

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

Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments and New Rules

Diseases of Bees

Proposed Changes: N.J.A.C. 2:24-1.1, 3.1, and 7

Proposed: November 20, 2017, at 49 N.J.R. 3565(a).

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.

Submit written comments by February 1, 2019, 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.

Take notice that the Department of Agriculture proposed amendments and new rules to N.J.A.C. 2:24 on November 20, 2017, at 49 N.J.R. 3565(a), in furtherance of the statutory obligation required by P.L. 2015, c. 76, regarding the regulation of the keeping of bees and apiary products. The public comment period closed on January 19, 2018.

The Department is proposing a number of substantial changes to the amendments and new rules in response to the comments received. A summary of the comments that prompted the changes and the agency response to those is provided below. This notice of proposed substantial changes is published pursuant to N.J.S.A. 52:14B-4.10.

Comments were received by:

Janet Katz
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Rossmore Community Church
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Linda O'Brien
Charlie Rivers
Shawn Keating
Marshall Nazin
Miriam Wolin
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Economic Impact Statement

1. COMMENT: Statements were made that this rulemaking would eliminate rooftop and hives on small properties and small farms creating a shortage of raw honey and increasing the prices of that honey, from which the sale of honey is used to reinvest into the expensive honeybee hobby and/or business.

RESPONSE: The Department’s rulemaking was based upon bee biology and the interactions with their surrounding environments. In

urban areas where there are generally fewer open spaces with forage for bees to feed upon, considerations must be made as to how many bees an urban area can accommodate. The rulemaking considered that in urban areas bees generally have less access to forage and thereby must compete for resources. As a practical matter, larger properties with more plant materials provide more resources to honeybees. The rulemaking was not designed to exclude anyone, though the Department understands how the original notice of proposal was more restrictive in the colony density requirements in urban areas especially. These density requirements have been reconsidered, and further consideration has been provided to rooftop beekeeping, such as securing hives and maintaining buffers with neighbors on all levels. The comments on the cost of the hobby and how income may be reinvested into the hobby are not necessarily indicative of all hobbyists and are beyond the scope of the rulemaking.

N.J.A.C. 2:24-1.1 Definitions

2. COMMENT: Some commenters were confused about the number of allowable nucs and how long they were allowed to maintain them. Some noted that it is a good practice to maintain nucs with full size hives for sustainability, as nucs are used for more than just swarm control. The time frame to allow nucs was confusing, was it 45 days or 34 days, and what was the scientific basis for 45 days?

RESPONSE: The Department proposes changing the definition of nucleus and nuc box. The nucleus definition would be brought in line with scientific standards of between three to five deep frames, or their equivalent, as opposed to 10 frames. Some beekeepers use deep frames, while others use medium frames, this would provide for flexibility.

Additionally, language saying why the nucleus was created has been removed, as beekeepers commented that there are many reasons to use a nucleus, not just for catching swarms. "Nuc box" would be simplified to define that it is a structure that houses a nucleus colony of bees. Either a nuc or hive body can be used to trap a swarm, and nucs may be used on a strong hive to reduce the desire to swarm. A deep hive body can be used to split a strong hive and give the parent hive more room. Nucs would be allowable for 90 days under the new notice of proposal. The discrepancy between 34 days and 45 days was a typographical error, but 45 days was chosen because in that time a virgin queen should have mated and laid a solid brood pattern.

3. COMMENT: Some felt the line drawn between commercial beekeeping and hobbyist beekeeping was unclear and suggested alternative definitions. One commenter asked if he would be considered a commercial beekeeper if hives were kept on rooftops of a church or hotel.

RESPONSE: In the original notice of proposal, hobbyists were defined as gifting apiary products, but not selling them. The Department now proposes to change the definition to ensure that commercial beekeepers are those that overwinter and produce apiary products, provide pollination services, and/or meet the qualifications of the Right to Farm Act; hobbyists would be all other beekeepers, who do not qualify for Right to Farm protections. Under the original notice of proposal, anyone selling apiary products would not be considered a hobbyist, under the new notice of proposal the distinction is that anyone not qualifying as a commercial beekeeper is a hobbyist.

Under this notice of substantial changes, the definition of commercial beekeeper would be changed to track the Right to Farm Act, as opposed to encompassing even the *de minimis* exchange, or barter of honeybees or apiary products. Hobbyist beekeeper would be changed to allow for the gifting or sale of apiary products. "Non-qualified commercial beekeeper" and "Qualified commercial beekeeper" would be deleted, leaving only three categories: hobbyists, commercial, and migratory addresses in the new notice of proposal. Additionally, N.J.A.C. 2:24-7.1(a) would be adjusted for the removal of definitions.

4. COMMENT: One commenter questioned the distinction between hobbyist and non-qualified commercial beekeepers.

RESPONSE: In the original notice of proposal, hobbyist beekeepers did not sell their apiary products but could gift their products. Non-qualified beekeepers were those beekeepers that sold their products but did not meet the financial criteria to provide them protection under the Right to Farm Act, P.L. 1983, c. 31 (N.J.S.A. 4:1C-1 et seq.) (RTFA). Under this notice of substantial changes, the Department proposes eliminating the majority of the classification of beekeepers and reducing

them to commercial beekeepers and general beekeepers that do not qualify for RTFA protection (see also the Response to Comment 3).

5. COMMENT: Some commenters felt that commercial beekeepers would be harmed by the regulations because they would no longer have the market of hobbyist beekeepers to sell apiary products.

RESPONSE: In the new notice of proposal, the Department proposes to have hive densities more in line with the Department's Guidelines for Keeping Bees in Populated Areas, commonly referred to as the Department's "Best Management Practices" (BMPs). That will allow hobby beekeeping to continue to flourish and not impact commercial beekeepers.

6. COMMENT: Many commenters found the definitions for the classifications of beekeeper types, especially hobbyist, non-qualified commercial, and qualified commercial beekeepers confusing and unnecessary.

RESPONSE: During the consultation period in drafting the original notice of proposal, representatives from the New Jersey League of Municipalities suggested using a three-tiered system to identify beekeepers who sell their apiary products from those who do not. Some, but not all, beekeepers are covered under RTFA protections, if they generate income over the threshold outlined in the RTFA. In the original notice of proposal, hobbyist beekeepers were defined as those who did not sell their products, qualified beekeepers were those who made revenue from their apiary product sales, and qualified beekeepers were those who sold their products and qualified for RTFA protections. Many commenters stated that they sold their products, yet considered themselves hobbyists.

Under this notice of substantial changes, given that so many commenters found the original tiering system confusing, the Department has simplified it, proposing a simplified two-tiered definition for beekeepers: commercial beekeepers are those that overwinter and produce apiary products, provide pollination services, and/or meet the qualifications of the Right to Farm Act; hobbyists would be all other beekeepers.

7. COMMENT: One commenter asked what is meant by "another tract?" Who cares for the nuc on the other tract?

RESPONSE: Another tract is a piece of land other than the one upon which the beekeeper's apiary is located. However, after further consideration, the definition of "undeveloped tract of land" is being changed to match the New Jersey Beekeeping Association model beekeeping ordinance to provide further clarification. The beekeeper would care for the nuc on another tract of land.

N.J.A.C. 2:24-3.1 Registration Requirements

8. COMMENT: Many commenters opposed the requirement of notifying neighbors in the registration process. Many stated that the registration process proposed is overly burdensome and vague. Some felt that the entire registration process was overly burdensome and impractical as bees can travel miles while foraging. Some also disliked the added expense of sending notifications by certified mail, while others had concerns about confidentiality of hive locations that may lead to vandalism or theft.

Some asked how the Department would confirm that all neighbors were notified. Others were unsure of how the list of surrounding addresses would be obtained, and were concerned that neighbors may not understand honeybees, or may not have known they were already present in a community. People felt that this notification may lead to unnecessary conflicts with neighbors.

Some commenters were in favor of notifying neighbors and thought neighbors should be more involved in the consideration of bees in their community. Other commenters were concerned with being required to provide an emergency contact, while other hobbies do not have this requirement. This was discussed as an overly burdensome requirement.

RESPONSE: The Department has reconsidered the neighbor notification requirement, which would have been required only for new registrants, and proposes deletion from the new notice of proposal. The requirement was designed for new beekeepers introducing hives for the first time into their communities. This portion of the original notice of proposal would have required new beekeepers to affirm that they had notified neighbors to address any questions or concerns before bees were brought to a property. Additionally, for organization and clarity, "hive

identification” would be added as a definition in N.J.A.C. 2:24-1.1 and removed from N.J.A.C. 2:24-3.1(c)3. E-mail addresses would be required, as would the contact information for the owner of the property where the hives are located (when the property is not owned by the beekeeper).

