

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

Quarantines

Proposed Amendment: N.J.A.C. 2:20-2.3

Proposed Repeal and New Rule: N.J.A.C. 2:20-8.5

Proposed New Rules: N.J.A.C. 2:20-9

Authorized By: Joseph Zoltowski, Director, Division of Plant Industry, State Board of Agriculture and Douglas H. Fisher, Chairman, and Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:1-21.5, 4:6-20, and 4:7-1 et seq.

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

Proposal Number: PRN 2018-038.

Submit written comments by July 6, 2018, to:

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

The agency proposal is as follows:

Summary

The Department of Agriculture (Department) proposes new N.J.A.C. 2:20-9, Non-Native Phytophagous Snails. The introduction of dangerously injurious insect pests or plant pathogens from another state or foreign country can constitute a serious threat to agriculture in New Jersey. In the globalization of world trade, the prospect of spreading highly injurious plant pest species to new areas continues to increase, and there is a need to quarantine certain pests to prevent their introduction into New Jersey. Based on these factors, the New Jersey Department of Agriculture has proposed in this new subchapter, the means by which the agricultural industry and the environment of New Jersey can be protected from highly injurious invasive pest threats.

The Department of Agriculture proposes to amend N.J.A.C. 2:20-2.3 relating to the special permit for the importation and/or growing of plant cultivars and hybrids of European Black Currant (*Ribes nigrum L.*). The purpose of the proposed amendment is to protect New Jersey's white pine environments from white pine blister rust. This rust, native to Asia, was introduced to North America around the turn of the 20th century. In the northeastern region, it was observed in several states along the eastern coast of North America and subject to a Federal quarantine restricting the movement and possession of black currants. Since its

introduction, it had spread to 38 states and caused substantial damage and mortality, especially in commercially valuable species of white pine. All of the North American white pines are susceptible to the rust. To protect the State's native white pines from the spread of white pine blister rust, Federal and state governments outlawed growing currants and gooseberries in 1918. In 1966, the Federal ban was rescinded and the decision to continue the ban was given to individual states.

White pine blister rust has a complex life cycle that requires two hosts for it to survive- white pine and most commonly, black currants (*Ribes nigrum*) or a type of gooseberry plant (*Ribes ssp.*), neither of which are native to New Jersey. Other varieties of gooseberry that are currently grown in New Jersey have not been shown to host white pine blister rust. Both plants are necessary and must be in close proximity for the disease to complete its life cycle, eventually causing tree mortality. At the request of some growers interested in producing and selling products made from black currants, in May 2002, amendments to the quarantine rules were made allowing four varieties of black currants that were supposed to be resistant to white pine blister rust to be grown under a special permit.

In light of recent scientific evidence by Federal plant pathologists that the four varieties of black currants are not immune to the rust, the Department proposes to amend the permitting requirements to eliminate these immune varieties in order to prevent the reoccurrence of this disease from the New Jersey environment. The Department seeks to keep the permit language in the existing rule to allow for any future new varieties that may be developed or discovered.

The Department proposes to eliminate the specific Asian longhorned beetle quarantine areas in N.J.A.C. 2:20-8.5. This section defines the boundaries of the quarantine areas in Middlesex and Union Counties for the Asian longhorned beetle established in 2004. The Department, in cooperation with the United States Department of Agriculture Animal and Plant Health Inspection Service Plant Protection and Quarantine (USDA APHIS PPQ), efforts has successfully eradicated this exotic invasive forest insect, and declared such, from the New Jersey environs in 2013, making the delineation of the quarantine zone unnecessary. Specifically, the Department proposes to repeal existing N.J.A.C. 2:20-8.5 and replace it with a new rule, permitting the Secretary to temporarily designate quarantine areas based on positive confirmation of the Asian longhorned beetle by the Department or the USDA APHIS.

