

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF PLANT INDUSTRY

Diseases of Bees

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

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

Proposed: November 20, 2017, at 49 N.J.R. 3565(a).
Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments and New Rules: December 3, 2018, at 50 N.J.R. 2355(a).

Adopted: March 27, 2019, by the State Board of Agriculture and Douglas H. Fisher Secretary.

Filed: March 27, 2019, as R.2019 d.035, **with substantial and non-substantial changes** to proposal after additional notice and public comment, pursuant to N.J.S.A. 52:14B-10 **and with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: May 6, 2019.

Expiration Date: October 26, 2024.

On November 20, 2017, the New Jersey Department of Agriculture (Department) proposed to change the name, amend existing rules, and add new rules to N.J.A.C. 2:24, Diseases of Bees. These proposed changes were to reflect the requirements mandated by P.L. 2015, Chapters 75, 76, and 77. Among other things, these laws required the Department to develop standards to complement existing apiary standards that have primarily regulated commercial apiaries to prevent the introduction and spread of disease among honey bee colonies. Additionally, the new statutes preempted municipal standards for beekeeping and required the Department to set the standards that municipalities would have the option of adopting by ordinance.

The laws required the Department to consult with the following groups during the rule drafting process: New Jersey Beekeepers Association

(NJBA), New Jersey League of Municipalities (NJLOM), and the Mid-Atlantic Apiculture and Research Consortium (MAAREC). Department staff, including the State Apiarist, undertook extensive efforts to share drafts and hold meetings with representatives of these groups to discuss both the November 20, 2017, notice of proposal (initial rule proposal) and the December 3, 2018, notice of substantial changes upon adoption to the initial rule proposal (notice of substantial changes).

The initial rule proposal received over 1,200 comments. Upon review of these comments and further consultation with the statutorily required groups, the notice of substantial changes was developed. This process included multiple meetings and sharing of multiple drafts. The majority of the changes were based heavily on the Department's "Best Management Practices-Guidelines for Keeping Bees in Populated Areas" ("Best Management Practices" or "BMPs"). Additional extensive input was provided by the State Apiarist, MAAREC, and NJBA for information regarding honey bee biology. The Department finds this complete rulemaking to be both reasonable standards for hobbyist beekeepers, balanced with the interests of citizens living close to these beneficial, managed hives.

The Department now adopts this rulemaking, making both substantial and non-substantial changes upon adoption. First, many of the 233 commenters were concerned that beekeeping on properties under ¼ acre would not be allowed. This was never the intent of this rulemaking, and upon adoption, the Department has clarified that beekeeping of up to three hives is allowable on properties up to ¼ acre, with the ability to seek a waiver for even more hives. A second change corrects an improper cross-reference in the waiver subsection, N.J.A.C. 2:24-7.3, at subsection (g), to properly cite to the standards set forth under subsection (d).

The Department appreciates the hard work and effort of everyone involved in this process, especially that of the members of the public who provided invaluable detailed comments. The Department looks forward to closely monitoring these rules in the future. If problems are identified with any of these standards, the Department will consider proposing amendments with the input from NJBA, NJLOM, MAAREC, and further public comment.

Summary of Public Comments and Agency Responses:

Comments on the initial rule proposal were received from:

Janet Katz
Sten Nielsen
Elizabeth Vernon
Rossmore Community Church
Arthur Saracino
Dr. Ian and Sharon Molk
Linda O'Brien
Charlie Rivers
Shawn Keating
Marshall Nazin
Miriam Wolin
Esther Brenner
Elena Starta
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Jean-Pierre Soraire
Elizabeth Williams
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Janet Carrato
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Tim Guilkd
Teri Schnitzel
Jeff P
Roy Scheckermann
Laura Merz
Joe Kreps
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Loel Holloway
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Jimmy Demarco
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Shelly Wilcock
Diane Sabo
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 Autym Dymarczyk
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 Samantha Dunn
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 Elizabeth Harrison
 John Peter Leighton
 Curtis Crowell
 Mary Kosenski
 Jennifer Robbins
 Janice Zuzov
 Cody Blanchard
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 Heidi Blanchard
 Lana Blanchard
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 Sheila Lafler

Maru Pineiro
 Angela Juffey
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 Joan Youell
 Eric Hanan

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 Bruce Harris
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 Eric Frye
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Comments on the notice of substantial changes were received from:

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 Adam Stern
 Taylor Burd
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 Richard Brennan
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 Cindy Crowell
 Maria Sanchez
 Marc Leckington
 Andrew Kohler
 Tonie Hockenbury
 Jessica Ferguson
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 Jason Cooper
 Laurel Cline
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 Becky Wunderlich
 Will Stonebrink
 Gary and Lydia Liebchen
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 Alice Casey
 Jim LaConte
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 Joe Zgurzynski
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 Frank Mortimer
 Mark Adams
 Leigh K. Lydecker Jr.
 Mayor Gregory Skinner, and
 Council Borough of Peapack
 and Gladstone
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 Ed Andrascik
 Martine Gubernat
 Mark Lish
 John Garretson
 Dr. Michele Sinoway
 Valerie Wheatley
 Mary Ann Ferrante
 Christoph Ohngemach

Ze'ev Abigador
 Daren Lynch
 Thomas Miller
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 Jim Simon
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 Udi Shorr
 Len Klinker
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1. Comments Received Upon Publication of Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments and New Rules at N.J.A.C. 2:24-1.1, 3.1, and 7

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

1. COMMENT: One commenter felt that the definition of nucleus should be changed to allow for at least one honey super, and the definition would change to, “means a small honeybee hive, generally of a width to accommodate five or fewer frames and no more than three stories high.” The commenter stated that overwintering nucleus hives is highly desirable from a hive management standpoint and to economically replace winter losses. Additionally, it was noted that an increasing number of beekeepers use medium “Illinois” boxes and the definition calls for deep frames or their equivalents.

RESPONSE: The Department considered the trend to use medium boxes as opposed to the traditional deep boxes, which is why the definition for nucleus allows for three to five deep frames, “or their equivalent.” If overwintering of nucs was allowed, this could potentially be used as a loophole for colony density requirements. The use of nucs has been greatly expanded and allows for their presence for 90 days. The Department respectfully declines this suggestion.

2. COMMENT: One commenter requested recognition for the top-bar hive and/or the Warre hive, as long as they have removable frames.

RESPONSE: Beehives with removal frames for inspection purposes are acceptable; this includes top bar hives and Warre hives with removable frames. Warre hives without removable frames are not acceptable.

3. COMMENT: One commenter thought that the definitions of hobbyist and commercial beekeeper included a third category for migratory subject to these rules.

RESPONSE: Neither of these definitions references migratory beekeepers, only hobbyist beekeepers who overwinter hives are subject to these rules.

4. COMMENT: One commenter noted it did not see the need for a difference in beekeepers and commercial beekeepers, but appreciated the continuation of the migratory commercial beekeeper.

RESPONSE: The Department appreciates this comment.

5. COMMENT: One commenter felt it was redundant to reference other parts of the rule in the definitions section. For instance, referring under the apiary and bee yard definitions to the registration portion of the rule. The commenter also felt that the definition of “shipper” should include “queens for sale.”

RESPONSE: The Department acknowledges this comment but declines to adopt the suggestions and the specific references were proposed for the ease of the public. The change to “shipper” will not be made as such a change would make the definition too narrow.

6. COMMENT: One commenter felt the definition of “governing authority” was unclear as to who at a municipal level would be responsible for appointing a designee and requested this be clarified. Additionally, there was no indication of how the Department would approve of these designees and a list of criteria should be provided.

RESPONSE: Pursuant to P.L. 2015, c. 76, a municipality may pass an ordinance to adopt by reference these apiary standards and designate a municipal office responsible for monitoring these standards. This allows

for flexibility in different municipalities, some of which may have many possible candidate offices, and others that may have fewer. The statute places authority for disease inspection with the Department, but where a municipality has passed an ordinance adopting the standards set by the Department, the Department will provide training to one or more individuals designated by the municipality for the general standards such as colony density, water source, setbacks, etc. The Department will provide training to these individuals if the standards are adopted by ordinance.

7. COMMENT: One commenter stated that hobbyist beekeepers must still comply with local licensing and zoning requirements.

RESPONSE: The commenter is correct; these rules do not exempt individuals from other legal requirements. Definitions are for the purposes of this chapter.

8. COMMENT: Some commenters felt there was ambiguity as to the number of “hives” in a location where “colony” is sometimes used. It was noted that other structures can contain a colony (not just a Langstroth box). Do these other form factors meet the definition of hive and do they count?

RESPONSE: The general definition of colony and hive per location could be considered interchangeable when considering the number of colonies per location. The only technical difference is that “hive” refers to the actual man-made box used to eventually house the colony of bees within, while “colony” refers to the bees, hive box, associated equipment, brood, pollen, etc. For these standards, hives are manmade structures in sound condition and must have removable frames.

9. COMMENT: Some commenters felt the definition of “commercial beekeeper” was not clear, and asked if it required that someone meet all requirements, in other words, did the Department mean “and/or” as written, or “or?”

RESPONSE: Commercial beekeeper means a beekeeping operation that overwinters hives and produces honey or other agricultural or horticultural apiary-related products, or provides crop pollination services, worth \$10,000 or more annually, and/or otherwise 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.

10. COMMENT: One commenter felt that there need only be one definition of “general beekeepers” as the word hobbyist does not apply to much more than backyard beekeepers.

RESPONSE: In the initial rule proposal there were three classes of beekeepers defined. However, after reviewing the comments from the initial rule proposal, and further discussions with the interested parties, the Department proposed having only two classes in the notice of substantial changes. Following discussions with the groups, all parties agreed that hobbyist beekeeper category was satisfactory.

11. COMMENT: One commenter felt that “hive or “hive body” was unclear, if “hive” is not retained, what is a hive under the rules? The person asked what was a hive body?

RESPONSE: There is no need for a definition of hive body, as its definition is the same as hive, which is the manmade structure with removable frames intended for the housing of a colony of bees.

12. COMMENT: One commenter asked what is meant by overwintering and “tract of land?”

RESPONSE: Both words are self-explanatory in that overwintering means keeping colonies of bees in hives throughout the entire year compared to colonies used for pollination service that are brought into the State in the spring and moved to other areas of the country from summer through the rest of the year. Tract of land is a parcel of land.

13. COMMENT: One commenter stated the definition of “nuc box” does not provide a maximum size as specific dimensions are not provided.

RESPONSE: The dimensions of a nuc box are as variable as the types of beekeepers residing in the State. It is outside the scope of this rulemaking to place restrictions for a dimensional box size. Beekeepers who are unsure should refer to accepted industry standards for sizes.

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

14. COMMENT: A couple of commenters objected to the requirement to mark hives. One commenter noted that most of the time supers are moved, as opposed to frames, and if frames are moved, the bees and queen may be hurt if the weather is too cold. Another commenter felt that marking should not apply to hobbyists who keep hives on their own properties.

RESPONSE: The purpose of marking hives is to identify who the beekeeper is, especially when hives are relocated to properties other than that owned by the beekeeper. The information is helpful to the State Apiarist, so contact can be made to the beekeeper when diseases or heavy parasitism rates are found during routine inspections. This mark would be submitted by the beekeeper to the Department during the annual registration process. The mark need not be burnt or etched in the wood and may be as simple as providing initials with a permanent marker somewhere noticeable on the top or super. The mark is intended to be located outside of a box for easy beekeeper identification by the apiarist and is not to be put on the hive frames to eliminate the need to open the hive and disturb the bees and queen. This requirement was in the NJBA’s Model Beekeeping ordinance.

15. COMMENT: One commenter supported the registration process, including the website. The commenter requested more staff for the State Apiarist to be able to inspect more apiaries and follow up with formerly registered bee yards.

RESPONSE: The Department appreciates this comment; however, at this time the Department believes the process needed can be maintained with current staffing levels.

16. COMMENT: Some commenters felt that there should be no education requirement because no pets or livestock require this, and more people are bitten by dogs than stung by bees. One commenter stated that good beekeepers take classes and read books ahead of beekeeping, as is the practice with any hobby.

RESPONSE: The Department recognizes that this requirement isn’t required of other pet or livestock owners. However, many municipalities have nuisance ordinances that address unruly behaviors of animals when they adversely affect neighbors; P.L. 2015, c.76 prohibits municipalities from passing such ordinances for beekeeping. Additionally, bees forage many miles from their hives. Furthermore, there are State standards that define the minimum requirements for animal care that farmers and owners are to follow. In the instances of both pets and livestock, animals are confined to the owner’s areas and do not forage over many miles like bees do. The education requirement is strictly for new beekeepers, who have a one-year period to learn how to care for and protect their colonies from diseases and parasites that are in their environment and to effectively manage their colonies to prevent neighboring disturbances. This education component for new beekeepers will help them produce healthy colonies, which allows for their continued beekeeping success in the industry.

17. COMMENT: One commenter felt that property owners of land where apiaries are kept on leased land should not be contacted regarding removing bees.

RESPONSE: Beekeepers would always be contacted first, but in the event a beekeeper is unable to be contacted for any reason, such as illness, then the property owner would be contacted as the bees may not have any caretaker.

18. COMMENT: Some commenters felt that the education requirement should not apply to apiaries that have been continually registered. It was

also asked what accreditation is expected of education institutions and asked how beekeepers certify compliance.

RESPONSE: The requirement for education applies to initial registrations, thus, it would not apply to apiaries already registered with the Department. Beekeepers would check a box during the registration process to certify compliance. Accreditation is a process of validation in which institutions of higher education are evaluated, standards are set by a peer review board of faculty from various other accredited colleges and universities.

19. COMMENT: One commenter suggested making only names, not mailing addresses of beekeepers available to the public.

RESPONSE: This portion of the rules is beyond the scope of this rulemaking, as it is contained in the existing rule and was not proposed for change. The Department would not release apiary site information to Open Public Records Requests, only beekeeper name and mailing address.

20. COMMENT: One commenter stated that not everyone has an email address, and the Department should add “if available” after the email address.

RESPONSE: The Department recognizes that not everyone has email addresses and allows for submission of paper registrations. If a beekeeper does not have an email address, then the field would simply be left blank on the online registration system.

21. COMMENT: One commenter asked if an online beekeeping course would satisfy the education requirement.

RESPONSE: Yes, the rule allows for online courses to meet the education requirement.

22. COMMENT: One commenter suggested that the AIS number be used for hive identification.

23. COMMENT: One commenter noted that AIS numbers that have been inactive for more than a couple of years have historically been dropped from the AIS registry. What happens then? If someone was out of beekeeping for five years and then re-registered for an AIS, would they be required to take a beginner beekeeping course?

RESPONSE TO COMMENTS 22 AND 23: Registration for beekeepers is an annual requirement. This period provides the opportunity for beekeepers to register the location and numbers of their hives for the apiarist to use, if needed, when conducting disease spread investigations. The AIS number is unique to each beekeeper, the hive marking requirement is intentionally left broad, so beekeepers are not required to give out their unique identifier to the public.

24. COMMENT: One commenter disliked the language allowing access by any and all government agencies and said it should require them to have jurisdiction under this chapter and with approval and be supervised by the State Apiarist.

RESPONSE: Access is allowed to “... any and all governmental agencies with jurisdiction to enforce this chapter pertaining to the hives, maintenance of the hives, or disease control ...” The Department feels this language is sufficiently descriptive.

25. COMMENT: One commenter appreciated the removal of the requirement of an alternative beekeeper.

RESPONSE: The Department appreciates this comment.

26. COMMENT: Some commenters felt it was unclear that registrations are required annually.

RESPONSE: The Department acknowledges this comment but respectfully disagrees.

27. COMMENT: One commenter asked how the process of transferring marks will occur during the application process.

RESPONSE: Registrants will have a box in the online form, or a line on a paper form, to describe the marks.

28. COMMENT: One commenter was in favor of taking a course, but felt the definition of “course” was not sufficiently clear. It was felt there are not enough courses to meet the demand. The commenter also questioned what would happen if an experienced beekeeper moved from another state?

RESPONSE: The Department acknowledges this comment but feels the education requirement is sufficiently descriptive. Additionally, the provision allows for the exemption of master beekeepers.

29. COMMENT: One commenter disliked the requirement for release of public information.

RESPONSE: The Department is subject to the Open Public Records Act, but beekeeper information would not be released other than the name of the beekeeper and mailing address.

30. COMMENT: One commenter asked what the procedure would be if the Department required additional information from a registrant, he asked would it be by email, phone call, or other method. He also asked what form the certificate of registration would be in—would it be paper or electronic?

RESPONSE: If the Department needed additional information, the Department would determine what method to use in requesting it on a case-by-case basis. Registrations would be electronic or by paper if the registrant applied via paper application.

