

EXPRESS TERMS

A new Part 143 is added to Title 1 of the New York Codes Rules and Regulations to read as follows:

PART 143

CONTROL OF THE BOX TREE MOTH

(Statutory Authority: Agriculture and Markets Law §§18, 164 and 167)

Section 143.1. Definitions.

Section 143.2. Establishment of the quarantine area.

Section 143.3. Movement of regulated articles within the quarantine area.

Section 143.4. Intrastate movement of regulated articles originating within or traveling through the quarantine area to or from points outside the quarantine area.

Section 143.5. Conditions governing compliance agreements for movement of regulated articles out of the quarantine area.

Section 143.6. Conditions governing limited permits and certificates of inspection for movement of regulated articles out of the quarantine area.

Section 143.7. Exemptions.

Section 143.8. Assembly of regulated articles for inspection.

Section 143.9. Marking requirements.

Section 143.10. Inspection and disposition of shipments.

Section 143.11. Other laws and regulations; interstate movement of regulated articles.

Section 143.12. Effective date.

Section 143.1. Definitions

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

(a) AML. The Agriculture and Markets Law.

(b) Authorized holder. Any person who is granted a limited permit or certificate of inspection by the Department or enters into a compliance agreement with the Department.

(c) Box Tree Moth or BTM. Any living life stage of the insect known as *Cydalima perspectalis*.

(d) Certificate of inspection. The document issued under the authority of or by the Department, which affirms that a regulated article is free of BTM for the purposes of intrastate movement.

(e) Commissioner. The Commissioner of the Department of Agriculture and Markets or the Commissioner's duly authorized representative.

(f) Compliance agreement. The document issued under the authority of or by the Department that sets forth the requirements covering restricted movement, treatment, processing, handling or utilization of a regulated article not otherwise eligible for intrastate movement, and permits its authorized holder to issue a limited permit for the movement of a restricted article, subject to the terms of the compliance agreement and this Part without a Department inspection prior to each movement.

(g) Department. The Department of Agriculture and Markets (AGM).

(h) Infestation. The presence of the BTM in any life stage.

(i) Inspector. Any inspector of the Department or cooperator from the United States Department of Agriculture (USDA), when authorized by the Department to act in that capacity.

(j) Limited permit. The document issued under the authority of or by the Department, or an authorized holder of a compliance agreement, permitting the one-time restricted movement of a regulated article from the quarantine area to a specified destination for specified treatment, processing, handling or utilization.

(k) Moved and Movement. Shipped, offered or received for shipment, carried, transported, or relocated into or through any area of the State.

(l) Person. An individual, organization, corporation, partnership, public authority, county, town, village, city, municipal agency or public corporation, or any other legal entity other than the Department or its respective authorized agents including the United States Department of Agriculture.

(m) Quarantine Area. The geographic area of the State defined in and delineated on the quarantine area map in Section 143.2 of this Part.

(n) Regulated article. The whole plant, plant parts and nursery stock of the genus *Buxus*, including all living and dead material, cut or fallen stems and branches, stumps, stems, roots, branches, leaves and debris any of which measuring a half inch or greater in any two dimensions as measured by a sieve or other appropriate mechanism, or is comingled or indistinguishable from any part of the *Buxus* plant and/or plant parts. A regulated article may also include any other article, commodity, item, or product that an inspector reasonably believes to be infested, or susceptible to infestation by BTM, and which is the subject of a quarantine order issued by the Commissioner, pursuant to Article 14 of the AML.

(o) USDA APHIS, PPQ. The United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine.

Section 143.2. Establishment of the quarantine area.

