

# 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

##### Diseases of Bees

**Proposed Amendments: N.J.A.C. 2:24-1.1, 2.3, 3.1, and 6.4**

**Proposed New Rules: N.J.A.C. 2:24-7**

Authorized By: State Board of Agriculture and Douglas Fisher, Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:6-1 et seq., specifically 4:6-23 and 24.

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

Proposal Number: PRN 2017-216.

Submit written comments by January 19, 2018, to:

Joseph Zoltowski, Director  
Division of Plant Industry  
NJ Department of Agriculture  
PO Box 330  
Trenton, New Jersey 08625-0330  
or electronically at: [proposedrulesPlantIndustry@ag.state.nj.us](mailto:proposedrulesPlantIndustry@ag.state.nj.us)

The agency proposal follows:

#### Summary

Maintaining the health of New Jersey's native and honey bee populations 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, tomatoes, and watermelons. Besides pollinating agricultural crops, native bees and honey bees also pollinate a wide variety of annual and perennial flowers, as well as all tree species.

Along with beekeeping for commercial pollination and commercial production of honey, bees, queens, and various other apiary supplies, there has been greater attention in recent years to beekeeping as a hobby. Contributing factors appear to be news of honey bee colony collapse disorder, first widely publicized in 2006, coupled with increased awareness of the benefits of locally produced healthy foods. As various municipalities had also previously adopted restrictions or even exclusions of beekeeping in certain municipal areas, beekeeping organizations sought to secure passage by municipalities of a model beekeeping ordinance, which included a number of standards that are contained in these proposed rules.

In 2015, three new laws were enacted significantly affecting beekeeping in New Jersey. These laws extend Right to Farm protection

for certain apiary activities (P.L. 2015, c. 75, N.J.S.A. 4:1C-3), imposed penalties for intentional destruction of manmade houses for native non-honey bee pollinators (P.L. 2015, c. 77, N.J.S.A. 4:6-23), and preempted municipal authority to regulate beekeeping while requiring the Department of Agriculture (Department) to develop standards governing breeding and keeping of honey bees in the State while providing for delegation of authority to municipalities to monitor and enforce regulation of beekeeping in accordance with the newly required Department standards (P.L. 2015, c. 76, N.J.S.A. 4:6-24). The new law that affects commercial farms and extends Right to Farm protection in some circumstances for beekeeping activities (P.L. 2015, c. 75, N.J.S.A. 4:1C-3) is within the authority of the State Agricultural Development Committee (SADC) and the implementation of that law is not included within the Department's proposed amendments and new rules.

The regulatory framework mandated by the new laws expands the Department's existing obligations to control diseases of bees and the movement of bees into the State for pollination. Preemption of municipal authority, inclusion of both agricultural and nonagricultural land use responsibilities, and 15,000 to 20,000 bees in each small hive required the Department to develop the proposed new rules and amendments to include beekeeper responsibilities to the non-beekeeping public.

In developing the standards, pursuant to N.J.S.A. 4:6-24, the Department consulted with the New Jersey League of Municipalities, the New Jersey Beekeepers Association, and the Mid-Atlantic Apiculture Research and Extension Consortium. In addition, as also mandated by the statute, the Department considered the following:

- (1) the population densities in rural, suburban, and urban areas of the State;
- (2) the densities and intensities of development and differing land uses in communities throughout the State; and
- (3) any other characteristics of various regions of the State that the Department determines to be significant to the regulation of apiary activities in the State.

The consultation group also included representatives of the SADC and citizens from one municipality that requested the opportunity to provide background involving the development of a municipal land use approach after lengthy local hearings concerning one beekeeper. There were three meetings with the group (September 11, 2015, April 25, 2016, and September 6, 2017, and a conference call September 26, 2017). Between the first and second meetings, the Department met with a committee of the State Board of Agriculture on February 19, February 29, and March 2, 2016. The State Board committee offered a range of information available from agriculture and beekeeping experience.

Both groups were also provided existing guidelines and relevant prior municipal ordinances in New Jersey and other states. Numerous municipal ordinances that previously existed in New Jersey were reviewed as necessary background for the development of standards that

would reflect the land use, population density, and other characteristics that had been determined to be important in rural, suburban, and urban areas that had found it necessary to address beekeeping. Municipal approaches in New Jersey included: consideration of beekeeping as agricultural and applying to beekeeping existing limits on agricultural land uses in the municipality; interpretation as a bar to beekeeping of the absence of beekeeping as a specific permitted use; application of existing animal control limits to bees; and more recent area limits to beekeeping to accommodate lot size and population density.

Other issues considered with both groups included health issues concerning the potential danger from allergies to bees, anecdotal experience and observation of more frequent bee stings around pools, notice to neighbors of beekeeping in a neighborhood and past problems from having too many hives in too small an area and/or too close to a neighbor property line, insufficient water supply, poor management by working bees at night, and inattention to hive size increasing the possibility of swarming. The League of Municipalities communicated to all municipalities requesting information about experience and/or problems related to bees. There was general agreement on the need for attention to colony density, colony location, setbacks, flyway barriers, water sources, and identification signs where bees are kept.

Proposed amendments and proposed new subchapter are as follows:

The Department proposes to change the heading of Chapter 24 from Diseases of Bees to Diseases of Bees and Beekeeping Activities to reflect the additional elements required by the new laws.

N.J.A.C. 2:24-1.1 Definitions. The Department proposes to amend definitions and add new definitions to address the changes required by the new laws. The Department proposes to amend existing definitions as follows: “apiary” (to clarify that one or more hives are at one location); “apiary site” (to delete the term as it does not appear in the rules); “beekeeper” (to revise to track language in P.L. 2015, c. 76 (N.J.S.A. 4:6-24) for clarification of those to whom proposed changes and standards apply and expand to include hobbyist and commercial classifications, as necessary, with law changes in preemption and Right to Farm eligibility); “colony” (is replaced to expand to include equipment and stages of bees living there and to remove newly defined term “swarm”); “commercial apiary” (to delete the term as it does not appear in the rules); “divide” or “split” or “nucleus” (to remove “nucleus” because it is now separately defined); “hive” (to describe the frames structure instead of using the proper name for one specific type of frame); “noncommercial apiary” (to delete the term as it does not appear in the rules); and “shipper” (to expand to include intrastate shipments of bees).

