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**ENVIRONMENTAL PROTECTION
LAND USE MANAGEMENT
DIVISION OF WATER SUPPLY**

**AGRICULTURAL, AQUACULTURAL, AND HORTICULTURAL WATER USAGE
CERTIFICATION**

Proposed Readoption with Amendments: N.J.A.C. 7:20A

Authorized By: Lisa P. Jackson, Commissioner, Department of
Environmental Protection

Authority: N.J.S.A. 58:1A-1 et seq.

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

DEP Docket Number: 05-06-06/429

Proposal Number: PRN _____

A public hearing concerning this proposal will be held on the following dates and times, at the following locations:

August 8, 2006 at 6:00 p.m.
RUTGERS EcoComplex
Environmental Research & Extension Center
1200 Florence-Columbus Rd.
Bordentown, NJ 08505-4200

August 10, 2006 at 6:00 p.m.
Somerset County Complex
Freeholders Meeting Room
20 Grove Street
Somerville, NJ 08876

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Submit comments by September 15, 2006 to:

Oneida Cuevas, Esq.
Attn: DEP Docket Number: 05-06-06/429
Office of Legal Affairs
New Jersey Department of Environmental Protection
PO Box 402
Trenton, New Jersey 08625-0402

Written comments may also be submitted at the public hearings. It is requested, but not required, that anyone submitting oral testimony at the public hearings provide a copy of any prepared text to the stenographer at the hearing. The Department of Environmental Protection (Department) requests, but does not require, that comments be submitted on disk or CD as well as on paper. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The proposed readoption with amendments can be viewed or downloaded from the Department's website at <http://www.state.nj.us/dep>.

The agency proposal follows:

Summary

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

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In accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the Agricultural, Aquacultural, and Horticultural Water Usage Certification rules, N.J.A.C. 7:20A, were scheduled to expire on June 8, 2006. Pursuant to N.J.S.A. 52:14B-5.1c, this notice of proposal extends that expiration date to December 5, 2006. The Department has evaluated these rules, and has determined that they are necessary, reasonable, and proper for the purpose for which they were originally promulgated, and is proposing to readopt N.J.A.C. 7:20A with amendments as discussed below.

The Department is responsible for ensuring a safe and adequate supply of water pursuant to the Water Supply Management Act (Act), N.J.S.A. 58:1A-1 et seq., and therefore must plan for, administer, and manage the State's water resources. Under the Act, the Department is directed to provide a regulatory program to ensure that the ground and surface water supplies of the State are managed in a way that protects their quantity and quality, thereby protecting public health and safety, and natural resources. While the Water Supply Allocation Permitting Program, administered pursuant to N.J.A.C. 7:19, is the central mechanism through which many of the water supply management objectives of the Department are implemented, the Agricultural, Aquacultural and Horticultural Water Usage Certification Program administered under these rules at NJAC 7:20A is also a key component of administering the Act and provides the Department the necessary tools to meet these objectives.

The Department is proposing to readopt with amendments the Agricultural, Aquacultural, and Horticultural Water Usage Certification rules, N.J.A.C. 7:20A. Diversions of water to serve agricultural, aquacultural and horticultural activities, just as with other diversions regulated

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under the Water Supply Allocation Permits rules, N.J.A.C. 7:19, may have significant adverse impacts on natural resources and other users of the resource. These impacts can result in diminished stream flows, lowered water levels in wetlands, accelerated saltwater intrusion in ground waters, reduced yields from diversion sources used by other agricultural and non-agricultural interests and the spreading of contamination. Historically, many of these impacts were not fully addressed in the agricultural, aquacultural and horticultural water usage certification review process. Due to increased stress on the State's water resources from a growing population and associated development, and the need to conserve and protect valuable natural resources, the Department has determined that water diversions for agricultural, horticultural and aquacultural uses require a higher level of scrutiny than is currently provided under the existing regulations. To address the need to reduce the impacts associated with this water use, the Department is proposing both technical and administrative amendments to the rules that include new definitions, requirements for more precise source location information, additional assessment of natural resource impacts, more stringent certification conditions to protect natural resources and other users, requiring that cranberry growing operations provide the method used to determine water usage, and a requirement to submit an agricultural development plan to justify maintaining allocation amounts at the level approved in the certification when water use reports indicate less than that amount is being used.

Subchapter 1 - General Provisions

N.J.A.C. 7:20A-1 sets forth the scope and authority of the chapter; describes how the chapter

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is to be construed; defines the words and terms used in the chapter; describes and provides a schedule for those applying for water usage certifications and agricultural water usage registrations; and establishes privileges to divert water.

The Department is proposing to amend N.J.A.C. 7:20A-1.1 to clarify that the rules govern modifications and renewals of water usage certifications and agricultural water usage registrations as well as the initial establishment of them.

The Department is proposing to amend N.J.A.C. 7:20A-1.2(c) to include the implementation of agricultural management practices for conserving water, minimizing the amount of water required, and using the lowest quality water for the intended purpose of the diversion to be presumed in the public interest. The Department will consider the size of the area to be irrigated, crop type and amount of impervious surface on the farm management unit as key criteria in the decision-making process, as explained below with reference to subchapter 2 and certification application and review. Changing agricultural practices in New Jersey are resulting in additional impervious surfaces through increased use of impermeable plastic ground cover, greenhouses, and other agriculture-related structures. Impervious surface reduces the recharge capability of the site and impacts surface water quality and ground water levels. Implementation of improved agricultural management practices will help off-set some of the water quality and water quantity impacts resulting from increased impervious surface use. This will be achieved by requiring that the volume of water necessary is minimized through water conservation practices and by requiring that high-quality waters are only utilized when there is no practicable or appropriate alternative, such as, stormwater capture or reclaimed water for beneficial re-use.

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The Department is proposing the following new definitions at N.J.A.C. 7:20A-1.3:

“Agricultural development plan.” In a significant number of water usage certifications, the reported water use is much less than the amount of water allocated. To manage the State’s water supply in accordance with the intent of the Act and ensure there is a clear need for the water allocated, the Department undertakes, where appropriate, to reduce the amount of unused allocations. Certification holders may assert that the excess water is needed to meet future water demands resulting from irrigating additional acreage, expanded operations or changing crop types to meet evolving markets. The agricultural development plan is intended to address the issue of unused water in a certification by having the certification holder develop and implement a plan that confirms the water is reasonably needed for future use. If the operation is not developed in accordance with the plan and the water needs are not consistent with the plan, the Department may propose to reduce the amount of water allocated in a current water usage certification at the time of renewal.

“Agricultural management practices.” Water supply in the State is stressed by lowering aquifer levels, saltwater intrusion, contamination and reduced stream flows. In a growing number of regions of the State, additional water is not available to meet growing demands. This situation requires all users of water to use it efficiently and effectively. When considering an application for a water usage certification, the Department will assess the agricultural management practices on a farm management unit when determining if the diversion of water is in the public interest and if methods, techniques and actions are taken to conserve water and protect natural resources. Technical guidance documents prepared by the Rutgers Cooperative Research and Extension,

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and United States Department of Agriculture, where appropriate, will be used by the Department when requiring the implementation of agricultural management practices on a farm management unit.

“Authorized representative.” The Department proposes to replace references to lessee, operator, farmer and other similar terms with “authorized representative,” which is defined as a person that the owner of the farm management unit on which the agricultural, aquacultural, or horticultural activity is taking place or is planned has designated in writing to the appropriate county agricultural agent and the Department as having authority to act on the owner’s behalf on matters governed by this chapter. The authorized representative may include a lessee, the farmer and/or operator, or other person so designated by the owner to perform agricultural, aquacultural or horticultural activities on the farm management unit.

“Farm management unit.” This term and definition are intended to better identify the area and facilities constituting the activity for which a water usage certification is issued. This clarity is key when determining the amount of impervious surface on a parcel, regulating agricultural, aquacultural and horticultural water use on multiple of parcels under one certification, assessing the agricultural development plan, and determining water supply needs.

“Freshwater wetland or wetland.” The Department is proposing to incorporate into these rules the definition in the Freshwater Wetland Protection Act rules at N.J.A.C. 7:7A. This proposed definition is necessary for the Department to include freshwater wetlands in the assessment of potential natural resource impacts resulting from a diversion of water in accordance with this chapter.

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“Impervious surface.” With the increasing use of greenhouses and other structures, and the expanding use of impermeable ground cover in agricultural, aquacultural and horticultural operations, and the impacts such impervious cover has on water quality and supply, the Department will assess the amount of impervious surface on a farm management unit when making water allocation decisions on applications for a water usage certification. The proposed definition explains what the Department considers to be an impervious surface.

“Off-stream pond.” The Department is proposing to reduce the regulatory burden by addressing increases in pumping capacities from off-stream ponds as a minor modification to a certification. The definition is necessary to implement this change.

“Passing flow.” Impacts to stream flow will be considered by the Department during review of an application for a water usage certification. Passing flow in a stream is one of the tools available to the Department to make such impact assessments.

“Public water system.” The Department is proposing this definition for purposes of determining if water is being received from a permitted public supply and therefore a certification is not required, when assessing source water protection areas, and when assessing impacts to other users. This term is also included as a “person” in this chapter.

“Saltwater.” This definition is proposed for purposes of determining if a diversion is exempt from regulation and when considering if a diversion is accelerating saltwater intrusion as addressed in this chapter. Because the salinity of water varies in concentration, the definition establishes the standard as 10,000 mg/L.

The Department also proposes to amend the following existing definitions at N.J.A.C.

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7:20A-1.3 for clarification and consistency.

The term “agricultural, aquacultural, or horticultural purposes” is proposed to be amended to provide that crops grown for consumption by animals are considered agricultural products.

“Agricultural water use registration” or “water use registration” is proposed to be amended to include the word “usage” to replace “use.” The phrase “submitted to and processed by the county agricultural agent by” is deleted because the essential concept is that the registration is the particular document. The issuance process is addressed elsewhere in the rules. In addition, the Department is proposing to amend this definition to clarify that the 100,000 gallons of water per day threshold is from one or cumulatively from a combination of multiple diversion sources.

“Applicant” is proposed to be amended to clarify that an applicant may be seeking to establish, modify or renew a certification. As explained elsewhere, “farm management unit” replaces “property” to more clearly define the area for which the certification or registration is being issued, and “authorized representative” replaces “a person leasing the property for agricultural, aquacultural, or horticultural purposes.”

The Department is proposing to delete “Cone of depression” because the term is not used in this chapter.

"Decision maker" is proposed to be amended by deleting "recommendations to the appropriate county agricultural agent" and adding "decisions" and "after consultation with the appropriate county agricultural agent" to clarify that the Department, not the county agricultural

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agent, makes the decision on a diversion application. However, the Department will continue to consult with the county agricultural agent prior to making the decision on an application.

“Diversion source” is proposed to be amended to replace “structure” with “aquifer and/or surface water sources from which a diversion of water is made and the associated infrastructure” to expand the definition to include the source providing the water as well as the infrastructure by which the water is diverted.

“Drought” is proposed to be amended to include that it is a condition characterized by various factors that together warrant the declaration of a drought watch, warning and/or water supply emergency in accordance with the Water Supply Management Act, N.J.S.A. 18A-1 et seq. and the implementing rules at N.J.A.C. 7:19-13.1(d).

“Lawful Entry” is proposed to be amended by replacing “his or her” with “the Commissioner’s” for consistency with the proposed amendment to the definition of “Commissioner.” Reference to N.J.S.A.58:1A-15c is also added to clarify the authority for making such investigations. The definition is further proposed to be amended to expand lawful entry to include investigating actual or suspected non-compliance with the Act.

“Modification” is proposed to be amended by adding “monthly and/or annual” and substituting “volume” for “amount” to clarify what changes constitute a modification to an existing water usage certification under these rules.

“Person” is proposed to be amended to include others who may be impacted by a diversion of water and may not be engaged in agricultural, aquacultural or horticultural practices. In its current form, the definition only includes those engaged in agricultural, aquacultural or

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horticultural activities, but not other agencies, groups or persons who may be impacted by these activities.

“Potentiometric surface” is proposed to be amended by replacing “head” with “elevation” to more accurately reflect what is being measured.

“Replacement well” is proposed to be amended by replacing “will” with “shall” to require sealing of the well being replaced, and correcting the reference to the Well Construction and Maintenance; Sealing of Abandoned Wells rules. The definition is further revised to allow, under certain circumstances, for a replacement well to be beyond 100 feet from the existing well as described in N.J.A.C. 7:20A-2.2(a)1i. Often situations arise whereby, due to the location of structures, facilities or other barriers, a replacement well cannot be located within 100 feet of the existing well. Currently in these situations the water usage certification holder would be required to obtain a major modification of the water usage certification in order to divert from the replacement well. The proposed amendment to the definition would allow under certain conditions, as determined by the Department, approval of a replacement well located greater than 100 feet from the existing well as a minor modification to the water usage certification. This would reduce the regulatory burden on the water usage certification holder with a minimal impact on the water resource.

“Water resource” is proposed to be amended to include “freshwater wetland”.

“Water supply critical aquifer” is proposed to be amended to provide that such an aquifer may be one where circumstances exist under which the Department determines that special measures are required to ensure the integrity and viability of the water source and to protect the

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public health, safety and welfare to make it more consistent with how this term is defined in the Water Supply Allocation Permits rules at N.J.A.C. 7:19.