Finally, the Department proposes new N.J.A.C. 2:20-9, Non-Native Phytophagous Snails. The new subchapter would add a quarantine against the rearing and importation of non-native plant feeding snails into the State from infested areas. In the past, the Department has eradicated small established infestations of non-native plant feeding species of these mollusks, costing considerable fiscal and staffing resources to allow New Jersey nursery stock entry into other states that prohibit their introduction. At least 13 other states have similar

quarantines against movement of non-native snails into their states through the nursery trade and certification from New Jersey is required.

Annually, there are inquiries from residents wishing to establish a cottage industry to produce escargot for restaurant sales using non-native snail species. Biological sales companies have also historically provided some of the more common non-native mollusk species to science teachers through mail order catalogues. In both instances, these non-native species were subsequently released and became established into the local environment costing tens of thousands of dollars and countless hours of manpower to successfully eradicate these invasive species. These species are extremely adaptable and have a high reproductive rate, which allows them to outcompete native species and pose a significant impact to the agricultural community and trade. They are also known to serve as intermediate vectors for parasitic nematodes, which cause both human and animal health issues many of which are fatal if not treated early in the infection.

Specifically, the new rules are as follows:

N.J.A.C. 2:20-9.1 contains the definitions of words and terms used in the subchapter.

N.J.A.C. 2:20-9.2 sets forth the materials regulated by the subchapter.

N.J.A.C. 2:20-9.3 sets forth the restrictions on raising, maintaining, holding, or moving non-native phytophagous snail throughout the State.

N.J.A.C. 2:20-9.4 sets out the standards for the treatment or disposal of infested materials.

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 primary purpose of N.J.A.C. 2:20 is to protect the agricultural and environmental areas of the State through the prohibition, identification, and elimination of certain destructive exotic insects, diseases, and plant pests. The social impact of the proposed amendment, repeal, and new rules will be minimal in terms of impacting the availability of clean agricultural crops and nursery stock to consumers. The environmental quality of the State would be improved since dangerous, non-native invasive plant pests and diseases would be prohibited. The prohibition of these organisms would also benefit trade of New Jersey’s agricultural commodities to other states and countries as phytosanitary certifications of plant material must comply with regulations of other states or foreign countries.

The proposed amendment of N.J.A.C. 2:20-2.3 would have a positive social impact because it would protect the agricultural and environmental areas of the State through the prohibition of importation or growing of plant cultivars and hybrids of European black current, which can carry white pine blister rust. The proposed repeal of N.J.A.C. 2:20-8.5 would have a positive social impact as the Asian longhorned beetle has been successfully eliminated, which makes the quarantine unnecessary. Finally, the proposed addition of N.J.A.C. 2:20-9 would have a positive social impact by protecting the environmental quality of the State by keeping out non-native pests that can carry disease.

Economic Impact

The purpose of the proposed amendment, new rules, and repeal is to provide protection from the reintroduction of a highly destructive disease of five needle pines and injurious plant pests not native to the State but found infesting areas of other states and foreign trading partners. The least expensive and most efficient method of control of these environmental and agricultural pests is to prevent their entry and establishment in this State. The economic impact of the introduction and establishment of any of the foreign plant pests defined in this chapter into New Jersey and North American agriculture would be devastating as they are capable of untold damage if unabated. Re-introduction and establishment of the white pine blister rust fungus in New Jersey would lead to the loss of highly valued ornamental or landscape plantings of white pines, white pines planted in Christmas tree plantations, nurseries, for conservation purposes, and native white pines in forests and parks throughout the State.

Allowing the possession and establishment of non-native polyphagous snails into the State would cause significant population reductions of native snail populations. These non-native species are

extremely adaptable and have a high reproductive rate that allows them to out-compete native species and pose a significant impact to the native ecosystem, agricultural community, and trade. They are also known to serve as intermediate vectors for parasitic nematodes that cause both human and animal health issues many of which are fatal if not treated early in the infection. Numerous states have existing quarantines against the movement of any life stages of non-native plant feeding snails through the nursery trade. The establishment of these non-native species into agricultural areas would hamper the certification and movement of horticultural products into other states, which could severely hamper businesses in the nursery industry.

