

DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Section 3287

Spotted Lanternfly Exterior Quarantine

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of Public Problem, Administration Requirement, or Other Condition or Circumstance  
the Regulation is Intended to Address

This regulation is intended to address the obligation of the Department of Food and Agriculture to protect the agricultural industry and environment from the introduction and spread of injurious plant pests within California. Specifically, the regulation is intended to prevent the introduction into California of spotted lanternfly (*Lycorma delicatula*), a pest relatively (*Lycorma delicatula*), new to North America. Recent finds of this pest in conveyances destined for California from currently infested areas demonstrate a recently established, viable pathway of spread, and render such a regulation necessary.

Specific Purpose and Factual Basis

The specific purpose of Section 3287 of Title 3 of the California Code of Regulations (CCR) is to prevent the introduction of live spotted lanternfly (*Lycorma delicatula*) into California. The spotted lanternfly is a highly destructive plant pest that can be difficult and expensive to control. Feeding on sap from stems and leaves, the spotted lanternfly weakens the plant, which can cause the plant's death. Spotted lanternfly adults attack the foliage, flowers, or fruits of more than 300 different ornamental and agricultural plants. This lanternfly is not established in California, however, between August 19, 2019, and September 25, 2019, the Department made ten interceptions of this pest in conveyances destined for California from currently infested areas.

The factual basis for the determination by the Department that adoption of these regulations is necessary is as follows:

The Food and Agricultural Code (FAC) Section 403 provides that the department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.

Under FAC Sections 407, 5301, and 5302, the Department is authorized to adopt regulations necessary to prevent the spread of injurious insect pests and animal diseases.

Under FAC Section 5024, the Department shall inspect any plant or thing that is, or is liable to be, infested or infected by, or which might act as a carrier of, any pest.

Under FAC Section 5321, the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread and the feasibility of its control or eradication.

Under FAC Section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in their opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC Section 5321. The Secretary may make and enforce such regulations as she deems necessary to prevent any plant or thing which is, or is liable to be, infested or infected by, or which might act as a carrier of, any pest, from passing over any quarantine line which is established and proclaimed pursuant to this division

The Department has determined it is necessary to take these steps to protect California agriculture from this injurious insect pest as per FAC 407.

**Section 3287 (a)**

Section 3287 (a) establishes that the quarantine is being created against Spotted lanternfly, *Lycorma delicatula*, a lanternfly in the Order Hemiptera, Family Fulgoridae.

**Section 3287 (b)**

For clarity, Section 3287 (b) defines terms used in the regulation.

“Compliance Agreement” is defined as a written agreement that is between a person engaged in handling, receiving, or moving regulated articles and the Department of Food and Agriculture. In this document the person agrees to fulfill the requirements of the compliance agreement and comply with provisions of this regulation.

“Covering” is defined as a rigid or flexible sheet that that can be secured over an otherwise open load to prevent the egress of spotted lantern fly. If woven or of mesh, openings in the weave must be 1 millimeter or less.

“Decontaminate” is defined as to treat so as to remove any stages of the spotted lanternfly.

“Infestation” is defined as an established, reproducing population of spotted lanternfly as determined by the Department.

“Infested area” is defined as a delineated area such as a state, province, political sub-division, nation or an area within those spaces that the United States Department of Agriculture, United States Forest Service, or respective State Plant Pest Regulatory Agency has declared to have an infestation of, or to be quarantined for, spotted lanternfly.

“Living Life Stage” is defined as all life stages of the spotted lanternfly, including, but not limited to, adults, nymphs, or viable egg masses.

“Move; movement” is defined as shipped, offered or received for shipment, carried, transported, or relocated into or through any infested area.

“Moving through the infested area” is defined as the regulated article, the vehicle, and the conveyance, transporting or being transported within the boundaries of an infested area without stopping (except for refueling or for traffic control devices or conditions) and has been stored, packed, or handled only at locations outside the infested area.