“Water usage certification or “certification” is proposed to be amended by deleting “by a county agricultural agent or the Department pursuant to this chapter” because the essential concept is that the certification is the particular document. The issuance process is addressed elsewhere in the rules.

“Well” is proposed to be amended to provide that it is a hole or excavation larger than four inches in diameter or a hole or excavation greater than ten feet in depth and to specify that it can be for the emplacement of water. These changes make the definition more consistent with the definition of the term in the Well Construction and Maintenance; Sealing of Abandoned Wells rules at N.J.A.C. 7:9D.

“Well sealing” is proposed to be amended by adding the words “or decommissioning” for clarification, and correcting the citation to the Well Construction and Maintenance; Sealing of Abandoned Wells rules.

“Zone of influence” is proposed to be amended to clarify that water level is the impact of interest when establishing the zone of influence.

In the applicability provisions at N.J.A.C. 7:20A-1.4 (a), the Department proposes to replace “wish to” with “seek approval” to improve the text.

The Department proposes amendments at N.J.A.C. 7:20A-1.4(a)2 by replacing “diverting” with “receiving,” by replacing “purveyor or for transfers from a water purveyor”

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with “public water system” and by deleting “water usage certification” to accurately reflect that a water usage certification is not required when a person is receiving water from a public water system within the scope of an existing water supply allocation permit.

At proposed new N.J.A.C. 7:20A-1.4(a)2i, the Department proposes to prohibit the transfer of water from an existing water usage certification to a non-agricultural use. The Department is frequently approached by purchasers of agricultural lands who request the certification be transferred for a different non-agricultural use. The proposed amendments to this subsection are intended to prohibit such transfers and be consistent with the Water Supply Allocation Permits rules at N.J.A.C. 7:19, under which non-agricultural practices are regulated.

The Department is proposing to amend N.J.A.C. 7:20A-1.4(a)3 to establish that the 100,000 gallons of water per day withdrawal threshold includes cumulative diversions from all sources. The purpose of this amendment is to ensure that multiple diversions within close proximity and having potentially significant impacts are considered in a single certification, rather than allowing multiple diversions by the same person to be included in multiple agricultural water usage registrations where the standards for resource protection are less stringent. Amendments to N.J.A.C. 7:20A-1.4(a)3i, ii and iii are proposed to replace “management” with “authorized representative” to more clearly identify when diversions from multiple properties would require a water usage certification.

The Department proposes to amend N.J.A.C. 7:20A-1.4(a)4 to reference N.J.A.C. 7:20A-2.3 and 2.5 because these subsections also include application requirements for major modifications of water usage certifications. The Department proposes to amend N.J.A.C.

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7:20A(a)4i(1) to provide that the location of the replacement well must be submitted in accordance with the standards set forth at proposed N.J.A.C. 7:20A-2.3(e). N.J.A.C. 7:20A-1.4(a)4i(3) is proposed for amendment to specify that the well permit number that is assigned by the State of New Jersey is required. Accurate source locations are very important in assessing impacts to other users of the water resources, natural resources and contaminated sites, and to ensure wells can be located when they are no longer in use and must be decommissioned. Utilizing the requirements proposed at N.J.A.C. 7:20A-2.3(e) to identify source locations will improve accuracy and enable those seeking water supply allocation permits, water usage certifications, and the remediation of contaminated sites to better evaluate the impacts of their actions.

At N.J.A.C. 7:20A-1.4(a)4ii, the Department proposes to correct the citation to the Well Construction and Maintenance; Sealing of Abandoned Wells rules.

The Department proposes recodifying N.J.A.C. 7:20A-1.4(a)4iii as N.J.A.C. 7:20A-1.4(a)4iv with amendments as described below. The Department proposes new N.J.A.C. 7:20A-1.4(a)4iii to require the holder of a water usage certification to notify the appropriate county agricultural agent of the installation of a replacement well within thirty days of installation. Often the Department is not aware that a replacement well has been installed because the certification holder has failed to notify the county agricultural agent. Because the Department's Well Permitting Program annually receives thousands of well applications, often staff are unable to identify those specific applications that are for a replacement well in a water usage

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certification. The proposed notification requirement will ensure that both the county agricultural agent and the Department are aware of this activity.

At N.J.A.C. 7:20A-1.4(a)4iv, the Department proposes to amend the timeframe within which the county agricultural agent is required to report the installation of the replacement well to the Department from the current 60 days to 30 days following notification by the holder of the certification. This will ensure the Department is aware of the replacement well for the water usage certification in a timely fashion, as described above.

At N.J.A.C. 7:20A-1.4(b), the Department proposes to amend this subsection to specify that the maximum month of usage is based on the three year period immediately preceding the date the application was submitted rather than the previous calendar year. The proposed three year evaluation reduces the likelihood that a one year anomaly in precipitation or other event would overly influence this assessment. “Measuring month” is replaced by “ maximum month of usage”. The amendments clarify how the Department determines whether a water usage certification or an agricultural water usage registration is required.

The Department is proposing new N.J.A.C. 7:20A- 1.4(d) to clarify that the water usage certification or agricultural water usage registration is issued to the owner or designated representative of the farm management unit on which the agricultural, aquacultural or horticultural activity occurs. It further states that the water usage certification or an agricultural water usage registration remains in effect until it is cancelled or modified by the holder, it expires without renewal, or it is revoked by the Department.

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The Department is proposing to amend the provisions regarding uncertified diversions at N.J.A.C. 7:20A-1.5(a) to clarify that any person having the capability to divert water at a rate in excess of 100,000 gallons per day is prohibited from doing so without first obtaining the appropriate water usage certification, or agricultural water usage registration pursuant to this chapter.

The Department is proposing to amend N.J.A.C. 7:20A-1.5(d) by replacing “he or she” with “the certification holder” for clarity. N.J.A.C. 1.5(d)3 is proposed to be amended by prohibiting an uncertified diversion from a critical water supply aquifer, or from a point on a stream that is upstream of a public water supply intake or a discharge regulated under the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the implementing rules at N.J.A.C. 7:14A. This is intended to ensure sufficient water continues to be available for the public water supply to meet demand and enable the facility regulated under N.J.A.C. 7:14A to meet its permit discharge limits.

The Department is proposing new N.J.A.C. 7:20A-1.5(e) to incorporate the requirements of the Water Supply Management Act (N.J.S.A. 58:1A-1 et seq.) and to clarify that anyone who holds a Water Policy and Supply Council permit valid prior to August 13, 1981, but who did not re-establish that privilege to divert water as of February 9, 1982, shall apply for a water usage certification in accordance with these rules. The Department occasionally receives claims that water is being diverted under approval by a Water Policy and Supply Council permit, when the person has neither applied for nor received a water usage certification.

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The Department is proposing to amend the water usage certification transfer provisions at N.J.A.C. 7:20A-1.6(a), (a)1 and (a)2 to reflect the proposed amendment at N.J.A.C. 7:20A-1.4(d) that the water usage certification is issued to the owner of the farm management unit or the authorized representative.

The Department is proposing to delete N.J.A.C. 7:20A-1.6(b) because the new water usage certification holder is responsible for knowing their obligations under the rules rather than the person from whom the transfer originates. The existing rules require the person transferring the water usage certification to inform the new water usage certification holder of their obligation to notify the county agricultural agent and the Department of the transfer. The Department has determined that the existing requirement places an unreasonable burden on the person transferring the water usage certification.

The Department proposes to amend the provisions regarding complaints of interference at N.J.A.C. 7:20A-1.7(a) to include a diversion that is operating in violation of this chapter to expand the universe of diversions adversely impacting other existing users of the water source that must be reported to the Department. The proposed amendment will better protect the water diversion privileges of those diverting under an approved certification.

The Department proposes to amend N.J.A.C. 1.7(c) to provide that if a complaint appears valid, the Department will investigate to make a determination as to the cause of the complaint. The Department is also proposing new N.J.A.C. 7:20A-1.7(c)i to establish that the water usage certification holder is responsible for mitigating adverse impacts to surface or ground water, or to other users, caused as a direct result of the diversion. Protecting the diversion

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privileges of existing, authorized users is a prominent objective of the Act and is necessary to ensure those who have depended on such sources can continue to have sufficient access to the water from which they have been granted the privilege to divert.

N.J.A.C. 7:20A-1.8 is proposed to be amended by replacing, “Water Supply Element” with the “Division of Water Supply” to reflect the current name of the program.

Subchapter 2. Water Usage Certification Procedure

N.J.A.C. 7:20A-2 prescribes the procedures to be followed by applicants when applying for a water usage certification, and by county agricultural agents and the Department when processing the applications for water usage certifications.

The Department is proposing to amend N.J.A.C. 7:20A-2.2(a) by adding a cross-reference to N.J.A.C. 7:20A-2.5 to ensure all the standards for obtaining a major modification to a water usage certification are met. The Department is proposing to amend N.J.A.C. 7:20A-2.2(a)1 to specify that the location of a replacement well in a different aquifer than the existing well requires a major modification. When a replacement well is placed in a different aquifer than the one originally used as the source, the impacts may also be different and require additional review by the Department to assess any such impacts. The major modification process facilitates this additional scrutiny.

Proposed new N.J.A.C. 7:20A-2.2(a)1i authorizes the Department, provided specific conditions are met by the certification holder, to approve as a minor modification a replacement well or the relocation of an intake more than 100 feet from the location specified in the existing

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certification. The proposed amendment is intended to streamline the modification process in those situations where, due to a physical barrier or obstruction, the replacement source cannot be located within 100 feet of the existing source. However, in no case shall the relocation of a well or intake greater than 200 feet from the existing well or closer to a contamination site on the Department's known contaminated site list, a surface water classified as category one pursuant to N.J.A.C. 7:9B, or to an exceptional resource value fresh water wetland pursuant to N.J.A.C. 7:7A-2.4(b), or within 500 feet of the property line for the replacement well or diversion source be considered as a minor modification of a water usage certification.

The Department is proposing to amend N.J.A.C. 7:20A-2.2(a)3 by deleting pumping capacity since the pumping capacity provision is included at proposed new N.J.A.C. 7:20A-2.2(a)4. The Department is proposing to recodify N.J.A.C. 7:20A-2.2(a)4 at N.J.A.C. 7:20A-2.2(a)5 with no change in text.

The Department is proposing new N.J.A.C. 7:20A-2.2(a)4 to require a major modification for an increase in pump capacity. Also proposed is an exception from the requirement to obtain a major modification for increases in pump capacity for off-stream ponds. The Department has determined that an increase in pump capacity for an off-stream pond intake will have no adverse impact on natural resources and therefore, the minor modification option, which reduces the administrative burden on the certification holder, is appropriate.

The Department is proposing to amend N.J.A.C. 7:20A-2.2(b)1 by adding "agricultural" to "county agent" for consistency throughout the chapter. In addition, a reference to the replacement well criteria proposed at N.J.A.C. 7:20A-2.2(a)1i is added should the replacement

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well qualify for a minor modification. The Department is proposing to amend N.J.A.C. 7:20A-2.2(b)4 to include the new proposed criteria for a replacement well at N.J.A.C. 7:20A-2.2(a)1i. Other proposed amendments include deleting the reference to N.J.S.A. 58:4A-14(c) and replacing it with N.J.A.C. 7:9D-1.15 which includes more detailed well record requirements and reference to this citation will facilitate identification and compliance with this provision. The section is being amended to replace the requirement of submitting a sketch showing the location of the additional well with the requirement that the location of the additional well be shown on a map produced in accordance with new N.J.A.C. 7:20A-2.3(e), as described below.

The Department is proposing new N.J.A.C. 7:20A-2.2(b)6 to allow an increase in pump capacity for off-stream ponds to be issued as a minor modification, provided there is no increase in the volume of water allocated for such purposes. As stated previously, the Department has determined that an increased pumping capacity on an off-stream pond will not have an adverse impact on water resources.

The Department is proposing to amend the section title of N.J.A.C. 7:20A-2.3 to include requirements in addition to general application procedures. At N.J.A.C. 7:20A-2.3(b), the Department is proposing to delete the requirement that an applicant obtain a photocopy of the appropriate portion of the United States Geological Survey Quadrangle Map or county road map from the county agricultural agent because more extensive mapping requirements are proposed at new N.J.A.C. 7:20A-2.3(e).

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The Department is proposing to amend N.J.A.C. 7:20A-2.3(c) by deleting the requirement to submit a photocopy of the United States Geological Survey Quadrangle Map or county road map, and proposes to include a new requirement for the site to be clearly delineated as required at proposed new N.J.A.C. 7:20A-2.3(e).

The Department is proposing to recodify N.J.A.C. 7:20A-2.3(d) at N.J.A.C. 7:20A-2.3(g) with amendments as described below. Proposed new N.J.A.C. 7:20A-2.3(d) requires the county agricultural agent to submit all applications and application cover letters for diversions located within the Delaware River Basin to the Delaware River Basin Commission (DRBC), in addition to the Department. Qualifying diversions within the Delaware River Basin must receive approval from the DRBC, as required by that agency's regulations, prior to diverting water. The Department is also proposing at N.J.A.C. 7:20A-2.3(d)2 that proof of filing the application with the DRBC be provided with the water usage certification application to the Department. These proposed changes to the rules facilitate compliance with the DRBC requirement.