31. COMMENT: One commenter felt the definition of “hive identification” was too vague as the rule did not specify an acceptable location for the “mark,” thus, it could be applied anywhere.

RESPONSE: The Department acknowledges this comment but does not feel the location of the mark is essential to specify as it may be different for individual beekeepers.

32. COMMENT: One commenter suggested a two-year registration period.

RESPONSE: Existing State law requires the Department to inspect colonies of bees and investigate the existence of apiary diseases to protect the overall beekeeping industry and allow for the certification of disease-free queens and colonies. The annual registration provides the apiarist the most accurate locations of hives for their investigation of apiary diseases.

33. COMMENT: Some commenters felt that an additional education requirement should apply to beekeepers in the future to protect the ecosystem and keep beekeepers apprised of new issues, such as diseases and food sources.

RESPONSE: In the initial rule proposal, continuing educational requirements were proposed for all beekeepers, but were substantially reduced to only require an educational component for new, beginning beekeepers to help their efforts for success in the beekeeping trade through the notice of substantial changes.

N.J.A.C. 2:24-7.1 General Scope and Applicability

34. COMMENT: Many commenters felt that the part of the rulemaking that addressed direct threats to public health or safety would prevent beekeepers from keeping bees, even if they followed the regulatory standards. Some asked who would determine the direct threat and what criteria would be used and who would make the determination if this was met. Some asked to define these terms. One commenter suggested that, at the municipal level, boards of health should handle these appeals, and suggested adding a definition of “municipal apiarist.”

RESPONSE: The Department has very carefully considered this provision and discussed it extensively with both NJBA and NJLOM. This provision serves as an important balance of the interests of beekeepers and neighbors. While the provision will likely be rarely used, the Department, or governing authority, would have the ability to take action where there is a direct threat to public health and safety. The Department must make considerations to protect the health, safety, and welfare of all the people of the State, and within the statutory framework of P.L. 2015, c. 76. Many other statutes, including the Municipal Land Use Law, include provisions of public health and safety. The Department finds the terms to be sufficiently clear.

Under the statute and the rule, it is up to the Department, or a municipality that has passed an ordinance in keeping with the statute and rule, to decide whether to proceed under the violation and enforcement provision. Complaints and evidence from neighbors might cause the Department or municipality to issue a notice of violation; however, the beekeeper is entitled to due process rights. These include a seven-day warning letter, a notice of violation that includes relevant facts and requirements, a stay against enforcement, and the right to appeal. The process is described in N.J.A.C. 2:24-7.2(l), Violations and enforcement.

Furthermore, any enforcement action brought by a governing authority other than the State Apiarist must be stayed—no action will be taken to remove bees—while an appeal is pending, unless the State Apiarist determines the stay to be unnecessary. Thus, the beekeeper can maintain his or her hives pending the outcome of the adjudicative process. This stay provision means that during the pendency of any action, the beekeeper

will maintain status quo with his or her hives, unless the State Apiarist determines immediate action is necessary.

If the Department is the fact finder in such an action, then the matter will be referred to the Office of Administrative Law for a factfinding hearing, and the Department will be the final decision maker. Municipalities that adopt the rules may have a different process; however, there will be an opportunity to provide facts and ultimately there will be a determination made by a factfinder. If a beekeeper receives an adverse finding, the municipality would then have to request the Department revoke the beekeeper’s registration.

The Department appreciates the suggestion of defining a municipal apiarist, but respectfully declines the suggestion as it likely exceeds the statutory authority given to the Department and would require compensation of this position with no source for funding.

35. COMMENT: One commenter requested rewording of access to properties to allow for working beekeepers who may not be able to provide access on an inspector’s schedule.

RESPONSE: The Department considered this after the initial rule proposal, and the rule now requires advanced notice where possible and feasible to consider schedules of beekeepers and investigators. The State Apiarist routinely contacts beekeepers in advance to schedule a mutually agreeable time.

36. COMMENT: One commenter felt, regarding bee health, as determined by the State Apiarist or his or her designee, as ambiguous as “his or her designee” was too subjective and training should be required.

RESPONSE: The Department proposed the use of the State Apiarist’s designee as this is a position within the Department and would allow for this individual to designate other qualified individuals to make this determination, if necessary, in the future.

37. COMMENT: One commenter stated that N.J.A.C. 2:24-7.1(a) was amended to exclude a broad range of beekeepers and should be revised to ensure the exemptions apply to select beekeepers.

RESPONSE: The Department acknowledges this comment but disagrees with this interpretation. N.J.A.C. 2:24-7.1 was changed in the notice of substantial changes to remove terms in the initial rule proposal.

38. COMMENT: Some commenters stated that the language to protect public health and safety is crucial to balancing the interests of residents, honeybees, native pollinators, and the ecosystem as a whole. Irresponsible beekeeping can lead to spread of disease through the ecosystem and governing authorities must have the power to prevent such harm.

RESPONSE: The Department appreciates this comment and agrees.

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

39. COMMENT: Many commenters noted that it was unclear if beekeeping was allowed on tracts of land under ¼ acre, as allowed in the Department’s Guidelines for Keeping Bees in Populated Areas.

RESPONSE: The Department’s intent was three hives on properties up to ¼ acre, as reflected in the Guidelines for Keeping Bees in Populated Areas. Due to these comments, the Department has clarified upon adoption that colony density included tracts of land up to ¼ acre.

40. COMMENT: Some commenters felt that despite the increase in allowable colony density, the allowance did not go far enough. One commenter felt that the colony density should be considered in even numbers. Others did not understand the definition of “tract of land.”

RESPONSE: The Department consulted with experts and researched colony density in other states and cities. Unfortunately, there are no studies of colony density and honeybees. This was confirmed by MAAREC. Therefore, the Department relied on the standards of the longstanding Guidelines for Keeping Bees in Populated Areas. If additional studies occur after this rulemaking, changes can always be proposed based upon scientific and other data.

41. COMMENT: One commenter suggested having overwintering densities, as opposed to restricting nucleus colonies.

RESPONSE: The Department increased the amount of time and allowable uses for nucleus colonies and believes these concerns have been addressed, and, therefore, respectfully rejects this suggestion.

42. COMMENT: One commenter suggested “human-built” structures, as opposed to “manmade.”

RESPONSE: The Department appreciates this suggestion, but P.L. 2015, c. 77, uses the term “man-made native bee hive” and this term is consistent with that statute.

43. COMMENT: One commenter felt that the distance from road and sidewalks should be 10 feet through 15 feet as opposed to 20 feet and could be negotiated by neighbors.

RESPONSE: Recommendation of these setbacks were made following consultation with representatives of the NJBA and State Apiarist and were based on existing BMP’s taken directly from the NJBA model beekeeping ordinance.

44. COMMENT: One commenter felt it was unacceptable to have flyway barrier requirements and that neighbors should work out these issues.

RESPONSE: The Department appreciates this response, but the State Apiarist finds that flyway barriers are an important tool especially in more densely populated areas.

45. COMMENT: One commenter felt that the determination of keeping bees on multistory, multifamily buildings should be determined by building owners.

RESPONSE: The State Apiarist and NJBA support not keeping bees in these areas, except on rooftop settings, due to the potential dangers and close contact with neighbors.

46. COMMENT: One person asked if included in land sizing, the Department could incorporate surrounding areas that were green acres, wildlife/park areas, or including all acreage in a development if there is only one beekeeper in the development. Additionally, if a property is not a farm but has multiple natural areas, could it be considered multiple tracts? When would a land owner of a property of more than 3.3 acres be able to have more than 40 hives?

RESPONSE: In assessing colony density, a beekeeper can consider property that he or she has control over (owned or leased), so other areas would not be eligible for inclusion. However, the factors of neighboring properties and use would be considered in a colony density waiver application. Under these standards, all kinds of land use are treated the same, so whether a property is a farm or not would not be a factor for colony density.

For every acre of property, 12 hives are allowable, not to exceed 40 hives per contiguous tract of land, which means under 3.3 acres no more than 40 hives would be allowed under the colony density standards. However, the beekeeper could seek a waiver to keep hives in excess of that number.

47. COMMENT: One commenter opposes setbacks from the road, as long as hives are not facing the road, because bees fly up and out of their hives and are not flying behind hives to look for forage.

RESPONSE: Setbacks are required to minimize interactions between the public and foraging bees when near. In situations where this is not possible, flyway barriers are to be constructed to further minimize this accidental interaction. These setback requirements were taken directly from the Department’s “Guidelines for Keeping Bees in Populated Areas” and have been changed following input from both the State Apiarist and representatives from the New Jersey Beekeepers Association during the consultation periods.

48. COMMENT: One commenter felt there should be no limits on the number of hives on any property.

RESPONSE: The Department finds that colony density requirements are crucial, especially in urban environments when compared to rural, agricultural areas because of the proximity of bee and human interactions.

49. COMMENT: A few commenters felt that flyway barriers are excessive and should be removed.

RESPONSE: These setback requirements were taken directly from the Department’s “Guidelines for Keeping Bees in Populated Areas” and have been changed following input from the State Apiarist and representatives from the New Jersey Beekeepers Association. They are necessary to reduce the human-bee interaction when honeybee colonies are within the setbacks of a neighbor’s property line by forcing the bees to fly upward when foraging from their colony.

50. COMMENT: One municipality and its land use board felt that colony densities of three hives per quarter acre are too high and asked what scientific density studies were used to determine this number. It was also stated that neighbors should have notice about beekeeping in

residential areas. Finally, it was unclear what recourse, if any, a neighbor had if there was an issue with a hobbyist beekeeper maintaining hives within the allowable density limits.

RESPONSE: The Department increased the colony density limits based on the public comments received and based them upon the Department’s Best Management Practices. Unfortunately, studies on colony density could not be located, despite extensive research efforts. Neighbors would receive notice of beekeeping beyond the colony density requirements if the beekeeper sought a waiver. Neighbors would always have private rights of legal action, such as filing complaints in courts for public or private nuisances. Additionally, the provision in N.J.A.C. 2:24-7.1 would protect the public health and safety. The Department will monitor any issues and, if necessary, may propose amendments to the rules affected by this rulemaking.

51. COMMENT: One commenter asked about a proposed budget for the paperwork dealing with a waiver and complaints, how are fines collected and leveled against beekeepers, where does the money go?

RESPONSE: This is beyond the scope of this rulemaking, as no fines are proposed for hobbyist beekeepers. The only fines are those for destruction of native hives that were set by the statute.

52. COMMENT: One commenter felt the Department only considered urban beekeeping for rooftop installations.

RESPONSE: Rooftop beekeeping would be allowed anywhere, as long as they are secured and not less than 20 feet from any area used for outdoor human activity.

53. COMMENT: One commenter asked whether the rooftop restriction distance was line of sight or a horizontal radius.

RESPONSE: There is no distinction, as the distance is 20 feet from any human activity.

54. COMMENT: One commenter asked where the 25-foot restriction of bees from source of water originated because bees seem non-discriminate of where they collect water. It was suggested the source of water be related to acreage.

RESPONSE: This was based on the Department’s Best Management Practices. Having a water source closer to a hive encourages bees to use that source as opposed to other sources on other properties. The Department appreciates the suggestion to link water to acreage size but declines to adopt this suggestion, as hives could be placed anywhere on a property and bees forage in a radius around the hives.

55. COMMENT: One commenter felt the requirements for queen stock are weak and vague because all beekeepers prefer to work with calm bees. It was asked who determines under what criteria to requeen? The commenter stated the queen is not defensive but regulates the mood of the colony by pheromones alerting them to be more defensive, and that sometimes the lack of pheromones would be a reason the hive is more defensive. The commenter asked where this leaves beekeepers who choose homegrown natural methods of requeening?

RESPONSE: The beekeeper is required to determine if his or her queens are getting old or are causing their hives to become aggressive. These are subjects that should be addressed in initial beekeeping educations or at the very least asked of more experienced beekeepers involved in beekeeping groups.

56. COMMENT: One commenter asked if the beekeeper would be entitled to recoup expenses for enforcement actions.

RESPONSE: No, expenses would be handled by the beekeeper individually in enforcement actions; there is no provision for reimbursement.

57. COMMENT: One commenter asked what “but is not limited to” means?

RESPONSE: The Department enumerated numerous examples of what would be considered in enforcement actions.

58. COMMENT: One commenter felt that referring to colony density as opposed to hives was unclear. If the intent was to allow the amount of colonies per acre, the density is opposed.

RESPONSE: The Department respectfully disagrees. “Hives” means the manmade structure with removable frames intended for the housing of, and that contains, a colony of honey bees. “Colony” means an aggregate of bees, the hive, and associated equipment, including honeybees, comb, pollen, and brood. The colony density of the rule is based directly on the BMPs. These new standards were proposed and

discussed in meetings and drafts of the rulemaking with NJLOM and NJBA.

59. COMMENT: One commenter felt there should be a better understanding of acceptable swarm management techniques.

RESPONSE: The Department consulted with the State Apiarist, MAAREC, and NJBA regarding swarm management techniques. Examples of accepted swarm management techniques are provided in the rule: providing adequate room for colony growth, splitting, and requeening.

60. COMMENT: One commenter felt there should be specific sizes for allowable structures, as this could potentially allow hobbyist beekeepers to circumvent municipal land use law.

RESPONSE: The Department appreciates this comment, but this requirement was changed to comply with the statutory requirements at N.J.S.A. 4:6-10. Additionally, colony density standards would limit the heights of structures, based on the size of a "deep frame" which is 9 5/8 inches tall.

61. COMMENT: One commenter appreciated the clarification of hives on level ground and secured on rooftops but urged more clarification for rooftop hive installation.

RESPONSE: The Department appreciates this comment but finds that considering all of the standards set forth in this rulemaking, this concern is addressed by such elements as colony density, structure, etc.

62. COMMENT: Some commenters disliked the process that allows for a Notice of Corrective Action and seven days to take such actions. It was suggested that the governing authority be allowed to take immediate corrective action, where warranted. These commenters also felt that a stay of an enforcement action when the governing authority is not the Department did not provide uniformity in enforcing the rules. An automatic stay would also place a new burden on municipalities to explain when enforcement should not take place.

RESPONSE: The Department appreciates these comments, but declines to adopt the recommendation to allow for immediate corrective action. The rules do have an automatic stay, but that can be lifted if the State Apiarist finds that immediate action is warranted. The Department finds the burden would be minimal, as the State Apiarist would evaluate these situations expeditiously.

N.J.A.C. 2:24-7.3 Waiver

63. COMMENT: Some commenters felt that notification for waivers was sufficient to send via certified mail, as required in the Municipal Land Use Law, N.J.S.A. 40:55D-12, as opposed to certified mail and regular mail.

RESPONSE: The Department appreciates these comments, but respectfully disagrees. Notifying neighbors when requesting density increases over and above those set by this rule serves to foster consideration of all involved. Serving notice through certified and regular mail is a common practice in the law, including in the New Jersey Court Rules, and reasonably balances the needs of both beekeepers and neighbors. The Municipal Land Use Law is only one statute that covers notice; many others require different notice, and P.L. 2015, c. 76, changed Municipal Ordinance Law, not Municipal Land Use Law.

64. COMMENT: One commenter felt that any party could come forward at any time that they did not want bees merely by stating a particularized reason such as adding a pool. The commenter suggested a 45-day appeal period after a variance is granted.

RESPONSE: While the Department appreciates and has certainly relied on aspects of the Municipal Land Use Law, the keeping of bees is a unique issue that is not covered by that statute. The Department has provided the requirement that when a landowner is served with an application to revoke a colony density waiver, all landowners must join in that action or be barred from bringing a revocation application for the period of a year. The Department finds this to be a reasonable balance between beekeepers and other citizens of the State.

65. COMMENT: One commenter stated that the use of the waiver process, even if infrequent, would still increase demands on the State Apiarist and other NJDA staff.

RESPONSE: The Department appreciates these concerns.

66. COMMENT: One commenter felt that notifying neighbors could raise unwarranted concerns where none existed before. These concerns

could be based on lack of understanding of honeybees, which could create unfounded objections and fuel neighbor animosity.

RESPONSE: The Department respectfully disagrees. Neighbor notification would only be required for hives in excess of the colony density standards provided. The Department finds that when colony density exceeds these standards, it is necessary to balance the interests of all citizens in the area. As many beekeepers have commented, contact with neighbors can be an educational experience and increase neighbor communication in a positive manner.

67. COMMENT: One commenter asked what would happen if a new neighbor moves in and there is a waiver that has been granted to a neighboring beekeeper, does the process need to be repeated. The commenter also expressed concern about associated expenses and the legal process.

