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RULE PROPOSALS

**AGRICULTURE
DIVISION OF PLANT INDUSTRY**

44 N.J.R. 1583(a)

Proposed Amendments: N.J.A.C. 2:24-1, 2.2, 4, and 5

Proposed New Rules: N.J.A.C. 2:24-6

[Click here to view Interested Persons Statement](#)

Diseases of Bees

Authorized By: Douglas Fisher, Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:6-1 et seq., specifically 4:6-21 and 22.

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

Proposal Number: PRN 2011-161.

Submit comments by July 20, 2012 to:

Carl P. Schulze Jr., Director
Division of Plant Industry
NJ Department of Agriculture
PO Box 330
Trenton, NJ 08625-0330
Telephone: (609) 292-5441

The agency proposal follows:

Summary

Maintaining the health of New Jersey's bee population is important to the agricultural industry. Declines in honey bee populations can cause serious economic repercussions throughout the agricultural community of New Jersey. In New Jersey many crops benefit from bee pollination, such as apples, cranberries, blueberries, cantaloupes, cucumbers and watermelons. Besides pollinating agricultural crops, honey bees also pollinate a wide variety of annual and perennial flowers, along with all tree species.

Following the collapse of numerous honey bee colonies across the country, the New Jersey Legislature passed legislation directed to hive and colony protection and mandating changes through P.L. 2007, c. 271 (N.J.S.A. 4:6-21), an act concerning the preservation of honey bee colonies. At that time, new Subchapter 6 was developed with the assistance of the New Jersey Beekeeping Advisory Group (Group). This Group is composed of representatives of the New Jersey Beekeepers Association, New Jersey Commercial Beekeepers, New Jersey Blueberry Advisory Council, American Cranberry Growers Association, New Jersey Farm Bureau, New Jersey State Board of Agriculture, New Jersey Agricultural Experiment Station and Plant Industry Apiary Inspection Program personnel. The proposals developed by the Group were shared with the New Jersey Department of Environmental Protection (NJDEP) Bureau of Pesticides and the New Jersey Pest Control Operators.

The NJDEP Bureau of Pesticides recommended that institutional structures be included with residential and commercial structural categories and that these include schools and municipal buildings in proposed Subchapter 6. Additional comments submitted by the Bureau to the Group led to the proposed addition of further definitions consistent with definitions in Bureau rules for pesticide applicators and operators to cover pesticide applications made by either licensed or unlicensed applicators.

The Department of Agriculture proposes to amend N.J.A.C. 2:24 to update the rules and to revise elements to reflect changes in pest population. These amendments update scientific references and accommodate current practices that have been shown to address the inspection and treatment needs.

Proposed amendments to N.J.A.C. 2:24-1.1, Definitions, add definitions for pesticide applicators and operators to cover pesticide applications made by either licensed or unlicensed applicators.

Proposed amendments to N.J.A.C. 2:24-2.2, Entities with apiary inspection services, address updates made to the inspection and certification requirements for bee colonies entering New Jersey from out-of-State. The amendments require inspection of the brood no more than 60 days prior to shipment and the percentage of American foulbrood and Varroa mites (if found) to be shown on the inspection certificate.

Proposed amendments at N.J.A.C. 2:24-4.1, Inspection protocol, to the inspection protocol incorporate the current scientific understanding of Varroa mites population. Previously there were some hives with Varroa mites and some hives without them; however, now the Varroa mites are found everywhere. As a result, the previous treatment procedure is no longer relevant to the presence of the pest. Sampling is no longer required but is identified as a tool to monitor the Varroa mite population level. Proposed amendments also eliminate the need to quarantine colonies for Small Hive Beetle based on current scientific management practices and national distribution of this pest. Proposed amendments also revise treatment protocols for American foulbrood based on evolving practices and identify procedures for non-treatable colonies. The proposed amendments to N.J.A.C. 2:24-4.2 concerning certification also recognize the population aspect of the Varroa mite and require that New Jersey queen breeders must obtain and provide to buyers a certificate disclosing the number of Varroa mites found per sample.