The Department is proposing to recodify N.J.A.C. 7:20A-2.3(e) at N.J.A.C. 7:20A-2.3(h) with amendments as described below. Proposed new N.J.A.C. 7:20A-2.3(e) establishes criteria for reporting diversion source locations in an application for a water usage certification. The Department is proposing new standards at N.J.A.C. 7:20A-2.3(e)1 to include submittal of a map produced using the Department's internet mapping tool available at www.nj.gov/dep/gis. The Department is also proposing new standards at N.J.A.C. 7:20A-2.3(e)2 to require that source locations be identified using the Global Positioning System (GPS), a licensed surveyor, or other Department approved method that meets the standards established at N.J.A.C. 7:1D, Appendix

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A. The information required at N.J.A.C. 7:20A-2.3(e) 1 and 2 will provide more accurate source location data that is essential for enabling the Department to assess potential impacts to other existing users, natural resources, contaminated sites, source water protection areas, saltwater intrusion areas, and areas of critical water supply concern. More accurate locational information will also assist with the location of wells should they be abandoned and require decommissioning pursuant to N.J.A.C. 7:9D. Historically, source location information for issued water usage certifications has been routinely inaccurate, often resulting in reported source locations not on the correct property, and in some cases not located in the same municipality. The provisions proposed in this subsection are intended to remedy this problem. The Department anticipates proposing similar location standards for well permits and well records in the Well Construction and Maintenance; Sealing of Abandoned Wells rules, N.J.A.C. 7:9D. These standards, if adopted, would be in effect for the installation of all new wells regardless of the intended use. The standards proposed under this subchapter will be for all new and existing wells and surface water sources. Existing wells in water usage certifications currently in effect will be addressed when the water usage certification comes up for renewal or an application for a modification to the water usage certification is submitted.

The Department is also proposing new N.J.A.C. 7:20A-2.3(e)3 which establishes that the applicant and/or certification holder is responsible for the accuracy of the source location identified in the application and inaccurate submittals may result in revocation of a certification and/or enforcement action.

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The Department is proposing new N.J.A.C. 7:20A-2.3(f) to require an applicant to provide information to demonstrate that the water requested is the lowest quality for the intended use. For non-edible crops, the Department may require the use of reclaimed water for beneficial re-use for irrigation where available and feasible. The Department seeks to conserve the highest quality water for potable purposes, consumable agricultural products and to support State planning initiatives. In many regions of the State ground water supplies are threatened by saltwater intrusion, excessive diversions and contamination. It is imperative that the State conserve the highest quality water for users that require a high quality water, such as public water supplies and agricultural products primarily intended for human consumption. Where use of lower quality water is appropriate, use of reclaimed water is sound policy and is in the interest of the citizens of the State.

The Department is proposing to amend N.J.A.C. 7:20A-2.3(g) by substituting “notarized” for “certified” to clarify that the document by which the applicant authorizes a representative to sign on its behalf must be signed and the seal affixed by a notary public. The Department is also proposing new N.J.A.C. 7:20A-2.3(g)1 to require a statement from the applicant certifying that the information submitted is true, accurate and complete. The Department is proposing to amend N.J.A.C. 7:20A-2.3(h) by adding a reference to N.J.A.C. 7:20A-2.3 to ensure all relevant requirements are identified.

Proposed new N.J.A.C. 7:20A-2.3(i) requires the county agricultural agent to submit a complete application to the Department for review and processing. This proposed new

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subsection is intended to clarify that the county agricultural agent, rather than the owner or authorized representative, submits the application to the Department.

The Department is proposing new N.J.A.C. 7:20A-2.3(j) provides that the water usage certification decision is made by the Department, in consultation with the county agricultural agent. The county agricultural agent is the primary contact with the certification holder or applicant, and plays a significant role in the decision process. The water usage certification document is still produced by the Department's New Jersey Environmental Management System (NJEMS) database. NJEMS provides the Department with a powerful tool to manage water usage certifications, track water usage and assess compliance with the regulations. The information in NJEMS is used by applicants for not only water usage certifications, but also for water supply allocation permits. The information enables these applicants to identify existing users who may be adversely impacted by their request.

The Department is proposing to amend the requirements for renewals at N.J.A.C. 7:20A-2.4(a) by recodifying the requirements for submitting a water usage certification renewal application to N.J.A.C. 7:20A-2.4(a)1 as discussed below. Proposed new N.J.A.C. 7:20A-2.4(a)1 requires that an application for renewing an existing water usage certification be submitted to the county agricultural agent at least three months prior to the expiration of the existing water usage certification.

Proposing new N.J.A.C. 7:20A-2.4(a)2 requires the applicant to submit the appropriate application form and all information necessary for the Department to make a decision on the application. Proposed new N.J.A.C. 7:20A-2.4(a)3 describes the actions the Department may

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take against a certification holder does not comply with (a) 1 and 2. These actions include notifying the certification holder the certification has expired, taking enforcement action and/or requiring the certification holder to apply as a new applicant to for a new certification. The proposed amendments are intended to clarify the responsibilities of the certification holder should they want the certification to continue in effect while the renewal application is reviewed and a decision is being considered by the Department. It is imperative that a certification holder submit a renewal application in a timely fashion in order to retain their diversion privileges. In an increasing number of regions throughout the State, water supply is stressed and once a diversion privilege is lost, its reauthorization may not be approved by the Department. The Department believes that the enhanced renewal application requirements will highlight the need for certification holders to responsibly submit renewal applications in a timely fashion, and raise awareness about the potential risk of losing their diversion privileges if they do not. Proposed new N.J.A.C. 2.4(a)4 allows a current certification to remain in effect past the expiration date if the renewal application is submitted to the county agricultural agent at least three months prior to the expiration date.

The Department is proposing to amend N.J.A.C. 7:20A-2.4(b) by adding a cross-reference to N.J.A.C. 7:20A-2.3 to ensure all applicable requirements are applied to an application for a water usage certification renewal. The Department proposes to amend N.J.A.C. 7:20A-2.4(b)1 by replacing “certification holder” with “property owner,” by removing redundant text, and by adding “authorized representative”. Because the property owner may be different than the person performing the agricultural, aquacultural or horticultural activity on the farm

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management unit and bears responsibility with the authorized representative for compliance with these rules, the Department is proposing to require that the property owner be identified on the application for renewing a water usage certification. In the current rules, the “certification holder” could be someone other than the property owner, and the property owner was not required to be identified. This proposed amendment is intended to ensure the property owner is identified on the application. As defined in N.J.A.C. 7:20A-1.3, “authorized representative” is the person designated by the property owner to perform agricultural, aquacultural or horticultural activities on the farm management unit. The water usage certification is issued to the authorized representative who is primarily responsible for compliance with these rules. N.J.A.C. 7:20A-2.4(b)2 is proposed for amendment to clarify that the acreage to be reported is not only the acreage that is being actively farmed, but also the acreage that being utilized for other agricultural, aquacultural or horticultural purposes. The Department is also proposing to require information on the amount of impervious surface currently on the farm management unit as well as that planned during the term of the certification. Agricultural, aquacultural and horticultural activities resulting in significant impervious surface often have greater adverse impacts on water resources than those enterprises that leave the ground open to absorb precipitation and control run off. Various studies comparing the impacts of impervious surface on water quality suggest that when impervious surface exceeds ten percent of the watershed, water quality impairments become evident. Where extensive (greater than ten percent) impervious surface exists or is planned for the farm management unit, the Department may include additional conditions in a water usage certification, such as the use of reclaimed water for beneficial re-use, the increased

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use of stormwater capture, and the use of more efficient irrigation practices. The Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38 provide that agricultural activities are required to obtain an approved farm management plan when there is an increase in impervious surface of three percent or greater, and an approved resource management plan when there is an increase in impervious surface of nine percent or greater on the farm management unit. The requirement to report impervious surface will also assist the Department in ensuring that a water usage certification application in the Highlands Preservation Area is in compliance with the requirements at N.J.A.C. 7:38.

The Department is proposing to amend N.J.A.C. 7:20A-2.4(b)3 by deleting the requirement that a State of New Jersey assigned well permit number be included in the application. This requirement is being proposed at new N.J.A.C. 7:20A-2.4(b)5. The Department is proposing to recodify N.J.A.C. 7:20A(b)4 at N.J.A.C. 7:20A-2.4(b)8 with no change in text. The Department is proposing new N.J.A.C. 7:20A-2.4(b)4 to require identification of each diversion source location using the Department's internet mapping tool, GPS or other Department approved method in order to provide more accurate location information, as described above. The Department is proposing to recodify N.J.A.C. 7:20A-2.4(b) 5 at N.J.A.C. 7:20A-2.4(b) 9 with no change in text. The Department is proposing new N.J.A.C. 7:20A-2.4(b)5 to require that the well permit number, depth, diameter and date the well was drilled be provided in the application for a water usage certification. Obtaining the well permit number will enable the Department to identify the well and thereby assess the construction of the well and aquifer in which it is screened, thus improving the Department's ability to assess impacts to water

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resources and other users. The Department is proposing to recodify N.J.A.C. 7:20A-2.4(b)6 at N.J.A.C. 7:20A-2.4(b)10 with amendments described below. The Department is proposing new N.J.A.C. 7:20A-2.4(b)6 to require that the applicant provide the drainage area upstream of the intake for diversion sources located on streams. The Department will use this information to assess the stream's ability to sustain the requested diversion and may establish a passing flow to protect ecological needs and other users of the stream. This information is available by contacting the United States Geological Survey at 609-771-3900 or at dcnj@usgs.gov. Proposed new N.J.A.C. 7:20A-2.4(b)7 requires an applicant for pond diversions to submit information detailing the average depth, surface area, and the source of the water, including wells or other surface waters used to supplement the pond. The Department will use this information to determine if the pond and the sources of water to the pond can sustain the requested allocation.

The Department is proposing amendments at N.J.A.C. 7:20A-2.4(b)10 to clarify that the purpose of the requested information is to determine how the certification holder is calculating water use. In the addition, the Department is proposing to include a copy of the month-end flow readings if the diversion is metered. The Department is proposing new N.J.A.C. 7:20A-2.4(b)10i to require that a cranberry growing operation provide the method used to determine water usage in the operation. The purpose of this requirement is to reduce multiple counting of the same water in water use reports. By overstating the amount of water actually being used in a cranberry operation through multiple counting of the same water as it moved from bog to bog, Department assessments of the regional water supply are skewed and regional water supply

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planning decisions are made more difficult and less accurate. Reviewing the method to be used by the cranberry growing operation at the time of application will enable the Department to ensure the water reported represents the actual water diverted.

The Department is proposing to amend N.J.A.C. 7:20A-2.4(c) to clarify that when a county agricultural agent finds an application is incomplete and the county agricultural agent notifies the applicant of the incomplete application, the applicant shall send all required information to the county agricultural agent within 30 days of the notification.

The Department proposes to amend N.J.A.C. 7:20A-2.4(d) by adding “agricultural” to county agent for consistency throughout the chapter and by adding that the county agricultural agent must submit the application to the Department. The Department is also proposing two new paragraphs. Proposed new N.J.A.C. 7:20A-2.4(d)1 sets forth the standards for determining the amount of water necessary to meet the needs of an agricultural, aquacultural or horticultural activity. Water needs are based on crop type planted and area under irrigation, acres planned for irrigation, or where appropriate, changes in crop type identified in an approved agricultural development plan. The agricultural development plan is proposed to ensure the amount of water allocated under the water usage certification is reasonably necessary for current and future needs. Currently, there are a significant number of water usage certifications where the approved allocation is not used by the certification holder. When the Department considered reducing the unused portion of the allocation in the water usage certification, certification holders would indicate they continued to require the water because they intended to increase the acreage under irrigation or change crops in response to market conditions. Unless a water usage certification

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holder can demonstrate a reasonable future need in accordance with the agricultural development plan and uses that water in accordance with the plan, the unused portion may be taken from the water usage certification for use by others requiring water, or for areas that may be over allocated, or returned to the natural system to sustain water dependent ecosystems. With this amendment, the Department is attempting to ensure that the amount of water allocated in a water usage certification is reasonable and appropriate. The Department's experience following review of water use reports indicates that, in many situations, certification holders are using only a small fraction of the water approved in the water usage certification. This may result in other agricultural, aquacultural or horticultural users being denied a new certification or an increase in their existing certification because when water allocated is assessed on a regional basis, the results typically show that the water resource is near or exceeding sustainability. When approved diversion amounts are more consistent with actual water use, the Department may be able to approve allocations for others who need water to support their activity. The implementation of an agricultural development plan is expected to result in a more equitable distribution of available water which is consistent with the intent of the Act.

The Department is proposing new N.J.A.C. 7:20A-2.4(d)2 to establish the required content of the agricultural development plan, including a map of the farm management unit with existing and planned cultivated areas delineated, and a listing by acre of crop types currently cultivated and a listing of crop types planned to be cultivated in the future.

The Department is proposing new N.J.A.C. 7:20A-2.4(d)3 to require that the agricultural development plan be submitted with the application for a water usage certification.

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The Department is proposing to amend N.J.A.C. 7:20A-2.4(f) by adding “agricultural” to county agent and by requiring that an agricultural development plan be used to assess future water use needs as described N.J.A.C. 7:20A-2.4(d)1 through (d)3 above.