The Department proposes to add new definitions as follows:

“Adequate source of water” is the amount required per colony per day as developed for standards for apiaries not on farms that were adopted by the Department on March 6, 1989, and derived from information from the United States Department of Agriculture and materials collected by the Division of Plant Industry, New Jersey Department of Agriculture. Insufficient water near the hives significantly contributes to bees seeking water elsewhere, particularly at swimming pools; “adjoining property” is property sharing any boundary; “bee yard” clarifies the previously undefined term for property where hives are kept whose physical location address, if hives are overwintered, must be registered with the Department to aid with disease control; “commercial beekeeper” is a beekeeper using the bees and/or apiary products as a business and may be migratory, and may or may not be eligible for Right to Farm protection; “governing authority” is the government body that is either the State or any delegated municipality with authority related to honey bees; “hobbyist beekeeper” is a beekeeper who keeps bees and may gift apiary products, but engages in no commercial activities involving or related to the bees or apiary products; “man-made native bee hive” is a structure to attract and house native bees; “migratory commercial beekeeper” is a beekeeper who engages in commercial activities with bees, but has only hives that do not overwinter in New Jersey; “native bee” is a bee occurring naturally in New Jersey and is not the honey bee; “non-qualified commercial beekeeper” is a beekeeper using the bees and/or apiary products as a business and who is not eligible for Right to Farm protection under new laws; “nucleus” is a small honey bee hive of limited size intended for a limited time of use to

accommodate overflow from larger colonies and available to discourage swarming behavior; “nuc box” is a small box kept without a colony to be available for use by beekeepers, with anywhere from three to 10 frames, to prevent colony swarming or collect swarms; “overwintering” clarifies previously undefined term for keeping bees in New Jersey all year; “qualified commercial beekeeper” is a beekeeper using the bees and/or apiary products as a business and who is eligible for Right to Farm protection under new laws; “supers” refers to any hive body or smaller box used for the storage of surplus honey that the beekeeper will harvest; “swarming” refers to the natural process of propagating a colony of honey bees by seeking a new colony location when a colony is allowed to become too crowded; and “undeveloped tract of land” is real property without buildings and/or public utilities.

N.J.A.C. 2:24-2.3 Queen or package bees. The Department proposes to amend subsection (a) to address disease control within the State by adding intrastate shipments (in commercial transactions). This will include shipments of bees originating within New Jersey, which may increase due to an increase in hobbyist beekeepers in the State. The Department proposes to delete subsection (c) because such Federal approved treatment is no longer available.

N.J.A.C. 2:24-3.1 Registration requirements; confidentiality and documentation. The Department proposes to amend this section to accommodate new electronic registration, to include more detail of elements already required in registration, and to expand the required information to administratively manage the greater number of non-qualified commercial and hobbyist beekeepers whose hives have affected or may affect citizens who are not beekeepers, as indicated by the increase in unregistered beekeepers and increase in complaints.

The Department proposes to amend and expand the information in subsection (a) by adding a new subsection (a) to include the Apiary Inspection Service number obtained through registration of overwintering and adding new subsection (c) to provide inspection process detail concerning disease control, complaint and compliance information, and to specify identification data for applications to be submitted electronically. This information allows more efficient disease control investigation and monitoring, and complaint resolution with limited staff resources.

The Department proposes to amend recodified subsection (d) by adding “beekeeper” for clarity. The additional information for registration remains confidential. A competitive advantage is lost if numbers and locations of hives are made public. Bees and hive equipment are valuable and highly portable material, particularly when remote yards are involved. Theft or intentional damage of hives is likely if beekeeper and bee yard information is made public. Registration participation is likely to be lost without the privacy protection that has been in place for many years.

The Department proposes new subsection (e) to expedite registration through resolution of previously identified problems.

The Department proposes new subsection (f) to state the information contained in an active registration and the registration applicability to bee yard and beekeeper.

The Department proposes new subsection (g) to state the registration a beekeeper must obtain for hives overwintered in New Jersey is issued by the Department and is valid in every municipality in the State where the beekeeper overwinters hives; in addition, it is not related in any way to the potential delegation to a municipality of other authority relating to bees.

The Department proposes new subsection (h) for administrative clarity of expiration of registrations.

The Department proposes to amend recodified subsections (i) and (j) to provide for electronic communication of information to registered beekeepers.

The Department proposes new subsection (k) to require baseline and continuing education for beekeepers. This will provide knowledge of and basic training in minimum needs for care of bees to best assure their survival and management of bees in populated areas. This applies to the education of new beekeepers during the first year after registration of overwintering and education of all beekeepers every five years thereafter to assure awareness of new threats to the health of bees and improvements in management of hives. The interdependence of healthy

bees and the needs of agriculture require that the community of all beekeepers share in the responsibilities to manage bees properly and prevent and address diseases of bees.

These amendments are necessary to enable efficient outreach to the increased number of beekeepers who have not registered in the past. In addition, the preemption of all municipal authority related to beekeeping, as specified in P.L. 2015, c. 76, requires the Department to address beekeeping and protection against diseases of bees in agricultural and non-agricultural areas. According to beekeepers in New Jersey and the State Apiarist experience, there has been a substantial increase in numbers of in-State non-qualified commercial and hobbyist beekeepers. The registration has moved to an electronic system and the management of beekeeping in non-agricultural areas necessitates attention, through the registration process, to citizen complaints and their resolution.

N.J.A.C. 2:24-6.4 Penalties. The Department proposes to amend this section to add the penalties as mandated by P.L. 2015, c. 77, N.J.S.A. 4:6-23, for intentional destruction of manmade native beehives and to reorganize the section accordingly.

The Department proposes new N.J.A.C. 2:24-7 providing apiary standards for breeding and keeping of bees and related activities and municipal administrative standards for municipalities that receive delegated authority as mandated by P.L. 2015, c. 76, N.J.S.A. 4:6-24.

N.J.A.C. 2:24-7.1 Scope and applicability. The Department proposes this new section to clarify that the new standards do not affect migratory commercial beekeepers and qualified commercial beekeepers serving production agriculture. It emphasizes that the existing regulations requiring registration and addressing diseases of bees, as proposed for amendment, do apply to all beekeepers, identifies the location in this proposed new subchapter of administrative standards for those municipalities who adopt the proposed new standards, and provides that statutorily mandated considerations (including population densities, intensities, and land use choices) support the proposed standards. The proposed standards include attention to population and land use, as well as the continued protection of public health and safety in their implementation.