RESPONSE: The waiver process has a requirement that all neighbors be served to place neighbors on notice and require that they come forward at the initial application of a waiver in order for the beekeeper to address any concerns before any waiver is considered. The process would not be repeated for a new neighbor; however, the new neighbor would have the ability to request a revocation of the waiver. The waiver revocation process would require all neighbors to be included or be barred from bringing a revocation action for a year. This process does not require retention of legal counsel; individuals may represent themselves.

68. COMMENT: One commenter felt the governing authority should be required to consult with the State Apiarist for all waiver applications.

RESPONSE: The rule requires the gathering of essential information for request of colony density waivers. The State Apiarist may be consulted, and would be, if the Department is the governing authority.

69. COMMENT: One commenter noted a typo where the rule states "address the facts in (d) 1 through 8 above," when (g) is the proper reference.

RESPONSE: The Department appreciates this comment and it has been fixed.

70. COMMENT: One commenter felt the waiver language was inconsistent with regard to who may seek a waiver, is it a landowner with a particularized property interest or a person who resides within or owns the property within 200 feet?

RESPONSE: A landowner with a particularized property interest is defined as any landowner within 200 feet of the applicable hives, as defined in N.J.A.C. 2:24-7.3(g).

71. COMMENT: Some commenters felt that the standards for assessing a waiver application were vague and without concrete standards.

RESPONSE: The Department respectfully disagrees and finds the standards for applying for a waiver as comprehensive. Eight elements are required and set forth in N.J.A.C. 2:24-7.3(d), which include proposed hive location, location of neighboring units, authority from the landowner where the hives would be kept, the number of proposed hives in excess of the colony density standards, description of flyway barriers (if any), zoning district, reasons for the waiver, and other relevant factors. These factual considerations and responses by neighbors (if any) will direct the factfinder accordingly in balancing all interests.

72. COMMENT: One commenter suggested that the governing body of the municipality where a waiver is sought be included as a party to receive notice to give the officials the ability to provide feedback. The commenter also suggested expanding the range of property owners past 200 feet and asked why it was changed from property to apiary site. It was also suggested this would create a burden on municipal tax assessors to track apiary sites. Finally, it was suggested that all beekeepers in the foraging area be notified of the request for waiver.

RESPONSE: The Department appreciates these comments but declines to make the suggested changes. The municipalities that adopt these rules by ordinance would handle waiver applications and make the determinations. The Department appreciates the suggestion but declines to change the radius past 200 feet, and additionally declines the suggestion to notify all beekeepers within the foraging area, as this could be up to three miles. Apiary site was chosen as opposed to property because bees forage from the apiary site, not from property lines. Municipal assessors would not be responsible for determining apiary sites. That burden would be on the individual seeking a waiver to make that determination.

N.J.A.C. 2:24-7.4 Administrative standards for delegated municipalities

73. COMMENT: One commenter felt that allowing any municipality to adopt restrictive ordinances with only consulting with the Department, NJLOM, NJBA, and MAAREC would lead to municipalities ignoring advice.

RESPONSE: This provision to allow municipalities to adopt these rules by ordinance is mandated by P.L. 2015, c. 76. However, this provision applies only to municipalities that had apiary standards in effect prior to the passage of P.L. 2015, c. 76. Any such municipalities would have to first adopt the Department's standards, and then may request guidance from the Department, which shall be provided no later than 90 days after the request is received. If the issue is not resolved during this period, which is unlikely, then the municipality would have to consult with all of the statutorily mandated groups to move forward with such conditions. The Department does not believe this process will be utilized by many municipalities.

74. COMMENT: Some commenters felt the Department allowed for over delegation to municipalities of preexisting Departmental authority for bee health and hive inspection. The commenters stated that towns lack the expertise to carry out these roles, which will be a bar to fair enforcement, and there are no mechanisms or funding for training of local officials.

RESPONSE: P.L. 2015, c. 76, mandates the ability for municipalities to adopt these apiary standards by ordinance. Any municipality that adopts these standards must provide the proposed ordinance to the Department two weeks before the formal consideration. Through this process the Department will ensure that only the allowable designation will occur. The Department will be offering trainings through the State Apiarist for any municipal authorities who will be responsible for monitoring the standards that do not entail disease or apiary parasite investigations or control measures.

General Comments:

75. COMMENT: Some felt that the rules are still too restrictive and bees are important to the ecosystem.

RESPONSE: The Department acknowledges this comment.

76. COMMENT: Many commenters felt that the changes in the rulemaking were positive and looked forward to a positive relationship with beekeepers.

RESPONSE: The Department acknowledges this comment.

77. COMMENT: Some commenters were informed that drafts were not shared with NJBA before publication and they were not involved in discussions with the Governor's Office or with the Attorney General's Office. One commenter asked who were the representatives from NJBA that were consulted, and was anyone a master beekeeper?

RESPONSE: Drafts were shared with NJBA, NJLOM, and MAAREC in advance of in-person meetings for the initial rule proposal and for the notice of substantial changes. Specifically, NJBA was provided a draft of the notice of substantial changes, in advance of the May 29, 2018 meeting, July 16, 2018 meeting, and a final draft was provided before the October 24, 2018 State Board of Agriculture meeting. Between the July and October meetings, only minor changes were made on the advice of counsel. The Department's communications with the Attorney General's office are subject to the attorney-client privilege. The Department consulted with all three of the statutory required groups.

The State Apiarist was integrally involved in the process. The MAAREC representative was Dr. Debra Delaney, and the NJBA representatives were Janet Katz, David Frank, and Jeffrey Burd. NJBA asked to speak to other individuals within NJBA, but NJBA declined this request.

78. COMMENT: Some comments asked about the committee that was set up after the 2018 Agricultural Convention and how that functioned.

RESPONSE: The State Board of Agriculture formed a bee rule committee that worked with Departmental employees to develop the Notice of Substantial Changes. Departmental employees, with the direction from this committee, met with the groups that were statutorily required: NJLOM, NJBA, and MAAREC. The State Apiarist continues to be integrally involved in all steps of the rulemaking process.

79. COMMENT: Many stated that the format of the notice of substantial changes was presented in an unreadable format that was

confusing. One commenter felt the format raised substantial questions of constitutionality and statutory due process.

RESPONSE: The Department followed the format that is required by the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and the process required by the Office of Administrative Law and does not have the discretion to use a different format.

80. COMMENT: One commenter asked for an easier way to go from hobbyist to commercial beekeeper.

RESPONSE: The Department appreciates this comment; however, the new line for hobbyist and commercial beekeepers follows the Right to Farm Act definition of commercial beekeeper.

81. COMMENT: One commenter asked why the Department had not responded to all comments in the notice of substantial changes. One noted he had not received a personal response to his comments.

RESPONSE: In publishing the notice of substantial changes, the Department responded to all comments that intimated the subsequent proposed changes pursuant to the Administrative Procedures Act. At the adoption stage (this notice), comments that did not initiate change are summarized and responded to.

82. COMMENT: One commenter stated that three hives would be approximately 180,000 bees per quarter acre, without scientific data and contrary to past public comment. The commenter felt that this density is contrary to recently published scientific studies and provided no recourse for the non-beekeeping public.

83. COMMENT: A few commenters stated that science has demonstrated that managed hives are detrimental to native pollinators, and this should be considered in colony density considerations. Some commenters referenced a very recent study by the Xerces Society entitled "An Overview of the Potential Impacts of Honey Bees to Native Bees, Plant Communities, and Ecosystems in Wild Landscapes: Recommendations for Land Managers," to support their arguments.

RESPONSE TO COMMENTS 82 AND 83: The term "native pollinators" include a wide variety of species, which encompass moths, birds, bats, butterflies, beetles, wasps, and, of course, bees. Because of the wide variety of pollinators that all require particular habitats to survive, no one knows exactly where they are. Concerning native bee pollinators, there are a few studies that indicate this effect; however, other factors also contribute to the reduction of native pollinators, some of which are loss of habitat, excessive pesticide use, monocultural plantings, and climate change. So far, a combination of these factors has been shown to contribute to the decline of native pollinators in the environment, not just the competition of managed honeybees and native bees.

The studies that reference the competition of managed honeybee colonies and native bees are conducted on public lands and natural areas and solely consider the effect on the pollination of native species of plants. Recognizing the results of the studies, it is outside of the purview of this rulemaking to rectify the disparity of native bee habitat and population reductions especially in urban environments that are characterized by nonnative, monocultural plantings and excessive pesticide use.

The referenced studies are recommendations for land managers of public and natural land areas to consider when making management decisions to allow permissions and locations for honeybee apiaries on their natural areas. Experts in the field of pollinator ecology are unable to identify the locations or address the population status of native bee pollinators, except in the areas where the studies were conducted and do not address the populations level effects on native bees from this competition with managed hives. All agree that additional research needs to be done in this area for more conclusive results to be developed.

84. COMMENT: One commenter noted challenges with a county agricultural development board (CADB) and the commenter's specific issue before that entity. It was suggested that CADB members and municipal employees responsible for enforcing beekeeping be required to take a short course on beekeeping.

RESPONSE: This comment is beyond the scope of the rulemaking to the extent it considers a specific matter before a CADB, which is not under the control of the Department. The Department has education and outreach plans for individuals enforcing beekeeping.

85. COMMENT: One commenter suggested swimming pools be banned because they attract bees.

RESPONSE: The Department acknowledges this comment.

86. COMMENT: One commenter suggested adding a class of “research” apiarists as they add valuable information to the apiary community. Such research could include swarming, location, structure, flyway barriers, water, and queens. Valuable data could be collected by allowing this category. This commenter noted he has two small hives on an 88-acre commercial facility.

RESPONSE: The Department agrees that there is quite a lot of information needed to further improve the management and health of honeybees. Unfortunately, the law did not address the collection of this valuable information by the Department. The Department is charged with regulatory affairs concerning the agriculture industry. This type of information is better collected by Institutes of Higher Education as they have the resources to effectively conduct these studies.

87. COMMENT: One commenter felt that the Beekeepers Association representatives make a living from bees and are not hobbyists and have a conflict of interest as they make a living from beekeeping and selling supplies to beekeepers.

RESPONSE: The Department acknowledges this comment.

88. COMMENT: One commenter noted that the NJBA has been asked numerous times for the 20 or so recent complaints about beekeeping and they have not provided any information.

RESPONSE: The Department acknowledges this comment and notes that staff also requested this information from NJBA but did not receive any information.

89. COMMENT: One commenter stated the rules were supposed to be created to protect the health and welfare of the general public and at the same time consider the interests of hobbyist beekeepers, but felt this balance was not achieved. It was noted that New Jersey is the only state that has completely pre-empted municipalities with regard to beekeeping, and this requires a one size fits all approach.

RESPONSE: The Department acknowledges this comment. Mechanisms are maintained under the rules to protect the public health and safety.

90. COMMENT: One commenter stated his opinion on the method used to determine different honeybee diseases. He described the method as seeing and smelling the cone where insects suspected of contracting biological disorders, followed by the inspector ordering the destruction of honeybees suspected of being contaminated. The commenter felt the correct method to make an accurate diagnosis is to take a sample of the insects and segregate the honeybees and all wooden containment until an accurate diagnosis is received from a state certified laboratory.

RESPONSE: The Department appreciates this information; however, this comment is beyond the scope of the proposed rulemaking.

91. COMMENT: One commenter stated there are other ways to create new colonies, such as a walkaway split and reduce the existing colony’s desire to swarm, but it does not meet the nucleus definition.

RESPONSE: It is outside the purview of this rulemaking to define the multiple ways of trying to keep hives from swarming or splitting hives. These management techniques should be learned through initial education or membership and mentoring from the variety of beekeeper groups in this State.

92. COMMENT: One commenter felt the Department’s response that beekeepers would not invest time to capture a swarm only to give them away is “extremely weak and quite petty.” The commenter stated that if members had actually captured a swarm or done a colony removal from a structure, they would know there is often significant effort to gain such a colony.

RESPONSE: The Department acknowledges this comment.

93. COMMENT: One commenter asked for elaboration on how honeybees interact in a variety of ways with the public. The commenter found the statement vague because honeybees do not desire to act in a negative way with neighbors and will not act aggressively away from the hive while foraging.

RESPONSE: Bees are usually docile when foraging; however, they can be involved in stinging incidents, especially if requiring water sources during summer months and none are provided by the beekeeper in proximity to the hives.

94. COMMENT: One commenter stated that the common practice is to allow bees to clean extracted honey comb by placing the combs in the

area, and asked if this practice must stop? Must another method be used to “clean” extracted combs?

RESPONSE: The Department finds this practice should not be used in a back yard setting because it could cause bees to fly frantically around the neighborhood, and it can and has spread American Foulbrood disease through a geographic area. The common practice of using bees to clean honey comb is not prohibited, but the Department would expect beekeepers who utilize this method of cleaning to be considerate of their immediate neighbors especially in highly populated urbanized locations. They should be using this method in areas of their properties that would not directly cause bees to swarm over neighboring properties while the bees are cleaning the comb.

95. COMMENT: Some commenters stressed the fact that this rulemaking will take manpower to enforce and the Department must ensure proper funding for it.

RESPONSE: The Department appreciates this comment; however, the statute did not provide additional funding.

96. COMMENT: One commenter felt there should be a better understanding of acceptable swarm management techniques.

RESPONSE: The Department consulted with the State Apiarist, MAAREC, and NJBA regarding swarm management techniques. Examples of accepted swarm management techniques are provided in the rule: providing adequate room for colony growth, splitting, and requeening. Acceptable swarm management techniques are provided through educational materials that can be found through online sources or taking introductory beekeeping courses provided by Rutgers University, or the majority of beekeeping association chapters throughout the State or the considerable number of beekeeping books.

97. COMMENT: One commenter felt there should be specific sizes for allowable structures, as this could potentially allow hobbyist beekeepers to circumvent municipal land use law.

RESPONSE: The Department appreciates this comment, but this requirement was amended to comply with the statutory requirements at N.J.S.A. 4:6-10. Additionally, colony density standards would limit the heights of structures, based on the size of a “deep frame” which is 9 5/8 tall.

2. Comments Received During Initial Comment Period Giving Rise to Substantial Changes in Proposal upon Adoption

Economic Impact Statement

98. 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 initial rule 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

99. 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 will change 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" will 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 upon adoption. 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.

100. 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 initial rule proposal, hobbyists were defined as gifting apiary products, but not selling them. The Department will now 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 initial rule proposal, anyone selling apiary products would not be considered a hobbyist, upon adoption of the rulemaking, the distinction is that anyone not qualifying as a commercial beekeeper is a hobbyist.

Upon adoption, 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 rule upon adoption. Additionally, N.J.A.C. 2:24-7.1(a) would be adjusted for the removal of definitions.

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

RESPONSE: In the initial rule 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). Upon adoption, the Department will eliminate the majority of the classification of beekeepers and reduce them to commercial beekeepers and general beekeepers that do not qualify for RTFA protection (see also the Response to Comment 100).

102. 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: Upon adoption, the Department will 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.

103. 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 initial rule 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 initial rule 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.

Upon adoption, given that so many commenters found the original tiering system confusing, the Department has simplified it, changing it to 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.

104. 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

105. 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 upon adoption will delete this requirement. The requirement was designed for new beekeepers introducing hives for the first time into their communities. This portion of the initial rule 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" will be added as a definition at N.J.A.C. 2:24-1.1 and removed from N.J.A.C. 2:24-3.1(c)3. Email 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

106. 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 initial rule 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.

Upon adoption, 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 107.

107. 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.

Upon adoption, the Department will change the rule to require 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 new, scaled-back educational requirement is located at N.J.A.C. 2:24-3.1(c)6, while continuing educational and recordkeeping requirements, proposed in the initial rule proposals at subsection (k), would be eliminated.

108. 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 initial rule 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.

Upon adoption, the Department will require 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 will now require 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.

109. 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.

Upon adoption, the Department will eliminate the option to have mentoring. While mentoring is encouraged, without a standard, some individuals may receive inconsistent training or possibly outdated or incorrect information.

110. COMMENT: Some commenters stated that the additional costs of education added to the 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 will change the education component to eliminate the requirement for continuing education for existing beekeepers. Upon adoption, 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.

111. 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 requirement is no longer included in the adopted rule.

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

112. 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 initial rule proposal. In drafting the initial rule 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 initial rule 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.

Upon adoption, 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, upon adoption, the Department changes the requirement for hobbyists to 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 initial rule 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.

113. 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 initial rule 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 initial rule 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 enact these changed colony density requirements.

114. 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 initial rule 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 initial rule 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.

115. 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 initial rule 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 referred to in the initial rule proposal has been removed upon adoption to eliminate this confusion for permitted land uses.

116. 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 initial rule 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.

Upon adoption, 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.