Proposed amendments to N.J.A.C. 2:24-5.1, Transport of bees, limit transport of hives any time of day or night by requiring that all hives are adequately secured and place more limits on transport of bees only during daylight.

The Department proposes to add a new Subchapter 6 addressing the preservation of honey bee colonies. The purpose of the new Subchapter 6 is to protect the State's dwindling honey bee population by allowing agricultural

agencies, or their designees, to determine the advisability of relocating colonies of this agriculturally beneficial insect when possible, without risk to human or animal health and safety, and within a reasonable period of time, prior to approving extermination of honey bee [page=1584] colonies by certified commercial pesticide applicators and licensed commercial pesticide operators in the State.

Proposed new N.J.A.C. 2:24-6.1, Relocating honey bee colonies, preserves honey bee colonies by requiring notice to the State Apiarist in advance of extermination of honey bees to secure assistance in relocation of hives instead of destroying the hives. Alternative means of notice through beekeepers is also provided in the absence of the State Apiarist.

Proposed new N.J.A.C. 2:24-6.2, Recordkeeping, requires the maintenance of a log of beekeepers contacted by commercial or private applicators prior to their elimination of swarms or colonies not in dwellings.

Proposed new N.J.A.C. 2:24-6.3, Exceptions, sets forth exceptions from the required notice of this subchapter for: commercial pesticide application for elimination of bees in residential, commercial, or institutional structures; the elimination of diseased colonies found during the State Apiarist's inspection activities; diseased bee colonies to be destroyed by the owner; and commercial pesticide applications performed at the direction of the government.

Proposed new N.J.A.C. 2:24-6.4, Penalties, sets forth penalties for intentional destruction of honey bee hives or hanging swarms without the required approval.

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

Social Impact

The rules affect beekeepers and inhabitants in affected municipalities where beekeeping is practiced within New Jersey. A healthy honey bee population and the pollination services that beekeepers provide are invaluable to the well being of the New Jersey public. The quantity and quality of the crops produced by the pollination dependent portions of the New Jersey agricultural industry benefit residents of New Jersey with both employment and a wholesome, economical and nutritious food source. Therefore, these rules have a positive social impact on the citizens of the State of New Jersey.

Economic Impact

The proposed amendments involve, in part, clarification of existing regulations that serve to maintain the known economically important pest situations encountered by the beekeeping industry. Therefore, these rules will have a positive economic impact on the citizens of the State of New Jersey. Proposed amendments also replace treatment obligations with monitoring (N.J.A.C. 2:24-4.1), thus limiting regulatory economic burdens. In the interest of preservation of the economically beneficial honey bee, new N.J.A.C. 2:24-6 makes clear the obligations of commercial pesticide applicators, operators and any person to contact agricultural agencies prior to exterminating honey bee colonies and establish penalties for destruction of man-made hives.

Federal Standards Statement

The requirements of the New Jersey Department of Agriculture, Division of Plant Industry regarding bee disease and other conditions unfavorable to the development of bees within the State are dictated by N.J.S.A. 4:6-1 et seq., and are not subject to any Federal requirements or standards.

Jobs Impact

The proposed amendments and new rules are not expected to result in the generation or loss of jobs in the State.

Agriculture Industry Impact

The proposed amendments and new rules will have a positive impact on the agriculture industry, for the reasons set forth in the Summary and Social Impact and Economic Impact statements above.

Regulatory Flexibility Analysis

All beekeepers in New Jersey qualify as small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Migratory beekeepers entering into New Jersey also qualify. Most farmers who use pollinating services are also small businesses. The rules impose compliance requirements and levels of performance, which will impact upon small businesses. The New Jersey Department of Agriculture has carefully attempted to balance the need for disease control with the impact on the citizen. However, since these rules deal with disease control and prevention no differing or lesser standards can be applied to small businesses.

Beekeepers overwintering bee hives in New Jersey are required by these rules to annually report the number and location of their overwintering bee yards to the Department through an apiary registration process only upon the Department's request. This is the only reporting or recordkeeping requirement imposed on small businesses by these amendments. Apiary registration provides for an accurate accounting of bee yards and enables the Department to minimize the incidence of bee diseases in a more efficient manner. No fees are imposed for registration.

