 2021

Comment 1 from Jean-Mari Peltier, Manager, Consolidated Central Valley Table Grape Pest & Disease Control District

On behalf of the Consolidated Central Valley Table Grape Pest & Disease Control District, I would like to express our support for the Exterior Quarantine regulations proposed by the Department pursuant to the requirements of Government Code section 11346.8 (c), and section 44 of Title 1 of the California Code of Regulations, the Department of Food and Agriculture is providing notice of changes made to proposed regulation section 3287, which pertains to the Spotted Lanternfly Exterior Quarantine.

It appears that the latest language offered by the Department further strengthens what already appeared to be a solid exterior quarantine program proposed last fall. In the California table grape industry, we are concerned that USDA has decided to handle this severe pest threat through containment, instead of eradication. Our organization has currently solicited proposals for Spotted Lanternfly, with a particular focus on detection, since pheromones are not expected to be attractants.

A final point we would like to add is that we believe the California Department of Food and Agriculture should create an advisory committee which would meet regularly to assure adequate attention to the status of the pest and coordination of relevant funding and treatment needs, if applicable. In particular, creation of a Multi-Agency Advisory Committee or MAC has been proposed. This is a sensible next step, as long as representation of the applicable industry groups – particularly table grapes – is included.

Response: The Department acknowledges your support. The creation of a Multi-Agency Advisory Committee is outside the scope of this amendment regulating the movement of hosts and possible carriers of spotted lanternfly.

Local Mandate Determination

The proposed regulations do not impose any mandate on local agencies or school districts.

Alternatives Considered

The Department of Food and Agriculture has determined that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. If no action were to be taken, this would be detrimental to the general welfare and economy of the state and well-being of agriculturally dependent rural communities in this state. It would also create harm to the public's general welfare if the pest were to spread to noninfested areas where it could damage urban landscapes and harm California's agricultural industry.