

# RULE PROPOSALS

## INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## AGRICULTURE

### (a)

#### DIVISION OF PLANT INDUSTRY

#### Spotted Lanternfly Quarantine

#### Proposed Amendment: N.J.A.C. 2:20-10.4

Authorized By: State Board of Agriculture and Douglas H. Fisher,  
Secretary, Department of Agriculture.

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

Calendar Reference: See Summary below for explanation of  
exception to calendar requirement.

Proposal Number: PRN 2019-061.

Submit written comments by August 2, 2019, to:

Joseph Zoltowski, Director  
Division of Plant Industry  
NJ Department of Agriculture  
PO Box 330  
Trenton, New Jersey 08625-0330  
or electronically at: [proposedrulesPlantIndustry@ag.nj.gov](mailto:proposedrulesPlantIndustry@ag.nj.gov)

The agency proposal is as follows:

#### Summary

The New Jersey Department of Agriculture (Department) proposes an amendment to N.J.A.C. 2:20-10, Spotted Lanternfly, to respond to a situation of imminent peril and serious harm to the agricultural industries, environmental resources, and residential areas of New Jersey, and to minimize further economic damage to the lumber, viticulture, nursery, and tourism industries in the Northeastern United States by the Spotted Lanternfly, *Lycorma delicatula*. This insect was initially discovered in Berks County, Pennsylvania in 2014. Since then, it has been found in 14 counties in that Commonwealth. In 2018, emergency rules were adopted to quarantine Warren, Mercer, and Hunterdon counties (see 50 N.J.R. 1903(a); 2235(a)). In February and March 2019, the Department confirmed the existence of the Spotted Lanternfly in Burlington and Salem counties, and now proposes adding additional areas to the quarantine zone.

The New Jersey Department of Agriculture has determined this insect to be a dangerous insect that is destructive to the agriculture, horticulture, and forest industries of New Jersey, and has declared a quarantine of this injurious insect pursuant to N.J.S.A. 4:1-21.5. The Spotted Lanternfly is indigenous to China, India, and Vietnam. It undergoes three stages of development: egg stage, nymphs, and adult. During both the nymph and adult stages, the Spotted Lanternfly sucks plant sap and sugars from a wide variety of tree species, native vines, wild grapes, small fruits, vegetables, herbs, and especially Tree of Heaven, *Ailanthus altissima*. The insects are gregarious in nature, producing large volumes of "honeydew"

excretions that allow the development of sooty mold, which covers plant tissues, reducing the photosynthetic ability of infested plants, resulting in the death of the plant. These "honeydew" excretions also attract hornets, wasps, and other stinging insects, which aggregate to the area causing potential human health issues and nuisance.

The unabated spread of Spotted Lanternfly would seriously threaten all agricultural industries and the environment of this State and related industries throughout the Northeastern United States. The most effective method to eradicate this insect is to spot treat all life stages of the Spotted Lanternfly with general use pesticides, bark spray treatment, use of tree banding techniques on Tree of Heaven in the habitat, and destroying egg masses that overwinter and hatch the following spring.

The purpose of the quarantine and rules is to minimize the environmental and economic damage to the nursery, horticultural, fruit, vegetable, orchard, and viticulture industries that will be severely affected by infestations, along with reducing the nuisance of honeydew excretions affecting the public well-being.

The proposed amendment to N.J.A.C. 2:20-10.4 would enlarge the quarantine area by adding Burlington, Camden, Gloucester, Salem, and Somerset counties. In the proposed quarantine expansion, the Spotted Lanternfly has been identified in the environment within portions of the municipalities of Palmyra Borough in Burlington County, Pennsville Township in Salem County, and Branchburg in Somerset County. Due to these positive identifications by the United States Department of Agriculture (USDA), these counties are proposed to be included in the quarantine area. Camden and Gloucester counties are also included in the quarantine area because they are located between Burlington and Salem counties, places where the existence of the Spotted Lanternfly has been confirmed. These counties are close together and all have multiple crossings to Pennsylvania across the Delaware River. The counties in Pennsylvania across from these three New Jersey counties are all currently under Spotted Lanternfly quarantine order. The decision to quarantine by county was made based upon Spotted Lanternfly reporting protocols developed by the USDA Animal and Plant Inspection Services Plant Protection and Quarantine (USDA APHIS PPQ), as well as Pennsylvania's approach, which utilizes counties as boundaries and scientific data regarding the speed and ease in which the Spotted Lanternfly travels. It may be necessary to add additional counties in the future if the Spotted Lanternfly is detected in other counties.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The proposed amendment will have a positive social impact as it will control the spread of the invasive plant pest, the Spotted Lanternfly. The proposed amendment will allow for the continued supply of quality agricultural crops to residents in New Jersey, and outside of the State, and will protect the environment from damage caused by this insect. The