The Department is proposing to amend N.J.A.C. 7:20A-2.4(g) to modify the name of the entity responsible for issuing a certification renewal. The proposed amendment would delete “Chief of the Bureau Chief of Water Allocation within the Department, or his or her designee” to clarify that it is the Department that will issue the certification renewal. Also proposed is the addition of language clarifying that the term of a renewed water usage certification is five years.

The Department proposes to amend N.J.A.C. 7:20A-2.4(h) by adding that the Department may reduce the amount of water below what is requested in an application or that was previously authorized in the existing water usage certification if the Department determines the allocation is not reasonably required for future use. The Department proposes to amend N.J.A.C. 7:20A-2.4(h)3 by deleting the public notice requirement, and replacing it with an opportunity for the certification holder to submit comments to the Department on the proposed reduction in diversion privileges. The public notice requirement is proposed for deletion because when a diversion is reduced, it is the certification holder, rather than the general public, that has an interest. Historically, the public notice provision has resulted only in unnecessary expenditures of money on public notices that generated little or no public interest. The public notice requirement for any new or major modification will continue as required by the Act.

The Department is proposing to amend N.J.A.C. 7:20A-2.4(i) to include the possibility of issuing an agricultural water usage registration should the recommended allocation be less than

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100,000 gallons per day. The Department also proposes to amend this section to modify the name of the entity responsible for issuing a certification or registration. The proposed amendment would delete “Bureau Chief of Water Allocation” to clarify it is the Department that issues a certification or registration. This amendment is proposed to avoid confusion in the event of specific program name changes in the future.

The Department is proposing several amendments to N.J.A.C. 7:20A-2.4(j) to specify the requirement for a public hearing must be in writing. The Department also is proposing to amend N.J.A.C. 7:20A-2.4(j)3 to delete “Chief, Bureau of Water Allocation” and “his or her designee” to clarify that the certification is issued by the Department. This amendment is proposed to avoid confusion in the event of specific program name changes in the future. In addition, the Department is proposing to amend N.J.A.C. 7:20A-2.4(j)3 to include that the Department may issue an agricultural water usage registration if the reduction results in an allocation of less than 100,000 gallons of water per day, which no longer meets the threshold volume for a water usage certification.

The Department is proposing to delete N.J.A.C. 7:20A-2.4(k) because the dates included in the section have passed and the requirement is no longer applicable.

The Department is proposing to amend the application requirements for water usage certification at N.J.A.C. 7:20A-2.5(a) by including a reference to N.J.A.C. 7:20A-2.3 to ensure all relevant application requirements are met, and to clarify that the application shall be sent to the appropriate county agricultural agent.

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The Department is proposing to amend N.J.A.C. 7:20A-2.5(a)1 by deleting “certification holder, and the name, address, and phone number,” by adding “property,” and by replacing “operator” with “authorized representative” to reflect amendments proposed throughout the chapter and for reasons as described previously.

The Department is proposing new N.J.A.C. 7:20A-2.5(a)1i that would require the owner of the farm management unit to provide any changes in the owner’s authorized representative to the county agricultural agent within 30 days of the change. In addition, the Department is proposing that the county agricultural agent report the change to the Department within 30 days of receiving the notice of the change from the owner.

The Department is proposing to amend N.J.A.C. 7:20A-2.5(a)2 to include the requirement that the number of acres planned to be farmed or otherwise utilized for agriculture, aquaculture or horticulture purposes, crop types planned by acre, and the amount of impervious surface currently on the entire farm management unit or planned within the effective term of the water usage certification be included in the water usage certification application. The acreage and crop information is needed to ensure that allocations reasonably meet existing and planned demands. As stated previously, approved allocations may far exceed the amount of reported water use, thus potentially denying other users access to that water for their demonstrated needs. The Department is also proposing that the applicant or person to whom a water usage certification has been issued submit information on the application demonstrating their future needs in the Agriculture Development Plan. This requirement provides a water usage certification holder an opportunity to show a reasonable future need which may allow them to

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maintain their current allocation limit even if that amount is currently unused. However, if a projected water allocation need does not materialize, the Department is in a better position to make reasonable reductions to the approved water usage certification. The Department is seeking information on the amount of impervious surface on a farm management unit to fully assess its impacts on water resources and to determine if additional conditions in the water usage certification are necessary to eliminate or minimize any such adverse impacts.

The Department is proposing to amend N.J.A.C. 7:20A-2.5(a)3 by recodifying the requirement to provide the State assigned well permit number to proposed new N.J.A.C. 7:20A-2.4(a)5 as discussed below.

The Department is proposing to recodify N.J.A.C. 7:20A-2.5(a)4 at N.J.A.C. 7:20A-2.5(a)8 with no change in text. The Department is proposing new N.J.A.C. 7:20A-2.5(a)4 to require that source locations be identified using the Department's internet mapping tool (i-Map), a licensed surveyor, Global Positioning System (GPS), or other Department approved method that meets the standards established at N.J.A.C. 7:1D, Appendix A. Improved source locations will enable the Department to better assess impacts of diversions on natural resources and other users. It will also facilitate the decommissioning of wells when they are no longer in use.

The Department is proposing to recodify N.J.A.C. 7:20A-2.5(a)5 at N.J.A.C. 7:20A-2.5(a)9 with no change in text. The Department is proposing new N.J.A.C. 7:20A-2.5(a)5 to require that the State assigned well permit number, well depth and diameter, and the date the well was drilled be provided in the application to make it a distinct requirement for clarification and enforcement purposes.

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The Department is proposing to recodify N.J.A.C. 7:20A-2.5(a)6 at N.J.A.C. 7:20A-2.5(a)10 with amendments described below. The Department is proposing new N.J.A.C. 7:20A-2.5(a)6 to require, for diversions from a stream, that the total drainage area in square miles upstream of the intake be included in the application. This information will enable the Department to assess the stream's ability to sustain the requested diversion, assess impacts on other existing users, and protect natural resources in the region. Drainage area information is available from the United States Geological Survey by calling 609-771-3900 or at [www.dcnj@usgs.gov](mailto:dcnj@usgs.gov).

The Department is proposing to recodify N.J.A.C. 7:20A-2.5(a)7 at N.J.A.C. 7:20A-2.5(a)11 with amendments described below. The Department is proposing new N.J.A.C. 7:20A-2.5(a)7 to require, for diversions from a pond, that the depth, surface area and source of the water for the pond be included in the application for a water usage certification. This information is necessary for the Department to assess the sustainability of the pond and the intended source to meet the requested diversion.

The Department is proposing to amend N.J.A.C. 7:20A-2.5(a)10 to require the applicant to provide month end flow meter readings in those situations where diversions are metered. The current rules require only the hours of operation which is appropriate for calculated diversions but not in those instances where meters are employed to measure water usage. The Department is also proposing to add "in order to demonstrate the method used to determine water use" to clarify that the intent of the subsection is to enable the Department to determine how water usage

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is being calculated. This requirement is intended to result in more accurate water usage determinations.

The Department is proposing new N.J.A.C. 7:20A-2.5(a)10i to require that a cranberry growing operation provide the method used to determine water usage in the operation. The purpose of this requirement is to reduce multiple counting of the same water in water use reports. By overstating the amount of water actually being used in a cranberry operation through multiple counting of the same water as it moved from bog to bog, Department assessments of the regional water supply are skewed and regional water supply planning decisions are made more difficult and less accurate. Reviewing the method to be used by the cranberry growing operation at the time of application will enable the Department to ensure the water reported represents the actual water diverted.

The Department is proposing to amend N.J.A.C. 7:20A-2.5 (a)11iii to delete “saline” and add “saltwater” as the term saltwater is defined at N.J.A.C. 7:20A-1.3 and more clearly identifies the water of concern. The Department is proposing to amend N.J.A.C. 7:20A-2.5(a)11(iv) to specify that the applicant shall provide sufficient information to demonstrate that the diversion will not reduce dry season flows or levels in a surface water body so as to adversely affect “ecologically based flows”. This provision is proposed to be added to the existing list of environmental features that the diversion shall not adversely impact. The Department has determined that stream ecology has evolved in response to varying seasonal stream flows and, therefore, efforts should be made to manage water withdrawals in such a manner as to maintain some degree of natural and seasonal fluctuation in flow. Because stream flows are water body

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specific, the Department will determine if establishing ecologically based flows is appropriate and/or feasible for a particular stream segment based on the flow information available and the magnitude of the requested diversion.

Proposed new N.J.A.C. 7:20A-2.5(a)11v requires that the applicant provide sufficient information to demonstrate that the diversion will not affect the hydrology of freshwater wetlands to such a degree that the functions and values of the wetlands are adversely impacted. Wetlands play a major role in enhancing water quality and providing wildlife habitat. The intent of the Act is to protect the State's water resources, of which freshwater wetlands are a significant component. Diminishing these valuable natural resources by denying them the water necessary for their sustenance is not in the public interest nor is it protective of the State's water resources.

At N.J.A.C. 7:20A-2.5(b), the Department is proposing to delete the requirement to submit a copy of the United States Geological Survey Quadrangle map or county road map with the application because the Department is proposing new map requirements at N.J.A.C. 7:20A-2.3(e). The Department is proposing to add language to ensure applications for agricultural, aquacultural and horticultural water usage certifications meet the requirements of the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38. The Department is proposing to require applicants for water usage certifications in the Highlands Preservation Area submit either an approved farm conservation plan or an approved resource management plan with their application for a water usage certification. At proposed new N.J.A.C. 7:20A-2.5(b)1, the Department is requiring that the applicant for a water usage certification located within the Highlands Preservation Area submit a copy of an approved farm conservation plan prepared in

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accordance with the Highlands Water Protection and Planning Act (HWPPA) (N.J.S.A. 13:20-1 et seq.) if the activity will result in an increase of impervious surface of three percent or greater on the farm management unit. At proposed new N.J.A.C. 7:20A-2.5(b)2, the Department requires that an applicant for a water usage certification located within the Highlands Preservation Area submit a copy of an approved resource management plan prepared in accordance with the HWPPA if the activity will result in an increase in impervious surface of nine percent or greater. While the threshold for regulating agricultural, aquacultural and horticultural diversions under the HWPPA was not reduced to 50,000 gallons per day as it was for diversions regulated under the Water Supply Allocation Permits rules at N.J.A.C. 7:19, HWPPA includes planning requirements for agricultural, aquacultural and horticultural activities that result in impervious surface of greater than three percent and greater than nine percent of the farm management unit. The required submittals will allow the Department to determine if the activity is in compliance with HWPPA, and the rules promulgated thereunder at N.J.A.C. 7:38, before issuing a water usage certification.

The Department is proposing to amend N.J.A.C. 7:20A-2.5(d) by adding “agricultural” to county agent. The Department is proposing new N.J.A.C. 7:20-2.5(d)1 to establish criteria for the amount of water to be requested in a water usage certification. Diversion requests are to be limited to the crop types and acreage currently cultivated, or crop types and acreage planned to be cultivated during the effective term of the water usage certification as described in the agricultural development plan. The proposed amendment also includes a provision whereby the Department may reduce an existing allocation, in accordance with N.J.A.C. 7:19-2.4(h), if the

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new crop types or expanded cultivation does not occur as planned within the effective term of the water usage certification. As described previously, the Department has determined that many allocations in water usage certifications far exceed existing or foreseeable needs. This results in far greater anticipated impacts to regional water resources and may result in another deserving agricultural, aquacultural or horticultural activity, or other user group, not being able to secure diversion privileges from the Department due to these potential impacts.

The Department is proposing to amend N.J.A.C. 7:20A-2.5(f) to incorporate the proposed recodification change at N.J.A.C. 7:20A-2.5(a)11, as described above, and by adding “agricultural” to county agent. The Department is proposing to amend N.J.A.C. 7:20A-2.5(g)1 by adding “agricultural” to county agent. The Department is proposing to amend N.J.A.C. 7:20A-2.5(g)(2) to clarify the standards for notifying potential interested parties upon completion of the Department’s review of an application for a water usage certification. Proposed amendments would require the Department to issue a “Notice of Application” providing for a thirty day comment period and a public hearing, if requested on the application. This proposed amendment will ensure the public is properly notified of a pending Department action on a water usage certification, as required by the Act.

The Department is proposing to amend N.J.A.C. 7:20A-2.5(h) to require the Department, rather than the applicant, publish the public notice of the water usage certification application in a newspaper of general circulation after consultation with the county agricultural agent. The Department is also proposing to amend this subsection by adding “agricultural” to county agent. The proposed amendment also establishes that the certification shall not be issued until the

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applicant pays the Department, in full, the costs of publishing the notice in the newspaper. This provision is expected to avoid significant delays in the issuance of application decisions where the applicant fails to submit the notice to the Department. Having the Department publish the notice and requiring the applicant to reimburse the Department for the cost of publication should facilitate the public notice component of the certification process.

The Department is proposing to amend N.J.A.C. 7:20A-2.5(i) and (j) to cross-reference the notice requirements at N.J.A.C. 7:20A-2.5(g) to ensure that the appropriate public notice requirements are included.

