TITLE 1. DEPARTMENT OF AGRICULTURE AND MARKETS
CHAPTER III. PLANT INDUSTRY
SUBCHAPTER C. PREVENTION AND CONTROL OF DISEASE IN TREES AND
PLANTS; INSECT PESTS; SALE OF FRUIT-BEARING TREES(ARTICLE 14,
AGRICULTURE AND MARKETS LAW)
PART 140. CONTROL OF THE PLUM POX VIRUS (POTYVIRUS DIDERON STRAIN)

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

Section 140.1 Definitions.
Section 140.2 Quarantined area.
Section 140.3 Regulated area.
Section 140.4 Nursery stock regulated area
Section 140.5 Conditions governing the propagation of regulated articles.
Section 140.6 Conditions governing the intrastate movement of regulated articles.
Section 140.7 Records
Section 140.8 Conditions governing the issuance of certificates and permits.
Section 140.9 Inspection and disposition of shipments.
Section 140.10 Assembly of regulated articles for inspection.
Section 140.11 Marking requirements.
Section 140.12 Shipments for experimental and scientific purposes.

140.1 Definitions.

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

(a) **Certificate** means a certificate issued or authorized to be issued by the commissioner, certifying the eligibility of products for intrastate movement under the requirements of this Part.

(b) **Commissioner** means the Commissioner of Agriculture and Markets of the State of New York and any officer or employee of the New York State Department of Agriculture and Markets or the United States Department of Agriculture duly delegated pursuant to section 17 of the Agriculture and Markets Law.

(c) **Compliance agreement** means an agreement approved by the commissioner and executed by persons or firms, covering the restricted movement, processing, handling or utilization of regulated articles not eligible for certification for intrastate movement.

(d) **Infection** means the presence of plum pox virus.

(e) **Inspector** means an inspector of the New York State Department of Agriculture and Markets, or representatives of the United States Department of Agriculture Animal and Plant Health Inspection Service (USDA APHIS), when authorized to act in that capacity.
(f) *Limited permit* means a permit issued by the commissioner for the planting of regulated articles in the nursery stock regulated area for the restricted movement of regulated articles from a regulated area to a specified destination for specified processing, handling or utilization.

(g) *Moved* and *movement* means 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.

(h) *Nursery dealer* means any person, firm, partnership, association or corporation which or who is not a nursery grower or an original producer of nursery stock in the State and which or who buys, or acquires, or receives on consignment nursery stock for the purpose of reselling, transporting, or otherwise disposing of same.

(i) *Nursery grower* means the owner or operator of the grounds or premises, private or public, on or which nursery stock is propagated, grown or cultivated for the purpose of distribution or selling the same as a business. The term nursery grower shall not include persons engaged in the part-time production of plant products not sold in the regular channels of business.

(j) *Nursery stock* means all trees, shrubs, plants and vines and parts thereof.

(k) *Nursery stock regulated area* means any town a portion of which is within 11.5 kilometers of any location where the plum pox virus has been detected within the preceding six years.

(l) *Plum pox virus* means the plum pox potyvirus Dideron strain, which is a pathogen affecting susceptible *Prunus* species.

(m) *Quarantined area* means the area designated as quarantined by this Part.

(n) *Regulated area* means an area designated as regulated pursuant to this Part due to the presence of plum pox virus in that area.

(o) *Regulated articles* means plant and plant materials, including trees, seedlings, root stock, budwood, branches, scion, twigs and leaves of the following varieties of the *Prunus* species:

1. Fruit-bearing and ornamental varieties including all cultivars of:

<table>
<thead>
<tr>
<th>Scientific Name</th>
<th>Common Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prunus americana</td>
<td>American plum and wild plum</td>
</tr>
<tr>
<td>Prunus armeniaca</td>
<td>Apricot</td>
</tr>
<tr>
<td>Prunus cerasifera</td>
<td>Myrobalan plum/Cherry plum</td>
</tr>
<tr>
<td>Prunus domestica</td>
<td>European plum and Common Plum</td>
</tr>
<tr>
<td>Prunus dulcis</td>
<td>Sweet Almond</td>
</tr>
<tr>
<td>Prunus persica</td>
<td>Peach and Flowering Peach</td>
</tr>
<tr>
<td>Prunus persica var. nucipersica</td>
<td>Nectarine</td>
</tr>
<tr>
<td>Prunus salicina</td>
<td>Japanese Plum</td>
</tr>
</tbody>
</table>
(2) Ornamental varieties including all cultivars of:

<table>
<thead>
<tr>
<th>Scientific Name</th>
<th>Common Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prunus cerasifera</td>
<td>Purple Leaf Plum</td>
</tr>
<tr>
<td>Prunus x cistena</td>
<td>Purple Leaf Sand Cherry</td>
</tr>
<tr>
<td>Prunus glandulosa</td>
<td>Flowering Almond</td>
</tr>
<tr>
<td>Prunus persica</td>
<td>Flowering Peach and Purple Leaf Peach</td>
</tr>
<tr>
<td>Prunus pumila</td>
<td>Sand Cherry and Western Sand Cherry</td>
</tr>
<tr>
<td>Prunus spinosa</td>
<td>Black Thorn and Sloe</td>
</tr>
<tr>
<td>Prunus serrulata</td>
<td>Japanese Flowering Cherry and Kwanzan Cherry</td>
</tr>
<tr>
<td>Prunus tomentosa</td>
<td>Nanking Cherry and Hansen’s Bush Cherry</td>
</tr>
<tr>
<td>Prunus triloba</td>
<td>Flowering Plum</td>
</tr>
</tbody>
</table>

(3) For the purposes of this Part, the following varieties of the *Prunus* species are not regulated articles: *Prunus avium*; *Prunus cerasus*; *Prunus laurocerasus*; *Prunus mahaleb*; *Prunus padus*; *Prunus sargentii*; *Prunus serotina*; *Prunus serrula*; *Prunus subhirtella*; *Prunus yedoensis*; and *Prunus virginiana*.

(4) For the purposes of this Part, seeds and fruit that are free of leaves of all varieties of the *Prunus* species are not regulated articles.

(p) *State* means the State of New York.

140.2 Quarantined area.

(a) That area of Niagara County which is bordered on the north by Lake Ontario and bordered on the east by the town line of the Towns of Newfane and Somerset, extending south to the town line of the Towns of Newfane and Hartland, extending south on the town lines of the Towns of Newfane and Hartland to the intersection of Route 104 (Ridge Road), extending west on Route 104 (Ridge Road), to the intersection of Route 425 (Cambria-Wilson Road/Lake Street), extending north on Route 425 to Lake Ontario to the north.

(b) The following cities, towns, and hamlets are under quarantine for the plum pox virus:

(1) City of Newburgh in Orange County;
(2) Town of Newburgh in Orange County;
(3) City of Poughkeepsie in Dutchess County;
(4) Town of Poughkeepsie in Dutchess County;
(5) Town of Marlborough in Ulster County;
(6) City of Beacon in Dutchess County;
(7) Town of Plattekill in Ulster County;
(8) Town of Fishkill in Dutchess County;
(9) Town of Wappinger in Dutchess County; and
(10) Hamlet of Marlboro in Ulster County.

140.3 Regulated area.

(a) That area of Ulster and Orange Counties that intersects and lies within the following one mile radius circle: (GPS coordinates 41.59229, -73.97927), that intersect with Route 9W on the north, following an imaginary line east to the intersection of Mill House Road, (GPS coordinates 41.58775, -73.97780), following an imaginary line south-west to the intersection of McDonald Drive, (GPS coordinates 41.57976, -73.97993), following an imaginary line south-west to the intersection of Levinson Heights Road, (GPS coordinates 41.57397, -73.98737), following an imaginary line south to the intersection of Old Post Road, (GPS coordinates 41.57295, -73.99007), following an imaginary line south to the intersection of Route 9W on the south, (GPS coordinates 41.57271, -73.99096), following an imaginary line south-west to the intersection of Lattintown Road (GPS coordinates 41.57393, -74.00663), following an imaginary line north-west to the intersection of Candlestick Hill Road, (GPS coordinates 41.58121, -74.01490), following an imaginary line north-west to the intersection of Bingham Road, (GPS coordinates 41.58945, -74.01589), following an imaginary line north-west to the intersection of Gobblers Knob Road, (GPS coordinates 41.59830, -74.00813), following an imaginary line north-east to the intersection of Hampton Road, (GPS coordinates 41.59138, -74.01522), following an imaginary line north-east to the intersection of Gobblers Knob Road, (GPS coordinates 41.59872, -74.00733), following an imaginary line north-east to the intersection of South Street, (GPS coordinates 41.60023, -74.00320), following an imaginary line north-east to the intersection of Lattintown Road, (GPS coordinates 41.60084, -73.99983), following an imaginary line east to the intersection of Lu El Ann Road, (GPS coordinates 41.60084, -73.99450), following an imaginary line south-east to the intersection of Cross Road, (GPS coordinates 41.59916, -73.98775), following an imaginary line south-east to the intersection of South Street/Rosa Drive, (GPS coordinates 41.59774, -73.98483), following an imaginary line south-east to the intersection of Highland Avenue, (GPS coordinates 41.59639, -73.98296), following an imaginary line south-east to Vineyard Lane, (GPS coordinates 41.5960, -73.98245), following an imaginary line south-east back to the intersection of Route 9W, (GPS coordinates 41.59229, -73.97927), to close the imaginary line in a one mile circle.