Spotted Lanternfly is a good hitchhiker, especially in the nymph stage, and it is easy for the small flies to be transported on clothing or vehicles, and there are no known predators for the Spotted Lanternfly.

Not only does the Spotted Lanternfly pose a threat to agricultural industries in New Jersey, it also may be a nuisance to the general population. The “honeydew” excretions are attractive to hornets, wasps, and other stinging insects that aggregate to the area causing potential human health issues and nuisance.

#### **Economic Impact**

Infestations of this foreign insect would negatively impact the overall \$1.1 billion agricultural industries of the State. The Spotted Lanternfly has the potential to degrade and destroy crops, which could cause considerable economic impact to the trade and marketing of New Jersey’s agricultural crops, as well as to the viability of the New Jersey farming community. While exact numbers on how much the Spotted Lanternfly has negatively affected Pennsylvania crops and/or nursery stock are not available, it is reported that there has been a significant impact on the agricultural and logging industries within the Commonwealth.

The proposed amendment would place restrictions on property owners, cities and municipalities, nurserymen, farmers, and other industries conducting business within those areas of New Jersey subject to the quarantine. Property owners in the quarantine areas whose properties are found to be infested would be required to pay for the cost of removal of Tree of Heaven and, as such, may face economic impacts. Persons and entities that do business inside and outside of the quarantine areas would be required to take training to become knowledgeable about how to ensure they are not moving life stages of this insect to uninfested areas. As Spotted Lanternfly egg masses are not easy to identify and due to the ability of the insect to “hitch hike” easily, members of the general public moving regulated articles from the quarantine area who carry a completed checklist will show that items have been inspected. In the past, with the gypsy moth, there were instances where people inadvertently moved egg masses to other areas of the country. The checklist will serve to inform members of the public about Spotted Lanternfly.

Nurseries, garden centers, farmers, and general businesses within the quarantine area may not ship regulated articles outside of the quarantine area without permits, compliance agreements, or phytosanitary inspections, which could cause delays in conducting routine business.

Prevention of further spread, and eradication, of the Spotted Lanternfly will protect forested residential and agricultural areas in the State of New Jersey from the damaging effects of this insect pest.

#### **Federal Standards Statement**

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

#### **Jobs Impact**

The Department has evaluated this rulemaking and determined that it will not have an impact on jobs within the State. Accordingly, no further analysis is required.

#### **Agriculture Industry Impact**

The proposed amendment will affect the routine business activities of agricultural and transportation industries conducting business within the counties under quarantine. Nurseries or garden centers within the quarantine area may not ship regulated articles outside the quarantine area without the possession of a permit issued by the Pennsylvania Department of Agriculture or by complying with the Department’s regulations.

#### **Regulatory Flexibility Analysis**

The proposed amendment to add additional counties may impose compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. No professional services are likely to be needed to comply with the amendments, other than those provided by the Department or the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Services (APHIS). Agricultural producers, transportation industries, and other businesses within the quarantine area may not move or ship regulated articles outside the quarantine area without a permit issued by the Pennsylvania Department of Agriculture. Pennsylvania was the first state where the spotted lanternfly was discovered, and that state

has developed a free online education and testing tool, that automatically generates a permit. Disposal of the Tree of Heaven, when necessary, may be done by a professional tree service, or by landowners themselves.