The Department is proposing to amend N.J.A.C. 7:20A-2.5(j)1 by replacing “conjunction” with “consultation” because the Department issues the approval but consults with the county agricultural agent in making the decision. The proposed change is to reflect that Department will issue the decision after consulting with the county agricultural agent. The decision is proposed to be issued by the Department and not by the county agricultural agent for the reasons described below. In addition, the Department proposes to replace “prepare a written analysis supporting” with “issue an,” and add “provide a basis for the decision” The proposed change is to clarify that the basis of the Department’s decision on the application will be included as part of the decision document and not a separate document as implied in the current rules. At N.J.A.C. 7:20A-2.5(j)2, the Department proposes to replace “written analysis under” with “the decision at, ” and “supports approval of” with “is to approve the” to make it consistent with the language at N.J.A.C. 7:20A-2.5(j)1 and to clarify that if the decision is to approve the application a certification will be issued. The Department is proposing to amend N.J.A.C. 7:20A-

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2.5(j)2i to provide that the Department will issue the water usage certification in consultation with the county agricultural agent, as explained above with regard to N.J.A.C. 7:20A-2.3(j). Proposed amendment to N.J.A.C. 7:20A-2.5(j)3 deletes the requirement for a written analysis for a denial to make it more consistent with existing practice. Proposed amendment at N.J.A.C. 7:20A-2.5(j)3i establishes, once again that the Department issues the water usage certification in consultation with the county agricultural agent.

The Department is proposing to amend N.J.A.C. 7:20A-2.5(k) for consistency with the proposed amendments at N.J.A.C. 7:20A-2.5(i) and (j). N.J.A.C. 7:20A-2.5(k)1 is proposed for amendment by adding “Rutgers University, The State University of New Jersey” to more appropriately reflect the affiliation of the Dean of Cook College. The Department is proposing to amend N.J.A.C. 7:20A-2.5(k)2 to add “or their authorized representative” to “applicant”. Finally, the Department is proposing to amend N.J.A.C. 7:20A-2.5(k)3 to establish that if an agreement between the involved parties results from the advisory panel meeting, the agreed upon conditions shall be incorporated into the certification document.

The Department is proposing to amend N.J.A.C. 7:20A-2.5(k)4 by adding “of the advisory panel” to clarify the meeting to be held to resolve disputes. Also proposed is an amendment to reduce the timeframe within which comments may be submitted following the public hearing from twenty to fourteen days, or as may be extended by the hearing officer at the public hearing. The Department has determined that fourteen days is sufficient time in which to submit additional comments after a public hearing. Should extenuating circumstances require

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additional time, the hearing officer under this proposal is given the discretion to extend the period if necessary.

The Department is proposing to amend N.J.A.C. 7:20A-2.5(k)5 to delete “analysis” and replace it with “findings” to clarify what is to be presented by the Department at the public hearing. The findings include all the information and data reviewed by the Department that provided the basis for the Department’s recommendation.

The Department is proposing to amend N.J.A.C. 7:20A-2.5(k)6 by deleting the requirement that the hearing officer prepare a hearing officer’s report. The Department is proposing to add language at N.J.A.C. 7:20A-2.5(k)6 that states the hearing officer is to be appointed by the Department and that the hearing officer shall have reasonable discretion to conduct the public hearing. The Department is also proposing new N.J.A.C. 7:20A-2.5(k)6i-6vii to establish and clarify the role of the hearing officer for consistency with the existing process. The proposed amendments establish the format of the public hearing and the content of the hearing officer’s report; requires that the hearing officer allow the Department and the applicant the opportunity to present their findings at the public hearing; allows persons to offer comments; establishes the date when the hearing record closes; provides reasonable time for the applicant to respond to comments presented at the public hearing; requires that the hearing officer review all comments received to ensure they have been properly addressed by the Department; and, requires that the hearing officer submit a hearing officer’s report to the decision maker.

The Department is proposing to amend N.J.A.C. 7:20A-2.5(k)7 to replace “Administrator of the Water Supply Element” with “Chief, Bureau of Water Allocation or other person so

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delegated by the Commissioner” to correctly reference the decision maker, as this is the current program organization. The Department proposes to replace “written analysis of its” with “recommendations” to accurately describe what documents the decision maker is to review prior to issuing the decision. A proposed amendment to N.J.A.C. 7:20A-2.5(k)7i establishes that the Department shall send a copy of the letter of denial to all persons who “request a copy of the final decision.” This proposed amendment is intended to reduce administrative costs and waste by sending documents only to those who have indicated an interest by formally requesting the document. The Department is proposing to amend N.J.A.C. 7:20A-2.5(k)7ii to establish that the Department shall send, in addition to the letter of approval, a copy of the signed certification document to all who “request a copy of the decision.” The decision maker’s statement will no longer be sent with these materials.

The Department is proposing to amend N.J.A.C. 7:20A-2.5(k)8 to clarify what costs pertaining to the public hearing shall be borne by the applicant and that the Department shall bill the applicant for such costs. Also proposed is an amendment to remove “or county agent, as applicable” to clarify that the Department that Department issues the decision documents and not the county agricultural agent as explained regarding N.J.A.C. 7:20A-2.3(j) above. The Department is proposing to amend N.J.A.C. 7:20A-2.6(a) by deleting the text establishing the county agricultural agent as issuing a water usage certification. As stated previously, the Department issues the water usage certification in consultation with the county agricultural agent.

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Also proposed is an amendment to water usage certification conditions at N.J.A.C. 7:20A-2.6(a)4 to require, for metered diversion sources, that month end meter readings indicating the amount of water diverted for each month must be maintained in a log. Some water usage certification holders meter sources to determine their water usage and the rules do not currently require reporting of metered diversions. Daily and/or monthly hours of operation, and the amount of water diverted monthly for each diversion source that is not metered will continue to be entered into the log as is currently required. The Department is also proposing to require that the log or other appropriate record be maintained on the site of the diversion for a minimum of three years.

The Department is proposing to amend .J.A.C. 7:20A-2.6(a)5 to require a water usage certification holder to report monthly water use for each diversion source directly to the Department, with a copy to the county agricultural agent. Water usage reports are important not only to ensure compliance with the allocation limits in the water usage certification, but more importantly the information is used by the Department to assess regional water usage trends and impacts, and to assist in water supply planning efforts. Having the certification holder submit the water usage reports directly to the Department will ensure there is no delay in the Department receiving such information. N.J.A.C. 7:20A-2.6(a)6 is proposed for amendment to require that, in addition to notifying the county agricultural agent of a water usage certification transfer, the holder of a water usage certification must also notify the Department. The information is important to the Department's ability to track the holders of water usage certification as well as to ensure the Department is provided the information without significant delay. At N.J.A.C.

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7:20A-2.6(a)8, the Department is proposing an amendment to include the addition of “only” to emphasize that the water diverted not be used for any other purpose than that approved in the water usage certification. The Department is proposing to amend N.J.A.C. 7:20A-2.6(a)9 to include that the water not currently being utilized or not reasonably required for future use, as described in the agricultural development plan, shall revert back to the State as determined by the Department. The Department, as authorized by the Act, must consider reducing the amount of water allocated in a water usage certification when there is no demonstrated need for that water to ensure equity among various water users and to ensure there is sufficient water in certain areas to meet ecological and natural resource needs.

The Department is proposing to amend N.J.A.C. 7:20A-2.6(a)10 by adding “or as authorized under N.J.A.C. 7:20A-2.2(a)1i” to clarify under what conditions a minor modification may be approved if a replacement well must be located greater than 100 feet from the existing well. The Department is also proposing to amend this section to exempt the addition of an off-stream pond from the requirement for a major modification. These amendments are consistent with those proposed at N.J.A.C. 7:20A-2.2(a)1i and 2.2(b)6, respectively. The Department has determined that diverting from an off-stream pond at a higher rate, but not at a greater amount, does not impose a sufficient impact to warrant the analysis required under a major modification. The Department is proposing new N.J.A.C. 7:20A-2.6(a)12 which authorizes the Department to establish a passing flow as a condition in a water use certification where the diversion may impact or has the potential to impact surface water bodies. In establishing the passing flow, the Department may consider the impacts to other downstream users, existing holders of a valid

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water supply allocation permit or registration, water usage certification or agricultural water usage registration, aquatic and water-dependent ecological requirements, use and classification of the waterbody, natural seasonal flow regimes, the safe yield of existing water supply systems, and the feasibility of establishing a passing flow. The proposed amendment is necessary to adequately protect natural resources and other users from the impacts associated with diversions of water for agricultural purposes. The proposed new provision also allows the Department to use its discretion when determining if a passing flow is necessary and feasible. The Department is proposing new N.J.A.C. 7:20A-2.6(a)12i because passing flow assessment tools are continually evolving as our understanding of ecological impacts grows and the Department wants to ensure it has the authority to implement such new tools as they develop.

The Department is proposing new N.J.A.C. 7:20A-2.6(a)13 to establish that the certification holder is responsible for mitigating adverse impacts to ground or surface water, or to permitted or authorized users of wells or surface waters, that are a direct result of the certification holder's diversion. This proposed amendment is necessary to adequately protect natural resources and other users from the impacts associated with diversions of water for agricultural purposes. Not all impacts from a diversion can always be foreseen at the time the water usage certification is issued. Only when the water is actually being diverted may such impacts become evident.

Proposed new N.J.A.C. 7:20A-2.6(a)14 authorizes the Department to establish additional conditions in a new or modified water usage certification for the protection of public community water systems, pursuant to the New Jersey Safe Drinking Water Act rules, N.J.A.C. 7:10-11.7.

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Farming is considered a minor pollutant source pursuant to the aforementioned rules.

Accordingly, the Department will require the use of agricultural management practices prior to approving new or major modifications to water usage certifications that may impact a public community water system.

The Department is proposing to amend the record of decision provisions at N.J.A.C. 7:20A-2.7(a) to add “agricultural” to county agent. Also proposed is an amendment to replace “analysis” with “basis” to more accurately describe the Department’s review of the water usage certification application. While the Department reviews the request made in the application and assesses potential impacts, a water usage certification application does not undergo the level of scrutiny nor is it required to perform the same level of testing as those applying for a water supply allocation permit under N.J.A.C. 7:19. The Act addresses agricultural, aquacultural and horticultural activity separately from other user groups, and the relatively less stringent review of agricultural, aquacultural and horticultural is consistent with the intent of the Act.

The Department is proposing to amend the appeal provisions at N.J.A.C. 7:20A-2.8 to clarify that a certification holder may request a contested case hearing on a Department decision regarding a water usage certification, since the rule already provides at N.J.A.C. 7:20A-2.8(a) that a decision by the Department to revoke or modify an issued approval can be appealed pursuant to this section.

The Department proposes to amend the rule regarding certifications that include the right to construct a dam at N.J.A.C. 7:20A-2.9 to establish that the Department, in consultation with the county agricultural agent, issues such a water usage certification.

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Subchapter 3. Agricultural Water Usage Registration Procedure

The Department is proposing to change the title of subchapter 3 to be consistent with the proposed amendment to the term “agricultural water usage registration” described above with regard to N.J.A.C. 7:20A-1.3.

N.J.A.C. 7:20A-3 prescribes the procedures an applicant is to follow when applying for a registration that the county agricultural agent and the Department follow when processing the application.

A proposed amendment to N.J.A.C. 7:20A-3.2(c) would establish that an applicant for a modification to an agricultural water usage registration must contact the county agricultural agent for an application. At N.J.A.C. 7:20A-3.2(c)-(d), the Department proposes to delete reference to a photocopy of the appropriate United States Geological Survey Quadrangle Map or county road map as an item to be provided by the county agricultural agent, as the proposed amendments to the mapping requirements at N.J.A.C. 7:20A-2.3(e) will provide more accurate locations for the farm management unit and the sources to be used to divert water under the agricultural water usage registration.

The Department is proposing to amend N.J.A.C. 7:20A-3.2(d)1i to add that the applicant’s telephone number must be provided, and to require that the applicant either be the property owner or the authorized representative. This amendment is consistent with the amendments to the application requirements proposed elsewhere in the chapter. An amendment

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proposed at N.J.A.C. 7:20A-3.2(d)1ii will require that all source locations in the application be located on a map as required in N.J.A.C. 7:20A-2.3(e). The Department also proposes to delete the reference to well permit number from this section as it is being added as a requirement under N.J.A.C. 7:20A-3.2(d)1iii. As described previously, accuracy of source locations is critical to the Department's ability to adequately assess a diversion source's impact on other users, contaminated sites and environmental resources. The standards proposed at N.J.A.C. 7:20A-2.3(e) will improve the level of accuracy of locational data. At N.J.A.C. 7:20A-3.2(d)1iii, the Department is proposing to delete the requirement to provide the location of each diversion source on a United States Geological Survey Quadrangle or county road map for the reasons described above. Also, the Department proposes to amend this provision to require that the following information be submitted with an application if the source is a well: the New Jersey assigned the well permit number; well depth and diameter; pump capacity, and the date the well was drilled. This information will enable the Department to better assess not only the potential impacts the requested diversion may have on other users of the aquifer, contaminated sites and natural resources, but will also aid in properly decommissioning the well at a later date should it be removed from service.

The Department is proposing to recodify existing N.J.A.C. 7:20A-3.2(d)1iv at N.J.A.C. 7:20A-3.2(d)1v with amendments described below. Proposed new N.J.A.C. 7:20A-3.2(d)1iv will require in the application, if the source is a pond, the average depth, surface area in acres, and the source of water to the pond. This information will assist the applicant, the Department

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and the county agricultural agent in determining if the pond has the capacity to provide the water requested in the application.