N.J.A.C. 2:24-3.1(k) Registration; Education

9. COMMENT: Comments were received stating that taking courses to keep bees and requiring recordkeeping is “overkill.”

RESPONSE: Education about how to effectively raise and manage bees is very important for the success of both the beekeeper and the colony in general. Under the original notice of proposal, continuing education requirements and documentation of the education were proposed in order to promote effective beekeeping as skills and techniques are developed. Learning current and effective colony management helps prevent swarming behavior and provides education and techniques about the myriad of apiary diseases and parasites that beekeepers should be aware of to ensure the health and continuation of their colonies. Many commenters, who were beekeepers, noted that they keep records of beekeeping activities to determine which techniques work well and which do not.

Under this notice of substantial changes, education is required only for newly registered beekeepers to provide them with the tools to be effective beekeepers and have success with the keeping of hives, not only for disease control, but to learn how to address circumstances that may be unknown to new beekeepers. Additionally, recordkeeping of inspections will no longer be required under N.J.A.C. 2:24-7.2(k). See also the Response to Comment 10.

10. COMMENT: Commenters stated that education should not be required because if hives are not managed properly by the beekeeper, the beekeeper will not have hives that perform and they will no longer have bees because of outside factors, such as improper hive management or lack of disease control. Many felt that the education requirements were too burdensome to good beekeepers and would be a financial hardship to many, which could serve to discourage beekeeping as a hobby. Some commenters stated that there is no need to reeducate beekeepers as they do not need to learn anything new, and that they could educate themselves, if necessary. Others observed that you do not need education for firearms, to raise livestock, or to raise children. Some recommended that continuing education for beekeepers is not in line with national standards and could set a dangerous precedent. Requiring education may reduce the number of beekeepers and/or encourage individuals to go “underground” and fail to register, which would be a negative impact on honeybee health.

RESPONSE: The Department acknowledges that there are many practical factors that may encourage or discourage beekeeping. However, the Department was tasked with creating standards for beekeeping pursuant to P.L. 2015, c. 76. While outside factors play a role in an individual’s interest or ability to keep bees, the Department proposed the education requirement in an effort to provide beekeepers with knowledge to help and encourage and assist them in successful beekeeping. Many professions have continuing education requirements, which serve to keep individuals abreast of the newest technologies or standards in fields.

Under this notice of substantial changes, the Department now proposes only an initial educational requirement that must be fulfilled in either the year prior to, or the year after, the initial registration. This requirement may be met in a variety of ways but must be accomplished through an accredited program. Additionally, master beekeepers are exempt from this requirement. This newly proposed, scaled-back educational requirement is located at N.J.A.C. 2:24-3.1(c)6, while previously proposed continuing educational and recordkeeping requirements at subsection (k) would be eliminated.

11. COMMENT: While many commenters favored education, it was stated that five years was too burdensome and would not be beneficial. Many in favor of initial beekeeping education felt that it could encourage hobbyists and provide them with the basics to be successful in their endeavors.

RESPONSE: The Department appreciates the positive comments regarding education of new beekeepers. The proposed five-year continuing education requirement was an effort to improve beekeeping management activities and the overall health of managed bees. In the original notice of proposal, there were no specific education requirements;

self-education, online courses, attendance at local beekeeper association meetings, or taking formal educational beekeeping classes would have been acceptable. Many professionals and/or professional organizations require continuing education to ensure their members are safely conducting their activities utilizing up-to-date techniques. Some, but not all, beekeepers belong to local beekeeping associations or take advanced educational coursework to improve their colony management skills and keep up-to-date with the latest parasite and/or disease treatments. There are no national standards for beekeeping education. Recordkeeping of the continued education was required to provide proof of compliance to protect beekeepers.

Under this notice of substantial changes, the Department now proposes an initial educational requirement that would have to be completed before the beekeeper’s second registration. This could be accomplished through an accredited college or university, through the State Apiarist, or through a beekeeping club. Upon extensive consideration, the Department now proposes initial education for new beekeepers. This education will help new beekeepers understand the basics of bee biology and bee health, which will, in turn, encourage and promote the growth of beekeeping as a hobby.

12. COMMENT: Commenters suggested that the Department’s role should be to educate, as opposed to proposing regulations. It was suggested that the Department require coursework and training for beginning beekeepers, as well as mentoring activities. Some commenters suggested requiring beekeepers to join local associations, as they provide a great job of education and support.

RESPONSE: The Department appreciated the comments in favor of education, especially for new beekeepers. The proposed educational requirements recognized the need to practice, and become comfortable with, newly-learned beekeeping procedures, and that hands-on experience is important to ingrain newly-learned skills. Local beekeeping chapters offer a variety of educational opportunities for beekeepers. However, the Department is tasked with setting a standard of compliance for all beekeepers, even those who may prefer not to join a local club but have other resources to learn the requisite beekeeping skills.

Under this notice of substantial changes, the Department now proposes eliminating the option to have mentoring. While mentoring is encouraged, without a standard some individuals may receive inconsistent training or possibly outdated or incorrect information.

13. COMMENT: Some commenters stated that the additional costs of education added to already high costs of beekeeping was unfair, and that training should be free. Some asked what would qualify as a beekeeping course, and suggested other ways of information sharing, such as internet forums, or a professional development time requirement should be allowed.

RESPONSE: As a result of comments in favor and opposed to the proposed educational requirements, the Department proposes amending the education component to eliminate the requirement for continuing education for existing beekeepers. Under this notice of substantial changes, the rule will still require new beekeepers to take a formal course in beekeeping provided by the State Apiarist, accredited universities, or from beekeeping associations. This requirement would be completed either a year prior to, or a year after, acquiring hives. This requirement would help new beekeepers be successful as they will learn techniques for raising and maintaining bees. This will encourage successful new hobbyist beekeepers, but not burden seasoned beekeepers. There are many acceptable resources that may be free- or low-cost options to beekeepers, especially after joining beekeeping clubs. Unfortunately, the Department does not have the resources to provide free training to all new beekeepers.

14. COMMENT: Some commenters felt that the recordkeeping requirement for the educational training was an unnecessary burden, as was keeping the records for six years. Some felt they should not have to fill out paperwork just to have bees on their property, and that it was unnecessary red tape that would deter people from keeping bees.

RESPONSE: As the educational component has been changed, the recordkeeping is no longer included in the new notice of proposal.

N.J.A.C. 2:24-7.2(a) Apiary Standards: Colony Density

15. COMMENT: The most comments received regarded the proposed colony density requirements. Many felt the allocations were not based on

scientific data and were unreasonable because many hives can easily be tolerated by neighbors, even on small lots. Some felt the number of colonies should not be tied to size of properties, and that the proposed density would ban or eliminate beekeeping in urban areas and force some beekeepers who have more colonies than in the proposed numbers to relocate their hives. Some suggested the Department utilize Federal colony density standards.

RESPONSE: Many beekeepers indicated that in their experience, properties could house more colonies on land parcels than what was being proposed in the original notice of proposal. In drafting the original notice of proposal, the Department considered the number of bees in colonies during the spring and summer seasons when bee population numbers would be at their highest level in relation to property sizes, in both urban and rural situations. The Department recognized in consideration of physical hive size, that more colonies could be maintained on small parcels of land, but also considered the population of bees per hive in drafting the proposed colony density figures to minimize adverse impacts to neighboring property owners, especially in urban areas. In the original notice of proposal, a waiver process was established to allow for colony increases by existing beekeepers if the bee populations, especially on small land parcels, did not interfere, or inconvenience, adjoining neighbors. The same process also allowed new beekeeping activities in areas where beekeeping was prohibited, provided the beekeeper took the time to go through the waiver process. There are no existing Federal colony density standards; only colony density recommendations that provide for adequate pollination standards for specific crop types.

Under the proposed substantial changes, due to the commenters' beliefs that the BMPs be followed, as well as the experiences of many beekeepers who submitted comments, SADC standards, and other factors, the Department now proposes for hobbyists three hives per quarter acre, not to exceed 40 hives per parcel of contiguous land. A chart has also been included for ease of reference.

Beekeepers in excess of 40 hives would be considered commercial, and this number brings the standards in line with the RTFA limits. Additionally, for every two colonies, a nucleus may be maintained. The additional colony will now be allowed for 90 days instead of 34 days referenced in the original notice of proposal. This will provide flexibility to the beekeepers and allow additional uses of nucleus colonies other than for swarm collection. A final addition to colony density would clarify that beekeepers can seek a waiver for hives in excess of these requirements and directs those beekeepers to N.J.A.C. 2:24-7.3, Waiver. These revisions to the colony density provisions eliminate confusing terminology and standards that were not understood by the majority of commenters.

16. COMMENT: Commenters stated that colony numbers should be based on the physical structure of the hive, not the bee populations within the hive, and that enough vegetation found on a 1.5-acre parcel could support multiple hives. Other commenters suggested that colony densities should be limited by the environment itself, not by arbitrary regulations, and be based on science.