117. 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 initial rule 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 reconsidered the categories and now, adopts a differentiation only upon commercial and hobbyist, as discussed in the responses to prior comments.

118. 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.

Upon adoption, the Department will require 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

119. 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 upon adoption. 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.

120. 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

121. 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: Upon adoption, 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

122. 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 adopts new standards. 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

123. 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, upon adoption, 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, upon adoption, the Department is 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

124. 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 will make a change upon adoption for 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(l) Apiary Standards: Violations and Enforcement

125. 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.

126. 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 adopted for violations and enforcements upon adoption 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

127. 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 initial rule 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.

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

RESPONSE: Upon adoption, the Department will make a change for simplification of the waiver process, as set forth in the Response to Comment 127. 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.

129. 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, upon adoption, this process will 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.

130. 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 upon adoption due in part to the increased colony density requirements and a consideration of resources.

P.L. 2015, c. 76

131. 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.

132. 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 was 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 made substantial changes upon adoption designed to more accurately reflect the legislative intent of P.L. 2015, c. 76.

Consideration of Bee Biology and Health

133. 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 initial rule 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.

134. 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

135. 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 proposed in the initial rule proposal, 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, the changes upon adoption reflect further integration of the BMPs, changes are made that incorporate the BMP's colony density standard. The BMPs allowed for three hives per quarter acre of property, which is what is added to the rulemaking upon adoption. Additionally, the Department has relied upon scientific information from MAAREC where deviations from the BMPs are proposed.

Impact of Rulemaking to Hobbyist Beekeeping

136. 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 will make changes to the

initial rule proposal that would decrease the restrictions on such things as colony density and education requirements and eliminate the need to maintain some paperwork.

137. 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 will make changes 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 responses to other comments.

138. 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 changes upon adoption, taken in conjunction with the initial rule proposal, now brings the colony density standards in line with the BMPs.

Impact of Rulemaking to Neighbors of Hobbyist Beekeepers

139. 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. The changes upon adoption will 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.

140. 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 initial rule proposal. 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 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, upon adoption, the Department will increase 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

141. 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.

142. 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 the changes upon adoption, 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 changed upon adoption.

143. 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 initial rule proposal. The Department decided to move forward with a notice of substantial changes as some elements of the initial rule 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 makes changes upon adoption.

144. 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 initial rule proposal and has relaxed many of the proposed elements, such as colony density, education, and recordkeeping requirements to encourage beekeeping.

145. 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, will, upon adoption, adopt less restrictive colony density requirements than proposed to encourage beekeeping across the State.

146. 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, the Department is making changes upon adoption to seek to balance the needs of beekeepers and the community, based upon further research and discussions with the statutorily mandated groups.

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

RESPONSE: The Department approached the notice of substantial changes from practical perspective and, upon adoption, will delete areas that were identified as confusing.

3. Comments Received During Initial Comment Period, Not Giving Rise to Changes in the Initial Rule Proposal

Social Impact Statement

148. COMMENT: Commenters listed potential negative impacts the rulemaking may have on the community: reduction in availability of honeybee products like honey and nucs, reduction in the number of

beekeepers who provide education about honeybees and beekeeping, loss of local honey as a source for allergy treatments, and a reduction in pollination of crops and plants. Many indicated enjoying honey from their beekeeping neighbors.

RESPONSE: The Department appreciates these concerns and acknowledges the many positive impacts beekeeping can have on the community. Most pollination and local honey is produced by commercial beekeepers who would not be affected by the proposed rulemaking. However, many commenters noted that they enjoy honey from their beekeeping neighbors. The proposed increase to colony density should allow these local small-scale producers to continue providing honey, and other benefits, such as pollination, to their communities.

149. COMMENT: Some commenters noted that beekeeping can be beneficial in urban, suburban, and rural areas.

RESPONSE: The Department agrees that honeybees can provide benefits to most areas within the State, including urban and suburban areas.

150. COMMENT: Some commenters felt that youth groups and organizations like 4-H, the National Future Farmers of America Organization, and the Boy Scouts and Girl Scouts of America would have less access to beekeeping educational opportunities if the rulemaking is adopted.

RESPONSE: The proposed rulemaking is not expected to have an impact on the ability to access hives and other educational resources by youth groups and organizations. Youth groups, including those mentioned, are encouraged to learn about beekeeping and agriculture.

151. COMMENT: Some commenters stated it is important for beekeepers to know how to monitor hive health and respond to safety concerns, so bees don't become a nuisance to the neighborhood. It also important for the public to be educated about how honeybee hives function. The Department should promote programs that educate the public and the beekeeping community to remove the stigma and fear surrounding beekeeping.

RESPONSE: The Department agrees that education can help members of the public understand honeybee behaviors. Beekeeping groups provide resources including lectures at a wide variety of community events, and some local beekeepers also serve as resources by either volunteering time or otherwise educating people about honeybees. The Department, through the State Apiarist, offers a class at the Public Health, Environmental, and Agricultural Laboratory (PHEAL) building in Ewing, New Jersey several times each year. However, this type of education is beyond the scope of the rulemaking, and existing beekeeping educational opportunities are not anticipated to decrease in availability.

152. COMMENT: Many commenters noted honey bees are essential for our crops, fruits, and flowers. Beekeepers must maintain healthy hives so our honeybee population doesn't succumb to ongoing threats, such as parasites, deforestation, and colony collapse. Honeybees are becoming an endangered species.

RESPONSE: The Department acknowledges and appreciates the role of honeybees not only in agriculture, but for other plants. Beekeeping statutes have required the maintenance of healthy hives for many years, and these statutes are why the Department maintains a State Apiarist. This rulemaking was proposed to provide reasonable standards for beekeepers, who will continue protecting honeybee populations from these and other challenges. The Department has historically been tasked with addressing disease issues with honeybees and has always encouraged beekeepers to practice responsible apiculture techniques in order to maximize a healthy honeybee population in New Jersey. *Apis mellifera* is not an endangered species, and the rulemaking will continue to protect the health of honeybees.

153. COMMENT: Some commenters stated the State should not discourage beekeeping and should become a national leader in improving the honeybee population.

RESPONSE: The Department understands that many members of the public felt that the proposed rulemaking would discourage beekeeping; however, this was not the intention. Based upon the public's comments, the Department proposed substantial changes in order to encourage hobbyist beekeeping and allow more growth of honeybee colonies. New Jersey's statutory model is unique, and the majority of states do not have beekeeping regulations for hobbyists.

154. COMMENT: Some commenters felt veterans, retirees, and enthusiastic hobbyists have chosen to spend their time beekeeping as a passion project or as a therapy and many would not be able to practice it to the extent they are accustomed to because of the regulations being restrictive.

RESPONSE: The Department appreciates that people practice beekeeping for a variety of reasons. However, this is beyond the scope of the rulemaking.

155. COMMENT: Some commenters stated that honeybees have a positive impact on bird populations and the environment and are central to the New Jersey ecosystem.

RESPONSE: There are many benefits to having honeybees in New Jersey. However, honeybees were first introduced to New Jersey from Europe in the early 1600s to increase pollination, and, thus, are not native to the State. The Department does not anticipate that the rulemaking will have a negative impact on the bird population.

156. COMMENT: Some commenters questioned how the proposed regulations would have a positive impact on society. They felt regulations should start with a thoughtful impact study before they are put into effect. Some asked if the Department has evidence of public health risk or harm to support the proposed regulations.

RESPONSE: The Department provided an analysis of the impact on society in the initial rule proposal. The analysis was based on the Department's experiences through the State Apiarist who has observed beekeeping in the State for many years. Past occurrences of beekeeping problems were considered when drafting the initial rule proposal in order to prevent them from happening again. Although most beekeepers behave responsibly, some people have engaged in unsafe practices for the bees, the environment, and for members of the public. Having standards serves to protect responsible beekeepers from unreasonable complaints, while also giving the Department the ability to respond to and address complaints.

157. COMMENT: Some felt there is a nationwide shortage of honeybees and questioned what facts support the view of a positive social impact of the proposed rules with this in mind.

RESPONSE: The purpose of this rulemaking is to encourage beekeepers to continue using effective beekeeping practices, which can lead to better overall hive health in New Jersey. Having reasonable standards promotes good beekeeping practices and provides a baseline for all beekeepers. Based upon the Department's experience, including that of the State Apiarist, the adopted rulemaking is not anticipated to cause a reduction in the honeybee population in New Jersey.

158. COMMENT: Some commenters asked what excess honey production means, if there was scientific data to support this, and wondered why this mattered.

RESPONSE: The Department believes this comment is referring to "surplus honey," a term that was used in the definitions section for the definition of "super." Surplus honey is any honey that is not used by the bees that can be harvested by the beekeeper. The use of this term does not imply that there should be a limit to honey production, or that any honey should go to waste.

159. COMMENT: One commenter felt there is very minimal public health risk involving honeybees. There may only be one death every four-to-five years in New Jersey that is related to a honeybee sting.

RESPONSE: The Department is unaware of the accuracy of these statistics regarding deaths caused by honeybee stings, or by any other stinging insects. However, the fact that the rate of serious incidents may be statistically very low does not mean the Department cannot consider potential dangers that might increase the occurrence of fatalities or other serious injuries as the Department must consider the health and safety of the State.

160. COMMENT: A few commenters expressed support of the proposed rules and felt they were not too onerous as bees do not stay confined to property and hives contain tens of thousands of honeybees per hive. They felt that swarms, infestations, inability to use pools or outdoor space, and other impacts on neighboring properties have not been properly managed by beekeepers or by the authorities sufficiently in the past. The rulemaking was compared with other regulations regarding livestock and other recreational activities and hobbies in New Jersey. Examples of restrictions included hunting, horseback riding, noise levels for music, etc.

They felt that many hobbies have the capacity to cause a nuisance and/or are restricted in some way.

RESPONSE: The Department appreciates the positive feedback, and did consider balancing the interests of all citizens, including these issues in both the initial rule proposal and the changes upon adoption.

Economic Impact Statement

161. COMMENT: Many commenters asked what specific data supported the Department's contention that the rulemaking would have a positive impact on New Jersey's economy. Some asked how much revenue is derived by local beekeepers through sale of apiary products and honey.

RESPONSE: The discussion of the economic impact in the initial rule proposal was based upon consultation with experts outside the Department, as well as the experience of the State Apiarist and others within the Division of Plant Industry and the State Board. There is no data available about the direct impact of beekeeping on New Jersey's economy as many apiary products are gifted or sold through direct sales from the beekeepers. Since the revenue of beekeepers is not directly tracked, the amount is unknown.

162. COMMENT: Some commenters stated that they sell honey to neighbors to offset the cost of having bees, which can be very expensive. Some neighbors of beekeepers also noted that they enjoy getting honey from local beekeepers.

RESPONSE: The Department understands that beekeeping can be a challenging task and involves an investment of time and money, and that some neighbors benefit from beekeepers in their communities.

163. COMMENT: Some commenters thought that sales of beekeeping supplies and other product sales would be reduced under this rulemaking and that this would favor large businesses over small businesses. Commenters also worried that total pollination in the State could be reduced.

RESPONSE: The Summary of the initial rule proposal was based on encouraging responsible beekeeping, which would likely have a positive economic impact, including on the sale of local honey and apiary supplies and products. Pollination of New Jersey crops has historically relied on commercial and migratory beekeepers, which are not affected by the proposed rulemaking.

164. COMMENT: Some commenters negatively referenced disease control and the number of colonies in an area. These comments reflect a belief that this rulemaking may result in colonies being poorly managed, which may further result in a greater frequency of diseases. Commenters are also concerned that the apiary inspector will be overburdened, necessitating more government employees to handle the workload.

RESPONSE: The Department combats disease pursuant to long-standing statutes and rules that will continue to be enforced. The State Apiarist will continue to conduct disease inspections as is required by law, and it is not anticipated more employees will be necessary. This rulemaking will protect responsible beekeepers and provide clear Statewide standards for hobbyist beekeepers.

Environmental Impact Statement

165. COMMENT: Some commenters noted that pollinators are important for agricultural crops. Some felt that by regulating beekeepers, this would lower the number of bees to pollinate fruits and vegetables of farms and orchards, naming specific crops, such as blueberries, cranberries, tomatoes, peaches, apples, and "pick-ur-own" farms production. Some noted a positive effect of transporting bee hives for crop pollination.

RESPONSE: Many crops produced in New Jersey rely on honeybee pollination through commercial apiaries. The commercial apiaries specializing in pollination are not affected by the proposed rulemaking as they apply only to hobbyist beekeepers. Farms that are not heavily reliant on honeybee pollination tend to be in rural, agricultural areas where commercial apiaries and hobbyist beekeepers are more common.

166. COMMENT: Some commenters felt that the quality of their backyard flowers and vegetable gardens will suffer without honeybees. Others suggested the rulemaking will decrease the amount of honey available to be purchased, which will negatively impact people who use honey to treat allergies.

RESPONSE: The Department recognizes the importance of native and domesticated pollinators to home gardens. Backyard flowers and vegetation will continue to receive pollination from honeybees and other native pollinators. The Department disagrees that there would be a reduction in the amount of local honey products available to the public.

167. COMMENT: Many commenters expressed concern that the rulemaking would be injurious to the environment and New Jersey's ecology as these bees travel six miles to accomplish pollination. Some commenters felt that the honeybee population will be decreased, injuring bird populations and allowing the rise of other insects, such as wasps, to fill the void. Plant life diversity will also be negatively impacted.

RESPONSE: Some feral honeybee colonies resulting from swarming behavior will struggle to, and many will not, overwinter because of diseases or Varroa mite infestations. Therefore, these feral colonies will generally not have a negative impact on native pollinators, such as wasps and birds. The Department does not anticipate that native bird populations or plant diversity would be negatively impacted by this rulemaking.

168. COMMENT: Some commenters stated that "bees are not a menace" and that this proposed rulemaking will have a negative effect on communities because bees provide many benefits, including education.

RESPONSE: The Department appreciates the benefits of beekeeping and local beekeepers. The Department and the State Apiarist will continue educating both beekeepers and the public about the benefits provided by honeybees. Educational opportunities about beekeeping are encouraged by the Department.

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

169. COMMENT: Some commenters raised concerns about the definition of commercial beekeepers and their feelings that commercial beekeepers unduly stress hives to make profits by feeding high fructose corn and artificial pollen, and that migratory beekeepers stress bees by moving them across the country, specifically to California to pollinate almond groves. Additional stressors include using antibiotics prophylactically, which may result in reduced efficacy. This continuous movement leads some commercial beekeepers to replace stock with less desirable bees from the south.

One commenter felt that commercial beekeepers cheat and make "fake" honey and sell compromised products. Another commenter felt that if the only drones available were commercial, future generations of bees would be negatively impacted.

RESPONSE: Commercial pollination services are important and are not a dispositive indicator of poor beekeeping practices. Most New Jersey commercial/migratory beekeepers are excellent beekeepers who have extensive knowledge about bees. They are aware of the best practices for maintaining healthy hives. In fact, the State Apiarist finds a higher rate of disease and parasite infestations in hobby apiaries than in commercial ones. Commercial beekeepers usually do not impact their neighbors' property because they keep their bee yards on large tracts of agricultural land. Antibiotic treatments may be used to protect colonies against diseases that may be present in these new environments.

Federal regulations address food issues, such as "fake" honey, which is beyond the scope of the rulemaking.

Geographic locations of honeybee populations do not correlate with high- or low-quality bee stocks. Quality bee stocks can be maintained throughout the country. Over 90 percent of honeybee queens are commercially raised.

170. COMMENT: Many comments were received that generally disliked the proposed definitions. A few commenters suggested that the Department use definitions from Rutgers University or from other sources. Some commenters referenced the redundancy of definitions concerning "nuc," "nuc boxes," "apiary," "bee yard colony," "hive," "swarming," and "adequate source of water."

RESPONSE: In drafting the initial rule proposal, the Department mostly used definitions that existed in the current Apiary Inspection Regulations, and proposed additions for categories of beekeepers, and to provide definitions of specific terms, such as "flyway barriers," "adequate source of water," and others in an effort to be clear. The definitions were drafted after consulting with the State Apiarist and other experts in the field. In instances like "nuc and nuc boxes," "apiary and bee yard," and "colony and hive," the Department has made changes upon adoption, as

discussed above. The definitions were developed by the State Apiarist with consultation by the Mid Atlantic Apiculture Research and Extension Consortium and New Jersey Beekeepers Association representatives.

171. COMMENT: One commenter felt that clarity was missing from the definition of "hive."

RESPONSE: The proposed definition of hive was supported by MAAREC, the NJBA, and the State Apiarist. The Department feels the definition is clear enough to provide reasonable notice to beekeepers, as well as governing officials, as to what constitutes a "hive."