The Department is proposing to amend N.J.A.C. 7:20A-3.2(d)1v to require that the maximum quantity of water to be diverted from each source must be provided on an annual basis as well as a monthly basis. Providing the annual amount of water requested will enable the Department and the county agricultural agent to better assess potential impacts resulting from the diversion.

The Department is proposing to recodify existing N.J.A.C. 7:20A-3.2(d)1v at N.J.A.C. 7:20A-3.2(d)1vi. The Department is proposing to amend N.J.A.C. 7:20A-3.2(d)1vi to add the requirement that the applicant provide the number of acres intended to be farmed as indicated in the Agriculture Development Plan. This information will be used by the Department and the county agricultural agent for determining if the water requested is appropriate for the intended purpose.

The Department is proposing to recodify existing N.J.A.C. 7:20A-3.2(d)1vi at N.J.A.C. 7:20A-3.1(d)1vii with no change in text.

The Department is proposing new N.J.A.C. 7:20A-3.2(d)1viii to require that the applicant include in the application a description of the irrigation equipment and irrigation practices to be used. This information will assist the Department and the county agricultural agent to determine if irrigation practices and equipment conserve water to the maximum extent practicable.

The Department is proposing to amend N.J.A.C. 7:20A-3.2(f) to replace “on” with “upon.”

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The Department is proposing new N.J.A.C. 7:20A-3.2(g) to establish the conditions the Department will include in an agricultural water usage registration. Proposed new N.J.A.C. 7:20A-3.2(g)1 provides that the agricultural water usage registration will include the list of approved diversion sources and the approved diversion rates for each source. This information facilitates the proper tracking of source locations and the assessment of potential impacts to existing and future diversions and natural resources. Proposed new N.J.A.C. 7:20A-3.2(g)2 sets forth the requirement that a registration holder maintain a log or other record in which the daily and/or monthly hours of operation for each diversion source are recorded. This information helps ensure compliance with the use limitation authorized under an agricultural water usage registration. Proposed new N.J.A.C. 7:20A-3.2(g)3 sets forth the requirement that the agricultural water usage registration holder submit to the Department by February 28 of each year, with a copy to the appropriate county agricultural agent, a report for the preceding calendar year of the monthly water usage for each diversion source, the crop types planted and the acres of each crop irrigated. This information helps ensure compliance with the agricultural water usage registration and facilitates the assessment of cumulative regional impacts from numerous diversion sources. Proposed new N.J.A.C. 7:20A-3.2(g)4 establishes that the Department can revoke an agricultural water usage registration, after notice and an adjudicatory hearing, if requested, for violations of the registration conditions, or rules, or Department orders, or when in the public interest. Proposed new N.J.A.C. 7:20A-3.2(g)5 restricts use of the water to the approved purpose(s) identified in the agricultural water usage registration. There have been instances where an agricultural water usage registration has been used to supplement the water

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needs of other user groups, such as golf courses, when the facility was unable to obtain a water supply allocation permit due to resource limitations or potential adverse impacts to other users. This condition is intended to eliminate that practice. Proposed new N.J.A.C. 7:20A-3.2(g)6 establishes what changes to the operations require a modification of the agricultural water usage registration or where an water usage certification may be needed. Changes that require a modification to the registration or a water usage certification include increased diversion, relocation of a source more than 100 feet from the existing source or pursuant to N.J.A.C. 7:20A-2.2(a)1i, addition of a new source, and/or an increase in pumping capacity. These are substantial changes that the Department must fully assess for potential adverse impacts to other users and natural resources.

Subchapter 4. Civil Administrative Penalties and Requests for Adjudicatory Hearings

This subchapter governs the Department's assessment of civil administrative penalties under the Act for violations of any provision of the Act, this chapter or any order adopted or issued by the Department pursuant to this chapter.

The Department is proposing to amend N.J.A.C. 7:20A-4.4(a)(2) to raise the civil administrative penalty for refusing the Department lawful entry and inspection to determine compliance with the water usage certification or agricultural water usage registration from a maximum of \$800 to a maximum of \$2,000. This increase is intended to deter a holder of a water usage certification or agricultural water usage registration from refusing inspections to assess compliance or any potential adverse impact the diversion may be causing.

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The Department is proposing to amend N.J.A.C. 7:20A-4.4(b)1 to raise the civil administrative penalty for an intentional, deliberate, purposeful, knowing or willful act or omission from \$3,000 to the statutory maximum of \$5,000 (see N.J.S.A. 58:1A-16). At N.J.A.C. 7:20A-4.4(b)2, the Department is proposing to increase the civil administrative penalty for an unintentional but foreseeable act or omission from \$1,500 to \$2,500. The Department is proposing to amend N.J.A.C. 7:20A-4.4(b)3 to increase the civil administrative penalty from \$1,000 to \$2,000 for all other violations.

The Department is proposing to increase the penalties for these to deter non-compliance with these rules, thereby helping ensure sufficient water remains available for other users of the State's water resources. The proposed penalty amounts are consistent with those in the Water Supply Allocation Permits Rules at N.J.A.C. 7:19-18.

Social Impact

New Jersey is a very densely populated, diversified state whose residents, industries and agriculture require substantial amounts of water. Within the State, approximately 1,100 agricultural water usage certifications and registrations are in effect for those persons diverting over 100,000 gallons of water per day. Without effective planning and management of the quantity and use of the State's water resources, including water supply emergencies, the State's future development, public health and well-being, and its ability to sustain agriculture, aquaculture and horticulture enterprises could be jeopardized. The Department manages the water supplies of the State to protect them for drinking water, industrial, agricultural, aquacultural and horticultural purposes, and to ensure their viability for future generations. The

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rules proposed readoption with amendments will enable the Department to continue managing available water supplies for agricultural, aquacultural and horticultural purposes, the protection of water resources and for public drinking water supply.

Economic Impact

While there are no fees imposed upon water usage certification holders and applicants by these rules proposed for readoption with amendments, there are costs associated with filing for certification including the costs to publish the public notice of the application and public hearing in a local newspaper, and the costs associated with a stenographer if a public hearing is held. Generally, the services of a professional engineer or geologist are not required to prepare an application for certification. However, the inclusion of a more in-depth assessment of natural resource impacts and the potential establishment of passing flows may require an applicant to secure the services of a consultant to prepare an application. In addition, reporting source locations using a Global Positioning System (GPS) device, survey or other acceptable method approved by the Department may result in the water usage certification or registration holder/applicant incurring costs to secure the services of a qualified person to make these measurements. Should the water usage certification or registration holder/applicant decide to determine the source locations themselves, acceptable GPS units, including associated software may cost up to approximately \$6,000 to purchase. The costs associated with determining source locations accurately is more than offset by the benefits of improved source locations that allow for far better assessments to be performed on potential impacts to other existing users, contaminated sites and natural resources.

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Once a certification is issued, costs to the certification holder may include the costs of reporting the annual amount of water diverted and the continued monitoring of groundwater and/or surface water levels should the certification holder choose to rely upon a vendor for this service.

The Department believes that the regulated community will not incur significant increases in costs to come into compliance with the rules proposed for readoption with amendments. The rules proposed for readoption with amendments will continue to provide an economic benefit to the general public, as implementation of the rules will help ensure the adequacy of the State's water resource for all user groups.

Environmental Impact

Clean and reliable water supplies are essential to the welfare of New Jersey's citizens, businesses and farmers. The Department's experience shows that water supplies upon which the citizens, businesses and farmers depend upon is a limited resource. Allowing uncontrolled use of the State's water resources, without regard to long term demand and natural resource protection, would ultimately result in an insufficient supply and adverse impacts to natural systems as the demand grows. The rules proposed for readoption with amendments will have a positive effect on the environment by ensuring proper management of the State's water resources for its citizens' future use. Management of the State's water resources will prevent depletion of these resources and ensures that New Jersey's citizens, businesses and farmers will have a safe and dependable supply of water to meet current and future needs.

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Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), require State agencies which adopt, readopt or amend state regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. N.J.A.C. 7:20A is not promulgated under authority of, or in order to implement, comply with or participate in any program established under Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis.

Jobs Impact

The rules proposed for readoption will have little impact on agriculture-related jobs in the State because the tasks required to be performed under these rules are generally performed by operators of agricultural, aquacultural and horticultural enterprises themselves or with assistance from the county agricultural agent. However, by managing the State's water resources as provided in the rules water resources are conserved for possible use by residential consumers, business and industry which has the potential have a positive impact on jobs in those sectors. Sufficient quantities of high-quality water are imperative for the State's economy to continue to grow and prosper and create jobs for its citizens.

Agriculture Industry Impact

The rules proposed for readoption with amendments implement the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., as it applies to those persons diverting or having the capability to divert 100,000 or more gallons of water per day for agricultural, aquacultural and

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horticultural purposes. Thus, the rules proposed for readoption directly impact the agriculture, aquaculture and horticulture industries. The rules proposed for readoption require that persons who have the ability to divert 100,000 or more gallons of water per day to either register with the Department or obtain a certification for their water use. The registration requirement applies to persons who are capable of diverting 100,000 or more gallons of water per day but who divert less than that amount. The certification program applies to persons who divert more than 100,000 or more gallons of water per day. The certification program ensures that diversions of water for agricultural, aquacultural or horticultural purposes are adequate to meet the respective users' water needs, but do not deplete the State's surface and/or ground water resources or adversely impact other existing users of the water resources. The registration program creates a record of a category of large-volume diversions so that the Department can better assess the State's water supplies.

The water usage certification and registration program has been in effect since 1981 and imposes the minimum regulatory requirements on the agricultural, aquacultural and horticultural industries necessary to enable the Department to manage the State's water resources. The county agricultural agents have an integral role in the program to facilitate completion of the necessary application requirements, prepare necessary reports and work with farmers to determine their water supply needs. This program enables the Department to monitor and manage water supply which, over the long term, will help ensure that the agricultural, aquacultural and horticultural industries remain viable in New Jersey.

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Regulatory Flexibility Analysis

The rules proposed for readoption with amendments apply to all persons having the capability to divert 100,000 or more gallons of water per day for agricultural, aquacultural or horticultural purposes. Of the approximate 1,100 certification and registration holders impacted by these rules, the Department believes the majority are “small businesses” as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In complying with the rules, small businesses diverting water will incur only minimal costs. Such costs are associated with assessing natural resource impacts, implementing certification conditions that require resource protection, publishing application notices in the newspaper, maintaining the appropriate water use records, and if a hearing is required, paying the costs of a stenographer. Other costs associated with developing diversion sources and irrigation systems, would be incurred regardless of these rules.

In proposing to readopt this chapter with amendments, the Department has balanced the need to protect and manage the State’s water resources against the economic impact of the rules on small businesses. The Department has determined that to minimize the impact of the rules on small businesses would endanger the environment, public health and safety, and existing and future users of the water resources, including the small businesses themselves. Therefore, no exemptions for small businesses are provided.

As discussed in the Economic Impact statement, the costs associated with securing the services of a consultant to prepare an application or the services of a qualified person to make measurements can range from a thousand to ten’s of thousands of dollars depending on the

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complexity of the area, the size and duration of a pump test and the number of sources. The Department does not anticipate that small businesses will have to secure professional services in order to complete the agricultural development plan because the county agricultural agent usually assists with conservation methods and can also assist with the completion of the agricultural development plan.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal State regulations to include in the rulemaking document a Smart Growth Impact statement that describes the impact the rules proposed for readoption with amendments would have on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the impact on smart growth and implementation of the State Plan. Managing the State's water resources to ensure there is a safe and dependable supply of water to meet the diversified needs of the State facilitates implementation of the smart growth initiative. By ensuring water to support agricultural, aquacultural and horticultural purposes is used wisely, water resources will be available to support smart growth goals. Tracking agricultural, aquacultural and horticultural use patterns will improve the State's smart growth planning capabilities by providing the data necessary to make informed planning decisions. Without such planning, there is a risk that sufficient water may not be available to support smart growth development at the time such development is to occur. The Department believes the water resource management program established under this chapter is consistent with the State's achievement of smart growth and implementation of the State Plan.

Full text of the proposed readoption with amendments (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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CHAPTER 20A AGRICULTURAL, AQUACULTURAL, AND HORTICULTURAL WATER USAGE CERTIFICATION RULES

SUBCHAPTER 1. GENERAL PROVISIONS

7:20A-1.1 Scope and authority

This chapter shall constitute **the** rules governing water usage certifications for agricultural, aquacultural, and horticultural purposes, **and agricultural water usage registrations** pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq. This chapter establishes the schedule and reporting procedure that persons having the capability to divert 100,000 or more gallons of water per day for agricultural, aquacultural, or horticultural purposes shall follow to establish their privilege to divert water and prescribes the application, review, notification and hearing procedures for establishing privileges to divert water and to obtain, **modify or renew** water usage certifications and/or registrations.

7:20A-1.2 Construction

(a) – (b) (No change).

c) Any agricultural, aquacultural, or horticultural uses of water in the State of New Jersey will be presumed to be in the public interest for the purpose of this chapter, **provided the agricultural, aquacultural, or horticultural activity employs agricultural management**

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practices for conserving water to the maximum extent possible, minimizes the amount of water utilized, and uses the lowest quality of water for the intended purpose considering the size of the farm management unit where water will be used, crop type, and the amount of impervious surface on the farm management unit.