RESPONSE: Under the original notice of proposal, beekeepers who had colony density numbers more than those proposed would be required to relocate some hives to other locations. This would have provided pollination services to other locations and reduce the competition of foraging bees for limited resources as experienced by colonies in tightly clustered urban locations. In drafting the original notice of proposal, the Department recognized the variability of the different environments throughout the State in providing adequate resources to bees and the burdensome and unenforceable situation that would result if left to determine colony density allowances exclusively on a case-by-case basis. While hive health is based, in part, on the type and amount of forage around the hives, this is not a factor that can be determined other than on a case-by-case basis. The Department relied upon its experience and knowledge of the State Apiarist, the Mid-Atlantic Apiculture Research and Extension Consortium (MAAREC), and the NJBA to propose these new colony density requirements.

17. COMMENT: Some commenters felt that the number of colonies should not be determined by lot size and that the proposed regulations would allow beekeepers only on large parcels of property. Many more colonies are allowed in other cities on rooftops, and a sliding scale was

proposed as an alternative to actual numbers per lot size or use a national standard.

RESPONSE: In the original notice of proposal, the colony density allocations were based on whether the property housing the colonies were in zones where agriculture was permitted or not. Using these factors, more colonies were allowable in agriculturally permitted areas as opposed to urban areas because there is more forage available for the colonies than in urban environments. Also, in the original notice of proposal, a waiver process was proposed to allow for more hives for beekeepers than published and to allow for colonies in prohibited areas. Colony density numbers in urban environments were intended to start low and allow for increases using the waiver process to address the requests on a case-by-case basis. The goal was to slowly increase colony numbers up to the point of adverse neighbor interaction. There are not any national standards for colony density numbers outside of providing pollination efficiencies for various crops. Other states use a tiered approach for colony density based on their individual states' best management practices.

18. COMMENT: A few commenters were confused about the difference between commercial and residential lots in the proposed rules and asked for more clarification about permitted land uses for hive locations.

RESPONSE: Although no definitions were provided for residential lots in the original notice of proposal, they were to be considered as lands located in a municipality that was zoned residential and containing residences. Commercial lots would be areas in the municipality that were commercially zoned and contained buildings, sheds, and warehouses, such as would be found in industrial complexes, but did not contain private residences. A few beekeepers and representatives from MAAREC confirmed that because commercial areas are usually planted with flowering plants and shrubs, they serve as good reservoirs for honeybee forage, especially in densely populated residential environments. Therefore, the type of land use mentioned in the original notice of proposal has been abandoned in the revision to eliminate this confusion for permitted land uses.

19. COMMENT: Some beekeepers remarked that they have more than the proposed colony numbers on their properties, have no problems with neighboring properties, and their hives benefit neighboring gardens and orchards. A few commenters also stated that the original notice of proposal would put many beekeepers out of business and that there is no need to restrict the number of hives.

RESPONSE: The Department recognizes and appreciates that successful beekeepers provide an immense benefit to the State by keeping healthy hives. With the increased interest in beekeeping, the original notice of proposal was conservative in the initial number of hives, but allowed for waivers to increase hive density. The waiver mechanism was proposed to provide for colony increases on small lot parcels to a level of density that would not cause detrimental effects to neighboring properties. Once that limit was reached, the beekeepers would be required to move some of their additional colonies to other locations in or out of the municipality.

Under this notice of substantial changes, the Department has greatly increased the colony numbers in relation to acreage, yet continues to maintain a simplified waiver process for individuals who seek hives in excess of the colony density requirements. It is anticipated that there would be fewer applications for waivers; however, this process will allow individuals to grow the number of their hives where requested and where appropriate. This continues to allow for a case-by-case approach.

20. COMMENT: One commenter questioned the need to utilize different classes of beekeepers in the original notice of proposal and suggested that there should be one category of beekeepers.

RESPONSE: In drafting the original notice of proposal, the Department considered the level of experience of beekeepers associated with the type and number of complaints received by the Department. The Department also considered terms utilized by the beekeeping community (for example, sideliner). The Department has reconsidered the categories and now, under this notice of substantial changes, proposes a differentiation only upon commercial and hobbyist, as discussed in the response to prior comments.

21. COMMENT: Some commenters did not like a written notice requirement from beekeepers to their immediate adjacent neighbors about

their beekeeping activities and stated that no other livestock producer is required to provide such notice.

RESPONSE: The Department proposed neighbor notifications of beekeeping activities because the size of livestock, such as chickens, horses, goats, pigs, and cattle makes them more obvious to the public than bees, not to mention that they are also contained to a particular property by fences. Bees forage from two to three miles to gather the necessary resources for the colony including food and water and their hives may be obscured from view by tree lines or fences. There have been instances where honeybees have been drawn to neighboring pools for water as they are attracted to the treated water.

Under this notice of substantial changes, the Department proposes neighbor notification only in the event a beekeeper seeks a waiver in excess of the colony density standards. This strikes a balance between beekeepers who desire to keep more hives and provides neighbors with notice of the intent to request colony density above the three hives per quarter acre.

N.J.A.C. 2:24-7.2(b) Apiary Standards: Swarming

22. COMMENT: Many commenters were concerned with the definition of, and proposed rules regarding the act of, swarming of honeybees. There were many comments received stating that because the number of hives will be restricted, beekeepers will have nowhere to keep collected bees that have swarmed. Hives need to be split, but if they are limited to the number of hives, beekeepers will not split, which will result in more swarms, feral colonies, problems for neighbors, and spread of disease.

RESPONSE: The Department has changed the colony density under this notice of substantial changes. For every two colonies permitted to be kept, the beekeeper is allowed one nuc. In the event the beekeeper goes over the density number, the beekeeper would need to find another yard location. The definition of “swarming” has been revised to clarify what swarming is, with an emphasis on the biological propagation of honey bees.

23. COMMENT: Several commenters pointed out that without being allowed the extra hives, there will be fewer beekeepers to collect swarms with the proposed regulations and that it will be unreasonable to expect a hobbyist beekeeper to collect swarms only to give them away.

RESPONSE: With the increased colony density standards, and allowance of nucs, there is more flexibility for beekeepers. Those who collect swarms have the ability to sell them if desired.

N.J.A.C. 2:24-7.2(c) and (d) Apiary Standards: Structure and Location

24. COMMENT: Some commenters felt that setbacks should not conflict with local ordinances, and that having a fence and a sign would warn children if they followed a ball into a back yard. Others noted that the 85-foot setback contradicts with the BMPs. One commenter asked who would grant the exemption for research hive locations.

RESPONSE: The Department has clarified that any fences used as flyway barriers must comply with any local ordinances. Signs may be helpful in certain instances; however, they are not mandated. Setbacks have been reconsidered and brought in line with the BMPs and are now proposed to be 20 feet from roadsides, sidewalks, or paths. There is no longer a distinction for public places, such as schools, churches, etc. As this has been removed, no further consideration of what entity would grant the exemption is necessary.

N.J.A.C. 2:24-7.2(e) Apiary Standards: Flyway Barriers

25. COMMENT: Many commenters disliked the proposed requirement for flyway barriers. Some noted that they did not need flyway barriers as they did not have neighboring residences, and felt the additional cost was unnecessary. Some pointed out there may be conflicts with local ordinances regarding fencing, while others did not think the additional cost was warranted. One commenter felt flyway barriers were important in cities. Most felt the added cost of flyway barriers outweighed the need. Others felt that they are unnecessary in rural areas and may harm birds and butterflies.

RESPONSE: The Department has reconsidered the flyway barrier requirement and proposes new standards under this notice of substantial changes. While the State Apiarist believes flyway barriers can serve as an important tool, they are not always necessary. Where a colony is located

less than 20 feet from any property line, in urban, densely populated areas, a flyway barrier may be necessary. Where necessary, the barrier should be six feet high and extend 10 feet on either side of the apiary. It can be made of vegetation, or material solid enough to force the bees up before they leave the beekeeper’s property. The flexibility to use natural vegetation or existing items as flyway barriers allows for flexibility and lower costs.

Flyway barriers need not be around the whole apiary in all circumstances and may not be necessary in other circumstances. A flyway barrier may be natural or preexisting, such as the side of a building, a tree line, or shrub line, so a beekeeper may not be required to build a fence. If a hive is further than 20 feet from the property line, no barrier is need. The beekeeper does not need to enclose the hives on all sides, it is only a barrier on the property line side of the apiary. Flyway barriers are useful in modifying the honeybee flight pattern. Flyway barriers do not discourage pollination, they merely direct the flight pattern up and in a certain direction. In the event a local ordinance would prohibit a fence-type flyway barrier, alternative methods could be used, such as vegetation; however, all flyway barriers must comply with applicable local ordinances.