172. COMMENT: As to the definition of nuc, some commenters asked what a beekeeper is supposed to do with a nuc that becomes a hive. Another commenter asked why nucs can't have supers, and some asked why nucs must be removed. A few commenters stated the nuc limits would make it difficult to meet the threshold under the Right to Farm Act.

RESPONSE: While beyond the scope of the rulemaking, nucs may be sold, if inspected, combined, or moved to another apiary site. If a nuc has supers, then it would be a full hive. Once it obtains the status of a hive, it would count toward the colony density standards. Right to Farm protections are beyond the scope of this rulemaking.

173. COMMENT: A few commenters asked for clarification of the definition of "governing authority" and were concerned that municipalities might propose stricter standards than the Department.

RESPONSE: P.L. 2015, c. 76 specifies that the State, not the municipalities, shall regulate apiary activities. However, municipalities may elect to adopt Department rules and monitor certain aspects themselves. Even if municipalities adopt the Department's standards, the State Apiarist, or his or her designee(s), will maintain exclusive authority to inspect colonies for health standards. Municipal officials will be permitted to monitor lot size, colony density, or water provisions as provided in the rules. Municipalities may only adopt ordinances regarding issues not resolved by this rulemaking, and only after consulting with the Department, the NJBA, and the MAAREC.

N.J.A.C. 2:24-2.3(c) Shipment of Bees

174. COMMENT: One comment noted that it would be impractical with one State Apiarist to require a valid apiary certificate for all shipments of queens or packaged bees.

RESPONSE: The state of origin inspects breeders of queens and packages, and issues a health certificate that by regulation accompanies every shipment.

175. COMMENT: One commenter asked how the Department will ensure out-of-State suppliers provide mite treatment because no suppliers do this. He also asked how miticides would be used to treat queens because they treat entire colonies at once, not just the queen by itself.

RESPONSE: When Varroa first entered this country, this regulation was put in place to ensure that New Jersey purchasers of queens were not buying varroa mites as well. This has been removed from the initial rule proposal because varroa is managed at the colony level, not the individual bee level.

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

176. COMMENT: Some commenters suggested that the proposed amendments to the registration requirements were too burdensome and would cause some beekeepers to not register. They noted hive registration is important because the State Apiarist notifies registered beekeepers of issues that affect bee health, including disease. Also, registered beekeepers have the option of automatically sending their information to the New Jersey Department of Environmental Protection where they can receive notice of spraying of pesticide under certain parameters.

One commenter felt the lack of registration could lead to a proliferation of wasps and yellow jackets, as there would be fewer honeybees. These commenters felt that if beekeepers maintain unregistered hives, New Jersey honeybee health could suffer.

RESPONSE: Registration has always been required under the rules, however a number of additional requirements were proposed that were designed to promote honeybee health and provide more information to the State Apiarist. The Department believes these registration requirements do not pose an undue burden nor would they cause a proliferation of wasps or yellow jackets.

177. COMMENT: Some commenters felt it is unreasonable to require hobbyists who only have one or two hives to pay fees.

RESPONSE: The Department has never required, or proposed, registration fees for beekeepers.

178. COMMENT: Some commenters expressed frustration about having to register annually and stated that bees are not disposable and would be there the following year.

One commenter asked if annual certification is required and suggested that there should be a distinction between renewals and new applications. One commenter pointed out that the proposed rules do not address renewal timeframes and asked when the renewal window closes. Others compared that keeping of deadly weapons such as guns are not required to be registered.

RESPONSE: Annual registration is currently required by the rule, and was not proposed in the initial rule proposal. Additionally, renewals and initial registrations are currently treated differently. Every year some beekeepers stop keeping bees, and many beekeepers either change the number of hives they maintain or move hives to other physical locations. This annual registration serves to keep accurate, up-to-date information for the State Apiarist so that he or she can monitor and address bee health throughout the State. Expiration of the annual registration would remain December 31 in the year it was issued. The control of deadly weapons is beyond the scope of this rulemaking.

179. COMMENT: Some questioned how beekeepers would be notified of compliance requirements.

RESPONSE: All Departmental rules, including those about beekeeping, are provided electronically on the Department's website, or, upon request, may be provided in another format.

180. COMMENT: One commenter asked when and how beekeepers will be notified of noncompliance and asked if beekeepers would have to keep records.

RESPONSE: Beekeepers who overwinter their hives are currently required to register annually. While recordkeeping was proposed in the initial rule proposal, the Department reconsidered this and it is no longer required.

181. COMMENT: One commenter asked what should be done with their registration if they do not want to keep bees any longer.

RESPONSE: If a beekeeper wants to get rid of their bees prior to winter time, bee relocation services are available, and the individual could remove his or her registration by contacting the Department. There will be no need to register the following year if someone chooses not to overwinter their bees.

182. COMMENT: One commenter asked if there was an increase in the number of unregistered hives between 2015 and 2018, and how many complaints were made between 2015 and 2017.

RESPONSE: It is unknown if there was any change to the number of unregistered hives between 2015 and 2018, because the Department tracks registered hives. The number of complaints received by the Department for beekeeping activities between 2015 and 2017 is estimated between 15 and 20.

183. COMMENT: A comment was received recommending simplifying registration based on class—hobbyist, commercial, and migratory commercial.

RESPONSE: The suggestion is appreciated, however registration is required only for hobbyist beekeepers and those that overwinter hives.

184. COMMENT: One commenter suggested that all beekeepers should be required to join a local beekeepers' association and register with the State, as a way to gauge hive concentration.

RESPONSE: While the Department recognizes and appreciates the many positive benefits of beekeeping associations, the choice to join or not lies with individuals. It is unknown what this commenter means by gauging hive concentration or why this is suggested.

185. COMMENT: One commenter recommended adding emergency conditions to the proposed rules where the State Apiarist or New Jersey Beekeepers' Association could be contacted in case of a true emergency.

RESPONSE: It is unclear what sort of emergency is referred to by this comment. If the hypothetical emergency refers to honeybee health (such as disease), then the State Apiarist is required to be contacted by long-standing statutory requirements. Contacting the New Jersey Beekeepers' Association is a choice for the beekeeper to make.

186. COMMENT: One commenter was concerned that there is no requirement for the Department to keep the website readily available. The commenter was also concerned that there is no provision requiring the Department to directly provide notice to beekeepers when re-registration is required. It was suggested that immediate registrations be issued, or alternatively, allow the electronic receipt to act as a temporary registration.

RESPONSE: The Department maintains an operational website for many reasons. The registration link will always be available for beekeepers, unless there is a temporary technological problem. The registration process is required annually, so beekeepers will be on permanent notice of their obligation to re-register. Additionally, paper registrations may be submitted.

187. COMMENT: Some commenters asked who will be evaluating the validity of citizen complaints, as the word "citizen" implies that anyone can make a complaint without consideration of their knowledge of beekeeping. It was suggested that complaints only be recognized by the State Apiarist. Someone requested a definition for "unresolved citizen complaint" and asked how this could be cured.

RESPONSE: The Department decided to remove this requirement of the registration process for other reasons, thus, no definition is proposed.

2:24-6.4 Fines

188. COMMENT: One commenter was concerned about the cost of fines for the destruction of bees and beehives in the rulemaking.

RESPONSE: The cost of fines in the rulemaking for the destruction of bees and bee hives is currently in the Apiary rules and was not proposed to be changed. However, a rule regarding the incorporation of fines for intentional destruction of man-made native pollinator colonies was included as required by P.L. 2015, c. 75.

2:24-7.1(f) Public Health and Safety

189. COMMENT: Some commenters, including NJBA, are opposed to the inclusion of the provision that would allow for restricting the ability to keep bees on an individual basis if there is a direct threat to public health and safety. They felt that beekeepers following the standards should be in compliance and feared excessive and unwarranted use of these provisions, and were concerned that this provision undermines the purpose of the apiary standards.

RESPONSE: The Department has very carefully considered this provision, and discussed it extensively with both NJBA and NJLOM. Upon careful consideration, the Department determined that it serves an important balance with the interests of beekeepers and their neighbors. This provision allows the Department, or governing authority, to take action where there is a direct threat to public health and safety. The Department must make considerations to protect the health, safety, and welfare of all the people of the State. Many, including the Municipal Land Use Law include provisions of public health and safety.

If the Department or the governing authority uses this provision, the beekeeper may appeal the violation and will receive a hearing. The process is described at N.J.A.C. 2:24-7.2(l) regarding violations and enforcement. Due process protections include a seven-day warning letter, a notice of violation that includes relevant facts and requirements, and the right to appeal.

Furthermore, any enforcement action brought by a governing authority other than the State Apiarist must be stayed, no action will be taken to remove bees, while an appeal is pending unless the State Apiarist determines the stay to be unnecessary. Thus, the beekeeper can maintain his or her hives pending the outcome of the adjudicative process. This stay provision means that during the pendency of any action, the beekeeper will maintain status quo with his or her hives, unless the State Apiarist determines immediate action is necessary.

The Department finds this provision to balance the needs of the beekeepers and the public.

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

190. COMMENT: A few commenters asked how distances for the proposed setbacks were determined, including the requirement that bees be kept at least 10 feet from walkways. Some noted and even provided photographs of where bees are successfully maintained on public lands, which included high fences and warning signs.

RESPONSE: The proposed setbacks were directly from the Department's Best Management Practices for Beekeeping in Urban Areas and the model municipal ordinance, which was developed by the NJBA. Both were based on minimizing accidental disturbance to hives from persons using the walkways. The Department appreciated the photos of various beekeeping activities.

191. COMMENT: Some people commented that colony density restrictions are necessary, especially in densely populated residential areas of the State.

RESPONSE: The Department was required by P.L. 2015, c. 76, to develop rules for the breeding and keeping of honeybees, which necessitates consideration of more than mere colony density requirements in order to protect honeybees and encourage responsible beekeeping.

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

192. COMMENT: One commenter suggested that, unless the Department is willing to sponsor and support a hive exchange program, it is irresponsible to prohibit a split or captured swarm. The commenter also felt that in the event of a beekeeper being unable to identify a tract for a collected swarm, the Department should step in and propose an alternative location in the beekeeper's county or instruct the municipality to do so.

RESPONSE: The rules would not prohibit the splitting of hives or capturing swarms. Also, the Department does not have the authority to order individuals to use specific sites for relocation, which has always been the beekeepers' responsibility.

193. COMMENT: One commenter pointed out that healthy, robust hives swarm and one method of preventing this is to split the hive before swarming occurs; while others stated that swarming is the only way the hive reproduces. Additionally, swarming is a natural process by which colonies reproduce and that crowding is only one factor. Bees naturally increase numbers rapidly in the spring, so half the bees can take half the honey and start a new colony. Swarming can be minimized, but not eliminated, and there is no such thing as a non-swarming honeybee. Further, replacing queens does not guarantee a colony will not swarm.

RESPONSE: The Department appreciates the comment and agrees that splitting reduces the likelihood and frequency of swarming. Crowding in a brood nest increases the urge to swarm. However, the Department recognizes that swarming may still occur even if best practices for proper splitting and requeening are followed.

194. COMMENT: One commenter felt that restrictive hive density would create an unanticipated consequence, where beekeepers will create nucs to avoid swarming, there will be a drop in demand for nuc purchases, and that would force nucs to remain at an apiary site or be given away. If this occurs, beekeepers will reach mandated hive density or be forced to exceed personal preference for hive density and saturation conditions will exist. Even with seasonal losses, there will be more nucs than can be sold or kept in the apiary and fewer beekeepers to perform swarm gathering with no place to put them.

RESPONSE: The Department does not anticipate such a scenario will occur. If oversaturation or other problems arise, the Department can address them on an individual basis. Also, the rules have increased colony density and nuc uses and timeframes, and a waiver process is available for beekeepers to increase their colony density even further if circumstances permit.

195. COMMENT: One commenter pointed out two common swarm control practices: 1) the two hive brood chambers can be reversed to give expanding colonies more space in the spring; and 2) separating brood chambers (splitting) about three weeks later to create two separate colonies. In this method, one colony has the original queen with half of the workers and a second colony is queen-less and will proceed to rear a virgin queen. In four weeks, the new queen will mature and mate and lay in a second colony and the four weeks can be reduced by introducing the newly reared queen immediately after splitting. In either case, the likelihood of swarming ends and colonies are recombined after removing the original queen from her hive.

RESPONSE: The Department appreciates this information and agrees these examples are viable options to help prevent swarming.

196. COMMENT: Some non-beekeeping commenters expressed support of swarm management and provided personal examples of negative experiences with swarms preventing them from enjoying their

backyards. One commenter experienced a swarm of several hundred bees in the ceiling of her home.

RESPONSE: The Department appreciates the personal experiences, and agrees that it is important to manage colonies to minimize swarming behavior and to balance the interests of beekeepers and their neighbors.

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

197. COMMENT: One commenter asked why should there be an 85-foot setback from public places because bees don't travel to sting people? This commenter also stated that hives kept in parks should have no restrictions and provided an example of a Boy Scout troop that keeps hives in public parks 10 feet from a sidewalk.

RESPONSE: The Department changed the setback requirement to be uniform for all properties. The Department notes that beekeeping in public areas should be carefully undertaken with a consideration that all citizens are free to use parks, and their interests must be considered and balanced as well.

198. COMMENT: One commenter asked if the height limit on hives meant that rooftop hives were not allowed because a height restriction is impractical to rooftop beekeepers. The commenter felt there is no basis for height limits, so this requirement should be eliminated. Additionally, limiting height or space contributes to swarming behavior and is contradictory to swarm management.

RESPONSE: The height limit does not prohibit rooftop hives. The height limit stipulates how tall a beehive may stand, regardless of which surface it is standing on. A height restriction helps to prevent the colony from becoming too tall and toppling over. Height restrictions can also reduce negligent, rough handling of bees that may occur when a beekeeper must move heavy boxes that are above shoulder height. If bees are handled roughly in a small lot, there is a greater chance that neighbors' properties will be adversely impacted by aggressive bees.

199. COMMENT: Some commenters felt that providing the location of hives to neighbors is an invasion of privacy and invites vandalism.

RESPONSE: The changes upon adoption remove the requirement of neighbor notification in the registration process. However, neighbor notification will still be required in the event a beekeeper wants to keep hive numbers in excess of the colony density standards and seeks a waiver of colony density.

200. COMMENT: One commenter said the restriction of hive placement is unnecessary and unwieldy. Another person said a 25-foot radius around the hives should be sufficient.

RESPONSE: The Department respectfully disagrees. The location of a hive on a small lot can make a meaningful difference in how the hive impacts neighbors' properties.

201. COMMENT: Other commenters felt that the setback requirements are too prescriptive and do not take into account different land uses, optimal placement, sunshine, flight path, or other property issues.

RESPONSE: Reasonable setback distances do not unfairly burden beekeepers. Setbacks are commonplace and help to balance the needs of everyone. Setbacks merely provide a buffer for neighboring properties, which could be negatively impacted if hives are kept too close to property lines.

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

202. COMMENT: Several commenters asked how you can ensure that queens will be gentle and have 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 rulemaking would be unenforceable.

Some recognized there are more aggressive queens, but there are ways to work with them, especially if they produce strong healthy workers. Acquiring a new queen might take a while, which makes it an unattractive option to address problems that require immediate attention. 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, so queens would need to be imported.

RESPONSE: These terms were derived directly from the Department's BMPs. *Apis mellifera* stock are considered gentle and tend not to swarm excessively. The language - "bred for gentleness and non-swarming

characteristics” simply refers to this scientific consensus. It does not impose any further burdens on a person who either purchases or raises their own *Apis mellifera* queens. More importantly, the rule requires selection of a queen from *Apis mellifera* stock as opposed to other breeds, which may be more aggressive or inefficient for other reasons.

A beekeeper may comply with this provision and still find that a queen has become aggressive. When this happens, requeening a colony is an effective way to combat unnecessary defensiveness. The State Apiarist routinely assists beekeepers in requeening hives.

When keeping bees 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.

203. COMMENT: One commenter stated that the useful life of a queen is approximately four years and the maximum rate of the queen mandibular pheromone is during the first year of life, which causes worker populations to produce more honey during that time. They also tend to be gentle and less likely to swarm.

RESPONSE: The Department appreciates this explanation and agrees that younger queens tend to rear workers that are less likely to swarm.

N.J.A.C. 2:24-7.2(i) Apiary Standards- Imprinting Hive Boxes

204. COMMENT: Some commenters felt hive imprints were beneficial to beekeepers because they could be helpful when tracking down stolen equipment. Other commenters felt that this should not be a requirement for several reasons. Hives may be sold or given away, in which case the new owner will be stuck with equipment imprinted with the previous owner’s name, and must add their own imprint as well. There was also a concern over what purpose this serves in instances where equipment is kept on one property. Why should an imprinting requirement be included at all?