140.4 Nursery stock regulated area.

The nursery stock regulated area shall consist of the quarantined area set forth in section 140.2 of this Part, exclusive of the regulated areas set forth in section 140.3 of this Part.

140.5 Conditions governing the propagation of regulated articles.

(a) Regulated articles originating from or growing within the regulated area or the nursery stock regulated area shall not be used as a source of propagated material (either root stock, scion, budwood or seed).

(b) Regulated articles originating from or growing within Niagara County shall not be used as a source of propagated material (either root stock, scion, budwood or seed), except as allowed in subdivision (c) of this section.

(c) On-farm propagation of regulated articles for the purposes of fruit production shall only be allowed pursuant to a compliance agreement.

140.6 Conditions governing the intrastate movement of regulated articles.
(a) Prohibited movement.

(1) The movement of any regulated article within the regulated area is prohibited.

(2) The intrastate movement of any regulated article from the regulated area to any point
outside the regulated area is prohibited, except pursuant to a limited permit, authorizing such
movement.

(3) The intrastate movement of any regulated article from any point outside the regulated
area to the regulated area is prohibited, except pursuant to a limited permit, authorizing such
movement.

(4) The intrastate movement of any article infected with or suspected of having been
exposed to the plum pox virus is prohibited, except as provided in section 140.12 of this Part.

(5) The handling of regulated articles by nursery dealers or nursery growers within the
nursery stock regulated area is prohibited, except pursuant to a compliance agreement.

(6) The digging and moving of regulated articles by nursery dealers and nursery growers
within the nursery stock regulated area is prohibited.

(7) The planting and over-wintering of regulated articles by nursery dealers and nursery
growers within the nursery stock regulated area is prohibited.

(8) The planting and over-wintering of regulated articles by nursery dealers and nursery
growers within Niagara County is prohibited.

(b) Regulated movement.

Regulated articles may be moved through the regulated area if the regulated articles
originated outside the regulated area and:

(1) the point of origin of the regulated articles is on the waybill or bill of lading; and

(2) a certificate accompanies the regulated articles; and

(3) the vehicle moving the regulated articles does not stop within the regulated area
except for refueling; and

(4) the vehicle moving the regulated articles during the period April 1st through
November 30th is either an enclosed vehicle or a vehicle completely covered by canvas, plastic
or closely woven cloth to prevent access by aphids or other vectors of plum pox virus.

140.7 Records.

Nursery dealers and nursery growers handling regulated articles within a nursery stock
regulated area that is adjacent to a regulated area shall compile, maintain and make available
for inspection, for a period of two years, records of inventory and sales of regulated articles on a
form or forms prescribed by the commissioner.
140.8 Conditions governing the issuance of certificates and permits.

(a) Certificates may be issued for the intrastate movement of regulated articles when they have been grown, produced, manufactured, stored or handled in such a manner that, in the judgment of the inspector, no infection would be transmitted thereby, provided that subsequent to certification, the regulated articles will be loaded, handled and shipped under such protection and safeguards against reinfection as are required by the inspector.

(b) 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 compliance agreements to maintain such sanitation safeguards against the establishment and spread of infection 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 cancellation of a limited permit.

(c) Certificates or limited permits issued under these regulations may be withdrawn or canceled by the commissioner and further certification refused whenever in his or her judgment the further use of such certificates or limited permits may result in the spread of the plum pox virus.

140.9 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, regulated articles or other articles infected with the plum pox virus, may be examined by an inspector at any time or place. When regulated articles 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 the spread of the plum pox virus. If found to be infected, such articles or regulated articles shall be freed of infection without cost to the State except that for inspection and supervision.

140.10 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 articles at such points and in such manner as the inspector shall designate, so that thorough inspection may be made or approved treatments verified. 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 and Markets or the United States Department of Agriculture Animal and Plant Health Inspection Service (USDA APHIS) shall not be responsible for any cost incident to inspection, treatment, or certification other than the services of the inspector.
140.11 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 car lot 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.

140.12 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.