N.J.A.C. 2:24-1.1 and 7.2(f) Definition and Apiary Standards: Location of Water Source

26. COMMENT: Comments were received regarding the water source requirement. Many asked where the gallon of water per colony was derived from and wondered why it was never allowed to be dry. Many felt that poor water management was rarely a problem with beekeepers and that honeybees could not be trained to use a water source. Thus, it would be unreasonable to require a water source to deter honeybees from drinking at swimming pools. Others noted that a source near the hives will not draw bees back to that source, as environmental conditions must be considered, including feral bee populations and other pollinators, as well as a honeybee’s attraction to swimming pools.

One commenter asked why water was required to be provided within 25 feet of a hive if there was a natural water source within 500 feet of an apiary. Another stated that bees cannot communicate with each other inside of 25 feet. Some noted that stagnant water could cause other health concerns, such as attracting mosquito larva.

One commenter noted that the need for supplemental water is seasonal, as it is not required for much of the year (for example, in the winter).

A few commenters were in favor of having an adequate source of water on the property where the hives are located.

RESPONSE: Despite extensive research, the Department could not find scientific studies that determined how much water a colony of honeybees uses in a day. It is established that honeybees’ water use is seasonal and dependent on temperature and humidity of the environment. It is also known that it is very important that a water source does not run dry because then the bees will find another source and not want to move back to the original because they have oriented to the new source. The requirement to have a water source close to the hives will also serve as a deterrent for honeybees to search for water on neighboring properties. Having fresh water available to bees promotes bee health.

The State Apiarist notes that bees can be trained to use water sources, as they are creatures of habit. Honeybees orient on a water source in later winter as they fly to gather water to thin honey to feed their brood; that is why a water source that is never dry is important. Once honeybees have oriented to a water source, they cannot be trained easily to use a different source. Many beekeepers do not consider the water source as an issue, unless or until there is a problem with a neighbor. By the time that occurs, it is often too late to reorient the bees back to the beekeeper’s property. Additionally, if the source that honeybees are oriented to runs dry, they will then have to seek out the next closest source, which may be on a neighboring property. While honeybees forage over large distances, they are opportunists that work closest to their hives in order to be more efficient.

In light of these comments, the Department worked closely with NJBA and MAAREC to change the definition of “adequate water source” in N.J.A.C. 2:24-1.1, under this notice of substantial changes, to mean a constant and continuous source of water provided by the beekeeper, or available naturally, and on the same property as the hives.

Additionally, under this notice of substantial changes, the Department proposes removing the inference that honeybees congregating at swimming pools means they have not been provided with an adequate water source. Honeybees can be drawn to the chemicals in pools, additionally, there may be feral honeybees or other pollinators drawn to the water sources as well.

N.J.A.C. 2:24-7.2(g) Apiary Standards: Queen Stock

27. COMMENT: Several commenters asked how you can ensure that queens will have gentle and non-swarming characteristics and felt these terms were vague with no metric to determine these qualities. Some noted that swarming is necessary, as that is how bees propagate. Others felt this portion of the notice of proposal would be unenforceable and would make it difficult for queen breeders to breed gentle hygienic queens.

Some recognized that there are more aggressive queens, but there are ways to work with them, especially if they produce strong, healthy workers and as the lead time to get a new queen may not be fast enough to address an immediate problem. One noted that queens are expensive.

A couple of commenters noted they would not be able to produce new queens due to the proposed colony density standards, and then queens would need to be imported.

RESPONSE: These terms were derived directly from the Department's BMPs. However, certain queens are known to become overly defensive. When this happens, requeening a colony is an effective way to combat unnecessary defensiveness. The State Apiarist routinely assists beekeepers in requeening hives.

When bees are in areas close to people and animals, colonies that behave aggressively must be requeened as soon as possible. This is another reason for a beekeeper to maintain nucleus colonies to have the gentle queen available. Queens can be expensive, but beekeepers have the ability to raise gentle ones and maintain them in a nucleus for quick requeening.

The Department proposes further clarification of queen stock to identify the Latin name, *Apis mellifera*, bred for gentleness, and to allow three weeks to requeen a colony that shows unusually defensive behavior.

N.J.A.C. 2:24-7.2(i) Apiary Standards: Violations and Enforcement

28. COMMENT: Commenters suggested that the standards be handled at the municipal level under existing nuisance laws. Other commenters stated that enforcement of the standards are burdensome and that without funding, municipalities would opt not to adopt the regulations and that governing authorities do not have the right to deny the public their rights to beekeeping as a hobby.

RESPONSE: P.L. 2015, c. 75 preempted the right of municipalities to adopt or enforce already existing ordinances governing beekeeping and gave the Department the authority to develop Statewide standards. Bees are highly mobile and forage away from the location of hives. As they leave the property where the hives are located, they interact with members of the public in a variety of ways. Often their presence is not noticed by the public; however, the foraging radius for honeybees must be considered when addressing concerns of neighbors. Unless the municipality adopts the standards by ordinance, it has no authority to enforce the regulations. The Department anticipates that there will be municipalities that do not want to enforce the standards, and the Department will be responsible in those instances.

29. COMMENT: One commenter questioned the dispute process concerning mandated corrective actions, and asked what happens to beekeepers who ignore the actions, and how much time do beekeepers have to move colonies when required? Another commenter acknowledged that a process for complaint investigation would not be difficult to develop and asked what facts support the determination that unregistered beekeepers have caused more public complaints over the last five to 10 years? Someone asked if the Department will share a list of beekeepers with the NJBA?

RESPONSE: Compliance orders would be issued to beekeepers after investigations were conducted of their properties and hives to determine if the complaints were founded. Beekeepers who are found in violation of the rules may face removal of hives at their own cost or the inability to register. There may be individuals who do not follow the rules, but that is why there is a proposed process for addressing those who do not follow

the standards. In the Department's experience, when addressing citizen complaints, most of the beekeepers that have complaints against them are unregistered. Complaints are frequently received by the Department from municipal health officials following their preliminary investigations of local complaints. The Department keeps information about registered beekeepers; however, this information is largely confidential and only the beekeeper's name and mailing address may be provided. The Department now proposes 90 days for a beekeeper to relocate any nucleus in excess of the colony density requirements.

The new structure proposed for violations and enforcements under this notice of substantial changes at N.J.A.C. 2:24-7.2(l) provides a more easily followed procedure. First, a written warning will be required. If corrective action is not made within seven calendar days, the beekeeper may be subject to a notice of violation. Enforcement of the notice of violation may include relocation of the hives (at the beekeeper's expense) or revocation of the certificate of registration. An appeals procedure would require appeals be made to the Department or governing authority within 25 days of receipt of the notice of violation.

N.J.A.C. 2:24-7.3 and 7.3A Waivers and Expedited Waivers

30. COMMENT: The waiver process for keeping bees will create an unnecessary perception that honeybees are more dangerous than they are and need to be eliminated from any non-agricultural area in New Jersey.

RESPONSE: The waiver process was a tool to allow increases to colony density on a case-by-case basis, although many commenters did not perceive it that way. By substantially increasing the baseline of colony density standards, the Department has significantly reduced the need for, and likely usage of, the waiver process. However, the process is still proposed for beekeepers that can reasonably keep bees in excess of the colony density standards for the property where the hives are located. Notice to neighbors in all directions of the apiary site(s), including vertical for high rise buildings, must be provided. Notice would be by certified and regular mail, hand delivery would no longer be an option, and they must be mailed no less than 10 days prior to the scheduled date of the hearing. Proof of service would be required at the hearing.

The application to the governing authority, in addition to what was included in the original notice of proposal, must now include written consent from a property owner (if the beekeeper is not the owner), set forth the number of hives in excess of the colony density standards of N.J.A.C. 2:24-7.2(a), description of flyway barriers (if any), zoning of the property, and the reasons the applicant is applying for a waiver.

Revocation of colony density waivers would still be allowable but may only be brought by neighbors residing within 200 feet of the apiary site, include certification of notice served upon the beekeeper, including factual basis for requested revocation to all landowners within the 200-foot radius and the additional requirements of the rule. Further, the Department will require all similarly situated, allegedly aggrieved parties to bring their actions at the same time to prevent piecemeal hearings and the possibility of abuse of this process for one year. Also required is an inspection report by the State Apiarist, or his or her designee, to certify the colonies as being disease free.

31. COMMENT: Many commenters objected to the waiver provision because it was too complicated, burdensome, and restrictive and would negatively impact thousands of beekeepers.

RESPONSE: Under this notice of substantial changes, the Department proposes simplification of the waiver process, as set forth in the Response to Comment 30. The waiver process was proposed to allow beekeepers to keep more colonies than the colony density requirements allow. Having a waiver process allows beekeepers to request more colonies and allows flexibility to the beekeeper. Beekeepers may now apply for a waiver of the colony density requirement. In doing so, beekeepers would need to obtain a list of property owners within 200 feet of the property from the tax assessor's office.