RESPONSE: The imprinting of hives serves to easily identify the owner of a hive box, and can assist in cases of theft or vandalism. A physical burn brand is not required; any type of permanent marking will serve this purpose, including use of permanent marker. The marking may be a name, initials, image, etc. The Department believes it is important to be able to identify the owners of hives, especially in situations where hives are located on property not owned by the beekeeper.

N.J.A.C. 2:24-7.2(k) Apiary Standards - Inspections

205. COMMENT: Many people commented that bee health inspections should not be delegated to municipalities because they do not have expertise in this area and the Department did not fund or mention additional training.

RESPONSE: Municipalities will not have delegated authority for bee health inspections. Bee health inspections will always be carried out by the State Apiarist, or his or her designee. In addition, the Department requires beekeepers to inspect their own colonies a minimum of three times per year. Municipalities may be delegated authority, if they apply to the Department to adopt these rules, to inspect for compliance with all other non-health related provisions, including colony density and setback requirements.

206. COMMENT: A commenter mentioned that the bee inspector is not allowed to inspect a colony on private property without an invitation.

RESPONSE: Pursuant to N.J.S.A. 4:6-18, the State Apiarist may enter properties where bees are kept. Nevertheless, the State Apiarist, or his or her designee, makes every effort to contact the beekeeper prior to arrival and at a mutually convenient time.

207. COMMENT: Can the State Apiarist certify a hive is disease-free? Are mites considered disease?

RESPONSE: The State Apiarist can certify a colony is disease-free at the time of inspection. Mites are not considered disease, they are parasites.

208. COMMENT: Several commenters were opposed to mandatory inspections.

RESPONSE: Inspections are necessary to ensure bee health and public safety. A successful beekeeper will normally inspect their colonies more than three times per season, even if no law requires it. The purpose of the regulation is to prevent beehives from being neglected or abandoned,

especially by new hobbyist beekeepers who do not possess experience with honeybees.

209. COMMENT: Some commenters were concerned that the Department would charge a fee for bee inspections.

RESPONSE: The Department does not charge for bee inspections.

210. COMMENT: A commenter was concerned as to how one State Apiarist could inspect 20,000 hives annually.

RESPONSE: The State Apiarist is not required to inspect 20,000 colonies per year, he or she simply has the discretion to perform annual inspections, as necessary. The Department believes it is important for beekeepers to regularly inspect their own colonies, so any problems will be dealt with quickly and correctly.

211. COMMENT: Several commenters stated their municipality would not adopt the regulations by ordinance because the rulemaking was flawed or the municipality was not equipped or funded to handle this. Some were concerned the municipality did not have any training.

RESPONSE: Municipalities have the discretion to decide whether or not to adopt the rules. If they elect not to do so, then the authority and responsibility remains with the Department. There may be local benefits to adopting the rules locally, including assisting local residents. After the rules are adopted, training sessions will be offered for municipal inspectors and other interested parties to learn how to inspect apiary sites for compliance with the rules.

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

212. COMMENT: Some commenters suggested that the proposed rules are impracticable and unenforceable considering there is only one State Apiarist. Additional funding would be needed to add more staffing to the Apiary program to assist the over-burdened staff. Enforcement actions should not be the basis of regulations needed for healthy and safe beekeeping.

RESPONSE: Without municipalities to assist in the enforcement of the proposed rules, the responsibility of enforcement will be placed on Departmental staff, which are limited. The Department is hopeful that municipalities will adopt the rules as ordinances, so they can address concerns of citizens at the local level, which can be very effective. This rulemaking is not based on enforcement actions, they were proposed as mandated by statute.

213. COMMENT: A few comments were received stating that only a few complaints against beekeepers are made each year, and they should be dealt with on a case-by-case basis, by qualified individuals.

RESPONSE: Under the rules, the Department will investigate complaints unless a municipality has adopted the rules, in which case, they can send their own designee to inspect an apiary. Although the Department does not track the number of complaints, it is important to have a process in place for when they are received. The State Apiarist, or his or her designee within the Department, will remain the sole authority for colony health inspections, which do require knowledge and expertise. Municipalities will receive training for how to inspect observable aspects of apiary operations, including determinations of whether setbacks are at a proper distance, if flyway barriers are sufficient, sufficient water provisions, and if colony density has exceeded the maximum amount.

214. COMMENT: One commenter asked what was the definition of restraints in Superior Court.

RESPONSE: This question is beyond the scope of the rulemaking; however, injunctive relief may be available in Superior Court.

215. COMMENT: One commenter asked how the Department plans to police wild bees.

RESPONSE: This is beyond the scope of the rulemaking and the statutory requirements.

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

216. COMMENT: Some were concerned that the need to apply for a waiver of colony density limits would discourage beekeepers from registering hives, leaving them unaccounted for and making inspectors unable to track them. There was also concern that the process would deter residents from keeping bees, reducing overall pollination in New Jersey.

RESPONSE: Under the increased colony density structure, the Department does not anticipate many applicants for waivers of colony

density limits. The waiver process exists as a benefit to beekeepers who seek to increase colony density beyond the allowable limits.

217. COMMENT: Some commenters felt the fees involved in obtaining a waiver will discourage beekeepers and having to apply for a waiver every time a hive swarmed, died off, or needed to be replaced would be unreasonable. It was also pointed out that if a waiver is denied, a beekeeper might have to move their colonies to another location, which will incur additional costs.

RESPONSE: The Department does not require the submission of any reports regarding swarming or transference of bees and beekeeping equipment. Furthermore, the waiver process is only in place for the beekeepers' benefit, and most people will have no need to request a colony density waiver.

218. COMMENT: Some commenters expressed concerns that municipalities may be overwhelmed with waiver requests. One commenter thought it would be more cost effective to enforce at the county level, while another stated that the Department should make decisions regarding waivers. Another was concerned that beekeepers are at the mercy of the municipality which is what the legislation aimed to prevent.

One commenter stated that the standards should be self-policing as there is no budget to conduct the reviews at the State or local level.

RESPONSE: The waiver process would only function at the municipal level if a municipality adopts the Department's rules by ordinance. Otherwise the application would be considered by the Department. Only in the event that a municipality faces an issue not addressed in the rules, could the municipality seek guidance from the Department and request further restrictions. Each municipality will weigh this option and take actions based on its own specific needs. The Department appreciates the comment regarding funding concerns.

219. COMMENT: Several commenters raised concerns about the lack of an administrative appeals process for individuals who are not granted a waiver. It was stated that the proposed legislation is in need of an appeals process or decisions will be exclusively reviewed by courts, with a heavy load of potential litigation on the governing authority and that the appeals process should clarify that all decisions by the governing authority are final. One commenter asked who will host the hearings, what format will they be in, and asked if the Department will have representation at the hearings.

RESPONSE: An individual who seeks a waiver will receive a final decision by either the Department or the governing authority, if the rules have been adopted by ordinance. Hearings will be held either before the municipal authority, or, if before the Department, hearings will adhere to the Administrative Procedures Act, and will likely be referred to the Office of Administrative Law, where the Department would be represented by a deputy attorney general. Final agency decisions have a different appeals process than municipality decisions, none of these procedures are changed by the rulemaking. Final agency decisions are appealable to the Appellate Division. The Department does not anticipate a heavy load of potential litigation due to the increase in allowable colony density.

220. COMMENT: Some commenters asked the Department to consider grandfathering preexisting hives. Some suggested that colony density waivers should only be required for new applicants. Commenters stated that grandfathering preexisting hives would allow hobbyists to maintain more hives.

RESPONSE: The Department carefully considered the issue of grandfathering, but determined it is not feasible to pick a specific date to allow grandfathering, or to prove existence of beekeeping prior to a certain date. The public safety and nuisance concerns that prompted the statute requiring the rulemaking prevent the Department from grandfathering unwieldy beekeeping operations. However, a grandfathering clause is not needed for most people to continue their operations as usual as the vast majority of beekeeping commenters indicated they maintain colony density within the Department's recommendations. As the rules now follow the long-standing recommendations on colony density, it is unlikely that many waivers will be requested.

221. COMMENT: One commenter asked if a beekeeper is in compliance, why do they still have to get a waiver and if they are not

compliant, why would they be eligible for a waiver? Can a beekeeper get a waiver for other requirements such as the location of a water source? What is a certificate that bees are free from disease and what about non-harmful diseases—what diseases are checked for?

Another commenter pointed out that the proposed rules required that waivers be accompanied by a certificate that hives are free of disease and will require inspection by an expert who can provide this certification, but the State Apiarist will not have the capability to inspect thousands of hives that require waivers, so additional resources will be required at the Department.

RESPONSE: Beekeepers in compliance with colony density standards do not need to seek a waiver. Waivers are only available for colony density increases, not other requirements, such as the location of a water source.

Regarding inspections, beekeepers are expected to monitor their own colonies for disease. They may seek the State Apiarist's assistance, and the State Apiarist may choose to inspect colonies as needed, but he or she is not required to inspect every honeybee colony in the State. If he or she chooses to do so, the State Apiarist will inspect for the following diseases: American foulbrood, European foulbrood, sacbrood, chalkbrood, Varroa mites (not a disease, but are monitored), snotbrood, and parasitic mite syndrome.

222. COMMENT: One commenter asked for an explanation of "preponderance of evidence."

RESPONSE: Preponderance of the evidence is a legal evidentiary standard for many civil matters, that requires the party attempting to prove something to demonstrate that it is more than 50 percent likely to be true. Another way to define preponderance is "more likely than not."

223. COMMENT: One commenter suggested that beekeepers should be given more than one year to come into compliance or request a waiver.

RESPONSE: A beekeeper may apply for a waiver to increase their colony density at any time.

224. COMMENT: Commenters who were in favor of the waiver provision stated that it is essential to have waivers for the governing authority to provide safeguards against situations where residents have multiple hives or who have neighbors with severe allergies. It was also stated that the waiver process balances the interests of all citizens by allowing interested parties to be heard and allows good beekeepers to keep more hives.

RESPONSE: The Department appreciates the positive comments and agrees that having a waiver provision allows flexibility for beekeepers and municipalities.

225. COMMENT: Some commenters were concerned about how long it might take for waivers to be granted and asked if the process can be expedited.

RESPONSE: Due to the proposed increase in colony density, it is anticipated that the waiver process will not be necessary for most people. The Department will process any waivers it receives as quickly as possible but cannot provide a definitive timeline. In matters referred to the Office of Administrative Law (OAL), the timeline is dictated by the OAL.

226. COMMENT: One commenter was concerned that the expedited waiver process is a breach of privacy, and that it is not feasible in a dense urban setting.

RESPONSE: Based on the comments and responses to Comments 127, 128, 129, and 130, which were also included in the notice of substantial changes (with other comment numbers), the expedited waiver process was not adopted.

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

227. COMMENT: Some commenters stated that delegation to municipalities is a common-sense approach because local officers are more aware of local issues and are, therefore, better qualified to decide if any enforcement actions are necessary. One commenter noted that this matched the legislative intent to allow municipalities to decide the most efficient path forward. Commenters noted that municipalities may not have the resources or capabilities to enforce, so having the option to not adopt the rules is beneficial. This process also encourages municipalities to request Departmental assistance.

RESPONSE: The positive comments are appreciated regarding the proposed standards for administrative delegation to municipalities and

agrees that flexibility is beneficial for practical and financial considerations.

Consultation with Apiarist, NJLOM, NJBA, and Drafters Generally

228. COMMENT: Many comments were received that the Department did not do due diligence because there was no consultation with academic experts, the New Jersey Beekeepers Association (NJBA), State Apiarist, or Rutgers Cooperative Extension Office, which is in violation of the intent and spirit of the law.

Some commenters stated that the Department should work with beekeepers and stakeholders in the State in the development of the regulations, as it was “obvious” the Department did not consult with beekeepers, environmental groups, or farmers. If consultation was made, input from the beekeeping groups was not taken into consideration. Why was there no input from the Beekeeping Advisory Council?

RESPONSE: P.L. 2015, c. 76 required the Department to consult with MAAREC, the NJBA, League of Municipalities, and any other entities in the development of the rules.

The initial rule proposal meetings occurred with these groups on September 11, 2015, April 25, 2016, and a conference call September 6, 2017. In addition to these groups, the Department met with members of the public, representatives of the State Agricultural Development Committee (SADC), Rutgers University (Native pollinator group), and the State Apiarist during the development of the proposed rulemaking.

Between the first and second meetings, Department employees met with a committee of the State Board of Agriculture on February 19 and 29 and March 2, 2016. Representatives of the SADC and Rutgers were also included. MAAREC representatives were only available via phone for the meetings and phone conferences. While there were instances when one member of an organization was unable to attend, representatives from all mandated groups attended the meetings and calls. The State Apiarist attended all the meetings and phone conferences.

After the comment period closed and all comments were reviewed and incorporated into a draft notice of substantial changes, a meeting was held with the committee of the State Board of Agriculture on May 7, 2018, with NJLOM on May 22, 2018, and NJBA on May 29, 2018. MAAREC was invited but unable to attend, however scientific questions were asked of Dr. Debra Delaney electronically and she provided responses. A third meeting was held on July 16, 2018, where NJBA and NJLOM both attended and provided feedback.

The Beekeeping Advisory Council is represented by the same individuals of the NJBA that were consulted with during the drafting of the proposed rulemaking, the other half of the council is represented by farmers of each agricultural commodity sector. In addition, the public comments provided everyone with the ability to provide input.

229. COMMENT: Many comments were received questioning why citizens from one municipality were allowed participation during the discussions and why no other municipal citizens were present. These commenters thought that input provided by these individuals was biased and inaccurate. They felt the rules were “based on one bad beekeeper.”

RESPONSE: The Department sought perspectives from not only the experts in beekeeping, but also members of the public to consider the statutory mandates of differing population densities, intensities of development, and any other characteristics of differing regions the Department determines to be significant to the regulation of apiary activities. These members of the public were willing and committed and made themselves available to attend the meetings and phone calls to relay concerns and experiences that some of the public have about beekeeping. Their input provided pertinent information concerning public safety and came from individuals who had negative experiences with neighboring beekeepers who were uncooperative. By receiving input from the public, the Department could more fully consider the impacts of the rules. The concerns raised by these individuals generally reflected the kinds of complaints the Department receives annually from all over the State.

230. COMMENT: Some commenters stated that the proposed regulations are not based on science, are overly restrictive, and are without statistical merit. They felt that qualified apiary experts and the NJBA should create the rules. Neither Mid-Atlantic Apiculture Research and Extension Consortium, NJBA, or the Farm Bureau agreed with the provisions in the proposed rulemaking. The New Jersey League of

Municipalities’ opinions were given too much weight, and not enough consideration was given to the NJBA’s recommendations.

RESPONSE: The Legislature vested the authority to develop rules and standards to the Department of Agriculture. Organizations like the NJLOM and NJBA and scientific organizations like MAAREC were consulted in the development of the standards. In fact, the NJBA provided a model ordinance, and some of its elements were included in the rulemaking. The Department also considered the Department’s own long-standing Best Management Practices and the laws in other states and other countries. The proposed rules were developed with the consideration of input from all groups to develop a balanced rulemaking, considering the needs of all citizens of the State.

231. COMMENT: Honeybees are endangered, and they need assistance to keep a healthy ecosystem.

RESPONSE: This is beyond the scope of the rulemaking, however *Apis mellifera* is not on the Federal Endangered Species List.

232. COMMENT: The Department received numerous negative comments pertaining to the writing style of the initial rule proposal and the perceived lack of knowledge with honeybees. Many insinuated that the writers thought that honeybees are dangerous, relied on anecdotal information, and did not research or use factual information on the subject prior to drafting the document.

RESPONSE: The Department does not track complaints about honeybees. The anecdotal information that was referenced in the Summary of the initial rule proposal referred to information received from the State Apiarist about complaints that he was involved with over the last few years. On average, annually, the Apiarist receives at least 10 complaints from municipalities or individuals about congregations of bees in or in close proximity to pools, gathering water, and stinging incidents. During the consultation period with the groups, requests were made to NJBA for information concerning nuisance calls they received or investigated to use for additional supportive data in the drafting of the document. Unfortunately, no further information was provided, so the Department relied upon the State Apiarist’s experiences and known issues faced by the general public. Additionally, the Department reviewed New Jersey animal ordinances, as well as apiary rules and regulations from other states. There is no Federal standard of beekeeping and different states handle this issue in a myriad of different ways: some through statute, some through regulation, some through Best Management Practices. The Department reviewed these perspectives and considered the unique needs of New Jersey in drafting the initial rule proposal. While there is no national standard, the majority of states refer to Best Management Practices and consider factors of colony density, setbacks, and provisions for bee health (including water sources.)