All beekeepers, both commercial and hobbyists, in New Jersey are subject to periodic inspections. The inspection protocols are standards that are applied to all persons that keep honey bees and cannot be changed for different size businesses. Not having these standards would have an adverse impact on the health and safety of the beekeeping industry. No fees are imposed for apiary inspections.

Finally, no capital expenditures or professional services are required to comply with the proposed amendments and new rules.

Housing Affordability Impact Analysis

The proposed amendments and new rules will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the amendments and new rules protect honey bee colonies and update scientific references.

Smart Growth Development Impact Analysis

The proposed amendments and new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the 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 amendments and new rules protect honey bee colonies and update scientific references.

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

SUBCHAPTER 1. DEFINITIONS

2:24-1.1 Definitions

As used in this chapter, the following words and terms shall have the following meaning:

...

"Certified and licensed responsible pesticide applicator" means any responsible pesticide applicator who is certified and licensed pursuant to the provisions of either N.J.A.C. 7:30-6, Commercial Pesticide Applicators, or N.J.A.C. 7:30-8, Private Pesticide Applicators.

...

"Commercial pesticide applicator" means any person (whether or not he or she is a private pesticide applicator with respect to some uses) who uses or supervises the use of any pesticide for any purpose or on any property other than as provided by the definition of "private pesticide applicator." Any employee of a government agency who engages in the use and application of pesticides as is necessary within the scope of his or her employment is considered a commercial pesticide applicator.

"Commercial pesticide operator" means any person who applies pesticides by equipment other than aerial under the direct supervision of a responsible commercial pesticide applicator.

...

"Pesticide applicator" means any person who is required to be certified and registered pursuant to the provisions of either N.J.A.C. 7:30-6, Commercial Pesticide Applicators, or N.J.A.C. 7:30-8, Private Pesticide Applicators.

"Private pesticide applicator" means any person who uses or supervises the use of any pesticide for the purposes of producing any agricultural commodity on property owned or rented by him or her or his or her employer or, if applied without compensation other [page=1585] than trading of personal services between producers of agricultural commodities, on the property of another person.

...

"Responsible pesticide applicator" means any individual who is accountable for the use of a pesticide by himself or herself or any person under his or her direct supervision.

...

SUBCHAPTER 2. SHIPMENT OF BEES INTO NEW JERSEY

2:24-2.2 Entities with apiary inspection services

(a) No colony, nucleus of bees, used apiary equipment coming from a state or country having an apiary inspection service shall be permitted into New Jersey unless accompanied by a valid certificate of inspection from the exporting state or country stating that the bees or equipment are apparently free from the conditions listed in N.J.A.C. 2:24-2.1 and that the bees are not Africanized bees derived from the African subspecies (*Apis mellifera scutellata*) and free from the characteristics identifiable therewith in accordance with N.J.A.C. [2:22-3.1] **2:24-3.1**.

(b) No certificate of inspection shall be honored unless a brood nest inspection was made [and a Varroa mite sample taken,] no more than 60 days prior to shipment from the site the bees were immediately prior to shipment into New Jersey. Inspections shall be conducted in the manner prescribed at N.J.A.C. 2:24-4.

[1. If, after inspection, the average of the Varroa mite sampling technique in an apiary exceeds two mites per sample with either an ether roll, or an average of 50 mites per sticky board, all colonies must be shipped under treatment with

an EPA approved miticide according to label specifications.]

[2.] **1.** The inspection date and percentage of inspection for American foulbrood, the percentage sampled for Varroa mites, **if available** and the sampling method with the results, must be shown on the inspection certificate.

(c) (No change.)

(d) No certificate of inspection shall be honored **by the New Jersey Department of Agriculture** on any colonies infected with American foulbrood [or from an infected area as determined by the New Jersey Department of Agriculture]. If an examination of the bees is undertaken pursuant to N.J.A.C. [2:22]~~2:24~~-2.1, the certificate of inspection will not be honored unless the findings of the examination are supplied.