There are relatively inexpensive and effective control measures for non-native polyphagous snails available through the proper use of pesticides, fungicides, herbicides, molluscicides, and other control agents applied early in the infestation or outbreak. The cost of such treatments would fall upon the businesses affected in proportion to the locations of the infestation or amount of acreage affected and the difficulty of treatment. Delay in treatment requiring prolonged quarantine of premises or stock, of course, will affect the operation of the business.

There is no provision in the statutes nor are funds provided by the Legislature for the reimbursement of the destruction of any infected crop, stock, or plant. It may be that costs of control due to the virulence or large-scale spread of such an outbreak could be borne by the Department through a wide area control program. If that should occur, it would be the Department’s responsibility to secure funding to deal with the problem either in cooperation with the Federal government or on its own.

Federal Standards Statement

The requirements imposed at N.J.A.C. 2:20-8 for Asian longhorned beetle are the same as those imposed by Federal law, 7 CFR 301.51, in which the State adopted parallel restrictions on the movement of regulated articles, to control and limit the spread of Asian longhorned beetle within New Jersey. There are no Federal laws pertaining to the rules imposed at N.J.A.C. 2:20-2, White Pine Blister Rust, or 2:20-9, Non-Native Phytophagous Snails.

Jobs Impact

The Department of Agriculture does not anticipate that any jobs will be generated or lost by virtue of the proposed amendment, repeal, or new rules.

Agriculture Industry Impact

The proposed amendment, repeal, and new rules will have a positive impact on New Jersey’s agriculture industry. The prohibition of non-native agricultural pests and the elimination of non-resistant species of black currants will protect the environment and prohibit the inadvertent movement of diseased or infested stock between other states or countries. The rules will afford protection to farmers from the introduction and establishment of a number of highly destructive plant pests not found in New Jersey.

Regulatory Flexibility Analysis

The proposed amendment, repeal, and new rules do not impose any reporting, recordkeeping, or compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, should control and quarantine measures have to be implemented, then the burden of undertaking plant pest remedial measures may be imposed upon the individual business affected. This burden is balanced against the overwhelming risks that the unabated spread of these plant pests would have upon the rest of the New Jersey environment and agriculture.

The proposed amendment, repeal, and new rules do not impose any reporting or recordkeeping on the part of any business or individual. However, accurate records that are kept in the ordinary course of the nursery business are extremely helpful in preventing the spread of plant pests. No professional services are likely to be needed to comply with this rulemaking. In the event that quarantine pests are discovered, the professional services of a licensed, certified pesticide applicator may be required to apply certain pesticides and other control agents.

The Department believes that the costs of compliance with the proposed amendment, repeal, and new rules depends on when pests are detected, and when pesticides and other control agents are applied. Relatively inexpensive and effective control measures are available through the proper use of pesticides, cultural practices, and other control agents applied early in the infestation or outbreak. The cost of such treatments would fall upon the businesses affected in proportion to the locations of the infestation or amount of acreage affected and the difficulty of treatment. Delay in treatment requiring prolonged quarantine of premises or stock, of course, would affect the operation of the business and would be expected to have a disproportionately harsher impact on a small business with smaller resources.

The Department has provided no lesser or differing requirements based upon business size. The Department has determined that the proposed amendment, repeal, and new rules represent the minimum standards necessary to protect against the potential endangerment to the agricultural and natural resources of the State that might result from the potential establishment of exotic pests or diseases that may be associated with live, growing plant materials imported from foreign countries.

Housing Affordability Impact Analysis

The proposed amendment, repeal, and new rules will have no impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed amendment, repeal, and new rules would evoke a change in the average costs associated with housing because the rules relate to quarantines against the introduction and possession of infested or infested plant materials in order to protect New Jersey's agricultural industry from highly injurious invasive pest threats.