233. COMMENT: A couple of commenters were concerned that existing Right to Farm Act protections for beekeepers might be violated by the proposed rulemaking.

RESPONSE: Not all beekeepers are protected under the RTFA. The proposed Departmental rules apply to beekeepers who do not qualify under the RTFA.

234. COMMENT: One commenter was concerned that relatively few complaints caused the bee association to be inundated with overburdensome regulations.

RESPONSE: The Department was required by legislation to develop universal rules for beekeeping in New Jersey.

235. COMMENT: A member of MAAREC provided comments that included an understanding that the number of bees in a colony could pose a threat to the public, and that colony management and genetic temperament of the colony should be the primary focus when considering how many healthy hives could be managed on a parcel of land. This commenter felt MAAREC was not consulted about bee biology and behavior but was only asked to review a draft of the proposed regulations.

RESPONSE: MAAREC was invited to all meetings of the group during the drafting and consultation process. Due to many reasons, MAAREC representatives did not attend the meetings in person, but participated via telephone. MAAREC was asked direct questions by the State Apiarist about bee health on a variety of issues raised in the comments via email, and MAAREC provided helpful responses to these inquiries that were included in the drafting process. NJBA, NJLOM, and

MAAREC were provided with numerous draft documents and provided many opportunities to provide feedback on the rules.

Reliance on Guidelines for Keeping Bees in Populated Areas

236. COMMENT: A few comments suggested that the Department should implement guidelines instead of regulations. They believe that the new regulations would be detrimental to new beekeepers and that the Department should rely on existing laws and regulations instead.

RESPONSE: In the passage of P.L. 2015, c. 76, the Legislature preempted municipal authority to govern beekeeping activities in the State and gave the authority solely to the Department. The law requires the Department to regulate beekeeping activities throughout the State by developing standards. The law also provides for the delegation of certain authority from the Department back to municipalities that incorporate these rules by ordinance. Previously, the Department's apiary rules addressed apiary inspections, registrations, certifications, and parasite and disease control. Best Management Practices are suggestions that are based on commonly used practices that provide a baseline level of success, but they are not necessarily based on scientific consensus. While the Department already had such guidelines, the new law requires the development of specific rules.

P.L. 2015, c. 76

237. COMMENT: The Department received many comments that the proposed rules were not aligned with the statutory intent of P.L. 2015, c. 76. Commenters stated that the statute did not intend there to be so many barriers to hobbyist beekeepers and that the statute was meant to encourage beekeeping. They felt that the rulemaking had the effect of discouraging beekeeping or would at least make it more difficult for hobbyist beekeepers to maintain their bee populations. It was expressed by some that the tenant of the legislation was to "do no harm" to beekeeping.

RESPONSE: The Department carefully considered the legislative intent when drafting the initial rule proposal. Stakeholders including the New Jersey Beekeeping Association, the New Jersey League of Municipalities, MAAREC, and a number of other sources were consulted during the process to develop the rulemaking. However, after considering the comments received during the comment period, the Department published the notice of substantial changes to make substantive changes upon adoption to comply with the intent of the law.

238. COMMENT: Commenters noted that the statute was intended to improve honeybee hive health, but that the regulations would not maintain honeybee health in light of recent colony collapse disorder and other pests. While the statute directed the regulations be based on science, commenters opined that the proposed new rules did not adequately consider bee biology and health, and as a result, there would be an unfair burden on beekeepers and a negative impact on honeybee colonies, as well as native pollinators—contrary to the main legislative intent.

RESPONSE: The Department, through the State Apiarist, in consultation with NJBA and MAAREC, as well as other peer reviewed scientific studies, considered honeybee biology and health when proposing the new rules. Colony collapse disorder was a factor considered, as were the diseases and other pests that afflict honeybees. In putting forth the notice of substantial changes, the State Apiarist was integrally involved in considering the comments and suggesting changes that would further benefit honeybee health, while considering the needs of all citizens of the State.

Consideration of Laws in States and Cities

239. COMMENT: It was noted by some commenters that, in many other states, local municipalities handle beekeeping at the municipal level, but that was no longer possible in New Jersey because of the new statute, and the fact that New Jersey has 565 municipalities makes it difficult to develop a one-size-fits-all approach.

RESPONSE: The Department appreciates that the commenters considered the diversity of New Jersey and recognized the challenges associated with developing a rulemaking to address the needs of all municipalities. However, P.L. 2015, c. 76 allows municipalities who have adopted these rules to petition the Department to make changes in the rule to meet their specific needs that are not addressed.

240. COMMENT: Many commenters provided information and/or asked about the Department's consideration of beekeeping in other jurisdictions including: New York City, Chicago, Philadelphia, Baltimore, San Francisco, Connecticut, North Carolina, Massachusetts, Oregon, Pennsylvania, Delaware, Maryland, and Virginia.

Some pointed out that urban areas like New York City and Chicago allow beekeeping on rooftops and have simple guidelines to follow. Many felt that the proposed rules would be more restrictive on beekeepers across the river from New York City, which did not make sense, and that keeping bees on small lots has been shown to be feasible in urban environments. A commenter from Seattle, Washington noted that as one of the top 10 most densely populated cities in the United States, they allow four hives for every 10,000 square feet, which is less than ¼ acre.

Others discussed states that had minimal standards set either by statute or regulation and pointed to how things have worked in those jurisdictions, and that the Department's rulemaking should be in line with other states for colony density. One commenter stated that surrounding states do not have restrictions on density.

Commenters from Oregon provided their experiences with beekeeping laws in Oregon, and noted that there, they did not adopt regulations, but instead developed a peer reviewed Oregon State University Best Practices document to be used. They felt this approach worked well, as the document was fixed like a regulation, and that provided flexibility.

RESPONSE: In developing the rulemaking, the Department researched how other states and cities have addressed colony density, as well as other issues surrounding beekeeping, including all jurisdictions listed, as well as foreign nations (for example, London, England). Urban, suburban, and rural areas were considered, and the Department found there was no consistent way that beekeeping was addressed across the country. For instance, New York City provides a guidance document, while North Carolina addresses colony density by allowing no more than five hives on a parcel of land within a jurisdiction. Oregon's approach would not work in New Jersey, as P.L. 2015, c. 76 requires the Department to adopt rules. Due to the lack of a one-size-fits-all approach, the Department considered the specific needs of beekeepers and citizens of New Jersey, utilized examples from other jurisdictions, and came to the initial rule proposal.

Impact of Rulemaking on NJDA Costs

241. COMMENT: A few commenters remarked that the proposed regulations would add an unreasonable burden on municipalities that adopt the standards, and that they would have to increase fees and taxes on their constituents to comply. They also commented that municipal officials lack expertise in beekeeping and the Department would have to provide training to them.

RESPONSE: P.L. 2015, c. 76 requires the Department to allow for delegation of certain authorities to municipalities that adopted the Department's standards by ordinance. If a municipality does not adopt these standards, then it will be the Department's responsibility to enforce the rules. Currently, municipalities investigate nuisance complaints using existing staff, either working for the local or county health department or the department of public works staff, who frequently reach out to the Department for guidance about bees and other livestock concerns. These investigative duties would remain the same for municipalities that adopt this rulemaking. Municipal investigators would investigate colony density, existence of flyway barriers, and water sources on the properties. Only the State Apiarist and Department inspectors would provide hive inspections to determine colony health.

242. COMMENT: A few comments were received stating that the Department should compensate municipalities for the additional expenses required to enforce the regulations and beekeepers for the movement and or hives that were found in excess of the densities in the proposed regulations. Additional comments were received stating that there are not enough personnel in the apiary program to effectively monitor and enforce the proposed regulation.

RESPONSE: Under the rulemaking, municipalities that adopt the standards will conduct their investigations using the same personnel that currently performs these functions. The legislation did not provide additional funding to the Department to carry out its provisions.

Impact of Rulemaking on Hobbyist Beekeeping

243. COMMENT: One commenter stated the goal should be to increase the number of small-scale beekeepers, which would result in greater genetic diversity of bees. Some expressed that the proposed regulation could cause many beekeepers to lose the bees they have cared for. They felt that the regulations would discourage new beekeepers from starting which would have a negative impact on future generations.

RESPONSE: The Department agrees that genetic diversity can be beneficial and that hobbyist beekeepers make positive contributions to the honeybee population in New Jersey. The Department does not believe the rules will discourage or prevent people from practicing beekeeping.

244. COMMENT: Comments were received that the proposed regulations were unnecessary, arbitrary and capricious, and do not take the practical needs of beekeepers into account, which will result in the reduction of the number of bees in New Jersey.

RESPONSE: The Department received numerous comments that the rules were unnecessary for the Department to adopt, however rules were mandated by the statute. Furthermore, the Department has carefully considered all of the comments received and made numerous changes to the initial rule proposal in order to be more accommodating of hobbyist beekeepers.

245. COMMENT: Commenters stated that the proposed rules were drafted because of one “bad” beekeeper that had not properly maintained his hives and that it caused residents in the town to have negative interactions with beekeeping. Some commenters noted the specific town of Peapack-Gladstone.

RESPONSE: The Department received input from various towns, including Peapack-Gladstone. In that town, residents had negative experiences with a beekeeper. Residents provided personal accounts, including instances where bees entered residences and were so numerous that residents could not enjoy their backyards. The Department balanced the need to curtail such negative experiences with the needs of hobbyist beekeepers, recognizing the benefits they provide to the State.

246. COMMENT: A few commenters stated that black bears are a problem for beekeepers and noted the cost of installing electric fencing may be cost prohibitive.

RESPONSE: The Department understands that black bears can pose problems for beekeepers; however, the rulemaking does not address this particular issue. Current methods used to prevent wildlife from intruding on apiaries will not be affected by the rulemaking.

Impact of Rulemaking to Neighbors of Hobbyist Beekeepers

247. COMMENT: Many longtime beekeepers stated that they had never received complaints from neighbors about their hives, and that neighbors benefit from pollination and enjoy the honey harvest. Many noted that in the few instances where neighbors raised concerns, those are generally able to be addressed directly by the beekeepers through education and exposure to the bees. Some commenters felt the proposed regulations may create problems between beekeepers and neighbors that did not previously exist.

RESPONSE: The Department appreciates this information about positive relationships between neighbors and beekeepers. Oftentimes communication and education about honeybees provided to neighbors can help address any concerns. While the majority of beekeepers may not have conflicts with neighbors, such conflicts do arise, and it then becomes the responsibility of the Department and municipalities to resolve them. In an effort to limit unnecessary reporting that might lead to such conflicts, the changes upon adoption require neighbor notification only where waivers of colony density are sought.

248. COMMENT: Some commenters suggested that residents be polled/surveyed to see if they want these regulations.

RESPONSE: The Department is required to enact rules by P.L. 2015, c. 76, and has received comments through the rulemaking process. The Department considered the many recommendations offered by the public in drafting this rulemaking. The process of drafting the rulemaking and subsequent notice of substantial changes has been in consultation with NJLOM, NJBA, and MAAREC, as well consideration of the public comments.

249. COMMENT: Some individuals asked how many complaints were received by the Department and which towns they came from.

RESPONSE: While the number of complaints are not directly tracked, the State Apiarist estimates that there are a handful of complaints received directly or indirectly by the Department each year.

250. COMMENT: A beekeeper had to rehome their bees due to a conflict with a neighbor. The NJBA helped them rehome the bees in a new location.

RESPONSE: The Department encourages beekeepers and organizations like the NJBA to continue supporting responsible beekeeping practices and address issues on a case-by-case basis.

251. COMMENT: Some individuals felt that members of the public often misidentify flying/stinging insects as honeybees when they are yellow jackets, wasps, or other native stinging insects. They noted that it is impossible to protect the public from these kinds of stinging insects. Commenters acknowledged that there are some individuals that are allergic to honeybees (some beekeepers themselves), but that honey bees rarely sting and, thus, do not need rules. One commenter added that there should be a fee waiver for EpiPens.

RESPONSE: Although the statistics on stinging incidents are a mixture of stings from hornets, wasps, and honeybees, a report by Dr. Forrest on stinging incidents estimates that there is an average of 220,000 annual visits by the public to the emergency department and nearly 60 deaths per year nationwide due to stings from hornets, wasps, and bees. His report states that “public health practitioners, policymakers, and the public should encourage the industry to provide proven public health interventions, like the EpiPen, at a socially responsible price point that serves the best interests of the U.S. population.” The Department recognizes that the vast majority of insect sting incidents are from wasps and hornets and not honeybees. However, there are at least 10 to 20 stinging complaints that the Department receives annually as a result of too many honeybees in a densely populated area or as a result of stepping on bees foraging for available water sources. The comment about the EpiPen is beyond the scope of this rulemaking.

252. COMMENT: Some commenters suggested promoting honeybee sting therapy to reduce the allergic potential to the public.

RESPONSE: The Department recognizes there may be scientific or medical benefits of sting therapy to those individuals that respond positively to bee venom for their medical conditions. However, this is beyond the scope of this rulemaking. The Department agrees that education of the public is important; however, as stated by many commenters, there is only one State Apiarist, and there are many entities within the State that are well equipped to educate the public about honeybees.

Consideration of Bee Biology and Health

253. COMMENT: Many commenters stated honeybees are docile and that most stinging incidents come from yellow jackets. The proposed regulations create an unfounded fear of honeybees.

RESPONSE: The Center for Disease Control only records stinging insects and does not differentiate what type of insect did the stinging. The Department agrees that some people do not understand the difference between honeybees and more aggressive species, such as yellow jackets, but numerous educational resources are already available to the public. Also, the initial rule proposal was drafted pursuant to PL. 2015, c. 76, which directs the Department to regulate apiaries in the State. The rulemaking will not cause the public to become more fearful of honeybees.

254. COMMENT: A commenter asked if you reduce the number of small beekeepers, where will the necessary bees come from?

RESPONSE: Most honeybee hives used in commercial pollination come from migratory beekeepers who move to New Jersey for the pollination season. Nevertheless, the Department recognizes the importance of hobbyist beekeepers’ contributions to New Jersey’s honeybee population.

255. COMMENT: Many people commented that these regulations do not consider the opinions of entomology experts, or the science of beekeeping.

RESPONSE: The Department has consulted with several subject matter experts and continued to consult with them in the rulemaking process.

256. COMMENT: Some commenters stated that beekeepers want to keep hives alive due to their investment of time and money. If their bees do not have adequate food, the beekeeper will stop keeping bees or move their hives to another location.

RESPONSE: Not all beekeepers have the expertise to recognize lack of forage and the impact it has on hives. The State Apiarist is available to give advice to struggling beekeepers.

257. COMMENT: Some commenters felt the Department did not consider land use planning while drafting this rulemaking.

RESPONSE: The Department continues to consult with land use experts, including the NJLOM.

258. COMMENT: One hive can pollinate 300 million flowers in one day.

RESPONSE: The Department agrees that the honeybee hives play a vital role in the process of pollination.

259. COMMENT: Many people stated there is no scientific data to support that more stings occur around swimming pools.

RESPONSE: The Department would agree that no one keeps track of honeybee stings around pools, but if honeybees are drinking and crawling around on the wet masonry around a pool, there is a possibility that a person may be stung.

260. COMMENT: Varroa must be controlled or honeybees will die.

RESPONSE: The Department agrees that Varroa Mite control is vital to colony survival.

261. COMMENT: Several people said these rules do not protect bees from chemicals.

RESPONSE: The Department does not have the authority to regulate pesticide applications. These rules are primarily focused on how apiaries are being managed and balancing the needs of beekeepers with the interests of the public.

262. COMMENT: Hives won't flourish without adequate nectar in the environment.

RESPONSE: The Department agrees with this statement and has worked with the NJBA to encourage and educate citizens about the importance of planting pollinator-friendly plants around their property.

263. COMMENT: Urban bees tend to be healthier than those in suburban and agriculture bees due to chemicals.

RESPONSE: The State Apiarist does not agree with this assertion and has not observed that.

264. COMMENT: Honeybees travel two miles regularly.

RESPONSE: The Department agrees that honeybees travel up to three miles on foraging trips.

265. COMMENT: Fewer hives will result in more yellow jackets and problem insects. Beekeepers are the best defense against wasps and yellow jackets.

RESPONSE: The Department does not agree that fewer honeybees will result in increased wasp and hornet populations. Wasps, hornets, and yellow jackets are meat eaters, whereas honeybees eat pollen and nectar. There is no evidence that diminished honeybee populations cause yellow jacket, wasp, or hornet populations to flourish. Furthermore, the Department does not anticipate a decline in beekeeping due to this rulemaking.