N.J.A.C. 2:24-7.2 Apiary standards. The Department proposes new subsection (a) to designate the number of hives a beekeeper's property size may accommodate. These proposed standards incorporate prior independent (unrelated to honey bees or beekeeping) land use evaluations and reflect determinations that do not unnecessarily conflict with residential choices previously made by individuals in their land use decisions. The numbers of hives designated in this subsection reflect the numbers allowable per location (or lot). Beekeepers may have more hives that are allowable per lot but would be required to either apply for a waiver to increase the allowable numbers per lot or move these additional hives to other locations or lots. The movement of additional hives to other locations provides for the overall improvement of colony health through the elimination of competition from other colonies for available local resources and increases their overall pollination effort to other areas of the State.

Proposed paragraph (a)1 provides that new hives are not allowed to be kept in the smallest residential lot size of less than one-quarter acre where agriculture is not already permitted and there have not been hives before July 31, 2015.

Proposed paragraph (a)2 incorporates the number of hives permitted on farms and commercial farms with property size of five acres or more as provided in the apiary agriculture management practice rules at N.J.A.C. 2:76-2A.2.

Proposed paragraphs (a)3, 4, and 5 were developed against the backdrop of experience in managing hives and in recognition of the biological behavior and needs of honey bees. The initial limitation in number of hives in each density standard is due to the increased conflict experience and conflict potential in residential areas when hobbyist beekeepers try to have larger numbers of hives. The larger numbers create (and have created) stress on adequate sources of water, poor swarm management, and excess honey production with no outlet (as the hobbyist is not engaged in commercial business). The significant difficulty that has and does occur in reducing the number of hives in a bee yard, once they are in existence, is equally important. Destruction of

healthy hives is never appropriate but identifying available alternative hive locations has been very difficult when there have been too many hives and related public disruptions have occurred. The proposed approach recognizes both reasonable limitations for hobbyist numbers and provides for measured increase in numbers, if justified, for the further integration of healthy communities of honey bees and people. See proposed new N.J.A.C. 2:24-7.3.

The Department proposes new paragraph (a)3 to establish standards by size of residential lot for colony density in areas where agriculture is otherwise permitted. Residential lots sized from one-quarter to less than five acres (except commercial farms) may have two hives and a nucleus per lot. Residential lots sized five acres or more may have up to 40 hives per lot.

The Department proposes new paragraph (a)4 to establish standards by size of undeveloped tract of land where agriculture is otherwise permitted. Undeveloped tracts of five acres or more may have up to 40 hives per lot.

The Department proposes new paragraph (a)5 to establish standards by size of residential and commercial lots for colony density in areas where agriculture is not otherwise permitted. On a residential lot sized less than one-quarter acre where hives were in existence at the time of the enactment of the new law (July 31, 2015) a hobbyist beekeeper may seek a waiver. On a residential lot of one-quarter acre to less than five acres, a person wishing to keep bees as a hobbyist may seek a waiver to keep two hives per lot, and on a residential lot of five acres, a person wishing to keep bees as a hobbyist may seek a waiver to keep up to 10 hives per lot.

On commercial lots there is expected to be more activity related to roadsides, sidewalks, paths, and public places. The limitations to the number of bee hives (each containing many thousands of bees) are necessary for the bees' health with limited forage opportunities and potential limitations to accessible water not in public areas for the bees, as well as a greater concentration of the public. Even accidental injury or conflict with the honey bee causes release of hormones signaling fear of destruction of the hive such that the usually docile honey bee, because of the threat, will sting in self-defense (which kills a honey bee). This increases potential danger to humans because, although it has been shown that a low number of humans are allergic to honey bee venom, nonetheless it presents a real danger to those few who are.

On a commercial lot of less than one-quarter acre, hives (not already in existence as of July 31, 2015, the time of the enactment of N.J.S.A. 4:6-24) are not permitted on that lot. On a commercial lot of such size with hives in existence as of July 31, 2015, the non-qualified commercial beekeeper may seek a waiver for up to 10 hives per lot. Similarly, on a commercial lot of one-quarter acre to less than five acres, a person wishing to keep bees as a non-qualified commercial beekeeper may seek a waiver to keep up to 10 hives per lot because there is not a record of hive management and experience that could justify more hives to start. On a commercial lot of more than five acres, a person who wishes to keep bees as a non-qualified commercial beekeeper may seek a waiver for up to 20 hives per lot.

The Department proposes new N.J.A.C. 2:24-7.2(b) to provide standards to limit and address swarming behavior. When hives become overcrowded bees naturally seek a new location to form an additional colony. By requiring a nucleus to be maintained on the tract, the bees are less likely to fly further away to find a place for the new colony.

The Department proposes new N.J.A.C. 2:24-7.2(c) to provide the standard for manmade hive removable frame structures.

The Department proposes new N.J.A.C. 2:24-7.2(d) to provide standards for setbacks from property lines, roads, sidewalks, and public places.

The Department proposes new N.J.A.C. 2:24-7.2(e) to provide standards for flyway barriers to direct the bees' flight path to and from the hive up and away from low flight across nearby neighbor properties to minimize likely contact with bees.

The Department proposes new N.J.A.C. 2:24-7.2(f) to provide the standard for water necessary for bees to drink and to use in cooling the hive. If there are congregating bees in swimming pools, bird baths, or other sources off the beekeeper's adjacent property the presumption of

noncompliance with the adequate source of water standard is rebuttable with credible evidence that the standards were met.

The Department proposes new N.J.A.C. 2:24-7.2(g) to provide the standard for maintenance of stock bred for gentleness and non-swarming behavior and requiring replacement of a queen that displays unusual contrary behavior.

The Department proposes new N.J.A.C. 2:24-7.2(h) to provide standards of careful management of the area around the hive(s) in non-farm areas to keep honey and related materials off the ground where they could attract other honey bees or other insects that sting.

The Department proposes new N.J.A.C. 2:24-7.2(i) to provide standards for identification of hive ownership through marking with a box brand that corresponds to the beekeeper registration. This aids in monitoring and checking hives for disease and when there are problems emanating from certain hives in an area.

The Department proposes new N.J.A.C. 2:24-7.2(j) to provide the standard to assure that the Department or delegated municipality officials have access to hives for disease control and maintenance and to assure that public concerns are being addressed.

The Department proposes new N.J.A.C. 2:24-7.2(k) to provide inspection standards for disease control and population management, as is necessary to maintain healthy pollinators to serve the needs of agriculture in New Jersey.

The Department proposes new N.J.A.C. 2:24-7.2(l) to provide standards for violations and enforcement of the standards. Any beekeeper who fails to register the bee yard where hives are overwintered and/or violates the rules of this chapter dealing with diseases of bees and other apiary standards may not be permitted to keep bees. Hobbyist beekeepers will be given warning and the chance to take corrective action; however, three violations in one registration period may result in revocation of the hobbyist's ability to keep bees. A non-qualified commercial beekeeper in violation of the standards may be restrained through a Superior Court action of the Department.