Smart Growth Development Impact Analysis

The proposed amendment, repeal, and new rules will have an insignificant impact on smart growth. There is an extreme unlikelihood that the proposed amendment, repeal, and new rules 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, repeal, and new rules relate to quarantines against plant pests and diseases not currently found in the State, therefore, they do not impact smart growth.

Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 2:20-8.5

Full text of the proposed amendment and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 2. WHITE PINE BLISTER RUST (*CRONARTIUM RIBICOLA FISCHER*)

2:20-2.3 Special permit for the importation and/or growing of plant cultivars and hybrids of European Black Currant (*Ribes nigrum* L.) in New Jersey

(a)-(c) (No change.)

[(d) Only the following white pine blister rust resistant/immune cultivars are permitted:

1. "Consort";
2. "Coronet";
3. "Crusader"; and
4. "Titania."]

[(e)] **(d)** For new introductions of **currants**, the permittee shall provide to the Department a certification from the plant source that all plants are white pine blister rust resistant/immune cultivars [as indicated in (d) above]. **A permit may be issued following favorable scientific review and certification of the varieties by the USDA APHIS and/or the U.S. Forest Service.**

Recodify existing (f)-(h) as **(e)-(g)** (No change in text.)

SUBCHAPTER 8. ASIAN LONGHORNED BEETLE

2:20-8.5 Quarantine area

The Secretary of the Department of Agriculture may temporarily designate any area in New Jersey as a quarantine area, if the Secretary has reason to believe that Asian longhorned beetle is

present based on positive confirmation of Asian longhorned beetle by the Department, or by the U.S. Department of Agriculture Animal and Plant Health Inspection Service.

SUBCHAPTER 9. NON-NATIVE PHYTOPHAGOUS SNAILS

2:20-9.1 Definitions

As used in this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

"Department" means the New Jersey Department of Agriculture.

"Infested areas" mean the states of Arizona, California, Florida, Hawaii, Minnesota, New Mexico, Oregon, Texas, Washington, or any other areas that are infested with phytophagous snails that are not native to New Jersey.

"Movement" means to ship, carry, transport, offer for shipment, receive for shipment, or allow to be transported by any means.

"Non-native phytophagous snail" means any live snail, in any stage of development that feeds on plants and does not occur naturally in New Jersey including, but not limited to, the following: the brown garden snail, *Helix aspersa*; the green or burrowing snail, *H. aperta*; the pulmonate snail, *H. pomatia*; the white garden snail, *Theba pisana*; the giant African snail, *Achatha fulica*; the giant South American snail, *Megalobulimus oblongus*; the lactea snail, *Otala lactea*; and any other species determined by the Secretary to be a threat to New Jersey agriculture and added to this section pursuant to N.J.S.A. 52:14B-1 et seq. Native New Jersey species are not included.

"Plant material" means all wild, cultivated, or greenhouse-grown plants, trees, shrubs, vines, bulbous plants and roots, grafts, scions, and buds. "Plant material" includes nursery stock, annuals, bedding plants, vegetable plants, cut flowers, and decorative plants without roots.

2:20-9.2 Materials regulated

Plant materials harboring live, non-native phytophagous snails, live, non-native phytophagous snails themselves, and/or other articles capable of transporting non-native phytophagous snails shall not be moved into the State of New Jersey from an infested area.

2:20-9.3 Restrictions

(a) Raising, maintaining, and/or holding live, non-native phytophagous snails is prohibited.

(b) Movement of live, non-native phytophagous snails into or through the State in any stage of development is prohibited.

2:20-9.4 Treatment or disposal of infested materials

Regulated articles that are infested with live, non-native phytophagous snails, or materials that have been exposed to infestation by these plant pests, may be ordered destroyed or fumigated at the expense of the owner, at the direction of the Department.