32. COMMENT: Commenters were concerned with the power the waiver process would give to neighbors to veto beekeepers' hives without justification. The commenters stated that this may open beekeepers to petty grievances between neighbors that might have nothing to do with bees. It was also pointed out that the waiver process will reinforce the incorrect stigma that bees are to be feared. One commenter asked how obtaining a waiver and renewing annually serves the public who are

largely ignorant of the practice of beekeeping and bee biology and whose safety is not affected by the practice of beekeeping. It was suggested that only residents located within a reasonable distance should be able to file for the revocation of a waiver.

RESPONSE: Neighbors with concerns may bring actions to revoke a waiver; however, under this notice of substantial changes, this process would require all similarly-situated individuals to come forward under one proceeding or be barred from bringing an action for the period of one year. Having notice to neighbors can be beneficial and protect the beekeeper in the event of unwarranted complaints. It is anticipated that with higher colony density standards, the waiver process will not be highly utilized.

33. COMMENT: A commenter stated that the expedited waivers will be a vast undertaking in the first 30 days and asked if the Department has the manpower to process them.

RESPONSE: The Department has reconsidered expedited waivers and they are no longer included under this notice of substantial changes due in part to the increased colony density requirements and a consideration of resources.

P.L. 2015, c. 76

34. COMMENT: Comments were provided that the act required uniform regulation of beekeepers by preempting municipal authority, but that delegating authority back to municipalities was contrary to the intent of the Legislature. Individual municipality control was thought to stifle the practice of apiculture, and these regulations were to be developed to promote the activity. While some commenters acknowledged the statute allowed for some delegation to municipalities, they stated that wholesale delegation of authority to municipalities was not allowed and that municipalities would not have the expertise to carry out certain functions.

RESPONSE: P.L. 2015, c. 76 requires the Department to allow municipalities that adopt the Department's rules to have authority delegated back to themselves. The act and proposed rules allow the municipalities a process to request the Department to address issues that they may have experienced in the past that are not addressed by the final rules. Indeed, the statute preempted local control to provide a uniform standard for beekeeping across the State. The Department clarifies and reorganizes the proposed delegation to be in line with the statutory requirements.

35. COMMENT: The Department received comments from numerous New Jersey Senators and New Jersey Assemblymen regarding the intent of P.L. 2015, c. 76. These comments indicated that the Department's original notice of proposal were not consistent with the intent of the original act in that it would stifle, as opposed to encourage, beekeeping in New Jersey. The commenters stated that the intent of the law was to encourage New Jersey's beekeeping industry and to preserve pollinators (honeybees and native pollinators). The Department was encouraged to consider all public comments and work with stakeholders to revise the rulemaking.

RESPONSE: The Department thanks the legislators, as their comments were extremely helpful for the Department to understand that the rulemaking should be changed to more accurately reflect the legislative intent behind the act. In consideration of these and all comments, the Department has again consulted with the stakeholders and has undertaken these substantial changes designed to more accurately reflect the legislative intent of P.L. 2015, c. 76.

Consideration of Bee Biology and Health

36. COMMENT: Commenters were concerned about disease and parasite spread if the rulemaking is adopted. They were also concerned about not having the ability to make up winter losses because the density was so low and the remaining genetic diversity of their bees. Commenters also thought that beekeepers would not register, which would provide potential refuges of disease that would spread from diseased hives to nearby healthy registered apiaries. Additionally, the rulemaking would now protect bee health where beekeeping would not be allowed where there is a threat to honeybee health, as determined by the State Apiarist pursuant to N.J.A.C. 2:24-7.1(f).

RESPONSE: The Department has relaxed the density from the original notice of proposal to be more in line with the BMPs, which had been the standard for more than 15 years. Registration is important in the battle

against disease. The Department hopes that beekeepers continue to register, so they are known in the event of a disease outbreak.

37. COMMENT: It is important to have extra hives to restart colonies with queen failure.

RESPONSE: The Department agrees with the commenter and is one of the reasons the colony density was increased to the Department's BMP density, which had been recommended for the past 15 years.

Reliance on Guidelines for Keeping Bees in Populated Areas

38. COMMENT: Comments were received suggesting the Department continue to use the standards set forth in the BMPs that were used for decades, instead of the proposed regulations, which utilized confusing colony restrictions. Some commenters recommended the Department follow Federal best management practices.

RESPONSE: Apart from colony density numbers previously proposed, the remaining beekeeping standards were developed from the Department's BMPs along with the model beekeeping ordinance from the NJBA. There are no Federal standards for beekeeping. Because of the large number of comments on this topic, this notice of proposed substantial changes reflect further integration of the BMPs, changes are proposed that incorporate the BMP's colony density standard. The BMPs allowed for three hives per quarter acre of property, which is what is incorporated into this notice of proposed substantial changes. Additionally, the Department has relied upon scientific information from MAAREC where deviations from the BMPs are proposed.

Impact of Rulemaking to Hobbyist Beekeeping

39. COMMENT: Commenters stated that the proposed rules would place an undue burden/hardship on beekeepers with all of the added administrative restrictions and will cause many to give up the hobby.

RESPONSE: The act tasked the Department to develop rules to set a standard for hobbyist beekeepers throughout New Jersey. After considering the comments, the Department proposes the instant substantial changes to the original proposed rules that would decrease the restrictions on such things as colony density and education requirements and eliminate the need to maintain some paperwork.

40. COMMENT: Commenters stated that the property (lot) size restriction for colony density, if adopted, would eliminate many of the hobbyist beekeepers, especially those in urban areas. In turn, the lack of urban beekeepers would have a negative impact on the health of the New Jersey honeybee stock.

RESPONSE: The Department has reconsidered the property size restrictions for colony density, and now proposes that property sizes be directly in line with the Department's BMPs, which will allow for greater flexibility in hive density for smaller properties. Allowing more hives on smaller properties provides the ability for urban beekeepers to keep bees without seeking a waiver to keep three or less hives on properties one-quarter acre or less, as discussed in the response to other comments.

41. COMMENT: Many commenters were concerned that the proposed regulations would have a negative impact on hobbyist beekeepers during a time when pollinators are diminished, and that it would make a large number of New Jersey beekeepers in violation of the regulations, even if they followed the BMPs. Many were concerned the proposed regulations effectively prohibit beekeeping in most of suburban New Jersey. This would have a negative impact on beekeeping generally because hobbyist beekeepers are innovative and work hard to keep bees healthy.

RESPONSE: The Department's notice of substantial changes, taken in conjunction with the original notice of proposal, now brings the colony density standards in line with the BMPs.

Impact of Rulemaking to Neighbors of Hobbyist Beekeepers

42. COMMENT: Some longtime beekeepers felt the proposed rules would eliminate their ability to keep hives on their properties at all due to the acreage constraint.

RESPONSE: The Department acknowledges that any acreage restraint will affect some beekeepers in New Jersey. This notice of proposed substantial changes will now allow three hives per quarter acre of property, with the opportunity for a waiver of even this requirement. Waiver applications will consider many factors, including the length of time the person has been keeping bees.

43. COMMENT: Some neighbors of beekeepers provided examples of negative experiences with neighbors who have kept bees. Complaints included that the bees were aggressive, hung around decks, pools, and bird baths; one individual indicated they had a swarm of honeybees in a residence.

RESPONSE: The Department considered these and other negative experiences from members of the public with beekeeping neighbors in drafting the original rulemaking. Individual neighbors with complaints have several options of addressing such issues, including private rights of action and other processes proposed, such as challenging application waivers of colony density. The proposed colony density requirements of three hives per quarter acre are based upon the long-standing BMPs, which have been reconsidered, accounting for public experiences and bee biology. While the Department now proposes increasing colony density requirements, beekeepers will have to abide by requirements, such as location requirements, water sources, and flyway barriers, which will mitigate possible negative effects on neighbors.

General Comments

44. COMMENT: Commenters stated that the proposed new beekeeping rules are discriminatory and only favor homeowners who can afford large parcels of land. They also pointed out that the regulations assume beekeepers will have access to multiple properties to move hives around when necessary.

RESPONSE: The Department based the proposed colony density standards on lot size, as generally, areas with smaller lots have less forage available for bees. The rulemaking made no assumptions as access to other properties, but considered honeybee biology and health when access to forage is limited, especially in areas that do not have ready access to forage. It may be necessary for beekeepers to move hives when they would exceed reasonable colony density limits; however, beekeepers may also seek a waiver that would be based upon the individual factors of each beekeeping situation.

45. COMMENT: Many comments were received stating that the proposed regulations are unfair and unrealistic and asked the Department not to implement them, stating that doing so would lead to negative impacts to beekeeping. Enacting these rules could damage local 4H clubs, entrepreneurs, hobbyists, scouting troops, and may make beekeeping impossible for many New Jersey residents.

