

TITLE ONE OF THE OFFICIAL COMPILATION OF CODES, RULES AND
REGULATIONS OF THE STATE OF NEW YORK (1 NYCRR)

PART 139
CONTROL OF THE ASIAN LONG HORNED BEETLE

Section

139.1.	Definitions
139.2.	Regulated area
139.3.	Articles under regulation
139.4.	Conditions governing the intrastate movement of regulated articles
139.5.	Conditions governing the issuance of certificates and permits
139.6.	Inspection and disposition of shipments
139.7.	Assembly of regulated articles for inspection
139.8.	Marking requirements
139.9.	Shipments for experimental and scientific purposes.

Section 139.1. Definitions

For the purpose of this Part, the following words, names and terms shall be construed respectively, to mean:

- (a) *Asian Long Horned Beetle*. The insect known as the Asian Long Horned Beetle, *Anoplophora glabripennis*, in any stage of development.
- (b) *Infestation*. This term refers to the presence of the Asian Long Horned Beetle in any life stage or as determined by evidence of activity of one or more of the life stages.
- (c) *Regulated area*. The quarantined area to which this Part applies.
- (d) *Inspector*. An inspector of the New York State Department of Agriculture and Markets, or of the United States Department of Agriculture, when authorized to act in that capacity.
- (e) *Moved; movement*. Shipped, offered for shipment to a common carrier received for transportation or transported by a common carrier, or carried, transported, moved or allowed to be moved from the regulated area into or through any nonregulated portion of the State.
- (f) *Certificate*. A valid form certifying the eligibility of products for intrastate movement under the requirements of this Part.

(g) *Limited permit.* A valid form authorizing the restricted movement of regulated articles from a regulated area to a specified destination for specified processing, handling or utilization.

(h) *Compliance agreement.* An approved document, executed by persons or firms, covering the restricted movement, processing, handling or utilization of regulated articles not eligible for certification for intrastate movement.

Section 139.2. Regulated area

(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 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 Park Lane, then south along Park Lane to its intersection with Park Lane South, then south and west along Park Lane South to its intersection with 112th Street, then south along 112th Street to its intersection with Atlantic Avenue, then west along Atlantic Avenue to its intersection with 106th Street, then south along 106th Street to its intersection with Liberty Avenue, then west along Liberty Avenue to its intersection with Euclid Avenue then south along Euclid Avenue to its intersection with Linden Boulevard, then west along Linden Boulevard to its intersection with Caton Avenue, then west on Caton Avenue to its intersection with Prospect Expressway, then north and west along Prospect Expressway to its intersection with the Gowanus Expressway, then north and west along the Gowanus Expressway to its intersection with 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.

(b) That area in the Villages of Amityville, West Amityville, North Amityville, Babylon, West Babylon, Copiague, Lindenhurst, Massapequa, Massapequa Park, and East Massapequa; in the Towns of Oyster Bay and Babylon; in the Counties of Nassau and Suffolk and bounded by a line beginning at a point where West Main Street intersects the west shoreline of Carlis Creek, then west along West Main Street to its intersection with Route 109, then north along Route 109 to its intersection with Arnold Avenue, then northwest along Arnold Avenue to its intersection with Albin Avenue, then west along Albin Avenue to its intersection with East John Street, then west along East John Street to its intersection with Wellwood Avenue, then north along Wellwood Avenue to its intersection with the Southern State Parkway, then west along the Southern State Parkway to its intersection with Broadway, then south along Broadway to its junction with Hicksville Road continuing south along Hicksville Road to Division Avenue continuing south along Division Avenue to

its intersection with South Oyster Bay, then east along the shoreline to Carlis Creek, then along the west shoreline of Carlis Creek to the point of beginning.

(c) That area in the Villages of Bayshore, East Islip, Islip, and Islip Terrace in the Town of Islip, in the County of Suffolk and bounded by a line beginning at a point where Route 27A intersects Brentwood Road, then east along Route 27A to its intersection with the Southern State Parkway Heckscher Spur, then north and west along the Southern State Parkway Heckscher Spur to its intersection with Carleton Avenue, then north along Carleton Avenue to its intersection with the southern boundary of the New York Institute of Technology, then west along the southern boundary of the New York Institute of Technology through its intersection with Wilson Boulevard to Pear Street, then west along Pear Street through its intersection with Freeman Avenue to Riddle Street, then west along Riddle Street to its intersection with Broadway, then south along Broadway to its intersection with the Southern State Parkway Heckscher Spur, then west along the Southern State Parkway Heckscher Spur to its intersection with Brentwood Road, then south along Brentwood Road to the point of beginning.

(d) That area in the Borough of Richmond in the City of New York bound by a line beginning at a point along the State of New York and the State of New Jersey border due north of the intersection of Richmond Terrace and Morningstar Road; then south to the intersection of Morningstar Road and Richmond Terrace; then southwest along Morningstar Road to its intersection with Forest Avenue; then east along Forest Avenue to its intersection with Willow Road East; then south and then southeast along Willow Road East to its intersection with Victory Boulevard; then west along Victory Boulevard to its intersection with Arlene Street; then south along Arlene Street until it becomes Park Drive North; then south on Park Drive North to its intersection with Rivington Avenue; then east along Rivington Avenue to its intersection with Mulberry Avenue; then south on Mulberry Avenue to its intersection with Travis Avenue; then northwest on Travis Avenue until it crosses Main Creek; then along the west shoreline of Main Creek to Fresh Kills Creek; then along the north shoreline of Fresh Kills Creek to Little Fresh Kills Creek; then along the north shoreline of Little Fresh Kills Creek to the Arthur Kill; then west to the border of the State of New York and the State of New Jersey in the Arthur Kill; then north along the borderline of the State of New York and the State of New Jersey; then east along the borderline of the State of New York and New Jersey excluding Shooters Island to the point of beginning.