There will be a greater effect on arborists or tree removal businesses working within the quarantine area, which may only haul wood debris to State-approved disposal facilities. However, all businesses that transport regulated articles in the quarantined area must comply with the amendments, not just small businesses. As such, no waiver is provided because of the effect on public health, safety, and the general welfare.

However, should control measures be necessary, the burden of undertaking Spotted Lanternfly remedial measures on crops or other plants may be imposed upon the individual businesses affected. This burden, of course, is in counterpoise to the overwhelming risks that the unabated spread of the Spotted Lanternfly would have upon the rest of New Jersey and North American agriculture, especially in the Northeastern United States.

Initial and annual costs for businesses are negligible. To comply, businesses must 1) assign one designated employee to complete the training course; 2) have this employee maintain records and train coworkers about quarantine procedures; 3) print copies of the Spotted Lanternfly Checklist to be used by employees moving regulated articles in the quarantine area; and 4) keep records of all training, inspection, and related maintenance activities for two years. Some businesses may need to purchase additional tarps and covers for items that they transport in the back of open-bed pickup trucks. Paper costs will be minimal and variable depending on the number of employees using vehicles and transporting regulated articles. Recordkeeping will require minimal storage space. The Department considered how burdensome the training requirement might become if every employee were required to complete the course, so only one employee is required to take the official training course, and then will train others. The attendant costs of compliance will be less for small businesses due to the fact that they will generate less paper records and have fewer vehicles to inspect. Small businesses cannot be exempted from these rules or the Spotted Lanternfly will continue to spread.

The costs of compliance with the proposed amendment depend on which life stage Spotted Lanternfly is detected, and the speed of which host tree removal and treatment is initiated in the infested areas. Delays in property treatment resulting in the spread of the insect to other trees and areas would affect the operation of the business and would be expected to have a disproportionately harsher impact on a small business with small resources.

The Department has provided no lesser or differing requirements for small businesses. The Department has determined that the proposed amendments represent the minimum standards necessary to protect against the potential endangerment to the agricultural and natural sources of the State that might result from the spread of Spotted Lanternfly.

#### **Housing Affordability Impact Analysis**

The proposed amendment will have no impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed amendment would evoke a change in the average costs associated with housing because the proposed amendment relates to quarantines against the introduction and control of the Spotted Lanternfly in order to protect New Jersey’s agricultural industry from highly injurious invasive pest threats.

#### **Smart Growth Development Impact Analysis**

The proposed amendment will have an insignificant impact on smart growth. There is an extreme unlikelihood that the proposed amendment would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendment relates to quarantines against the Spotted Lanternfly, a plant pest recently discovered in the State. Therefore, they do not impact smart growth.

#### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### SUBCHAPTER 10. 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[.];
  4. **Burlington;**
  5. **Camden;**
  6. **Gloucester;**
  7. **Salem; and**
  8. **Somerset.**
- (b) (No change.)

## COMMUNITY AFFAIRS

### (a)

#### DIVISION OF CODES AND STANDARDS

#### Planned Real Estate Development Full Disclosure Act Regulations

#### Proposed Amendments: N.J.A.C. 5:26-1.3, 8.1, 8.2, and 8.4

#### Proposed New Rules: N.J.A.C. 5:26-8.8 through 8.14

#### Proposed Repeals: N.J.A.C. 5:20 and 5:26-8.3

Authorized By: Lieutenant Governor Sheila Y. Oliver,  
Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 45:22A-21.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2019-065.

Submit written comments by August 2, 2019, to:

Geraldine Callahan  
Department of Community Affairs  
PO Box 800  
Trenton, New Jersey 08625  
Fax No. (609) 984-6696  
[geraldine.callahan@dca.nj.gov](mailto:geraldine.callahan@dca.nj.gov)

The agency proposal follows:

#### Summary

The Department of Community Affairs (Department) proposes to amend the Planned Real Estate Development (PRED) Full Disclosure Act Regulations, N.J.A.C. 5:26, to implement P.L. 2017, c. 106, which amended the Planned Real Estate Development Full Disclosure Act (PREDFDA), N.J.S.A. 45:22A-43 et seq., to enhance resident voting participation rights in common interest community associations. The effective date of PREDFDA was July 13, 2017, except that certain sections of the act concerning notices and voting practices were effective October 13, 2017. This rulemaking establishes that unit owners and voting eligible tenants living in community associations have the right to nominate and elect candidates, as well as run for and be elected to the executive boards that govern the communities. A section-by-section summary of the proposed amendments, new rules, and repeals follows.