The Department proposes new paragraphs (l)5 and 6 to provide standards for denial and appeal of denial of registration of a hobbyist beekeeper not in compliance with the standards of N.J.A.C. 2:24-7.2. Such denial may be appealed to the Department within a limited time period.

N.J.A.C. 2:24-7.3 Expedited waiver. The Department proposes this new section to allow an expedited waiver process for non-qualified commercial and hobbyist beekeepers who wish to retain more hives on their lot size than these proposed new rules permit. Because these beekeepers have owned and maintained these additional hives they have a record of compliance and beekeeping practices. The process for expedited waiver of the number of hives on a given lot size is shorter but still considers whether there are issues concerning the satisfaction of the hives' needs to maintain healthy colonies and/or issues affecting the public in the residential or commercial area.

N.J.A.C. 2:24-7.3A Waiver. The Department proposes this new section to provide a waiver process for non-qualified commercial and hobbyist beekeepers who wish to have new hives in prohibited lots or more hives on their lot size than these new rules permit. The waiver process is more detailed in public notice requirements, provides the individual factors to be considered in determining whether a waiver should be granted, clarifies that the decision to make the determination concerning the number of hives is based on the factual justification, and provides a process for the revocation of a waiver. The necessary steps for revocation assure that the matter will receive a fact-based review. Finally, no waiver can be granted unless the hives are certified as free of disease.

N.J.A.C. 2:24-7.4 Administrative standards for delegated municipalities. The Department proposes this new section to provide the process related to delegated municipalities as required by N.J.S.A. 4:6-24. The section sets forth the process by which delegated municipalities can address issues not covered by the apiary standards, provides for sharing of lists of registered beekeepers in a delegated municipality, and requires submittal of limited reports to assure referral to the Department of registration requests, referral to the Department of reports of disease, summary of citizen complaints, and enforcement actions necessary.

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 proposed new rules and amendments affect beekeepers and inhabitants in municipalities where beekeeping is practiced within New Jersey. A healthy honey bee population and the pollination services that commercial 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. The proposed new rules and amendments also affect potential and current hobbyist beekeepers by exercising limitations in accordance with the aspects of development and human population required by the laws recently passed preempting municipal authority and the broad guidance given in the State Development and Redevelopment Plan. Therefore, by supporting what is commercially necessary for agricultural growth and recognizing the necessary balance with human activities in residential settings, these proposed new rules and amendments 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 rules that serve to maintain the health of the hives from known economically damaging pests encountered by the beekeeping industry. Therefore, these proposed amendments will have a positive economic impact on the citizens of the State of New Jersey. The proposed amendments also replace treatment obligations with monitoring (N.J.A.C. 2:24-4.1), thus limiting regulatory economic burdens.

There is likely to be a positive economic impact on the industry by supporting responsible beekeeping in non-farming areas at levels of intensity that support existing land use determinations and encourage economic support of products of beekeeping.

In the interest of preservation of the economically beneficial honey bee, proposed new N.J.A.C. 2:24-7 makes clear the obligations of hobbyist and non-qualified commercial beekeepers to maintain standards of care for their hives to minimize disruption and difficulties that could be caused by inattention to biological needs of the bees (water, new hive spaces to limit swarming, and others) in the general population. This, in turn, allows a healthy non-qualified commercial business environment with economic benefits.

There are no fees, and the only new penalties are for destruction of man-made or native hives pursuant to N.J.S.A. 4:6-23. The continuing education may be free (online or through existing beekeeper organizations) in the interest of maintaining healthy colonies and to minimize disruption to public health and safety. The education requirements are required for new beekeepers for the same reasons and will not impose an unreasonable economic impact upon hobbyists or nonqualified commercial beekeepers because it is a minimal cost of doing business and is necessary for healthy bees.

If a beekeeper seeks a waiver that gets denied, he or she may be required to move the colonies to another location with any cost dependent on distance and beekeeper time to move hives).

These proposed new rules and amendments may impact certain beekeeper economics by requiring a reduction in the number of hives in more densely populated areas, which may result in a cost to move some hives to less populated areas; however, the balance required by N.J.S.A. 4:6-24 is necessary to accommodate the reasonable needs of the public and the non-qualified commercial and the hobbyist beekeepers.

#### **Federal Standards Statement**

The requirements of the New Jersey Department of Agriculture, Division of Plant Industry regarding bee diseases, and other conditions unfavorable to the development of bees or the keeping of bees as a hobby 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, Social Impact, and Economic Impact statements above.

### Regulatory Flexibility Analysis

All commercial 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 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 proposed new rules and amendments deal with disease control and prevention, no differing or lesser standards can be applied to small businesses. The standards for beekeeping mandated by P.L. 2015, c. 76, N.J.S.A. 4:6-24, contribute to the continued health of the bees and also to the public health and safety and, as such, no differing or lesser standards can be applied to small businesses.

Commercial 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. The new rules also add an educational component to the already existent recordkeeping requirements that are required by beekeepers. This educational requirement is to provide current hive and pest management techniques to existing beekeepers to improve the health and vitality of their colonies. The costs of the educational component can vary from free online coursework to structured “hands on” training provided by educational institutions or beekeeping associations. These are the only reporting or recordkeeping requirements imposed on small businesses by these rules. Records have to be maintained by the beekeeper to produce to the Department upon request. Apiary registration provides for an accurate accounting of all 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 in New Jersey are subject to periodic inspections and there are no fees imposed for apiary inspections.

All beekeepers, both commercial and hobbyist, 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 or different hobbyist apiaries. Not having these standards would have an adverse impact on the health and safety of the beekeeping industry. No fees are imposed by the Department 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 the affordability of 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 proposed amendments and new rules protect honey bee colonies, clarify standards for commercial apiaries, and add standards for hobbyist apiaries pursuant to P.L. 2015, c. 76, N.J.S.A. 4:6-24, and impose penalties for intentional destruction of manmade houses for native non-honey bee pollinators pursuant to P.L. 2015, c. 77, N.J.S.A. 4:6-23.

### 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 proposed amendments and new rules protect honey bee colonies, clarify standards for commercial apiaries, and add standards for hobbyist apiaries pursuant to P.L. 2015, c. 76, N.J.S.A. 4:6-24, and impose penalties for intentional destruction of manmade houses for native non-honey bee pollinators pursuant to P.L. 2015, c. 77, N.J.S.A. 4:6-23.