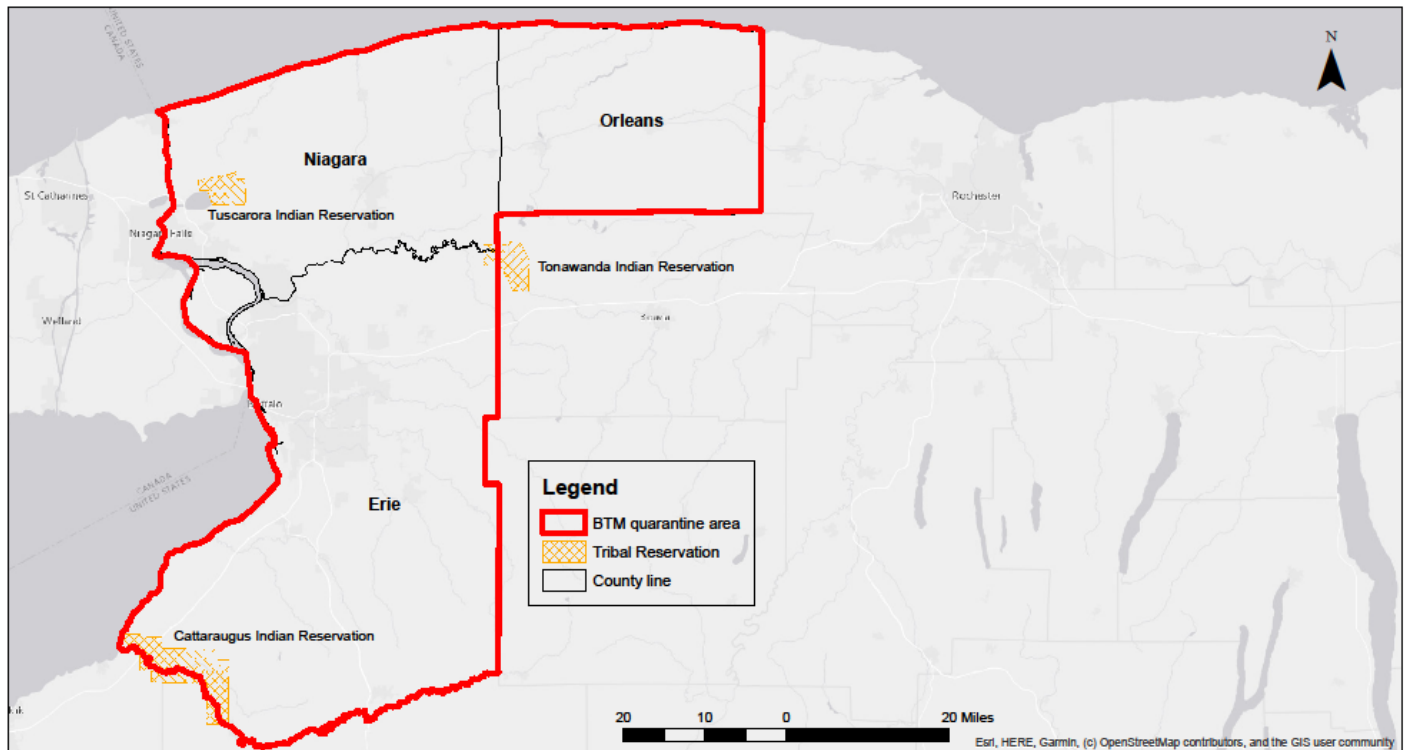
(a) Establishment of the quarantine area. The quarantine area is set forth on the map below and is designated to include the following areas:

- (1) Niagara County, in its entirety;
- (2) Orleans County in its entirety; and
- (3) Erie County, in its entirety.

(b) The requirements in this Part shall not apply to the Cattaraugus, Tonawanda and Tuscarora Indian Reservations.

(c) Any amendment of or addition to the quarantine area shall be made by regulation.

Box Tree Moth Quarantine Area



Section 143.3. Movement of regulated articles within the quarantine area.

A regulated article may be moved freely within the quarantine area, provided the regulated article is otherwise eligible for unrestricted movement under all other state and federal plant quarantines and regulations applicable to the regulated article.

Section 143.4 Intrastate movement of regulated articles originating within or traveling through the quarantine area to or from points outside the quarantine area.

(a) The intrastate movement of regulated articles, as defined herein, whether moved independent of, or in connection with any other article, is prohibited except as established in this Section, and/or in Sections 143.5, 143.6 and 143.7 herein.

(b) No person shall move a regulated article from any point within the quarantine area to or through any point outside the quarantine area, unless:

(1) accompanied by a limited permit or certificate of inspection authorizing such movement under administrative instructions of the Commissioner; or

(2) subject to an exemption as described in Section 143.7 of this Part.

(c) Notwithstanding the provisions of subdivision (b) of this Section, a regulated article originating from within New York, but outside the quarantine area in New York, may be moved through the quarantine area in the state, provided that:

(1) The points of origin and destination of the regulated article are indicated on a waybill accompanying the regulated article; and

(2) The regulated article, if moved through the quarantine area during the months of May through and including October, is either moved in a completely enclosed portion of a vehicle or other conveyance, or is completely enclosed by a covering adequate to prevent access by BTM, such as canvas, plastic, or other closely woven cloth; and

(3) The regulated article is moved directly through the quarantine area without stopping, except for refueling, and as required by traffic conditions.