RESPONSE: The Department appreciates these comments but respectfully disagrees with the sentiments expressed. The rulemaking, including as changed in this notice of substantial changes, attempts to set forth reasonable standards for beekeeping; however, based upon comments like these and others, higher colony density standards and more flexible requirements are proposed in this notice.

46. COMMENT: Commenters noted that the proposed regulations are flawed, and editing will not suffice to make them acceptable. They suggest withdrawing them entirely, considering all comments received, and forming a new committee to address the issues. Commenters also stated that the Department should consult with the NJBA and New Jersey League of Municipalities to rewrite regulations based on facts, science, and the Best Management Practices. Several commenters suggested trying to reach a compromise between the citizens and beekeepers that is fair to both sides.

RESPONSE: The Department considered all options available under the Administrative Procedures Act when deciding how to move forward with the original notice of proposal. The Department decided to move forward with this notice of substantial changes as some elements of the original notice of proposal will remain. The Department has consulted, through the rulemaking process and the period following the end of the comment period to consult, with NJBA, New Jersey League of Municipalities, and MAAREC. Several meetings were held with these groups after the comment period closed, as well as other communications with the groups. In the continued work with these groups, the Department now proposes these substantial changes.

47. COMMENT: Numerous commenters felt that the proposed regulations are overly restrictive and that beekeeping should be encouraged in New Jersey, rather than discouraged.

RESPONSE: The Department has reconsidered much of the original notice of proposal and has relaxed many of the proposed elements, such

as colony density, education, and recordkeeping requirements to encourage beekeeping.

48. COMMENT: Some commenters noted that the original notice of proposal did not take into account the varied landscape of New Jersey and that the State will no longer be able to call itself the Garden State if it restricts beekeeping in this way.

RESPONSE: The Department considered all types of landscape of New Jersey, from unpopulated areas to the most densely populated areas in the rulemaking, and upon further consideration of these and other aspects, proposes less restrictive colony density requirements to encourage beekeeping across the State in this notice of substantial changes.

49. COMMENT: A few commenters agree that some regulation is necessary, but what was contained in the original notice of proposal went too far.

RESPONSE: Based upon the feedback received, the majority of which was negative, this notice of substantial changes seeks to balance the needs of beekeepers and the community based upon further research and discussions with the statutorily mandated groups.

50. COMMENT: One commenter noted that the proposed regulations are difficult to understand and suggested they be rewritten in layman's terms.

RESPONSE: The Department has approached this notice of substantial changes from practical perspective and proposes the deletion of areas that were identified as confusing.

Summary of Substantial Agency-Initiated Changes and Changes After Discussions with Interested Parties After the Comment Period:

In addition to the proposed substantial changes initiated by comments, the Department proposes some additional changes. These changes were developed through meetings with the New Jersey League of Municipalities and NJBA.

N.J.A.C. 2:24-1.1 Definitions

“Adjoining property” would be changed to clarify that it means any property that shares a boundary where the subject apiary is located. This definition is more narrowly tailored to the location of apiary sites.

“Apiary” would be changed to clarify that the location of an apiary need not be owned by the owner of the hives, and to identify that overwintering hives must be registered. This change would also affect N.J.A.C. 2:24-3.1, Registration, as references would be to apiaries, not bee yards.

“Beekeeper” would be changed to mean any person or entity, and to remove the reference to classifications of beekeeper, which are proposed to be removed.

“Bee yard” would be removed as it is duplicative of apiary site.

“Deep frame” is a new definition that will set the standard height for hive boxes, which relates to the height allowance of hives under apiary standards. This sets a standard for the hive box.

“Divide or split” is deleted as it was a superfluous term for the term “nucleus.”

“Governing authority” would be clarified to add a cross-reference for how municipalities can become the governing authority at N.J.A.C. 2:24-7.4.

“Super” would now describe the item used for surplus honey and that it is placed over the brood chamber and would not say that a beekeeper would harvest. This more accurately describes the item, and not uses of the super.

N.J.A.C. 2:24-3.1 Registrations

The information to be collected would now include an e-mail address, and if registrations are collected by paper, they would require a physical signature. Additionally, certificates of registration will be issued by the Department to beekeepers that register. This will signal to the beekeeper that the beekeepers' registration has been accepted and will provide identification that the hives are registered with the Department.

N.J.A.C. 2:24-7.1

NJBA requested that subsection (c) note that this subchapter does not apply or create any standards to be applied under the Right to Farm Act.

New paragraph (f)2 is added to allow the State Apiarist, or his or her designee, to protect the health of honey bees.

N.J.A.C. 2:24-7.2

Insertion of the statutory cross-reference to N.J.S.A. 4:6-10 is proposed to be added to subsection (c), structure, with the language pertaining to height of the hives that was proposed in the rule deleted, as it is no longer necessary with the added cross-reference.

Upon further consideration of urban beekeeping, the Department proposes amending subsection (d), location, with specific requirements for rooftop beekeeping. This was based upon general comments received, as well as the North Carolina statute, and discussions with NJLM and NJBA. Rooftop hives must be securely placed and level, should be at least 20 feet from areas used for human activity, and are not permitted on balconies.

Subsection (j) is proposed to clarify access requirements. Beekeepers shall provide access to all apiaries under their control with inspectors with jurisdiction under these apiary standards. Notice will be provided in advance where possible. This change will clarify who can have access to apiary sites and provide notice, where possible. Parties were concerned about who would have access to the apiary sites, and the Department never intended for free access to hives, it is only for inspectors from the Department or governmental agencies with authority.

Subsection (k) cleans up language replacing “conducted” in the lead-in text with “handled,” and removes language about annual inspections that was confusing. While the original notice of proposal allowed for “annual or as needed” inspections, now they will just be “as needed.” The Department proposes deletion of paragraph (k)3, which allowed for a written notice of violation if any colony is not in compliance with inspection requirements. Notices of violation are addressed elsewhere in the rulemaking, and the State Apiarist has statutory authority to inspect under certain circumstances.

During the consultation process, the NJBA requested that subsection (l) pertaining to violations and enforcement be amended to allow for the State Apiarist to stay any proceeding where he or she is not the official issuing the Notice of Violation. This would allow the State Apiarist to assess a situation and determine if immediate action is necessary for the health and welfare of the citizens and bees. The denial or revocation process has been clarified to allow for revocation or denial to registered beekeepers who do not meet the requirements. If the Department is not the governing authority, that entity would request the Department take such action. Appeals of denial or revocation would be sent to the Department.

N.J.A.C. 2:24-7.4

The Department has made some clarifications to bring the rule in line with the directives of P.L. 2015, c. 76. A final adjustment will remove the requirement that municipalities report diseases of bees to the Department, as these should be reported to the Department directly.

Effect of Proposed Changes on Impact Statements Included in Original Proposal

Social Impact

The proposed substantial changes affect beekeepers and other citizens of municipalities where beekeeping is practiced in New Jersey. A healthy honeybee population, and the pollination services provided by commercial beekeepers, and hobbyist beekeepers, are invaluable to the wellbeing of New Jersey citizens. The quantity and quality of crops produced by the pollination benefit residents through employment, as well as wholesome, economical, and nutritious food. The proposed changes are less restrictive on beekeepers than the original notice of proposal and would be more flexible to allow beekeepers to have more hives on properties. The proposed density requirements are based upon the long-standing Best Management Practices guidelines provided by the Department. Specific aspects of the notice of proposal that would affect citizens include more uniform setback and flyway barrier requirements as a buffer from beekeeping activities. The notice of proposal also allows beekeepers to request an increase to colony density through a waiver process, whereby neighbors would be able to provide input into the request to have hives in excess of the colony density requirements.

Beekeepers would notify neighbors of the request to increase colony density, and those neighbors 200 feet from the hives can provide feedback on the request and how this may impact them. Previously, with the more restrictive colony density, an expedited waiver process was proposed for the grandfathering of current hobbyist beekeepers. As changed herein, the rules would have a streamlined process, which the Department anticipates will not be used very often due to the increase in baseline of colony density. Therefore, by supporting agricultural growth and balancing the interaction with human activities, especially in residential settings, these proposed substantial changes will have a positive impact on the citizens of New Jersey.

Economic Impact

The proposed substantial changes would clarify existing rules that maintain the health of hives from known economically damaging pests encountered by the beekeeping industry. The line between commercial and hobbyist beekeeping has been relaxed, this notice of substantial changes allows gifting to neighbors and small-scale sales of apiary products. While all other Federal, State, and local laws, rules, regulations, and ordinances would apply to any sales, hobbyists would now be allowed to have some sales of apiary products. Additional changes make clear the obligations of hobbyist and commercial beekeepers to maintain standards of care for hives to minimize disruption and difficulties that could be caused by inattention to biological needs of the bees (water, new hive space, etc.) Supporting responsible beekeeping in non-farming areas encourages economic support of apiary products. Therefore, the changes proposed upon adoption will have a positive economic impact on the citizens of New Jersey.