7:20A-1.3

Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

...

"Agricultural, aquacultural, or horticultural purposes" means the commercial activity of producing principally for sale aquatic organisms, crops, plants, animals or their products for the use or consumption by humans **and/or animals** including [in a primary sense] the growing, harvesting, storage and the on-farm preparation for use and marketing of aquatic organisms, crops, plants, animals or their products.

...

“Agricultural development plan” means a plan for identifying crop types anticipated to be planted, anticipated for the expansion of agricultural or horticultural activities into areas of the farm management unit currently not cultivated and/or irrigated,

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and/or the amount of impervious surface planned on the farm management unit during the effective period of the water usage certification.

“Agriculture management practices” means those methods, techniques and actions employed to conserve water and protect natural resources as described in various bulletins and guidance documents prepared and distributed by the Rutgers Cooperative Research and Extension, New Jersey Agricultural Experiment Station, Rutgers University and/or the United States Department of Agriculture.

"Agricultural water [use]**usage** registration" or "water [use] **usage** registration" means the document [submitted to and processed by the county agricultural agent by] **issued to** persons having the capability to divert more than 100,000 gallons of water per day **from a source or combination of sources**, but [using] **whose actual usage is less than 100,000 gallons of water per day** [said quantity] for agricultural, aquacultural, or horticultural purposes.

"Applicant" means any person filing or required to file an application [for] **to establish, modify or renew** a water usage certification or water [use] **usage** registration [to establish, a privilege] to divert water pursuant to this chapter or the Act. An applicant may be the owner, [or operator] of **the** [property] **farm management unit** or [a person leasing property for agricultural, aquacultural, or horticultural purposes] **the authorized representative**.

“Authorized representative” means the person that the owner of the farm management unit on which the agricultural, aquacultural, or horticultural activity is

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taking place or is planned has designated in writing to the appropriate county agricultural agent and the Department as having authority to act on the owner's behalf on matters governed by this chapter. The authorized representative may include a lessee, the farmer and/or operator, or other person so designated by the owner to perform agricultural, aquacultural or horticultural activities on the farm management unit.

...

“Commissioner” means the Commissioner of the Department of Environmental Protection or [his or her] **the Commissioner's** designated representative.

[“Cone of depression” means an area where the groundwater has been drawn down to the point where the aquifer to be utilized is overstressed, threatened by saline intrusion or in a critical water supply area.]

...

“Decision maker” means the person designated by the Department to make [recommendations to the appropriate county agricultural agent] **decisions** on applications, **after consultation with the appropriate county agricultural agent,** for water usage certifications and claims of privileges to divert water.

...

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“Diversion source” means the [structure] aquifer and/or surface water sources from which a diversion of water is made and the associated infrastructure by which water is diverted.

...

“Drought” means a climatic condition [of dryness due to] characterized by lower than normal precipitation, and resulting in reduced stream flows, reduced soil moisture, reduced groundwater levels and/or a lowering of the potentiometric surface in wells that warrants or may warrant a declaration of a drought warning pursuant to N.J.A.C. 7:19-13.1(d), or a water supply emergency pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

“Farm management unit” means a parcel or parcels of land, whether contiguous or noncontiguous, together with agricultural, aquacultural or horticultural buildings, structures and facilities, producing agricultural, aquacultural or horticultural products, and operated under common ownership or by a common authorized representative if the same person is representing multiple owners, whether active or inactive, and as such parcels are reflected by lot and block numbers, or metes and bounds.

“ Freshwater wetland” or “wetland” means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically

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adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; provided, however, that the Department, in designating a wetland, shall use the three-parameter approach (that is, hydrology, soils, and vegetation) enumerated in the 1989 Federal Manual as defined in the Freshwater Wetlands Protection Acts rules at 7:7A. These include tidally influenced wetlands which have not been included on a promulgated map pursuant to the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq. It shall not mean a “farmed wetland” pursuant to N.J.A.C. 7:7A.

“Impervious surface” means any structure or surface that prevents the infiltration of precipitation into the land. Examples of impervious surfaces include, but are not limited to, pavement, roof tops, sidewalks, driveways, barns, hoop houses, greenhouses, plastic or other impermeable ground cover, sheds, foundations, houses, garages, commercial buildings, compacted soil or stone areas, and lined ponds. This term shall not include temporary structures that remain in place for less than six months per calendar year.

“Lawful entry” means an entry by the Commissioner, or [his or her] the Commissioner’s designated representative, into any building, place, or premise pursuant to N.J.S.A. 13:1D-1 et seq. and N.J.S.A.58:1A-15c, and otherwise provided by law, ordinance, regulation, order, permit, certification, or agreement, as may be required for the purpose of investigating actual or suspected non-compliance with the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

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"Modification" means a change to a certification including, but not limited to, an increase in monthly and/or annual certification [amount] volume, the addition of a new diversion source, or an increase in pump capacity of an existing diversion source.

...

"Off-stream pond" means a pond or other impoundment used for water supply purposes that is not connected directly by structures or channels to a surface water body, whereby the surface water is able to flow into the pond or impoundment, and where diverting from the pond or impoundment will not impact the flow or water level of the surface water.

"Passing flow" means the volume of water required to be maintained at a selected point in the stream to promote water quantity and quality conditions after consideration of downstream users and ecological needs.

"Person" means any individual, corporation, company, partnership, firm, association, owner, [or operator of an enterprise engaged in agricultural, aquacultural, or horticultural purposes] political subdivision of this State, or of any State, interstate or Federal agency, authorized representative, or a public water system.

"Potentiometric surface" means an imaginary surface which represents the static [head] elevation of water, relative to sea level, in a well constructed in an aquifer.

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“Public water system” means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves at least 25 individuals daily for at least 60 days out of the year. This term includes any collection, treatment, storage and distribution facilities under control of the operator of such system and used primarily in connection with such system, and any collection or pre-treatment storage facilities not under such control which are used primarily in connection with the system.

“Replacement well” means a new well that is to replace an existing well which [will] **shall** be sealed in accordance with N.J.A.C. [7:9-9] **7:9D-3** and where the proposed well will be approximately the same depth as the existing well and diverting from the same aquifer; have the same or lesser pumping capacity; and be within 100 feet of the existing well, **or as prescribed in N.J.A.C. 7:20A-2.2(a)1i.**

...

“Saltwater” means water that contains chloride concentrations in excess of 10,000 mg/L.

...

“Water resource” means any river, stream, lake, pond, **freshwater wetland**, aquifer, other underground source, or other water body.

...

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"Water supply critical aquifer" means an aquifer within an area of critical water supply concern in which there may be either insufficient water supply, shortage of ground water due to overdraft, threat of salt water intrusion or contamination, **or where other circumstances exist under which the Department determines that special measures are required to ensure the integrity and viability of the water source and to protect the public health, safety and welfare.**

"Water usage certification" or "certification" means the document issued [by a county agricultural agent or the Department pursuant to this chapter] to a person granting that person the privilege to divert 100,000 gallons or more of water per day from ground and surface water sources for agricultural, aquacultural, or horticultural purposes for a five-year period.

"Well" means a hole or excavation [deeper than it is wide,] **larger than four inches in diameter or a hole or excavation greater than ten feet in depth,** that is drilled, bored, [core] driven, **cored,** jetted, dug or otherwise constructed for the purpose of the removal **or emplacement** of, investigation of, or exploration for water.

"Well sealing" means the permanent closure **or decommissioning** of a well in accordance with the procedures set forth at [N.J.A.C. 7:9-9] **N.J.A.C. 7:9D-3.**

"Zone of influence" means the area of ground water which experiences an impact **in water level** attributable to a pumping well.

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(a) This chapter applies to all persons who have been issued a water usage certification, and to other persons who are diverting, have the ability to divert 100,000 or more gallons of water per day for agricultural, aquacultural, or horticultural purposes, and to all persons who in the future [wish] **seek approval** to divert 100,000 or more gallons of water per day for agricultural, aquacultural, or horticultural purposes except as specified below:

1. This chapter does not apply to persons who divert salt water except where the Department determines that **a** salt water diversion and usage may affect the utilization of fresh water.

2. Water usage certifications shall not be required for a person [diverting] **receiving** water from a [purveyor or for transfers from a water purveyor] **public water system** within the scope of an existing [water usage certification or] water supply allocation permit. Modification of a certification shall be required for diversions or transfers of water from [certified or permitted usage] **a water usage certification** to another use not within the scope of an existing water usage certification regardless of the same or different ownership of the property.

i. Transfers of water from an existing water usage certification to a non-agricultural use is prohibited.

3. An applicant with a total demand of 100,000 or more gallons of water per day **from one or cumulatively from multiple sources** may be issued a water diversion allocation from ground and surface water sources by a single water usage certification in cases where:

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i. The agricultural, aquacultural, or horticultural site or group of properties under common ownership or [management] **under a single authorized representative** are contiguous to each other;

ii. The noncontiguous agricultural, aquacultural, or horticultural site or group of properties under common ownership or [management] **under a single authorized representative** are all located within the same municipality; or

iii. The noncontiguous agricultural, aquacultural, or horticultural site or group of properties under common ownership or [management] **under a single authorized representative** lie within an area of a square two miles on a side.

4. An application for a major modification of a water usage certification, as provided for under [in] N.J.A.C. 7:20A- 2.2 [(a)] **2.3 and 2.5**, is not required for the installation of a replacement well for an existing well included in an existing water usage certification.

i. Prior to the installation of the replacement well, the holder of the existing water usage certification shall provide the following information to the appropriate county agricultural agent for the replacement well and the existing well:

(1) Location **of the replacement well and the existing well on a map prepared in accordance with N.J.A.C. 7:20A-2.3 (e)**;

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(2) Pump capacity and depth; and

(3) [Well] **State of New Jersey assigned well** permit number and local name or number.

ii. The holder of the water usage certification shall provide the State of New Jersey assigned well permit number for the existing well that is to be sealed to the person sealing the well. The existing well shall be sealed in accordance with N.J.A.C. 7:9[-9]**D-3.**

iii. The holder of a water usage certification shall notify the appropriate county agricultural agent of the installation of the replacement well within thirty days after the replacement well was installed.

[iii.] **iv.** The county agricultural agent shall submit to the Department the information required under (a) 4i above within [60] **30** days after **notification by the holder of the certification of** the installation of the replacement well.

(b) An applicant shall be considered to have diverted 100,000 or more gallons of water per day for agricultural, aquacultural, or horticultural purposes if the applicant proposes to divert 100,000 or more gallons of water per day, or existing documentation establishes that the applicant's proposed or actual total gallons of water diverted for agricultural, aquacultural, or

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horticultural purposes during the maximum month [for] of usage in [calendar year most recent to the time of the application] the three year period immediately preceding the date the application was submitted, when divided by the total number of days in the [measuring month] maximum month of usage, [produces a figure of] equals 100,000 or more gallons of water per day.

(c) (No change.)

(d) A water usage certification or water usage registration is issued to the owner or authorized representative of a specific farm management unit and remains in effect for that farm management unit until such time as the certification or registration is cancelled or modified by the owner or authorized representative of the farm management unit, expires without renewal, or is revoked by the Department pursuant to N.J.A.C. 7:20A-2.6(a)7.

7:20A-1.5

Uncertified diversions

(a) No person shall divert or have the capability to divert water either from a single diversion source or from combined diversion sources at a rate in excess of 100,000 gallons of water per day without either obtaining a water usage certification or water [use] usage registration in accordance with this chapter, or obtaining a Water Supply Allocation Permit or a Temporary Dewatering Permit, a Water Use Registration, or complying with the requirements

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for a Short Term Water Use Permit-by-Rule or Dewatering Permit-by-Rule in accordance with N.J.A.C. 7:19.

(b) –(c) (No change.)

(d) Any certification holder who, because of a water supply shortage and/or water quality emergency, seeks to divert water from a diversion source for which [he or she] **the certification holder** does not have diversion privileges under a certification issued pursuant to this chapter, shall obtain from the appropriate county agricultural agent written verification of the water supply shortage and/or water quality emergency, and shall submit the verification with a written request for authorization for the uncertified diversion to the Department at: Bureau Chief, Bureau of Water Allocation, P.O. Box 426, Trenton, New Jersey 08625-0426. The certification holder shall be eligible for authorization for the uncertified diversion only if the following requirements are met:

1. The certification holder applies for a modification of [its] **their** certification under N.J.A.C. 7:20A-2.2 within 30 calendar days of the initiation of the uncertified diversion authorized under this subsection;

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2. The certification holder uses the uncertified diversion authorized under this subsection only on a last on, first off basis until the certification modification required under (d)1 above is approved; and

3. The uncertified diversion is not from a water supply critical aquifer **or from a point on a stream that is upstream of a public water supply intake or discharge regulated under the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the implementing rules at N.J.A.C. 7:14A.**

(e) Pursuant to N.J.S.A. 58:1A-6(a)(1), any person who holds a Water Policy and Supply Council permit that was valid prior to August 13, 1981, but who did not re-establish that privilege to divert water by February 9, 1982, shall apply for a water usage certification under these rules.