266. COMMENT: None of the changes address the health of honeybee populations.

RESPONSE: The legislation directed the Department to develop rules governing how and where a person could keep honeybees considering land use, lot size, and other relevant factors. The proposed rules are consistent with maintaining a healthy honeybee population in the State of New Jersey.

267. COMMENT: The proposed regulations will decimate bee populations.

RESPONSE: The Department respectfully disagrees with this comment.

268. COMMENT: Feral colonies are still going to exist, and these regulations will not affect them.

RESPONSE: The Department agrees that feral colonies should be unaffected by this rulemaking, and that controlling feral colonies was not part of the enabling legislation.

General Comments

269. COMMENT: Commenters stated that the proposed rules should consider reimbursement to beekeepers for damage caused by black bears, which love eating honey. A partnership with the New Jersey Division of Fish and Wildlife was suggested to manage this issue because black bears are a chronic problem.

RESPONSE: The Department understands that black bears can cause problems for beekeepers due to the animals' attraction to honey. While this issue is beyond the scope of the statutory authority, the Department will consider these concerns in its ongoing dialog with the Division of Fish and Wildlife.

270. COMMENT: A couple of comments were received that the rulemaking was inconsistent with the resolutions adopted by the delegates at the annual convention since 2015.

RESPONSE: The Department appreciates and takes very seriously the resolutions passed by the delegates. Annually, delegates review the problems with the agricultural industry and adopt resolutions that make recommendations to the Department, as well as other agencies of the State and nation, with programs for the welfare of the agricultural interests of the State. The Department reviewed these recommendations, and they were considered in the drafting process.

271. COMMENT: Commenters stated that a one-size-fits-all policy will not benefit the greater good of our State. Each situation is different and problems with nuisance beekeepers should be addressed on a case-by-case basis. They suggested that individual towns should address their own problems and that having Statewide restrictions is not the best way to enforce beekeeping etiquette.

RESPONSE: Prior to the passage of P.L. 2015, c. 76, municipalities were able to adopt ordinances regarding beekeeping, but they are no longer able to do so. The Department has proposed a flexible approach to colony density through the waiver process, and individual conflicts will be resolved based on the unique circumstances presented in each case. Also, municipalities who have adopted these rules as ordinances may pass additional ordinances if their specific issues are not resolved.

272. COMMENT: Commenters stated that the proposed rules would hinder caring for beneficial insects by State residents and that bees are needed as part of a healthy ecosystem. One commenter noted that the Department should reconsider current restrictions on bee habitats.

RESPONSE: These rules do not address other beneficial insects or have any direct impact on them or natural bee habitats.

273. COMMENT: Commenters were concerned that the proposed rules would force them out of New Jersey to a more bee-friendly state. Several municipalities commented that the rules would have a detrimental effect on their town and beekeeping in general.

RESPONSE: After considering the public's concerns, particularly those about colony density size, the Department has changed the rules upon adoption (after the notice of substantial changes) to accommodate most beekeepers in the State. However, understanding that all situations are unique, a waiver process exists to allow for increases of colony density over the defined limits.

274. COMMENT: Commenters felt that there are better solutions and that the Department is regulating to solve a non-problem.

RESPONSE: The Department developed the rulemaking as required by P.L. 2015, c. 76.

275. COMMENT: Many commenters were in favor of lessening restrictions in order to help the environment and agriculture and keep the Garden State green.

RESPONSE: The changes upon adoption make the rules much less restrictive than originally proposed in the initial rule proposal.

276. COMMENT: Commenters feel that they are investing their time and money, trying to do something positive for the environment and bee population and being punished for it.

RESPONSE: The Department respectfully disagrees with this comment, as the intent was to set reasonable standards based upon science and experiences of beekeepers and communities. Setting standards helps protect the majority of beekeepers, but also allows for addressing conflicts when they arise.

277. COMMENT: Some commenters were concerned that local municipalities will be able to manipulate the regulations at will.

RESPONSE: P.L. 2015, c. 76 allows municipalities that apply to the Department to adopt and enforce the rules by local ordinance. These standards would remain uniform; however the statute does allow for a municipality that has an issue not addressed by the Department's rules to seek guidance from the Department to address the issue.

278. COMMENT: Several comments suggested that the proposed regulations were the product of over-hyped stories and were based on fear.

RESPONSE: The rulemaking was based upon institutional knowledge within the Department, as well as from consultations with the NJBA, NJLDM, and MAAREC. Furthermore, extensive research was conducted and individual experiences were considered in order to develop reasonable, safe, and effective beekeeping standards.

279. COMMENT: Some commenters believe efforts should be focused on public awareness. Attention should be put into educating the public on the importance of honeybees, beekeeping, living with bees, and the harmful effects pesticides have on bees. Others thought it important to educate the public about pollination, crops, and the financial implications of the bee population decreasing. One commenter stated that safety concerns would be better addressed with signage and another suggested creating citizens' groups in each county.

RESPONSE: The Department encourages education about honeybees and provides information through its website and other means, including presentations by the State Apiarist. Education about the importance of honeybees can be found from a variety of sources.

280. COMMENT: Many comments were received stating the rulemaking was an example of a government overreach and a politically motivated mistake that would curtail beekeeping. Some suggested that beekeeping need not be limited, that this is an infringement on the rights of property owners, and that politics should be taken out of the process. Many commenters believe the proposed rules are a way for the government to collect more money from residents and that this is a matter that should be settled on the municipal level. One commenter stated that this type of government overreach is what drives residents out of the State.

RESPONSE: The Legislature required the Department to develop rules for beekeeping when it removed the authority of municipalities to regulate beekeeping. The rulemaking does not propose any fees for hobbyist beekeeping. The only fee proposed is for the destruction of man-made native beehives, which was set forth in P.L. 2015, c. 77.

281. COMMENT: Many commenters express concern about possible negative effects on honey production by the rulemaking. They stated that honey is important to the ecosystem and has been shown to have benefits to allergy sufferers.

RESPONSE: The majority of honey for sale in the State is produced by commercial beekeepers, who are not subject to the proposed rules.

282. COMMENT: One commenter proposed an open forum where all facts are on the table and the validity of the objections can be debated.

RESPONSE: The Department has received comments during the comment period and has held several meetings with the NJLDM and NJBA, where the issues were discussed in a roundtable format.

283. COMMENT: Many commenters suggested the Department should be focusing on topics they consider to be more pressing than honeybees and beekeeping. Some topics the commenters mentioned were the regulation of other animals and harmful insects, lowering property taxes, loss of green cover, and harmful insecticides. Another concern raised was that of Monsanto and the damage the commenters believe that organization is doing to the environment. Commenters requested the Department expend resources on creating regulations that will control big agricultural companies like this, instead of on bees.

RESPONSE: P.L. 2015, c. 76 required the Department to develop rules for the breeding and keeping of honeybees. The Department only regulates what it is statutorily required. Issues such as lowering property taxes and loss of green cover are not within the purview of the Department's authority and are beyond the scope of this rulemaking.

284. COMMENT: Some commenters were concerned that only one municipality was heard in the developing of these proposed regulations and believe that all municipalities should be given the opportunity to weigh in.

RESPONSE: The Department sought input from many municipalities, the NJLDM, and the model ordinance drafted by the NJBA. Additionally, many municipalities provided written comments.

285. COMMENT: Some commenters stated that a way to encourage beekeeping would be to impose fines to anyone who damages or destroys a hive or harms a honeybee.

RESPONSE: P.L. 2015, c. 76 imposes fines for the destruction of man-made native beehives, the Department cannot impose a fine without statutory authority.

286. COMMENT: Comments were received stating that the proposed regulations will drive beekeepers underground, subverting the ability to monitor and encourage safe beekeeping and causing a more serious set of issues to emerge.

RESPONSE: The required registration of beekeepers overwintering hives previously existed. Registering hives provides valuable contact with the State Apiarist and assures notification of important information regarding honeybee health.

287. COMMENT: One commenter asked what is the SADC?

RESPONSE: The State Agriculture Development Committee is a governing committee created pursuant to N.J.S.A. 4:1C-4, which operates in, but not under the supervision of, the New Jersey Department of Agriculture. Among other things, SADC administers the RTFA, as well as the Farmland Preservation Program, which empowers the SADC to enter into agreements with landowners and municipalities to ensure that farmland will continue being used for farming purposes.

288. COMMENT: Comments were received stating that the proposed regulations will make it detrimental to recover local honeybees and when a nuisance hive is found in a congested area, rather than rescuing, the only recourse will be to exterminate.

RESPONSE: Recovery of honeybees is beyond the scope of this rulemaking. The State Apiarist is available to assist with swarms and the NJBA and other local beekeeping groups volunteer to assist in these situations. Nothing in this rulemaking is anticipated to make such operations more difficult.

289. COMMENT: One commenter pointed out that according to a documentary on colony collapse disorder, one hive per 60,000 people is what we should strive for.

RESPONSE: The Department appreciates this information.

290. COMMENT: One commenter stated that the proposal makes false statements about many supposed beekeeping facts.

RESPONSE: It is unknown which specific facts are referenced by this commenter; however, the Department has received and considered varying opinions, both scientific and from experienced beekeepers.

291. COMMENT: One commenter stated that beekeeping in the modern society is a public service.

RESPONSE: The Department appreciates this comment and agrees that beekeeping provides benefits to the public.

292. COMMENT: One commenter asked the Department to indicate the percentage of increased complaints and to specify what the complaints are related to and if some complaints outweigh others.

RESPONSE: The number of complaints generally stays consistent from year-to-year. Complaints are generally related to bees drinking at pools, swarms in backyards and flying swarms, and bee hives that are too close to property lines.

293. COMMENT: One commenter stated that the changes presented in the proposed regulations focus on the behavior of the beekeepers in their local environment, which is behavior that is common sense for responsible beekeepers.

RESPONSE: The rules set minimum standards for anyone keeping bees in New Jersey. While some of the requirements may be common sense for some beekeepers, not all beekeepers, including new beekeepers, may be aware of the necessity to take certain actions or provide certain tools when keeping bees.

294. COMMENT: Some commenters expressed the need for these proposed rules to become effective in order to protect the public and felt they will balance the rights of registered beekeepers and their fellow citizens. Some showed support for the proposed rules with only minor revisions, while others supported all aspects of the proposal.

RESPONSE: The Department appreciates the positive feedback to the rulemaking.

Summary of Agency-Initiated Changes, Substantial and Non-Substantial, After Publication of the Initial Rule Proposal and/or the Notice of Substantial Changes:

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

“Adjoining property” is 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” is 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 add a cross-reference, N.J.A.C. 2:24-3.1, Registration, as references would be to apiaries, not bee yards.

“Beekeeper” is changed to mean any person “or entity,” and to remove the reference to classifications of beekeeper, which are deleted.

“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 pursuant to N.J.A.C. 2:24-7.4.

“Super” would now describe the item used for surplus honey and that it is placed over or above 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 email 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 added to subsection (c), structure, with the language pertaining to height of the hives that was proposed in the initial rule proposal deleted, as it is no longer necessary with the added cross-reference.

Upon further consideration of urban beekeeping, the Department is changing 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 changed 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.

Changes to subsection (k) clean up language replacing “conducted” in the lead-in text with “handled,” and remove language about annual inspections that was confusing. While the initial rule proposal allowed for “annual or as needed” inspections, now they will just be “as needed.” The Department deletes 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 changed 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. 2:24-7.3

The Department noticed a typographical error at N.J.A.C. 2:24-7.3(g)1. The citation is incorrect, instead of referencing (e)1 through 8 above, it should reference (d)1 through 8 above.

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.

Federal Standards Statement

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

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

CHAPTER 24

DISEASES OF BEES AND BEEKEEPING ACTIVITIES

SUBCHAPTER 1. DEFINITIONS

2:24-1.1 Definitions

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

“Adequate source of water” means ***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 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 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.]

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

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

“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]* *who is not a* commercial beekeeper.

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

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

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

[“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 honey bee swarming behavior, catch a swarm, or control a colony that was going to swarm. 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 swarm]* *to house a nucleus*.

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

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

“Shipper” means any person or business entity 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 2. SHIPMENT OF BEES INTO NEW JERSEY

2:24-2.3 Queen or package bees

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

(b) (No change.)

SUBCHAPTER 3. REGISTRATION OF APIARIES

2:24-3.1 Registration requirements; confidentiality and documentation

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

(b) All beekeepers in New Jersey who overwinter their bees must 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, *email 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]* *honey identification**;

4. The number of hives per location;

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 May 6, 2019; 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.*

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

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

(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.

(i) The Department shall supply the registrant, through a link to its website, with access to current New Jersey laws and rules.

***[j]** Upon completion of online registration, each registered beekeeper will be electronically issued a registration that identifies that beekeeper as a legally registered New Jersey beekeeper.

(k) Continuing education shall be as follows:

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

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

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

SUBCHAPTER 6. PRESERVATION OF HONEY BEE COLONIES

2:24-6.4 Penalties

(a) Any person who intentionally destroys a man-made honey bee hive or hanging swarm without the approval required under this subchapter shall be liable to a civil penalty of up to \$1,000 for each offense.

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

(c) The penalties imposed pursuant to (a) and (b) above are to be collected by a summary proceeding under the Penalty Enforcement Law of 1999, P.L. 1999, c. 274 (N.J.S.A. 2A:58-10 et seq.), or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. The Superior Court and municipal court shall have jurisdiction to enforce the Penalty Enforcement Law of 1999 in connection with this action.

(d) If the violation is of a continuing nature, each day during which it continues shall constitute an additional, separate, and distinct offense.

Penalties recovered for violations of this section shall be remitted to the Department of Agriculture and expended on programs to revive honey bee populations in the State.

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

2:24-7.1 General scope and applicability

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

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

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

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

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

(f) Notwithstanding compliance with this chapter including these apiary standards, it shall be unlawful for any beekeeper to keep any hive or hives in such a manner or of such disposition as to ***[be]* *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
up to ¼ Acre	3
½ Acre	6
¾ Acre	9
1 Acre	12
Over 1 acre	3 per ¼ acre not to exceed (a)2 below

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. *[A]* ***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]* ***20*** 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. *[A]* ***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-swarming 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) General maintenance. No bee comb or other materials that might encourage robbing by honey bees or other stinging insects shall be left upon the grounds of the apiary site in suburban and urban environments.

(i) Marking of hives. All beekeepers shall legibly mark hives with the *[“box brand” or marking of the beekeeper owning the hive. The “box brand” may be a name, number, initials, or an image, and may be branded, engraved, painted, or written with permanent marker]* ***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. 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. 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.* The date, time, and place of the hearing before the governing authority.

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

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

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

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

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

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

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

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

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

(e) *(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)1)* *(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 **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) **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) Municipalities must provide the Department copies of such ordinance(s) two weeks in advance of formal consideration of such ordinances.

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

1. The municipality shall request guidance from the Department.

i. If a municipality that had apiary standards in effect by ordinance prior to the passage of P.L. 2015, c. 76, finds that the previous ordinance resolved the condition or circumstance, the municipality may petition the

Department with the guidance request to accept those prior standards under N.J.S.A. 4:6-24.c for immediate resolution;

2. Subject to (c)1i above, the Department shall provide the guidance no later than 90 days after the request is received by the Department; and **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.) *1.* Upon expiration of the 90-day period, the municipality, if it has consulted with the Department, the New Jersey League of Municipalities, the New Jersey Beekeepers Association, and the Mid-Atlantic Apiculture Research and Extension Consortium, or successor organizations with similar purposes, may adopt by ordinance a standard to address the condition or circumstance, provided that the standard reflects consideration of population density, the density and intensity of development, type of land use, and honey bee biology and behavior.

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

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

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

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

2. Reports shall contain the following:

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

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

iii. Number of monitoring inspections by the municipality; **and***

(iv. Number of registrant reports of diseases of bees to the municipality and forwarded to the Department; and)

(v.) **iv.** Number and type of enforcement actions taken.

ENVIRONMENTAL PROTECTION

(a)

COMPLIANCE AND ENFORCEMENT DIVISION OF COMPLIANCE OPERATIONS AND COORDINATION

Notice of Readoption Noise Control

Readoption: N.J.A.C. 7:29

Authority: N.J.S.A. 13:1G-1 et seq.

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

Effective Date: April 11, 2019.

New Expiration Date: April 11, 2026.

Take notice that, pursuant to N.J.S.A. 52:14B-5.1, Noise Control, N.J.A.C. 7:29, is readopted and shall continue in effect for a seven-year period. The rules had been scheduled to expire on June 7, 2019. The Department of Environmental Protection (Department) has reviewed these rules and determined that they should be readopted because they are necessary, reasonable, and proper for the purpose for which they were