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 substantial changes 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 and hobbyist beekeepers overwintering bee hives in New Jersey are required by these rules to annually report the number and location of their overwintering apiaries to the Department through an apiary registration process. Apiary registration provides for an accurate accounting of all overwintering apiaries 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 by Departmental apiary staff and there are no fees imposed for apiary 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.

Full text of the proposed substantial changes to the proposed amendments and new rules follows (additions to proposal indicated in italicized boldface *thus*, deletions from proposal indicated in italicized cursive brackets {thus}):

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 a constant and continuous 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 *provided by the beekeeper, or naturally available, on the same property as the hives.*

“Adjoining property” means any property that shares any boundary with the property *{of another land owner} upon which the subject apiary is located.*

“Apiary” means one or more [colonies] hives (each containing a colony) of *{honey bees} honeybees* that are kept at a single location. *The property where the hive(s) are located may or may not be owned by the owner of the hives. If used for overwintering hives, apiaries must be registered pursuant to N.J.A.C. 2:24-3.1.*

“Beekeeper” means any person *or entity* 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} honeybee* 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.*}*

“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.*}*

“Commercial beekeeper” means

1. *A beekeeping operation that overwinters hives and produces honey or other agricultural or horticultural apiary-related products;*
2. *Provides crop pollination services, worth \$10,000 or more annually; and/or*
3. *Otherwise qualifies as a commercial farm pursuant to the Right to Farm Act, N.J.S.A. 4:1C-1 et seq., as amended and supplemented.*

“Deep frame” means a moveable frame designed to fit a standard 9 5/8 inch tall hive.

“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 *as approved by the Department pursuant to N.J.A.C. 2:24-7.4.*

“Hive identification” means a mark that has been branded, engraved, painted, or written with permanent marker on each hive(s) and that shall be a name, number, initials, or image.

“Hobbyist beekeeper” means one who engages in beekeeping and may gift or sell 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} who is not a commercial beekeeper.*

“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} honeybee* hive with *{no more than 10} between three to five deep frames, or their equivalent, in the box and no supers attached. {It may have been created from larger colonies to minimize honeybee 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} to house a nucleus.*

“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} is placed over or above the brood chamber.*

“Swarming” refers to the natural *{process} method* 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} propagation of the honeybee colony where a portion of the colony leaves looking for a new location.*

“Undeveloped tract of land” means *any land that is not improved or actually in the process of being improved with residential, commercial, industrial, church, park, school or governmental facilities, or other structures or improvements intended for human use and occupancy, and the grounds maintained in association therewith.*

SUBCHAPTER 3. REGISTRATION OF APIARIES

2:24-3.1 Registration requirements; confidentiality and documentation

(a) (No change from proposal.)

[(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)} apiary(ies)** 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 or by paper and shall include the following:

1. The name, address, *e-mail 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} apiaries* and, if the beekeeper is *{leasing property for beekeeping, the name of the owner(s) of the leased property} not the property owner, the name, mailing address, and telephone number of the property owner;*

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 *{ “hive identification”};*

4. (No change from proposal.)

5. The electronic *or physical* signature of the registration applicant; *and*

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.*}*

6. *Upon initial registration, acknowledgement from the beekeeper overwintering apiaries, of the requirement that within a year prior to or*

after the date of the initial registration, the beekeeper shall take a beginner/general beekeeping course from either an accredited college or university, the State Apiarist, or a local beekeeping club. By the second annual registration, the beekeeper shall certify compliance with this educational requirement.

i. This education requirement shall not apply to beekeepers who have been continuously registered under the AIS system prior to (the effective date of this new rule); or

ii. This education requirement shall not apply to beekeepers who certify they are certified as Master Beekeepers through an accredited program.

7. If submitted by paper, the application shall be mailed to:
 Director, Division of Plant Industry
 New Jersey Department of Agriculture
 PO Box 330
 Trenton, New Jersey 08625.

[(b)] (d) (No change from proposal.)

(e) Issuance of certificate 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 certificate of registration pursuant to this section.

(f) Active registrations. The certificate of 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) apiary(ies) shall be nontransferable and shall cover the bee yard apiary(ies) and the named beekeeper AIS number.

(g) (No change from proposal.)

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

[(c)] (i) (No change from proposal.)

[(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 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 beekeepers not overwintering any hives, migratory commercial beekeepers, or commercial beekeepers.

(b) (No change from proposal.)

(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, or to create any standards to be applied under that act.

(d)-(e) (No change from proposal.)

(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 pose a direct threat to public:

1. Public health and safety; or

2. Bee health, as determined by the State Apiarist or his or her designee.

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.

1.

Tract of Land Size	Number of Colonies Allowed
1/4 Acre	3
1/2 Acre	6
3/4 Acre	9
1 Acre	12
Over 1 acre	3 per 1/4 acre not to exceed N.J.A.C. 2:24-7.2(a)(2)

2. Notwithstanding (a)1 above, colony density shall not exceed 40 hives per contiguous tract of land.

3. For every two colonies permitted on a tract of land, there may be maintained upon the same tract one nucleus colony with no super attached from March 1st through October 31st. Any additional nucleus colony shall be moved to another location, tract, or combined with a

colony on the same property within 90 days after the date made or acquired.

4. A beekeeper may seek permission from the governing authority to keep more hives than permissible under the requirements of this subchapter, by seeking a waiver as provided for under N.J.A.C. 2:24-7.3, Waiver.

(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, using accepted swarm management techniques for the industry, which may include, but are not limited to, providing adequate room for colony growth, splitting, and requeening.

(c) Structure. In accordance with N.J.S.A. 4:6-10, 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.

1. Hives must be securely placed on level ground or secured on rooftop installations;

2. When hives are located on rooftops, they shall not be less than 20 feet from any area used for outdoor human activity; and

3. Hives are not permitted on balconies of multistory, multifamily dwelling unit buildings.

(e) Flyway barrier. When a colony is located less than 20 feet from any property line, 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.

1. Notwithstanding this subsection, all flyway barriers must comply with any Federal, State, or local laws, rules, regulations, and/or ordinances.

(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 *Apis mellifera* stock bred for gentleness and non-swarmer characteristics. A beekeeper shall maintain all colonies with queens that Queens shall be replaced within three weeks 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) (No change from proposal.)

(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 hive identification. This box brand hive identification 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 access to all apiaries under the beekeeper's control 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, with jurisdiction to enforce this chapter pertaining to the hives, maintenance of the hives, or disease control. Beekeepers will be notified in advance, where possible and feasible. If the beekeeper cannot be located, notice shall be to the landowner where the apiary is located.

(k) Inspection shall be handled conducted as follows:

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

2. All colonies must shall 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 annually.

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 are as follows:

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.

1. A 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). A beekeeper who violates other sections of this chapter shall be subject first to a written warning identifying each offense with written notice of corrective action required. If corrective action is not taken within seven calendar days after the receipt of such a warning, the beekeeper may be subject to a Notice of Violation. Enforcement of a Notice of Violation may include, but is not limited to, required immediate relocation of hive(s) at the beekeeper's expense, and/or revocation of the beekeeper's certificate of registration and his or her ability to keep bees.

i. Written appeals of a Notice of Violation by the beekeeper must be received by the Department, or the applicable governing authority within 25 calendar days after constructive, or actual, receipt of the Notice of Violation by the beekeeper or landowner.

ii. Written appeals of any Notice of Violation issued by the Department should be sent to:

Director
Division of Plant Industry
New Jersey Department of Agriculture
PO Box 330
Trenton, New Jersey 08625

iii. Written appeals of any Notice of Violation issued by a governing authority shall be sent to the address provided in the Notice of Violation.

2. In instances where the State Apiarist is not the official issuing the Notice of Violation, enforcement of the Notice of Violation, if appealed, shall be stayed pending the adjudicative process, unless the State Apiarist, or his or her designee, determines a stay is unnecessary pending the appeal process.

5. 3. Denial or revocation of registration. The Department, shall deny a or revoke the certificate of registration provided pursuant to N.J.A.C. 2:24-3.1 to any hobbyist registered 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 *and/or* revocation of the registration will be issued by the Department.

i. Where a governing authority has authority pursuant to P.L. 2015, c. 76, the governing authority may request the Department take action to revoke and/or deny a certification pursuant to this subsection.

{6.} 4. Appeal of denials or revocations. {Hobbyist beekeeper} Beekeeper applicants who have been denied a registration or whose certificate of registration has been denied or revoked may appeal the denial to the Department.

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

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

*Director, Division of Plant Industry
New Jersey 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}7.3 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 *colony density* 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.}

(b) The applicant shall obtain a certified list of the names and addresses of all property owners within 200 feet of {his or her property} the apiary site(s) from the municipality's tax assessor's office.

