

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

- AAM -the abbreviation to identify the adopting agency
- 01 -the *State Register* issue number
- 96 -the year
- 00001 -the Department of State number, assigned upon receipt of notice
- E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing; or C for first Continuation.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Department of Agriculture and Markets

NOTICE OF ADOPTION

Asian Long Horned Beetle Quarantine

LD. No. AAM-50-01-00003-A

Filing No. 247

Filing date: March 5, 2002

Effective date: March 20, 2002

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 139.2 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Subject: Asian long horned beetle quarantine.

Purpose: To prevent the spread of the beetle to other areas.

Text or summary was published in the notice of proposed rule making, LD. No. AAM-50-01-00003-P, Issue of December 12, 2001.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Robert Mungari, Director, Division of Plant Industry, Department of Agriculture and Markets, One Winners Circle, Capital Plaza, Albany, NY 12235, (518) 457-2087

Assessment of Public Comment

The agency received no public comment.

east and south along the shoreline of Randall's and Ward's Island to its intersection with the Triborough Bridge, then east along the Triborough Bridge to its intersection with the Queens shoreline, then north and east along the Queens shoreline to its intersection with the City of New York and Nassau County line, then southeast along the City of New York and Nassau County line to its intersection with the Grand Central Parkway, then west along the Grand Central Parkway to its intersection with the Jackie Robinson Parkway, then west along the Jackie Robinson Parkway to its intersection with Woodhaven Boulevard, then south along Woodhaven Boulevard to its intersection with Atlantic Avenue, then west along Atlantic Avenue to its intersection with the Eastern Parkway Extension, then south, and west along the Eastern Parkway Extension and Eastern Parkway to its intersection with Grand Army Plaza, then west along the south side of Grand Army Plaza to its intersection with Union Street then west along Union Street to its intersection with Van Brunt Street, then south along Van Brunt Street to its intersection with Hamilton Avenue and the Brooklyn Battery Tunnel, then north along Hamilton Avenue and the Brooklyn Battery Tunnel to its intersection with the East River, then north along the Brooklyn Battery Tunnel across the East River to the point of beginning.

Text of proposed rule and any required statements and analyses may be obtained from: Robert Mungari, Director of the Division of Plant Industry, Department of Agriculture and Markets, One Winners Circle, Albany, NY 12235, (518) 457-2087

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 5 days after the last scheduled public hearing required by statute.

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Said Section also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law as he may deem necessary.

2. Legislative objectives:

The proposed modification of the quarantine accords with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the spread within the State of an injurious insect, the Asian Long Horned Beetle.

3. Needs and benefits:

The Asian Long Horned Beetle, *Anoplophora glabripennis*, an insect species non-indigenous to the United States was detected in the Greenpoint section of Brooklyn, New York in August of 1996. Subsequent survey activities delineated other locations in and about Amityville, Queens and Manhattan.

As a result, 1 NYCRR Part 139 was adopted, establishing a quarantine of the areas in which the Asian Long Horned Beetle had been observed. The boundaries of those areas are described in 1 NYCRR section 139.2. Subsequent observations of the beetle have resulted in a need to modify the boundaries of the quarantine areas described in 1 NYCRR section 139.2.

4. Costs:

(a) Costs to the State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties:

Nurseries exporting host material from the quarantined area, other than pursuant to compliance agreement, will require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of \$25 per hour. Most inspections will take one hour or less. It is anticipated that there will be 25 or fewer such inspections each year with a total annual cost of less than \$1000.

Department of Agriculture and Markets

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Asian Long Horned Beetle Quarantine

L.D. No. AAM-50-01-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of section 139.2 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Subject: Asian long horned beetle quarantine.

Purpose: To modify the quarantine of certain areas of the boroughs of Manhattan, Brooklyn and Queens in New York City to prevent the spread of the beetle to other areas.