Section 143.5. Conditions governing compliance agreements for movement of regulated articles out of the quarantine area.

(a) A person engaged in growing, handling, or moving a regulated article intrastate may apply for a compliance agreement with the Department.

(b) The Department may, in its sole discretion, may issue or decline to issue a compliance agreement.

(c) Any authorized holder of a compliance agreement shall comply with the provisions of this Part and any conditions imposed under the compliance agreement.

(d) Any compliance agreement may be cancelled by the Department, either orally or in writing, whenever an inspector determines, in his or her sole discretion, that the authorized holder of the compliance agreement has not complied with this Part or the conditions imposed under the compliance agreement.

(1) Cancellation of a compliance agreement shall take effect immediately upon providing oral notice or the delivery of the written notice. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing at a date no later than three days after such oral cancellation.

(2) Cancellation of a compliance agreement shall be deemed final unless within seven days from the date of cancellation, the Department receives notice from an authorized holder in writing of its intention for a proceeding to review such action.

Section 143.6 Conditions governing limited permits and certificates of inspection for movement of regulated articles out of the quarantine area.

(a) Limited Permits.

(1) An inspector or an authorized holder of a compliance agreement may issue a limited permit for the movement of a regulated article out of the quarantine area, provided that the regulated article meets the following requirements:

(i) During the months of May and continuing through the end of October, limited permits for the movement of regulated articles intended to be sold or shipped outside of the quarantine area shall require the treatment of regulated articles using such control measures approved by the Department, and in accordance with any applicable manufacturers' instructions or labels; and

(ii) Before a limited permit may be issued, where applicable, a regulated article intended for interstate commerce shall be otherwise eligible for unrestricted movement under all other applicable federal and state plant quarantines and regulations.

(2) All issued limited permits shall accompany the corresponding shipment of any regulated article leaving the quarantine area, as specified in Section 143.9 of this Part.

(3) An inspector or authorized holder of a compliance agreement may issue additional limited permits, pursuant to the terms of a compliance agreement, or may authorize, in writing, the reproduction of an issued limited permit in order to be placed on shipping containers, as requested by a person operating under a compliance agreement. Such limited permits may then be completed and utilized as needed, for the movement of a regulated article to points outside the quarantine area, provided such regulated article otherwise meets all requirements of this Part.

(4) Any limited permit may be cancelled by the Department or an inspector, either orally or in writing, whenever an inspector determines, in his or her sole discretion, that the authorized holder of the limited permit has not complied with this Part or the conditions imposed under the compliance agreement.

(i) Cancellation of a limited permit shall take effect immediately upon providing oral notice or the delivery of the written notice, whichever occurs first. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing at a date no later than three days after such oral cancellation.

(ii) Cancellation of a limited permit shall be deemed final unless within seven days from the date of cancellation, the Department receives notice from an authorized holder in writing of its intention for a proceeding to review such action.

(b) Certificates of inspection.

(1) An inspector may issue a certificate of inspection for the movement of a regulated article out of the quarantine area, provided that the regulated article meets the following requirements:

(i) Before a certificate of inspection may be issued, a regulated article intended for interstate commerce must otherwise be eligible for unrestricted movement under all other applicable federal and state plant quarantines and regulations; and

(ii) The regulated article shall be inspected and determined to be free of BTM infestation, as defined herein, by an inspector or an authorized holder of a compliance agreement; or

(iii) The regulated article shall be treated or processed by methods which render BTM non-viable, which have been approved by the Department, or as outlined in the compliance agreement; or

(iv) The regulated article is grown, produced, manufactured, stored or handled in such manner that, in the judgment of the inspector, transmission of infestation would be controlled or limited, provided that, subsequent to the issuance of a certificate of inspection, such regulated article shall be loaded, handled, and shipped under such protection and safeguards against BTM infestation, as established by an inspector or otherwise established by the Department.

(2) All issued certificates of inspection shall accompany the corresponding shipment of any regulated article leaving the quarantine area as specified in Section 143.9 of this Part.

(3) An inspector may issue additional certificates of inspection, or may authorize, in writing, the reproduction of an issued certificate of inspection in order to be placed on shipping containers, as requested by a person operating under a compliance agreement. Such certificates of inspection may then be completed and utilized as needed, for the movement of a regulated article to points outside the quarantine area, provided such regulated article otherwise meets all requirements of this Part.