“Permit” is defined as a document issued by a State Plant Regulatory Agency that certifies that a person has successfully completed training regarding spotted lanternfly and agrees to the conditions specified by the permit.

“Person” is defined as any individual, partnership, association, corporation, and limited liability company.

“Phytosanitary Certificate” is defined as a document that certifies a commodity has been inspected or treated and found to be free from specific pests and is issued by an authorizing official.

“Regulated Article or Articles” is defined as any plant, plant product, storage place, packaging, conveyance, container, soil, and any other organism, object, or material capable of harboring or spreading the spotted lanternfly and deemed to require phytosanitary measures.

“Reproducing Population” is defined as biological evidence of the spotted lanternfly’s ability to successfully reproduce in the environment, including, but not limited to, egg masses, visibly mated females, early instar nymphs, or multiple life stages present within one year.

“Treatment” is defined as the official procedure for the killing, inactivation, devitalization or removal of pests, or for rendering pests infertile.

### **Section 3287 (c)**

Section 3287 (c) specifies which areas of the United States are under quarantine for spotted lanternfly due to their infested or partially infested status. In section 3280 (c)(1) the quarantine areas listed for the United States currently include the entire states of Delaware, Maryland, New Jersey, Pennsylvania, Virginia, and West Virginia.

### **Section 3287 (d)**

Section 3287 (d) lists the articles and commodities declared in the regulation as hosts and possible carriers for spotted lanternfly and that are included in the quarantine to protect the state from potential spotted lanternfly infestations.

Section 3287 (d) (1): Any living life stages of the spotted lanternfly.

Section 3287 (d) (2): All plants and plant parts because these can provide shelter and substance for spotted lanternfly egg masses, larvae, and adults. This includes, but is not limited

to, any species of live or dead tree, nursery stock, budwood, lumber, firewood, logs, perennial plants, garden plants and produce, stumps, roots, branches, mulch, and composted and uncomposted chips, bark, and yard waste.

Section 3287 (d) (3): Outdoor industrial and construction materials, equipment and waste which can provide surfaces for the egg masses and harbor adult spotted lanternfly. This includes, but is not limited to, concrete barriers or structures, stone, quarry material, ornamental stone or concrete, wood, and construction, landscaping, and remodeling waste.

Section 3287 (d) (4): Shipping and storage containers, which can provide surfaces for the egg masses and harbor adult spotted lanternfly: This shall include, but is not limited to, wood crates, pallets, boxes, personal moving containers, and barrels.

Section 3287 (d) (5): Outdoor household articles, which can provide surfaces for the egg masses and harbor adult spotted lanternfly: This shall include, but is not limited to, lawn tractors and mowers, mower decks, grills, grill and furniture covers, tarps, mobile homes, tile, stone, deck boards, fire pits, and any equipment not stored indoors.

Section 3287 (d) (6): Conveyances, which can provide surfaces for the egg masses and harbor adult spotted lanternfly of any life stage including, but not limited to, cars, trucks, trains, recreational vehicles, and boats, whether utilized for movement of the materials previously listed or not, and any trailers, wagons, or other equipment attached thereto.

Section 3287 (d) (7): Agricultural equipment, which can provide surfaces for the egg masses and harbor adult spotted lanternfly including, but not limited to, tractors, harvesting equipment, and rigid containers such as shipping containers, pods, and large bins.

Section 3287 (d) (8): Any other article, object, materials, or means of conveyance when it is determined by a California State Plant Quarantine Officer to present a risk of carrying or spreading any life stage of spotted lanternfly.

All of the commodities and articles included above are either potential hosts of spotted lanternfly or can harbor nymphs, adults, or egg masses of spotted lanternfly. Therefore, they are high risk pathways for the artificial introduction of spotted lanternfly into California.

### **Section 3287 (e)**

Section 3287 (e) prohibits entry into California of all articles and commodities covered in Section 3287 (d) from the area under quarantine with the following exceptions, as these represent a low risk of spotted lanternfly introduction.