Section 139.3. Articles under regulation

(a) *Prohibited movement.* The intrastate movement of living Asian Long Horned Beetles in any stage of development, whether moved independent of or in connection with any other article, is prohibited, except as provided in section 139.9 of this Part.

(b) *Regulated movement.* The following articles shall not be removed from a quarantined area except under a limited permit or unless accompanied by a certificate indicating freedom from infestation:

(1) Firewood (all hardwood species) and all host material living, dead, cut or fallen, inclusive of nursery stock, logs, green lumber, stumps, roots, branches and debris of a half inch or more in diameter of the following genera: Acer (Maple); Aesculus (Horse Chestnut); Albizzia (Silk Tree or Mimosa); Betula (Birch); Populus (Poplar); Salix (Willow); Ulmus (Elm); Celtis (Hackberry); Fraxinus (Ash); Cercidiphyllum japonicum (Katsura); Platanus (Plane Tree, Sycamore) and Sorbus (Mountain Ash) are regulated articles.

(2) Any other commodity or article when found on inspection to be infested with, or show evidence of, the Asian Long Horned Beetle in any stage of development.

Section 139.4. Conditions governing the intrastate movement of regulated articles

(a) *Movement from regulated area.* Unless exempted by administrative instructions of the Commissioner of Agriculture and Markets of the State of New York, regulated articles shall not be moved intrastate from the regulated area to or through any point outside thereof unless accompanied by a valid certificate or limited permit issued by an inspector, authorizing such movement.

Section 139.5. Conditions governing the issuance of certificates and permits

(a) Certificates may be issued for the intrastate movement of regulated articles under one or more of the following conditions:

(1) when they have been inspected and found apparently free from infestation;

(2) when they have been treated, fumigated, or processed by approved methods; or

(3) when they have been grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, no infestation would be transmitted thereby: provided, that subsequent to certification, the regulated articles will be loaded, handled, and shipped under such protection and safeguards against reinfestation as are required by the inspector.

(b) *Limited permits.* Limited permits may be issued for the movement of noncertified regulated articles to specified destinations for specified processing, handling, or utilization. Persons shipping, transporting, or receiving such articles may be required to enter into written compliance agreements to maintain such sanitation safeguards against the establishment and spread of infestation and to comply with such conditions as to the maintenance of identity, handling, processing, or subsequent movement of regulated products and the cleaning of cars, trucks and other vehicles used in the transportation of such articles, as may be required by the inspector. Failure to comply with conditions of the agreement will result in its cancellation.

(c) *Cancellation of certificates or limited permits.* Certificates or limited permits issued under these regulations may be withdrawn or canceled by the inspector and further certification refused whenever in his or her judgment the further use of such certificates or permits might result in the dissemination of infestation.

Section 139.6. Inspection and disposition of shipments

Any car or other conveyance, any package or other container, and any article or thing to be moved, which is moving, or which has been moved intrastate from the regulated area, which contains, or which the inspector has probable cause to believe may contain, infestations of the Asian Long Horned Beetle, or articles or things regulated under this

quarantine, may be examined by an inspector at any time or place. When articles or things are found to be moving or to have been moved intrastate in violation of these regulations, the inspector may take such action as he deems necessary to eliminate the danger of dissemination of the Asian Long Horned Beetle. If found to be infested, such articles or things must be freed of infestation without cost to the State except that for inspection and supervision.

Section 139.7. Assembly of regulated articles for inspection

(a) Persons intending to move intrastate any of the articles covered by these regulations shall make application for certification as far in advance as possible, and will be required to prepare and assemble materials at such points and in such manner as the inspector shall designate, so that thorough inspection may be made or approved treatments applied. Articles to be inspected as a basis for certification must be free from matter which makes inspection impracticable.

(b) The New York State Department of Agriculture will not be responsible for any cost incident to inspection, treatment, or certification other than the services of the inspector.

Section 139.8. Marking requirements

Every container of regulated articles intended for intrastate movement shall be plainly marked with the name and address of the consignor and the name and address of the consignee, when offered for shipment, and shall have securely attached to the outside thereof a valid certificate (or limited permit) issued in compliance with these regulations: provided, that:

(a) for lot freight shipments, other than by road vehicle, one certificate may be attached to one of the containers and another to the waybill; and for carlot freight or express shipment, either in containers or in bulk, a certificate need be attached to the waybill only and a placard to the outside of the car, showing the number of the certificate accompanying the waybill; and

(b) for movement by road vehicle, the certificate shall accompany the vehicle and be surrendered to consignee upon delivery of shipment.

Section 139.9. Shipments for experimental and scientific purposes.

Regulated articles may be moved intrastate for experimental or scientific purposes, on such conditions and under such safeguards as may be prescribed by the New York State Department of Agriculture and Markets. The container of articles so moved shall bear, securely attached to the outside thereof, an identifying tag issued by the New York State Department of Agriculture and Markets showing compliance with such conditions.

As of: November 17, 2009