{(b)} (c) {Notice must be made} A copy of the application for colony density waiver must be provided to all property owners within 200 feet in all directions of the applicant's property by {hand delivery or} certified mail and by regular mail, with proof}. Notice to a partnership owner may be made by certified mail, and by regular mail to any partner. Notice to a corporate owner may be made by certified mail, and by

regular mail to its president, a vice president, secretary, or other person authorized by appointment or by law to accept service on behalf of the corporation. Notice to a condominium association, horizontal property regime, community trust, or homeowners' association, because of its ownership of common elements or areas located within 200 feet of the property that is the subject of the hearing, may be made in the same manner as to a corporation without further notice to unit owners, co-owners, or homeowners on account of such common elements or areas. Notice shall be mailed no less than 10 days prior to the scheduled date of the hearing. Proof of service {being} to the appropriate property owners shall be 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)} (d) The {notice} application to the governing authority shall set forth the following:

1.-2. (No change from proposal.)

3. If the property where the applicant intends to maintain the hive(s) is owned by another individual, express written consent by the property owner;

{3.} 4. The nature of the waiver requested, setting forth the number of the proposed hives in excess of those allowed pursuant to N.J.A.C. 2:24-7.2(a); {and}

5. A description of flyway barriers (if any);

6. Zoning district of the property where the hives are proposed to be kept; and

7. A description of the reason(s) the applicant seeks a waiver of colony density; and

{4.} 8. (No change from proposal.)

{(d)} (e) (No change from proposal.)

{(e)} (f) Should the applicant's request for a colony density 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)} (g) A colony density waiver granted by the governing authority may be revoked upon proper application to the governing authority by a landowner with a particularized property interest in the hive(s) subject to a colony density waiver issued pursuant to N.J.A.C. 2:24-7.2(a). For the purposes of this subsection, a landowner with a particular property interest is any landowner within 200 feet of the applicable hive(s). An application must:

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

2. Be made by a person who certifies that he or she resides within, or owns property in, the municipality or within 200 feet of the hive(s) where the colony density waiver applies; and

3. Include certification of notice served upon the beekeeper to all landowners within 200 feet of the hive(s) by regular and certified mail, return receipt requested, of the application for revocation of the colony density waiver.

(h) The notice shall {also} include a factual basis for the requested revocation, including a description of the compelling particularized property right of the landowner.

(i) 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 the colony density waiver based upon the same criteria {previously} set forth {herein under} in this section.

(j) Any landowner served with notice of the application to revoke a colony density waiver, who may also have reason to request revocation of a colony density waiver, must join in the original action, or he or she shall be barred from bringing an action to revoke the same colony density waiver, for the period of one year.

{(g)} (k) No colony density waiver shall be granted unless the beekeeper has submitted to the governing authority {a certificate indicating that the hive(s) are free of disease} an inspection report from the State Apiarist, or his or her designee. The {certificate} inspection report shall be submitted with the request for a colony density waiver application but no later than the hearing date scheduled for the colony density waiver application hearing.

{(h)} (l) The granting of a colony density 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) as set forth in this chapter.

2:24-7.4 Administrative standards for delegated municipalities

(a) *{A}* Pursuant to P.L. 2015, c. 76, a municipality may pass an ordinance to adopt by reference these apiary standards (*this chapter*) promulgated by the Department. The ordinance shall designate the municipal office responsible for monitoring these standards.

(b) (No change from proposal.)

(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)li above, the Department shall provide the guidance no later than 90 days after the request is received by the Department; and *{assumed responsibility of monitoring and enforcement of this chapter finds there is a condition or circumstance in the municipality that is not resolved by this chapter, the municipality shall request guidance from the Department. The Department shall provide guidance no later than 90 days after the request is received.*

{3.} I. (No change in text from proposal.)

(d)-(e) (No change from proposal.)

(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. (No change from proposal.)

2. Reports shall contain the following:

i-ii. (No change from proposal.)

iii. Number of monitoring inspections by the municipality; and

{iv. Number of registrant reports of diseases of bees to the municipality and forwarded to the Department; and}

{v.} iv. (No change from proposal.)

As to N.J.A.C. 7:8: N.J.S.A. 12:5-3, 13:1D-1 et seq., 13:9A-1 et seq., 13:19-1 et seq., 40:55D-93 to 99, 58:4-1 et seq., 58:10A-1 et seq., 58:11A-1 et seq., and 58:16A-50 et seq.

As to N.J.A.C. 7:13: N.J.S.A. 13:1D-1 et seq., 13:1D-29 et seq., 13:20-1 et seq., 58:10A et seq., 58:11A-1 et seq., and 58:16A-50 et seq.

As to N.J.A.C. 7:14A: N.J.S.A. 1B-3 et seq., 13:1D-1 et seq., 13:1D-29 et seq., 13:1E-1 et seq., 26:2C-1 et seq., 26:3A2-21, 40:55D-1 et seq., 58:10-23.11 et seq., 58:10A-1 et seq., 58:11-23 et seq., 58:11-49 et seq., 58:11-64 et seq., 58:11A-1 et seq., and 58:12A-1 et seq.

As to N.J.A.C. 7:38: N.J.S.A. 1B-15.128 et seq., 13:1D-1 et seq., 13:9B-1 et seq., 13:20-1 et seq., 23:2A-1 et seq., 58:1A-1 et seq., 58:10A-1 et seq., 58:11-23 et seq., 58:11A-1 et seq., 58:12A-1 et seq., and 58:16A-50 et seq.

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

DEP Docket Number: 03-18-10.

Proposal Number: PRN 2018-111.

A public hearing concerning this notice of proposal will be held on January 8, 2019, at 1:00 P.M. at:

New Jersey Department of Environmental Protection
Public Hearing Room, 1st Floor
401 East State Street
Trenton, NJ 08625

Directions to the public hearing room are available on the Department of Environmental Protection’s website at www.nj.gov/dep/where.htm.

Submit comments by February 1, 2019, electronically at www.nj.gov/dep/rules/comments. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter’s name and affiliation following the comment.

The Department encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Gary J. Brower, Esq.
Attn.: DEP Docket No. 03-18-10
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, 7th Floor
Mail Code 401-04L
PO Box 402
Trenton, New Jersey 08625-0402

Written comments may also be submitted at the public hearing. It is requested (but not required) that anyone submitting oral testimony at the public hearing provide a copy of any prepared text to the stenographer at the hearing.

This rule proposal may be viewed or downloaded from the Department’s website at www.nj.gov/dep/rules.

The agency proposal follows.

Summary

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.

The Department is proposing amendments to the Stormwater Management rules, N.J.A.C. 7:8, to replace the current requirement that major developments incorporate nonstructural stormwater management strategies to the “maximum extent practicable” to meet groundwater recharge standards, stormwater runoff quantity standards, and stormwater runoff quality standards, with a requirement that green infrastructure be utilized to meet these same standards. The Department is proposing to clarify and modify the definition of major development, which defines the scope of projects to which these rules apply. The Department is proposing changes to apply the total suspended solids (TSS) removal requirement to the runoff from motor vehicle surfaces and to remove the TSS removal requirement as it applies to runoff from other impervious surfaces not traveled by automobiles, such as rooftops and sidewalks. The Department is proposing several changes that will support water quality and

ENVIRONMENTAL PROTECTION

(a)

LAND USE MANAGEMENT

WATER RESOURCE MANAGEMENT

DIVISION OF WATER QUALITY

Coastal Zone Management Rules

Freshwater Wetlands Protection Act Rules

Stormwater Management

Flood Hazard Area Control Act Rules

New Jersey Pollutant Discharge Elimination System

Highlands Water Protection and Planning Act Rules

Proposed Repeal and New Rule: N.J.A.C. 7:8-5.3

Proposed Amendments: N.J.A.C. 7:7-25.1; 7:7A-18.1; 7:8-1.2, 1.3, 1.6, 2.4, 3.4, 3.6, 3.9, 3.10, 4.2, 4.6, 5.2, 5.4, 5.5, 5.6, and 5.9; 7:13-11.2, 18.5, and 20.1; 7:14A-24.7; and 7:38-10.2

Proposed New Rule: N.J.A.C. 7:8-5.6

Proposed Repeal: N.J.A.C. 7:8-5.7

Authorized By: Catherine R. McCabe, Commissioner, Department of Environmental Protection.

Authority: *As to N.J.A.C. 7:7:* N.J.S.A. 12:3-1 et seq., 12:5-3, 13:1D-1 et seq., 13:1D-9 et seq., 13:1D-29 et seq., and 13:9A-1 et seq.;
As to N.J.A.C. 7:7A: N.J.S.A. 13:9B-1 et seq., and 58:10A-1 et seq.;