(e)-(f) (No change.)

SUBCHAPTER 4. INSPECTION AND CERTIFICATION OF APIARIES

2:24-4.1 Inspection protocol

(a) Beekeepers will be notified in advance, where possible and feasible, of any potential inspection of their bees[; where possible, that notification will be at least five days prior to inspection].

(b) All inspections will be conducted in accordance with the following procedures:

1.-2. (No change.)

3. Varroa mite sampling [shall] **may** be conducted [according to the following minimum standard: either sample 20 percent of the colonies in each apiary using an ether roll technique, or five percent of the colonies in each apiary using an approved miticide and sticky board technique] **as a population level monitoring tool by the State Apiarist.**

(c) All hives sold in New Jersey must be found by the Department to be apparently free of American foulbrood. [All hives sold in New Jersey must be inspected and found by the Department to average less than two Varroa mites per sample by ether roll, or be under treatment with an EPA approved miticide to label specifications.] The inspection by the Department shall be conducted within 10 working days of the request for inspection by the seller.

[(d) The treatment procedure for Varroa in hives within New Jersey is as follows:

1. If an apiary averages two or fewer mites per sample with an ether roll, or an average of 50 mites or less per sticky board the beekeeper must begin treatment of the infested apiary within 12 months of the inspection by the Department.

2. If an apiary averages more than two and less than 20 mites per sample with an ether roll, or averages more than 50 and less than 1,000 mites per sticky board, the beekeeper shall begin treatment of the infested apiary as soon as practical but no later than October 30 following the inspection by the Department.

3. If an apiary averages 20 or more mites per sample with an ether roll, or averages 1,000 or more mites per sticky board, the beekeeper shall begin treatment of the infested apiary within 15 days of an order by the Department or before movement whichever occurs first.]

[(e)] **(d)** The treatment procedure for American foulbrood infected hives within New Jersey is as follows:

1. The Department shall categorize the infected colonies as "treatable" for control of American foulbrood (AFB) or

"non-treatable." This classification shall be at the discretion of the inspector, according to [(e)2] **(d)2** and 3 below, although the beekeeper is invited to be present and assist during the inspection.

2. Procedures for "treatable" colonies shall be as follows:

i. "Treatable" colonies are those colonies with [less than 10 percent AFB infection and] no AFB scale present.

[ii. The beekeeper shall remove and destroy by burning all infected wooden frames within 15 days of the initial inspection. Upon request, the Department shall assist the beekeeper in obtaining the necessary burning permits. Non-wooden infected frames shall be disposed in a landfill or rendered disease-free by any other method approved by the Department.]

[iii.] **ii.** (No change in text.)

[iv.] **iii.** The Department shall reinspect "treatable" colonies [according to the following schedule:

(1) Detection occurred March 15 - September 1: Reinspection shall be made as soon as possible, but no sooner than 60 days after initial inspection.

(2) Detection occurred September 2 - March 14: Reinspection shall be made as soon as possible but no sooner than April 30 following initial inspection.] **as soon after 60 days as weather conditions permit. Colonies would be under a one-year probationary period. If treatment is not successful during this one-year period, the colony would be considered non-treatable.**

3. Procedures for "non-treatable" colonies shall be as follows:

i. "Non-treatable" colonies are those colonies [which] **that** have [10 percent or more AFB infection or have] observable AFB scale.

ii.-iv. (No change.)

[(f) The treatment procedure for hives infested with small hive beetle (SHB) found within New Jersey is as follows:

1. If a colony is found to contain one or more small hive beetle (SHB) larvae, the colony shall be sent to a quarantine yard selected by the beekeeper and approved by Department. The beekeeper shall destroy infested frames by either burning, melting, freezing or fumigating. The beekeeper shall treat the soil around the infested colony or colonies with an approved Federal EPA and NJDA insecticide. The colonies shall not be released from the quarantined area until the Department inspects them and declares them free of SHB, in writing.

2. Beekeepers who fail to follow the control procedures pursuant to this subchapter shall be required to destroy SHB infested colonies by burning. Any violations of this subchapter shall be subject to the penalty and enforcement provisions of N.J.S.A. 4:6 -1 et seq.]