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

## CHAPTER 24

### DISEASES OF BEES AND BEEKEEPING ACTIVITIES

#### SUBCHAPTER 1. DEFINITIONS

##### 2:24-1.1 Definitions

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

“**Adequate source of water**” means source(s) of water that can never be dry, supplying at least one gallon per day per colony, no more than 25 feet from the hives and on the same property as the hives.

“**Adjoining property**” means any property that shares any boundary with the property of another land owner.

“**Apiary**” means one or more [colonies] hives (each containing a colony) of honey bees that are kept at a single location.

[“**Apiary site**” means the place where an apiary is located.]

...

“**Beekeeper**” means any person who [shall have or keep in his or her possession or in an apiary, a colony of bees] owns and engages in the breeding or keeping of honey bee hive or hives. Beekeeper includes two primary classifications defined as commercial and hobbyist with three sub-classifications within commercial defined as migratory commercial, qualified commercial, and non-qualified commercial.

“**Bee yard**” means the property where one or more hives are kept whose physical address, if used for overwintering hives, must be registered pursuant to N.J.A.C. 2:24-3.1. This property may or may not be owned by the owner of the hives.

...

“**Colony**” means [a hive or swarm of bees] an aggregate of bees, the hive, and associated equipment, including honey bees, comb, pollen, and brood.

[“**Commercial apiary**” means a business classified by the United States Standard Industrial Classification (commonly referred to in the SIC Code) as 0279B—Bee farms.]

“**Commercial beekeeper**” means a beekeeper with one or more hives who engages in sale, exchange, or barter of honey bees, or of any activities related thereto, including, but not limited to, the use of honey bees for pollination, the reproduction and sale of honey bees, or the production of honey or other apiary products from such bees, the manmade structure with removable frames, or other equipment related to beekeeping.

...

“**Divide[,] or “split” [or “nucleus”]** means bees and brood on drawn frames, with or without a queen. The number of frames, and the ratio of brood to honey or pollen, may vary, but never exceeds 10 frames.

...

“**Governing authority**” means the Department or its designee or, if the Department delegates authority to a municipality, the governing body of the municipality or its designee.

“**Hive**” means the manmade structure [which] with removable frames intended for the housing of and that contains a colony of honey bees.

“**Hobbyist beekeeper**” means one who engages in beekeeping and may gift apiary products but engages in no commercial activities involving the bees or apiary products, including no commercial activities of a migratory commercial, a qualified commercial, or a non-qualified commercial beekeeper.

...

“**Man-made native bee hive**” means a tube or other apparatus in which bees may nest and that is installed to attract native bees.

“**Migratory commercial beekeeper**” means a commercial beekeeper who moves his or her hives to different locations in New Jersey and/or to different states throughout the seasons to facilitate pollination of feed crops and take advantage of nectar flows, but who does not overwinter the hives in New Jersey and is not required to register pursuant to N.J.A.C. 2:24-3.1.

“Native bee” means a bee of a species that is native to the State and does not produce honey, but provides for the pollination of crops or plants, or other agricultural, environmental, or horticultural benefits.

[“Noncommercial apiary” means any apiary not classified as commercial.]

“Non-qualified commercial beekeeper” means a commercial beekeeper whose beekeeping operation does not qualify as a commercial farm pursuant to the Right to Farm Act, P.L. 1983, c. 31 (N.J.S.A. 4:1C-1 et seq.), as amended and supplemented.

...

“Nucleus” means a small honey bee hive with no more than 10 frames in the box and no supers attached. It may have been created from larger colonies to minimize honey bee swarming behavior, catch a swarm, or control a colony that was going to swarm. [see] See “divide.”

“Nuc box” is a small box commonly used by beekeepers, with anywhere from three to 10 frames, to prevent colony swarming or collect swarms.

“Overwintering” means keeping hives within New Jersey from November through March.

...

“Qualified commercial beekeeper” means a commercial beekeeper whose beekeeping operation qualifies as a commercial farm pursuant to the Right to Farm Act, P.L. 1983, c. 31 (N.J.S.A. 4:1C-1 et seq.), as amended and supplemented.

...

“Shipper” means any person or business entity [which] that ships or dropships[,] queens, packages, or divides into or within New Jersey or to New Jersey residents.

“Super” refers to any hive body or smaller box used for the storage of surplus honey that the beekeeper will harvest.

“Swarming” refers to the natural process of propagating a colony of honey bees. It usually occurs in late spring or early summer. The old queen bee leaves the colony with one-half to three-quarters of the adult bees in search of a new home.

“Undeveloped tract of land” means land that is not improved.

SUBCHAPTER 2. SHIPMENT OF BEES INTO NEW JERSEY

2:24-2.3 Queen or package bees

(a) All apiaries shipping queen or package bees into or within New Jersey shall have recorded with the New Jersey Department of Agriculture, a valid certificate in accordance with N.J.A.C. 2:24-2.2.

(b) (No change.)

(c) All queens or package bees shipped to New Jersey shall be accompanied by a Federally approved miticide treatment for the control of Varroa mite.]

SUBCHAPTER 3. REGISTRATION OF APIARIES

2:24-3.1 Registration requirements; confidentiality and documentation

(a) All beekeepers must register and obtain a unique Apiary Inspection Service (AIS) number covering all of the beekeeper’s bee yard location(s) where bees are overwintered.

[(a)] (b) All [bee yards] beekeepers in New Jersey [where bees are overwintered] who overwinter their bees must [be registered annually] register their bee yard(s) with the New Jersey Department of Agriculture Apiary Inspection Program on an annual basis.

(c) The registration application is to be submitted electronically at [https://www24.state.nj.us/AG\\_Apiary/ApiaryApp](https://www24.state.nj.us/AG_Apiary/ApiaryApp) and shall include the following:

1. The name, address, and phone number of the beekeeper and, in the case of hobbyist, the name and emergency contact number of a designated alternate beekeeper to rectify any problems, including, but not limited to, insufficient water and/or swarming, that may need to be addressed in the absence of the owner of the bees;

2. The actual physical location of the bee yard and, if the beekeeper is leasing property for beekeeping, the name of the owner(s) of the leased property;

3. The mark or “box brand” that must be permanently branded, engraved, painted, or written with permanent marker on each hive(s) and that shall be a name, number, initials or an image;

4. The number of hives per location;

5. The electronic signature of the registration applicant;

6. Affirmation by non-qualified commercial and hobbyist beekeeper applicants that the applicant beekeeper has provided written notice to neighbors who share a property line about the presence and location on the property of the beekeeper’s hive(s);

7. Affirmation by non-qualified commercial and hobbyist beekeeper applicants that the applicant beekeeper has corrected any noncompliance; and

8. Affirmation by non-qualified commercial and hobbyist beekeeper applicants that the applicant beekeeper is not aware of any unresolved citizen complaints.