(4) Any certificate of inspection may be cancelled by the Department or an inspector, either orally or in writing, whenever an inspector determines, in his or her sole discretion, that the authorized holder of the certificate of inspection has not complied with this Part or the conditions imposed by a compliance agreement.

(i) Cancellation of a certificate of inspection shall take effect immediately upon providing oral notice or the delivery of the written notice, whichever occurs first. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing at a date no later than three days after such oral cancellation.

(ii) Cancellation of a certificate of inspection shall be deemed final unless within seven days from the date of cancellation, the Department receives notice from an authorized holder in writing of its intention for a proceeding to review such action.

Section 143.7 Exemptions.

(a) Shipments of regulated articles for experimental and scientific purposes.

(1) A regulated article may be moved intrastate for experimental or scientific purposes, on such conditions and under such safeguards as may be prescribed in writing by the Department. The container of the article so moved shall bear, securely attached to the outside thereof, an identifying tag issued by the Department showing compliance with such conditions.

(2) An application for an exemption under this Section shall be made in writing to the duly authorized Department representative. The issuance or denial of an exemption under this Section, either orally or in writing, shall be final unless within seven days from the date of

denial thereof, the Department receives notice from applicant in writing of its intention for a proceeding to review such action.

(b) Commissioner Administrative Exemption.

(1) A regulated article may be moved intrastate pursuant to an administrative exemption issued by the Commissioner. The container of the article so moved shall bear, securely attached to the outside thereof, an identifying tag issued by the Department evidencing the issuance of such administrative exemption.

(2) An application for an administrative exemption shall be made in writing to the duly authorized Department representative. The issuance or denial of an administrative exemption under this Section, either orally or in writing, shall be final unless within seven days from the date of denial thereof, the Department receives notice from applicant in writing of its intention for a proceeding to review such action.

Section 143.8. Assembly of Regulated Articles for Inspection.

(a) All persons intending to conduct intrastate movement of a regulated article, except as provided in Sections 143.4, 143.5, 143.6, and/or 143.7 of this Part, shall make an application for inspection as far in advance as possible, in writing to the inspector.

(1) Regulated articles to be inspected shall be prepared and assembled at such locations and in such manner as the inspector shall designate, to allow for the thorough inspection of such article and/or to allow the application of control measures approved by the Department in order to render BTM non-viable.

(2) Before any regulated article that requires inspection under this Section shall be issued a certificate of inspection, such article shall be free from matter or other condition that makes inspection impracticable or infeasible.

(b) The Department shall not be responsible for any cost incident to inspections or certification, other than the cost of providing the designated inspector.

(c) Any determination finding a condition which prevents the issuance of a certificate of inspection under this Section, whether oral or in writing, shall be final unless within seven days from the date of such determination, the applicant notifies the Department in writing of its intention for a proceeding to review such action.

Section 143.9 Marking requirements.

Every container being utilized to hold or contain a regulated article, and 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 limited permit or certificate of inspection issued in compliance with this Part, provided, that:

(a) For movement by lot freight shipment, other than by road vehicle, one limited permit or certificate of inspection may be attached to one of the containers and another to the waybill.

(b) For movement by car lot freight or express shipments, either in containers or in bulk, a limited permit or certificate of inspection may be attached to the waybill only and a placard to

the outside of the car, showing the number of the valid limited permit or certificate of inspection accompanying the waybill.

(c) For movement by road vehicle, the limited permit or certificate of inspection shall accompany the vehicle and shall be surrendered to consignee upon delivery of the shipment.

(d) For movement of all regulated articles leaving the quarantine area, such regulated articles shall be accompanied by a limited permit or certificate of inspection as specified in the applicable compliance agreement.

Section 143.10. Inspection and disposition of shipments.

(a) Any vehicle or other conveyance, any package or other container, and any item to be moved, or which has been moved intrastate from the quarantine area which may contain a regulated article is subject to be examined by an inspector.

(b) When items are found to be moving or to have been moved intrastate in violation of these regulations, the inspector may take such action as he or she deems necessary to eliminate the danger of dissemination of BTM.

(c) When items are found to be moving or to have been moved intrastate in violation of these regulations, such items must be rendered free of infestation without cost to the State other than services of the inspector.

Section 143.11. Other laws and regulations; interstate movement of regulated articles.

This Part shall only apply to the intrastate movement of regulated articles. No provision of this Part relieves any person from the obligation to comply with any additional applicable federal, state, county, regional or local law or regulation.

Section 143.12. Effective Date

This regulation shall take effect immediately.