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

2:24-4.2 Certification protocol

All New Jersey queen breeders, as well as sellers of splits, nucleus [hives,] or divides must [average less than two mites per sample to be certified. All sales of queens, splits, nucleus hives, or divides to New Jersey apiarists will include an EPA approved miticide administered according to label specifications.] **obtain a certificate disclosing number of**

Varroa mites found per sample and provide a copy of such certificate to the buyer.

SUBCHAPTER 5. TRANSPORT OF BEES

2:24-5.1 Transport requirements

(a) All hives shall be adequately secured to prevent excess movement of the hives during transport, regardless of the time of the day.

[page=1586] [(a)] **(b) No bees shall be transported [in] into or through New Jersey between sunrise and sunset unless:**

[1. All hives are adequately secured to prevent excess movement of the hives during transport.]

Recodify existing 2. and 3. as **1. and 2.** (No change in text.)

Recodify existing (b) and (c) as **(c) and (d)** (No change in text.)

SUBCHAPTER 6. [(RESERVED)] **PRESERVATION OF HONEY BEE COLONIES**

2:24-6.1 Relocating honey bee colonies

(a) To preserve honey bee colonies in the State, any person including certified and licensed responsible pesticide applicators and commercial pesticide applicators and operators operating in the State shall contact the State Apiarist by phone at least 24 hours in advance of extermination of honey bees to obtain assistance in trying to relocate nuisance honey bee colonies or hanging swarms of honey bees, in lieu of destroying said honey bees. Honey bees shall not be destroyed without prior approval from the State Apiarist.

(b) In the event the State Apiarist is not reachable, any person including certified and licensed responsible pesticide applicators and commercial pesticide applicators and operators shall attempt to contact no fewer than three beekeepers identified by the New Jersey Beekeepers Association as swarm collectors servicing the affected county, in order to obtain assistance in relocating nuisance honey bee colonies or hanging swarms before nuisance honey bee colonies or hanging swarms of honey bees may be destroyed.

(c) The New Jersey Beekeepers Association maintains a website listing beekeepers offering to collect honey bee swarms and colonies inside structures at: <http://cjba.njbeekeepers.org/swarms.htm>.

2:24-6.2 Recordkeeping

A clear and legible written or computerized log of beekeepers contacted pursuant to N.J.A.C. 2:24-6.1 shall be maintained by any person for one year and made available for inspection upon request of the State Apiarist, or his or her representatives.

2:24-6.3 Exceptions

(a) Conditions of this subchapter do not apply to:

1. Commercial pesticide applications for the elimination of feral colonies of bees within either residential, commercial or institutional structures when the likelihood of exposure by persons allergic to bee venom presents a clear hazard; although any person, including certified and licensed responsible pesticide applicators, is encouraged to seek the services of a beekeeper/swarm collector specializing in collecting colonies or swarms from

inside structures in non-hazardous situations;

2. The State Apiarist, or his or her representatives in the elimination of diseased colonies found during inspection activities;

3. Honey bee colonies destroyed by a beekeeper/owner in the elimination of diseased colonies found during inspection or normal apiary management activities; or

4. Commercial pesticide applications performed at the direction of the United States Department of Agriculture Animal and Plant Health Inspection Service or the United States Customs and Border Protection for the elimination of suspect Africanized honey bees or other foreign species of the genus *Apis*.

2:24-6.4 Penalties

(a) Any person who intentionally destroys a man-made honey bee hive or hanging swarm without the approval required under this subchapter shall be liable to a civil penalty of up to \$ 1,000 for each offense, to be collected by a summary proceeding under the Penalty Enforcement Law of 1999, P.L. 1999, c. 274 (N.J.S.A. 2A:58-10 et seq.) or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. The Superior Court and municipal court shall have jurisdiction to enforce the Penalty Enforcement Law of 1999 in connection with this action.

(b) If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. Penalties recovered for violations of this section shall be remitted to the Department of Agriculture and expended on programs to revive honey bee populations in the State.