[(b)] (d) The only information contained in the individual registration that shall be considered public shall be the beekeeper’s name and mailing address; all other beekeeper required information shall be considered confidential.

(e) Issuance of registration. The Department shall review the application for completion, circumstances of uncorrected noncompliance, and unresolved citizen complaints and request additional information, if necessary, before electronically issuing the registration pursuant to this section.

(f) Active registrations. The registration shall bear the date of the issuance, name of the beekeeper, description of the premises covered by the registration, and beekeeper AIS number. Every registration of bee yard(s) shall be nontransferable and shall cover the bee yard and the named beekeeper AIS number.

(g) All active registrations are provided by the Department and are valid in every municipality where a registered hive is located.

(h) Expiration date. Every registration under this section shall automatically expire on the 31st day of December in the year in which it was issued.

[(c)] (i) The Department [of Agriculture] shall supply the registrant, through a link to its website, with [any and all appropriate orders,] access to current New Jersey laws and rules.

[(d)] (j) Upon [request] completion of online registration, [the Department shall issue to] each registered beekeeper[, documentation, which] will be electronically issued a registration that identifies [them] that beekeeper as a legally registered New Jersey beekeeper.

(k) Continuing education shall be as follows:

1. After registration of their overwintering bee yard(s), all new beekeepers shall have one year to take a beekeeping course or to be mentored by a current registered member of a local beekeeping association, which mentoring includes maintenance of a logbook with entries of mentoring activities including dates, names, and a brief description of mentoring activities;

2. All beekeepers must take recurrent training every five years offered by Rutgers University, the New Jersey Department of Agriculture, the New Jersey Beekeepers Association, or other professional educational organizations with standards of comparable rigor to keep the beekeeper current with parasites, diseases, and proper colony management practices; and

3. Records shall be maintained for six years by the beekeeper who shall submit copies verifying such continuing education/recurrent trainings to the Department, delegated municipality, or other governmental agency upon request.

SUBCHAPTER 6. PRESERVATION OF HONEY BEE COLONIES

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) Any person who intentionally destroys a man-made native bee hive shall be liable to a civil penalty of up to \$500.00 for each offense.

(c) The penalties imposed pursuant to (a) and (b) above are 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)] (d) 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.

#### SUBCHAPTER 7. APIARY AND MUNICIPAL ADMINISTRATIVE STANDARDS FOR BREEDING AND KEEPING OF BEES AND RELATED ACTIVITIES

##### 2:24-7.1 General scope and applicability

(a) This subchapter is not applicable to migratory commercial beekeepers providing pollination services to agricultural farms or areas and not overwintering any hives in the State or to qualified commercial beekeepers.

(b) This subchapter establishes additional apiary standards for the breeding and keeping of honey bees and related activities, not otherwise contained in this chapter.

(c) Nothing in this subchapter shall be interpreted to supersede the protections afforded by the Right to Farm Act, P.L. 1983, c. 31 (N.J.S.A. 4:1C-1 et seq.), as amended and supplemented.

(d) This subchapter establishes standards of administrative procedure for delegating the authority to monitor and enforce the rules adopted pursuant to this subchapter to municipalities.

(e) The apiary standards in this subchapter reflect consideration of the population densities in rural, suburban, and urban areas of the State and the densities and intensities of development and differing land uses in communities throughout the State.

(f) Notwithstanding compliance with this chapter including these apiary standards, it shall be unlawful for any beekeeper to keep any hive or hives in such a manner or of such disposition as to be a direct threat to public health and safety.

##### 2:24-7.2 Apiary standards

(a) Colony density shall be as follows:

1. On a residential lot of less than one-quarter acre where agriculture has not otherwise been determined as permitted, new (not already in existence) hives are not permitted;

2. On farms and commercial farms of five acres or more, the number of hives permitted is subject to N.J.A.C. 2:76-2A.2;

3. Where there has otherwise been a determination of agriculture as permitted:

i. On a residential lot size of one-quarter acre to less than five acres, except for commercial farms, two hives are permitted per lot. In the event of colony swarming and use of a nuc box, such nucleus shall be moved to another nonadjacent tract within 45 days after the date made or acquired; and

ii. On a residential lot size of five acres or more, 40 hives in compliance with this subchapter are permitted per lot;

4. On an undeveloped tract of land five acres or more in an area where there has been a determination of agriculture as permitted, 40 hives in compliance with this subchapter are permitted per lot;

5. Where agriculture has not otherwise been determined as permitted:

i. On a residential lot of less than one-quarter acre where hives are in existence as of July 31, 2015, the hobbyist beekeeper may seek a waiver pursuant to N.J.A.C. 2:24-7.3;

ii. On a residential lot of one-quarter acre to less than five acres, a person wishing to keep bees as a hobbyist may seek a waiver to keep two hives per lot;

iii. On a residential lot of five acres or more, a person wishing to keep hives as a hobbyist may seek a waiver to keep up to 10 hives per lot;

iv. On a commercial lot of less than one-quarter acre, new (not already in existence) hives are not permitted;

v. On a commercial lot of less than one-quarter acre where hives are in existence as of July 31, 2015, the non-qualified commercial beekeeper may seek a waiver pursuant to N.J.A.C. 2:24-7.3 for up to 10 hives per lot;

vi. On a commercial lot of one-quarter acre to less than five acres, a person wishing to keep bees as a non-qualified commercial beekeeper may seek a waiver to keep up to 10 hives per lot; and

vii. On a commercial lot of five acres or more, a person wishing to keep hives as a non-qualified commercial beekeeper may seek a waiver to keep up to 20 hives per lot.

(b) Swarming. A beekeeper shall manage all hives to limit and promptly address swarming. This includes provision of one or more nuc boxes, as necessary, for swarm management.

1. For every two hives permitted on a lot, a beekeeper may maintain on the same lot one or more nuc boxes with no supers attached as required from time to time for swarm management.

2. In the event of colony swarming, a beekeeper shall move each such nucleus colony to another tract within 34 days after the date made or acquired.

(c) Structure. A beekeeper shall keep all hives in manmade structures with removable frames in a sound and usable condition with a height not to exceed 5 and 1/2 feet from the bottom board of the hive.