Section 3287 (e)(1) states that articles and commodities that have a waybill that shows the point of origin of the shipment is a non-quarantined area, or an area of quarantine not within an infested area, are permitted entry. As these articles and commodities have not been exposed in infested areas they do not risk spreading the infestation.

OR

Section 3280 (e)(2) states that articles and commodities that have a Certificate of Treatment are permitted entry. A Certificate of Treatment is issued by an authorized state agricultural official and declares that the article or shipment was treated at origin for spotted lanternfly prior to shipment. Treatments shall be in accordance with methods and procedures approved and prescribed by the Secretary. Treatments shall be conducted under direct supervision of an authorized state agricultural official, unless the shipper operates under a compliance agreement with the state agricultural authority. These articles and commodities must be monitored by authorized state agricultural officials.

OR

Section 3280 (e)(3) states that, if the articles and commodities originate outside the infested area, but are moved through the infested area during the active season for spotted lanternfly, they may be permitted entry if moved in an enclosed vehicle or conveyance. Alternatively, they may be completely covered to prevent exposure to the pest. The covering, which must remain on until the regulated article leaves the infested area must then be inspected for any spotted lanternfly life stages. If any life stage is found, the article must be decontaminated or destroyed to prevent the infestation from spreading. By covering loads on conveyances the chance of artificial introduction of spotted lanternfly is substantially reduced.

OR

Section 3280 (e) (4) states that any articles are permitted entry if they are transported by a conveyance that provides a global positioning system (GPS) data report indicating that the conveyance did not travel through an infested area. As these articles and commodities have not been exposed in infested areas, they do not risk spreading the infestation.

OR

Section 3280 (e) (5) states that indoor articles not exposed to the environment are permitted entry, as determined by the nature or intended purpose of the article and confirmed by the shipper. This includes, but is not limited to, household articles, house plants, and indoor furnishings.

Section 3287 (e)(6) covers movement of regulated articles listed in sub sections (d) (1), (2), (3), (4), (5), (6), (7), and (8) from infested areas that are accompanied by a written permit, phytosanitary certificate, or compliance aAgreement. These documents certify that the articles comply with provisions of this regulation. This will prevent the artificial spread of spotted lanternfly.

Section 3287 (e)(6) (A) states that a permit, that may comprise a compliance agreement under a Master Permit, is required for movement of all vehicles and means of conveyances coming from an infested area inside or outside California as determined by Federal, State, or another Regulatory Agency. The permit must comply with all permit requirements. Permit requirements must specify conditions to prevent the artificial spread of spotted lanternfly.

Section 3287 (e)(6) (B) states that regulated articles from an infested area, or that are exposed to an infested area, are allowed entry with a phytosanitary certificate, subject to passing inspection. Such certified inspections before shipment will prevent the artificial spread of spotted lanternfly.

Section 3287 (e)(6) (C) outlines the requirements for a compliance agreement or phytosanitary certificate. Either can be used when moving material into California from an infested area.

A compliance agreement is a written agreement between the importers and the Department that allows plant products to be imported from an infested area. All of the following are required for a compliance agreement:

- a. The name and address of the importer.
- b. The type and volume of material that may be imported under the agreement.

- c. The names and addresses of the persons to whom, and the locations to which the materials may be imported, under the agreement.
- d. The locations from which the material may be imported under the agreement.
- e. The method by which the material may be imported.
- f. The time period covered by the agreement.
- g. The compliance agreement holder's commitment to keep complete records of each import shipment and to submit those records to the department for inspection and copying upon request.
- h. Specific import terms and conditions that will, in the department's opinion, effectively ensure that materials imported pursuant to the agreement will not introduce the spotted lanternfly into California.
- i. A provision authorizing the department to terminate the agreement, without prior notice, for any reason.
- j. A shipping certificate must accompany each shipment indicating that the product is under a compliance agreement.

This information is necessary to effectively enforce the exclusion of spotted lanternfly from California and to trace back any infestations that may be found during inspections.