Public hearing(s) will be held at: 11:00 a.m., Jan. 29, 2002 at Department of Agriculture and Markets, Two Winners Circle, Capital Plaza, Colonie, NY

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Text of proposed rule: Subdivisions (a) and (c) of Section 139.2 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York are repealed; subdivision (d) of said section is renumbered subdivision (c); and a new subdivision (a) is added to read as follows:

(a) That area in the boroughs of Manhattan, Brooklyn and Queens in the City of New York and bounded by a line beginning at a point where the Brooklyn Battery Tunnel intersects the Manhattan shoreline of the East River, then west and north along the shoreline of the Hudson River to its intersection with Martin Luther King Jr. Boulevard, then east along Martin Luther King Jr. Boulevard and across the Triborough Bridge to its intersection with the west shoreline of Randall's and Ward's Island, then

Most shipments will be made pursuant to compliance agreements for which there is no charge.

Tree removal services must chip host material or transport such material under a limited permit to a federal/state disposal site for processing.

Firewood from hardwood species within the quarantined area may not move outside that area due to the fact that it is not practical at this time to determine for certification purposes that the material is free from infestations.

The modification of the quarantine area in the boroughs of Manhattan, Brooklyn and Queens will affect 127 arborists, landscapers, landscape architects, growers and dealers located within the area.

(d) Costs to the regulatory agency:

(i) The initial expenses the agency will incur in order to implement and administer the regulation: None.

(ii) It is anticipated that the Department will be able to administer the quarantine with existing staff.

5. Local government mandates:

Yard waste, storm clean-up and normal tree maintenance activities involving twigs and/or branches of 1/2" or more in diameter of host species will require proper handling and disposal, i.e., chipping and/or incineration if such materials are to leave the area under quarantine. An effort is underway to identify centralized disposal sites that would accept such waste from cities, villages and other municipalities at no additional cost.

6. Paperwork:

Regulated articles inspected and certified to be free of Asian Long Horned Beetle moving from quarantined area must be accompanied by a state or federal phytosanitary certificate of a limited permit or be undertaken pursuant to a compliance agreement.

7. Duplication:

None.

8. Alternatives:

The failure of the State to modify the proposed quarantine to reflect the areas in which the Asian Long Horned Beetle has been observed could result in exterior quarantines by foreign and domestic trading partners as well as a federal quarantine of the entire State. It could also place the State's own natural resources (forest, urban and agricultural) at risk from the spread of Asian Long Horned Beetle that could result from the unrestricted movement of regulated articles from the areas covered by the modified quarantine. In light of these factors there does not appear to be any viable alternative to the modification of quarantine proposed in this rulemaking.

9. Federal standards:

The rule does not exceed any minimum standards for the same or similar subject areas.

10. Compliance schedule:

It is anticipated that regulated persons will be able to comply with the rule immediately.

Regulatory Flexibility Analysis

1. Effect on small business:

The small businesses affected by the rule are the nurseries, arborists, tree removal services and firewood dealers located within the modified quarantined areas. It is estimated that there are fewer than 100 such businesses within the modified quarantined areas. The local governments involved in that modification of the boundaries of the quarantine areas are the City of New York, the boroughs of Manhattan, Brooklyn and Queens. Although it is not anticipated that local governments will be involved in the shipment of regulated articles from the quarantine area, in the event that they do, they would be subject to the same quarantine requirements as other regulated parties.

2. Compliance requirements:

All regulated parties in the modified quarantined areas will be required to obtain certificates and limited permits in order to ship regulated articles from quarantined areas. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

3. Professional services:

In order to comply with the proposed rule small businesses and local governments shipping regulated articles from the modified quarantined areas will require professional inspection services, which will be provided by the Department and the USDA.

4. Compliance costs:

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the proposed rule: None.

(b) Annual cost for continuing compliance with the proposed rule:

Nurseries exporting host material from the modified quarantined area, other than pursuant to a compliance agreement, will require an inspection and the issuance of a federal or state phytosanitary certificate. This service is available at a rate of \$25 per hour. Most such inspections will take one hour or less. It is anticipated that there will be 25 or fewer such inspections each year, with a total cost of less than \$1,000. Most shipments will be made pursuant to compliance agreements for which there is no charge.