(d) Location. A beekeeper shall locate all hives a minimum of 10 feet from any property line and at least 25 feet from any roadside, sidewalk, or path and 85 feet away from any public place including playgrounds, sports fields, schools, or churches, unless permission is granted for educational or research purposes, with hive entrances located away from adjacent residential properties.

(e) Flyway barrier. A beekeeper shall establish a flyway barrier at least six feet in height consisting of a solid wall, fence, dense vegetation, or combination thereof that is parallel to the property line and maintain it to extend 10 feet beyond the colony in each direction except if the property adjoining a colony is undeveloped or agriculturally utilized, when no flyway barrier is required on that side.

(f) Water. A beekeeper shall provide all hives with access to adequate sources of water, as defined, to be available at all times. Bees congregating at swimming pools, pet watering bowls, bird baths, or other water sources allows a rebuttable presumption that all beekeepers with hive(s) on adjacent property are not in compliance with this standard.

(g) Queens. A beekeeper shall select queens from stock bred for gentleness and non-swarming characteristics. A beekeeper shall maintain all colonies with queens that shall be replaced if a colony exhibits unusual defensive behavior without due provocation or exhibits an unusual disposition toward swarming. A beekeeper has a duty to promptly re-queen the colony when these conditions persist.

(h) General maintenance. No bee comb or other materials that might encourage robbing by honey bees or other stinging insects shall be left upon the grounds of the apiary site in suburban and urban environments.

(i) Marking of hives. All beekeepers shall legibly mark hives with the "box brand" or marking of the beekeeper owning the hive. The "box brand" may be a name, number, initials, or an image, and may be branded, engraved, painted, or written with permanent marker. This box brand shall correspond to the information provided in the apiary registration required by N.J.A.C. 2:24-3.1(b).

(j) Access. The beekeeper shall provide on the beekeeper's property and shall assure through lease terms on property leased by the beekeeper, free access to the beekeeper's hives to inspectors from any and all governmental agencies to make reasonable inquiry

or otherwise enforce the laws pertaining to the hives, maintenance of the hives, or disease control.

(k) Inspection shall be handled as follows:

1. The hives may be inspected annually or as needed by the New Jersey State Apiarist or his or her designee;

2. All colonies must be managed by the beekeeper for disease and population management control no less than three times between March 1 and October 1 of any given year. The designated municipal, State, or Federal officer may accompany the beekeeper. A record of these inspections must be maintained by the beekeeper and submitted to the Department upon request; and

3. Upon receipt of information that any colony within the State is not being kept in compliance with these standards, the New Jersey Department of Agriculture may provide a written notice of violation to the beekeeper with opportunity for appeal.

(l) Violations and enforcement.

1. Any beekeeper may be prohibited from keeping hives:

i. If the beekeeper's overwintering hives are not registered with the State; or

ii. If the beekeeper violates the rules set forth in this chapter.

2. Any hobbyist beekeeper who violates N.J.A.C. 2:24-4.1 will be subject to penalties pursuant to N.J.A.C. 2:24-4.1(f) and who violates other sections of this chapter shall be subject to a warning identifying each offense with written notice of corrective action required. If corrective action is not taken, the hobbyist beekeeper shall be subject to enforcement, which may include required relocation of hive(s) to another location outside of the offended municipality within seven working days at the beekeeper's expense.

3. After three violations of this chapter in one registration period, the Department may revoke the hobbyist beekeeper's ability to keep bees.

4. Any non-qualified commercial beekeeper who violates this section may be restrained by the Superior Court in an action brought for such purpose by the Department.

5. Denial of registration. The Department shall deny a registration to any hobbyist beekeeper applicant who does not meet the requirements of this section and/or has an outstanding complaint or noncompliance. A written letter of denial stating the reason(s) for the denial of the registration will be issued by the Department.

6. Appeal of denials. Hobbyist beekeeper applicants who have been denied a registration may appeal the denial to the Department.

i. Written appeal must be received by the Department within 25 days of the date on the letter of denial received by the applicant.

ii. Written appeal should be sent to Director, Division of Plant Industry, NJ Department of Agriculture, PO Box 330, Trenton, New Jersey 08625-0330.

2:24-7.3 Expedited waiver

(a) A beekeeper who owned hives on July 31, 2015, in a number greater than is provided for pursuant to N.J.A.C. 2:24-7.2 and wishes to continue to own the hives may apply for an expedited waiver from the governing authority.

(b) The application for an expedited waiver must be submitted within 30 days of the effective date of these rules with public notice provided by giving written notice to all property owners within 200 feet of the applicant's property.

(c) Such public notice shall be made by hand delivery or by regular mail of the application containing a certification setting forth that the hand delivery or the mailing has been made to the appropriate property owners.

(d) The notice shall set forth the following:

1. The name and address of the applicant;

2. The address, lot, and block number of the property at which the applicant intends to maintain the hive(s);

3. Attestation by the applicant that he or she is a currently registered beekeeper with the New Jersey Department of Agriculture;

4. The number of hives that have been continuously on the property and that exceed the number permitted in these rules;

5. The prior history of complaints against the applicant, related to the hives and/or the bees on the applicant's property, and their resolution; and

6. The size of the property where the applicant proposes to continue to keep the hive(s).

(e) Should the applicant's request for an expedited waiver be granted, the governing authority shall set the number of total hive(s) permitted, based on the specific facts of the situation at issue.

2:24-7.3A Waiver

(a) A person desirous of owning and maintaining hives in a number greater than is provided for pursuant to N.J.A.C. 2:24-7.2 may apply to the governing authority for a waiver. The application for a hearing before the governing authority for a waiver must be submitted not less than 10 days prior to a regularly scheduled meeting of the governing authority, with public notice provided, as necessary, for regulatory actions of the governing authority and giving written notice to all property owners within 200 feet of the applicant's property. The applicant shall obtain a certified list of all property owners within 200 feet of his or her property from the municipality's tax assessor's office.

(b) Notice must be made to all property owners within 200 feet of the applicant's property by hand delivery or by regular mail, with proof of service being presented to the governing authority at the time of the hearing with a certification setting forth that the hand delivery or the mailing has been made to the appropriate property owners.