A phytosanitary certificate is required when regulated articles from infested areas enter this state. The articles must be inspected by an inspector of the state plant regulatory agency of the originating state, which will issue the phytosanitary certificate for the article. The phytosanitary certificate must state that no spotted lanternfly was found on the regulated articles and the certificate must accompany the regulated article from origin to destination. The phytosanitary certificate does not exempt the means of conveyance or vehicle, which may require a permit as defined in Section 3287 (e)(6) (A), as it may have traveled through infested areas.

Section 3287 (e)(7) states that regulated articles moved from infested areas by individuals not engaged in commercial activity require a checklist. The articles, vehicle or conveyance covered by this regulation may be moved from a quarantine area if accompanied by a checklist completed by the individual. The completed checklist must be signed by the individual transporting the regulated article(s) and shall accompany them. The checklist is a form available

from the department's website. This checklist will help establish the likelihood that an individual is bringing spotted lanternfly into California.

## **Background**

Spotted lanternfly has the capability of causing significant irreparable harm to California's agricultural industry and serious adverse environmental impacts. The nymphs and the adults of spotted lanternfly cause damage when they feed by sucking sap from stems and leaves of host plants. Their feeding can weaken and eventually contribute to the death of the host. In addition, the damage caused during feeding can cause the host to ooze and weep while the spotted lanternfly excrete fluid, all of which promotes mold growth and can attract additional insects. Known hosts of the spotted lanternfly include grapes, apples, apricots, peaches, plums, and nectarines. Per the 2017-2018 California Agricultural Statistics Review, the above crops were valued in California at \$6,749,767,000 in 2017.

In 2019, there were 10 spotted lanternfly interceptions in California between August and October on air cargo conveyances. These interceptions heightened the Department's concern about potential pathways for the introduction of spotted lanternfly into the state. Subsequently, the department began coordinating with other states to develop a harmonized plan to prevent the introduction of the spotted lanternfly to other states. Portions of this harmonized effort have been completed and information on the biology and artificial spread of the pest indicates that this insect has multiple potential pathways to expand into uninfested areas. Egg masses are laid on flat surfaces of host plants or man-made material, including walls of conveyances such as vehicles and trains. Each egg masses can include 30-50 eggs. Eggs are deposited in hardened egg cases that hold fast to substrates and are non-descript and easily overlooked. This life stage is the most likely life stage to be artificially spread through human activity.

Should the Department fail to institute a quarantine against this pest, spotted lanternfly could cause direct catastrophic losses to California's affected agricultural industries and significant harm to the State's economy through cost impacts or prohibitions to interstate commerce and exports of host commodities.

If spotted lanternfly were allowed to spread and become established in fruit production areas, California's agricultural industry would suffer losses due to increased pesticide use, decreased production of marketable fruit, and loss of markets if the United States Department of Agriculture (USDA) or other states or countries enact quarantines against California products which are hosts for the spotted lanternfly and conveyances which could carry the spotted lanternfly out of the area.

The introduction of destructive insects such as spotted lanternfly is always the subject of the regional and specific bilateral trade discussions which occur between the USDA and our trading partners. The expeditious implementation of quarantines is a key to ensure qualifying host commodities produced in or packed anywhere in California can also continue to move in international trade. Our trading partners are aware of California regulations. Therefore, it is necessary to adopt Section 3287.

#### California Environmental Quality Act

A Statewide Plant Pest Prevention and Management Program Environmental Impact Report (EIR) was prepared by the Department as the lead agency under the California Environmental Quality Act. The EIR addresses the potential impacts and mitigations when implementing the Statewide Plant Pest Prevention and Management Program activities related to inspections carried out to implement exterior quarantines.