1. N.J.A.C. 5:20, Meetings of Governing Boards of Associations of Condos and Other Planned Real Estate Developments, would be repealed. The text from the chapter would be incorporated as amended at N.J.A.C. 5:26-8.12, Open meetings, which is summarized as items 31 through 37, below. Because the rules contained in this chapter are applicable solely to

Planned Real Estate Developments, the Department found that it would be more appropriate to codify these requirements in the PRED rules.

2. At N.J.A.C. 5:26-1.3, Definitions, the following terms relevant to community associations would be added and defined: association, association member, bylaws, condominium, condominium property, executive board, master association, umbrella association, unit, and voting eligible tenants. Also, pursuant to the Office of Administrative Law's standards, the definition of "State" is proposed for deletion.

3. At N.J.A.C. 5:26-8.1, the section heading would be amended to "Formation of the association," and the text of the rule would split into two separate subsections for clarity, with no change in the technical requirements.

4. At N.J.A.C. 5:26-8.2, the section heading would be amended to "Association powers and responsibilities," and would consolidate existing sections N.J.A.C. 5:26-8.2 and 8.3 with amendments to allow for reproduction of the annual audit of association funds. N.J.A.C. 5:26-8.3 is, thus, proposed for repeal.

5. At N.J.A.C. 5:26-8.4, proposed new subsection (a) would be added to state that developers who retain at least one unit as a rental unit are not automatically entitled to a seat on the executive board. This ensures that the developer does not maintain unwarranted influence on the board. Proposed new subsection (b) would also be added to clarify that a developer cannot be prevented from running for a position on the executive board.

Proposed new N.J.A.C. 5:26-8.8, Membership in the association, would include the following.

This section would incorporate the requirements as set forth in P.L. 2017, c. 106, specifically the requirements at N.J.S.A. 45:22A-43, Organization of the association. This would establish that all unit owners are members of the association and provide basic election participation rights. Because of the significant influence community associations have over residents' lives, these participation rights seek to ensure that the executive board is governed fairly.

6. N.J.A.C. 5:26-8.8(a) would specify that an owner is a member of the association for as long as he or she holds the title to the unit.

7. N.J.A.C. 5:26-8.8(b) would grant the developer one membership in the association for each unit registered pursuant to this chapter that has not yet been conveyed to an individual purchaser. This section would further clarify that this does not provide the developer a different transition obligation than that required by statute.

8. N.J.A.C. 5:26-8.8(c) would establish the provisions for an association member to be in good standing. Association members must be in good standing in order to vote in executive board elections, amend bylaws, nominate someone, or run for a position on the executive board. The provision of good standing is also intended to serve as the sole standard for candidacy on the board. To be in good standing, the association member must be current in the payment of common expenses or other fees lawfully assessed; be in compliance with a judgement for common expenses or other fees lawfully assessed; be in full compliance with a settlement agreement with respect to the payments of assessments; and/or have requested or is participating in Alternative Dispute Resolution (ADR) or in a court proceeding over a matter that applies to the member's standing.

9. N.J.A.C. 5:26-8.8(d) would allow for tenant voting in executive board elections and tenant membership in the association subject to the owner's consent. The section would further clarify that the voting eligible tenant's voting rights would be in place of, and not in addition to, the rights of the owner of the leased unit.

Proposed new N.J.A.C. 5:26-8.9, Executive board elections, would include the following.

This section would incorporate the requirements as set forth in P.L. 2017, c. 106, specifically those at N.J.S.A. 45:22A-45.2, concerning executive board elections. This section would ensure that elections are conducted in a fair and open matter. This section would enhance the voting rights of members in good standing and ensure that election meetings are held and ballots are counted in a non-fraudulent way. This section contains overarching requirements, including the establishment of an executive board where there is none, the use of proxies, powers of attorney, and absentee ballots, and the allocation of votes. Further