(c) The notice shall set forth the following:

1. The name and address of the applicant;

2. The address, lot, and block number of the property at which the applicant intends to maintain the hive(s);

3. The nature of the waiver requested, setting forth the number of the proposed hives; and

4. The date, time, and place of the hearing before the governing authority.

(d) The governing authority may grant or deny an application for a waiver based upon a preponderance of evidence that the applicant has demonstrated good cause for the granting of such waiver. In examining whether or not a waiver should be granted, the following facts shall be considered:

1. The size of the property where the applicant proposes to keep hive(s);

2. The distance between the location of where the hive(s) is/are intended to be kept and the physical location of adjacent property owners' homes or dwelling units;

3. Whether the property where the hives are proposed to be kept is fenced to provide a particular type of required flyway barrier;

4. Whether the hive(s) for which the waiver is requested is/are the first hive(s) or are an addition to existing hive(s) on the applicant's property;

5. The prior history of complaints against the applicant for violation of this subchapter;

6. The zoning district of the property where the hives are proposed to be kept;

7. Whether the hive(s) serve some business purpose or the hive(s) are to be kept as a hobby; and

8. Other such facts as the governing authority may believe appropriate to consider according to the case and circumstances presented at the time the application is heard.

(e) Should the applicant's request for a waiver be granted, the governing authority shall set the number of proposed hive(s) permitted, based on the specific facts of the situation at issue.

(f) A waiver granted by the governing authority may be revoked upon proper application to the governing authority. An application must:

1. Address the facts in (d)1 through 8 above;

2. Be made by a person who certifies that he or she resides within or owns property in the municipality where the waiver applies; and

3. Include certification of notice served upon the beekeeper by regular and certified mail, return receipt requested, of the



application for revocation of the waiver. The notice shall also include a factual basis for the requested revocation. A hearing shall then be held by the governing authority on the application for revocation. The governing authority will evaluate the application for revocation of waiver based upon the same criteria previously set forth herein under this section.

(g) No waiver shall be granted unless the beekeeper has submitted to the governing authority a certificate indicating that the hive(s) are free of disease. The certificate shall be submitted with the request for a waiver application but no later than the hearing date scheduled for the waiver application hearing.

(h) The granting of a waiver shall in no way authorize the creation of an unhealthy condition and shall in no way affect the general standards upon the keeping of hive(s).

#### 2:24-7.4 Administrative standards for delegated municipalities

(a) A municipality may pass an ordinance to adopt by reference these apiary standards promulgated by the Department. The ordinance shall designate the municipal office responsible for monitoring these standards.

(b) Municipalities must provide the Department copies of such ordinance(s) two weeks in advance of formal consideration of such ordinances.

(c) If a municipality that has adopted the Department's standards finds a condition or circumstance not sufficiently addressed by Department standards:

1. The municipality shall request guidance from the Department.

i. If a municipality that had apiary standards in effect by ordinance prior to the passage of P.L. 2015, c. 76, finds that the previous ordinance resolved the condition or circumstance, the municipality may petition the Department with the guidance request to accept those prior standards under N.J.S.A. 4:6-24.c for immediate resolution;

2. Subject to (c)1i above, the Department shall provide the guidance no later than 90 days after the request is received by the Department; and

3. Upon expiration of the 90-day period, the municipality, if it has consulted with the Department, the New Jersey League of Municipalities, the New Jersey Beekeepers Association, and the Mid-Atlantic Apiculture Research and Extension Consortium, or successor organizations with similar purposes, may adopt by ordinance a standard to address the condition or circumstance, provided that the standard reflects consideration of population density, the density and intensity of development, type of land use, and honey bee biology and behavior.

(d) Upon adoption by reference of the Department standards by municipal ordinance with actual notice to the Department, the Department shall provide the municipality with a list of registered beekeepers in the municipality pursuant to N.J.A.C. 2:24-3.1(k) and communicate to the municipality the delegation of regulatory authority to monitor and enforce apiary activities and registrant compliance with the standards.

(e) The Department shall annually submit to each municipality with authority delegated pursuant to this section, a listing of each registered bee yard, beekeeper, and the property owner, if the owner is not the beekeeper, in that municipality, including the number of bee yards registered, hives per bee yard, and bee yard(s) location(s). The listing for the current year will be provided by March 31.

(f) Covering the period between February 15 and October 15 annually, municipalities with delegated regulatory authority shall submit reports of apiary activity to the Department, as follows:

1. The municipality shall submit reports to the Department by May 31, August 30, and October 30;

2. Reports shall contain the following:

i. Number of registration applications incorrectly sent to the municipality and forwarded to the Department;

ii. Number and type of complaints from residents including complaints of swarms and/or disruptive contact of honey bees with swimming pools;

- iii. Number of monitoring inspections by the municipality;
- iv. Number of registrant reports of diseases of bees to the municipality and forwarded to the Department; and
- v. Number and type of enforcement actions taken.

## COMMUNITY AFFAIRS

(a)

### THE COMMISSIONER

#### Standards of Conduct

#### Proposed Readoption: N.J.A.C. 5:1

Authorized By: Charles A. Richman, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-3.

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

Proposal Number: PRN 2017-265.

Submit written comments by January 19, 2018, to:

Kathleen Asher  
Department of Community Affairs  
PO Box 800  
Trenton, New Jersey 08625  
E-mail: [kathleen.asher@dca.nj.gov](mailto:kathleen.asher@dca.nj.gov)  
Fax Number: (609) 984-6696

The agency proposal as follows:

#### Summary

The Department of Community Affairs (Department) standards of conduct rules at N.J.A.C. 5:1 were scheduled to expire on October 22, 2017. As the Department submitted this notice of readoption to the Office of Administrative Law prior to that date, the expiration date was extended 180 days to April 20, 2018, pursuant to N.J.S.A. 52:14B-5.1.c(2). The rules include subchapters concerning general provisions, definitions, penalties, fair employment practices, conflict of interest and ethical standards, and political activities. Upon review of these rules, the Department has determined that the existing rules are necessary, reasonable, and proper for the purpose for which they originally were promulgated, and the Department, therefore, should readopt them.

As the Department has provided a 60-day comment period on 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 rules proposed for readoption provide that each person in the Department acts consistently with the Code of Fair Practices, the New Jersey Law Against Discrimination, and the Civil Rights Act, and addresses inquiries made that may implicate these laws. The rules proposed for readoption further require all Department officers and employees to comply with the Department's Code of Ethics. Finally, the rules proposed for readoption prohibit the use of an official position for political purposes and states that the Hatch Act, 5 U.S.C. § 118K, applies as well.

#### Economic Impact

The Department will not incur any additional costs. The rules proposed for readoption address activities of officers and employees of the Department.

#### Federal Standards Statement

No Federal standards analysis is required because the Department is not proposing these rules for readoption to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates reference to Federal law, standards, or requirements.

#### Jobs Impact

The Department does not anticipate that the rules proposed for readoption will result in the creation or loss of any jobs.