#### **Economic Impact Analysis**

The prevention of the introduction of spotted lanternfly in California through the adoption and implementation of this regulation has the following economic impacts:

##### The Creation or Elimination of Jobs within the State

The adoption of this regulation is designed to prevent the introduction of spotted lanternfly from interstate travel and shipping. Inspection activities are currently being performed by existing state and county staff at entry points throughout the State. The Department does not expect that additional review of compliance agreement or phytosanitary certificate would require significantly greater staff time. Therefore, the Department has determined that this regulatory proposal will have no significant impact on the creation or elimination of jobs in the State of California.

##### The Creation of New Businesses or the Elimination of Existing Businesses within the State

The adoption requires persons to have compliance agreement or phytosanitary certificate if the regulated articles are from or exposed to an infested area. There are no new vendors that will be formed to provide this service or current vendors may hire new staff. Therefore, the Department has determined that this regulatory proposal will not have an impact on the creation of new businesses in the State.

#### The Expansion of Businesses Currently Doing Business within the State

The adoption requires persons to have compliance agreement or phytosanitary certificate if regulated articles are from or exposed to an infested area. The phytosanitary certificate is issued by the state of origin and the checklist is completed by the individual. There will be no businesses expanded to provide these services. Therefore, the Department has determined that this regulatory proposal will not have an impact on the creation of new businesses in the State.

#### Anticipated Benefits from This Regulatory Action

The Californian, national, and international consumers of California spotted lanternfly host materials benefit by having high quality fruit, nuts, vegetables, and seeds available at lower cost. It is assumed that any increases in production costs will ultimately be passed on the consumer.

The adoption of this regulation benefits homeowners who grow fruit, nuts, vegetable, and seeds for consumption and host material that is planted as ornamentals in various rural and urban landscapes by preventing damage to these hosts and the need for them to be treated to mitigate infestations of spotted lanternfly.

#### Assessment

Based upon the Economic Impact Analysis, the Department has made an assessment that the adoption of the regulation would not (1) create or eliminate jobs within California; (2) create new business or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

The Department is the only agency which can implement a regulation enacting an exterior quarantine. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing State regulations.

Existing law, FAC section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code that the Secretary is directed or authorized to administer or enforce.

#### Estimated Cost of Savings to Public Agencies or Affected Private Individuals or Entities

The Department has determined that the adoption of section 3287 does not impose a mandate on local agencies or school districts and no reimbursement is required under section 17561 of the Government Code.

The Department has also determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the state will result from the adoption of section 3287.

The Department has determined that the proposed actions will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that the action will not have a significant statewide adverse economic impact on business was based on the following:

Actions based on this regulation taken by the state or local entities likely would result in net savings to the state in reduced agricultural loss and preventing increased pesticide uses in the event of an infestation.

Based on the preceding information, it was determined that the adoption of section 3287 does not have a statewide adverse economic impact on a representative business or private party.

#### Alternatives Considered

The Department has determined that no reasonable alternative has been identified and brought to the attention of the agency that would be more effective in carrying out the purpose for which the action is proposed, or is as effective and less burdensome to affected private persons than

the proposed action, or is as cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Information Relied Upon

The Department relied upon the following studies, reports, and documents in the proposed adoption of section 3287:

“California Agricultural Statistics Review, 2017-2018,” California Department of Food and Agriculture.

California Pest and Damage Record # NT0P50000541

California Pest and Damage Record # NT0P50000537

California Pest and Damage Record # MV1P06171144

California Pest and Damage Record # MV1P06171180

California Pest and Damage Record # NT0P50000520

California Pest and Damage Record # MV1P06171131

California Pest and Damage Record # MV1P06171129

California Pest and Damage Record # MV1P06171127

California Pest and Damage Record # MD0P06903746

California Pest and Damage Record # MV1P06112797

“Pest Alert: Spotted Lanternfly” USDA, Animal and Plant Health Inspection Service Plant Protection and Quarantine, November 2014

“Spotted Lanternfly: An Asian Exotic is Moving Westward from the East Coast” Robert A. Haack, Newsletter of the Michigan Entomological Society Vol. 63 No. 1, April 2019