Tree removal services must chip host material or transport such material under a limited permit to a federal/state disposal site for processing. Firewood from hardwood species within the quarantined area may not move outside that area due to the fact that it is not practical at this time to determine for certification purposes that the material is free from infestation. Local governments shipping regulated articles from the modified quarantined areas would incur similar costs.

5. Minimizing adverse impact:

The Department has designed the rule to minimize adverse economic impact on small businesses and local governments by limiting the modified quarantined areas to only those areas where the Asian Long Horned Beetle has been detected; by limiting the regulated articles to only those susceptible to infestation by the Asian Long Horned Beetle and to firewood and by limiting the inspection and permit requirements to only those necessary to detect the presence of Asian Long Horned Beetle and prevent its movement in host materials from the quarantined areas. As set forth in the regulatory impact statement, the rule provides for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the rule was designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

6. Small business and local government participation:

The Department has contacted various representatives of nurseries, arborists, the forestry industry, and local government to discuss the quarantine. It has also had extensive consultation with the United States Department of Agriculture.

The Department is involved in a continuing outreach program involving all of the parties affected by the rule. The quarantine has been discussed with the members of the Department's Plant Industry Advisory Committee, which includes representatives of the various types of regulated parties affected by the rule. In addition, a press release was issued at the time the original quarantine was imposed announcing the steps the State is taking to address the problem presented by the Asian Long Horned Beetle. Department representatives also attended a public meeting in Brooklyn, New York at which these issues were discussed and input was received. This outreach program will continue.

7. Assessment of the economic and technological feasibility of compliance with the rule by small businesses and local governments:

The economic and technological feasibility of compliance with the rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Regulated parties shipping host materials from the quarantined areas, other than pursuant to a compliance agreement will require an inspection and the issuance of a phytosanitary certificate. Most shipments, however, will be made pursuant to compliance agreements for which there is no charge.

Rural Area Flexibility Analysis

The rule will not impose any adverse impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This finding is based upon the fact that the modified quarantine area imposed by the rule is limited to portions of the Boroughs of Manhattan, Brooklyn and Queens in the City of New York, areas which do not fall within the definition of "rural areas" set forth in section 481(7) of the Executive Law.

Job Impact Statement

The rule will not have a substantial adverse impact on jobs and employment opportunities. The quarantine establishes conditions for the movement of regulated articles designed to prevent the spread of the Asian Long Horned Beetle to other parts of the State. A spread of the infestation would have very adverse economic consequences to the nursery, forestry, fruit and maple product industries of the State, both from the destruction of the regulated articles upon which these industries depend, and from the more restrictive quarantines that could be imposed by the federal government, other states and foreign countries. By helping to prevent the spread of the

Asian Long Horned Beetle, the rule will help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the State's nursery, forestry, fruit and nut product industries.

Forest related activities in New York State provide employment for approximately 122,400 people. Of that number, 73,740 jobs are attributable to forest-based recreation and approximately 48,670 jobs are associated with the wood-based forest economy, including manufacturing. The forest-based economy generates payrolls of more than \$1.789 billion annually, with \$1.133 billion attributable to forest-based manufacturing and \$655.3 million for forest recreation. Forest-based economic activity accounts for 1% of New York's employment and 1% of the State's payroll. Wood energy also makes an important contribution to the State's economy. In 1998, wood energy accounted for 3,647 direct jobs and \$78.4 million in direct income.

The nursery industry employed 6,011 persons in New York State in 1985. Approximately \$40.1 million in wages were paid by the industry. As set forth in the regulatory impact statement, the cost of the rule to regulated parties is relatively small. The responses received during the Department's outreach to regulated parties indicate that the rule will not have a substantial adverse impact on jobs and employment opportunities.