7:20A-1.6 Procedure for transfer of a water usage certification

(a) An existing water usage certification for any [property] **farm management unit** utilized for agricultural, aquacultural, or horticultural purposes that has been transferred in ownership, **authorized representative** and/or operation without any change or modification in the specified conditions of water usage for agricultural, aquacultural, or horticultural purposes, may be transferred to the new owner [or operator] of the [property] **farm management unit or**

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the authorized representative upon notification by the new owner [or operator of] or the authorized representative to the appropriate county agricultural agent and the Department except that:

1. If any change in the specified conditions of water usage or [property] farm management unit utilization for agricultural, aquacultural, or horticultural purposes occurs prior to or subsequent to the transfer of ownership, authorized representative, and/or operation, then the new owner or [operator] authorized representative shall follow the application process for new water usage certifications outlined in N.J.A.C. 7:20A-2.

2. If the new owner or [operator] authorized representative of the [property] farm management unit does not notify the appropriate county agricultural agent and the Department of the transfer of the existing water usage certification within 180 days after the transfer of ownership or operation, then the privilege of the new owner or [operator] authorized representative to divert water under the existing water usage certification shall cease and the new owner or [operator] authorized representative shall follow the application process for new water usage certifications outlined in N.J.A.C. 7:20A-2 to establish the privilege to divert water.

[(b) A certification holder who enters into an agreement for the transfer of ownership or operation of property used for agricultural, aquacultural, or horticultural purposes for which a water usage certification has been issued under this chapter shall notify the new owner or

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operator that the new owner or operator must notify the appropriate county agricultural agent of the transfer. The certification holder shall submit to the appropriate county agent a copy of this notification.]

7:20A-1.7

Complaints of interference

(a) The appropriate county agricultural agent shall refer to the Department all complaints received from persons alleging that their diversion source is being adversely impacted by an existing diversion source [which] **that** is included within a water usage certification **or a diversion that is operating in violation of this chapter.**

(b) (No change.)

(c) The Department shall determine the validity of all such complaints. If the complaint [is] **appears to be** valid, the Department shall investigate and make a determination as to cause based upon the facts in each particular case. The Department shall notify the complainant, the certification holder, and the appropriate county agricultural agent of its findings and shall, if necessary, direct that a solution be implemented within 30 days.

i. The water usage certification holder is responsible for mitigating adverse impacts on ground or surface waters, the users thereof who had a water supply allocation permit or water usage certification, and/or all authorized users of the ground or surface waters in

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operation prior to the water usage certification being issued to the water usage certification

holder, caused as a direct result of the diversion.

7:20A-1.8

Program information

Unless otherwise specified, any questions concerning the requirements of this chapter shall be directed to the appropriate county agricultural agent, or to the Bureau of Water Allocation, [Water Supply Element] **Division of Water Supply**, New Jersey Department of Environmental Protection, P.O. Box 426, Trenton, New Jersey 08625-0426.

7:20A-1.9 (No Change.)

SUBCHAPTER 2.

WATER USAGE CERTIFICATION PROCEDURE

7:20A-2.1 (No change.)

7:20A-2.2 Major and minor certification modifications

(a) A major modification of a water usage certification shall be obtained pursuant to N.J.A.C. 7:20A-2.3 **and 2.5** for the following:

1. The relocation of an intake or well to a site more than 100 feet from the site of the intake or well specified in the certification, **or the location of replacement well in a different aquifer;**

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i. The Department shall approve a replacement well in the same aquifer or the relocation of a diversion point greater than 100 feet from the existing well or existing intake as a minor modification to the water usage certification pursuant to (b) below if, as determined by the Department, there are structures, facilities or physical barriers situated such that the replacement well or relocated intake cannot be located within 100 feet of the existing well or existing intake. In this event, the replacement well or relocated intake shall be located as near to the existing well or existing intake as possible. However, in no case shall a replacement well or relocated intake located beyond 200 feet from the existing well or existing intake, or closer to a contamination site on the Department's known contaminated site list, a surface water classified as category one pursuant to N.J.A.C. 7:9B, or to an exceptional resource value fresh water wetland pursuant to N.J.A.C. 7:7A-2.4(b), or within 500 feet of the property line for the replacement well be considered as a minor modification in accordance with (b) below.

2.. (No change.)

3. An increase in [pumping capacity, or] monthly or annual allocation; [and/or]

4. An increase in pumping capacity, except for an off-stream pond intake that can be processed as a minor modification pursuant to (b) below; and/or

[4] **5.** (No change in text.)

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(b) A minor modification of a water usage certification may be effected pursuant to the following:

1. A change in name or mailing address of the certification holder by a written notice of the change to the county **agricultural** agent and the Department within 30 days of the change;

2. (No change.)

3. The installation of a replacement well in accordance with N.J.A.C. 7:20A-1.4(a)4 **or as determined pursuant to N.J.A.C. 7:20A-2.2(a)1i**;

4. The addition of a well in the same aquifer at the approximate same depth, with the same or lower pumping capacity as a well specified in the certification, provided the additional well is within 100 feet, **or as determined pursuant to N.J.A.C. 7:20A-2.2(a)1i**, of the existing well, is being added solely to reduce the irrigation time, and does not require any increase in allocation. The additional well shall not be any closer than 500 feet to any property line. The certification holder shall provide the appropriate county agricultural agent with a copy of the well record form as required under [N.J.S.A. 58:4A-14(c)] **N.J.A.C. 7:9D-1.15** for the additional well and [a sketch showing] the location of the additional well relative to the existing well with the distance between the two wells delineated[; and/or] **on a map produced in accordance with N.J.A.C. 7:20A-2.3(e)**;

5. A reduction in allocation in accordance with N.J.A.C. 7:20A-2.4(h)[.]; **and**

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6. An increase in pumping capacity for an off-stream pond intake that does not require an increase in allocation.

7:20A-2.3

General application procedures **and requirements**

- (a) (No change.)
- (b) An applicant for a water usage certification to renew, or establish a privilege to divert 100,000 or more gallons of water per day for agricultural, aquacultural or horticultural purposes, or for a major modification of the certification shall contact the appropriate county agricultural agent to obtain application forms [a photocopy of the appropriate portion of the United States Geological Survey Quadrangle Map or county road map,] and other instructions needed to file a complete application.
- (c) The applicant shall follow all the instructions to complete the application forms, and shall obtain and prepare all other documents, including [the] **a** [photo]copy of [the appropriate portion of the United States Geological Survey Quadrangle Map or county road map,] **a map produced in accordance with (e) below with the farm management unit clearly delineated, as** required by the instructions.

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(d) If one or more existing or proposed diversion sources are located within the Delaware River Basin, the county agricultural agent shall also:

1. Submit, at the time the water usage certification application is submitted to the Department, a copy of the application to the Delaware River Basin Commission (DRBC), P.O. Box 7360, West Trenton, New Jersey, 08628-0360; and

2. Provide a copy of the application cover letter sent to DRBC in accordance with (d)1 above, or other proof of filing with the DRBC, to the Department.

(e) The location of each water diversion source as required shall be identified on:

1. A map produced from the Department's internet mapping tool (i-Map) available on the Department's website at www.nj.gov/dep/gis. The map must be produced at a scale whereby streets and key features are clearly visible.

2. Diversion source locations shall be determined using the Global Positioning System (GPS), the Department's internet mapping tool (i-Map), a New Jersey licensed land surveyor, or other method meeting the Department standards at N.J.A.C. 7:1D, as set forth at Appendix A, with source locations reported in New Jersey State plane coordinates. The location shall be taken at the well head or intake opening, or if the location cannot be collected at one of those locations, at another location on the subject property, as close as possible to the well head or intake opening.

3. The applicant and/or water usage certification holder is responsible for the accuracy of all source locations identified in the application. Failure to provide accurate

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source locations may be grounds for revocation of the certification and/or enforcement action by the Department.

(f) The applicant for a water usage certification shall provide information to demonstrate the water to be diverted is the lowest quality water that is appropriate for the intended use.

1. For non-edible crops or other non-edible agricultural, aquacultural, or horticultural products, and where determined to be feasible by the Department, the Department may require the use of reclaimed water for beneficial reuse for irrigation or other purposes.

[(d)] (g) All applications shall be signed by the applicant if an individual, or a duly authorized representative of the applicant if the applicant is an entity other than an individual. If the applicant is not an individual, a [certified] notarized copy of the document authorizing the representative to sign for the applicant shall be attached to the application.

1. The applicant, upon submission of an application to the county agricultural agent for renewal, modification or new certification or registration, shall sign and date the following certification on the application form:

i. "To the best of my knowledge, the information submitted in this application is true, accurate and complete. I am aware that there are significant civil and criminal penalties for knowingly submitting false, inaccurate or incomplete information, including the possibility of fines and/or loss of the privileges granted under the water usage certification."

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[(e)] **(h)** The applicant shall complete the application forms and other required documents in accordance with N.J.A.C. 7:20A-**2.3 and** 2.4 or 2.5 as appropriate, and submit the completed application forms and other required documents to the appropriate county agricultural agent.

(i) The county agricultural agent shall submit the complete application to the Department for review and processing.

(j) After review, the Department shall approve, in consultation with the county agricultural agent, the water usage certification application and issue the water usage certification with conditions, deny the application, or return the application to the county agricultural agent for additional consultation with the applicant.

7:20A-2.4 Application requirements and procedures for the renewal with no modification or the renewal with minor modification of an existing water usage certification; extension of certain existing certifications

(a) [An application for renewal of an existing water usage certification shall be submitted to the appropriate county agricultural agent at least three months prior to the expiration date in accordance with the procedures set forth in N.J.A.C. 7:20A-2.3.] Renewals with no or minor modifications, as identified in N.J.A.C. 7:20A-2.2(b), shall be processed in accordance with this section. Renewals with major modifications shall be processed in accordance with N.J.A.C. 7:20A-2.5.

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1. An application for renewal of a current water usage certification shall be submitted to the appropriate county agricultural agent at least three months prior to the expiration date of the existing certification;

2. An applicant for renewal of a current water usage certification shall submit the appropriate application forms and other information as requested by the Department for the proper implementation of the Act and this chapter.

3. If the certification holder does not comply with (1) and (2) above, the Department may:

i. Notify the certification holder by certified mail that the permit has expired;

ii. Take appropriate enforcement action including the assessment of penalties under N.J.A.C. 7:19-18; and/or

iii. Require the certification holder to file an application as a new applicant in accordance with this chapter;

4. A current water usage certification for which a complete renewal application package has been submitted to the county agricultural agent three months prior to the expiration date shall remain in effect until the Department grants or denies the renewal application.

(b) **In addition to the requirements in N.J.A.C. 7:20A-2.3,** [T]the applicant for renewal shall submit a completed application form including the following information:

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1. The name, address, and telephone number of the [certification holder] **property owner**, and [the name, address, and telephone number of the owner or operator;] **the authorized representative, if different**;

2. The total number of acres owned or operated for agricultural, aquacultural, or horticultural purposes, the number of acres actively being farmed[,]
or otherwise utilized for agricultural, aquacultural, or horticultural purposes, the U. S. Department of Agriculture soil mapping unit,
the amount of impervious surface in acres currently on the farm management unit and/or planned in the future, the acreage planted in each crop, and the number of acres of each crop under irrigation;

3. A description of the location of each diversion source, and the name and pumping capacity for each diversion source [including, if the diversion source is a well, the State of New Jersey assigned well permit number];

4. The location of each diversion source shall be identified as required by N.J.A.C. 7:20A -2.3(e);

5. If the diversion source is a well, the State of New Jersey assigned well permit number, the well depth and diameter, and the date the well was drilled;

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6. If the diversion source is a stream, the drainage area in square miles upstream of the intake. This information is available by contacting the United States Geological Survey at 609-771-3900 or dcnj@usgs.gov;

7. If the diversion source is a pond, the average depth, surface area in acres, and the source of water to the pond, including any wells or streams that are used for supplementation;

[4]**8.** A description of the irrigation or water use practices and irrigation equipment used;

[5]**9.** A description of the method used to measure the amounts of water diverted from each diversion source; [and]

[6]**10. To demonstrate the method used to determine water use,** [F]for the last month of operation prior to application, a copy of the daily and/or monthly hours of operation of each diversion source, and[/or] the quantity of water diverted [monthly] **for that month for calculated diversions or a copy of the month end flow meter readings** from each diversion source **for metered diversions** as taken from the log or other appropriate record, as required pursuant to N.J.A.C. 7:20A-2.6(a)4.

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i. For a cranberry growing operation, the applicant shall provide the method used to measure water usage to ensure the same volume of water is not counted multiple times if it is transferred within the bog system of the cranberry growing operation.

(c) The appropriate county agricultural agent shall notify the applicant if the application submitted under (b) above is incomplete, and shall request that the applicant submit any necessary information **to the county agricultural agent** within 30 days of the date of notification.

(d) [On] **Upon** receipt of a complete application, the appropriate county **agricultural** agent shall calculate a water allocation adequate to meet the applicant's water usage requirements based upon the information submitted under (b) above and the agent's knowledge of agriculture, aquaculture, and horticulture **and shall submit the application to the Department.**

1. The amount of water requested shall be based on the crop planted, and the area in acres presently under cultivation, or where there is a formal written agricultural development plan it shall be based on the changes in crop type or the expansion into non-cultivated areas. If upon renewal of the certification the area and/or crop types in the plan have not been cultivated in accordance with the plan, the Department may reduce the amount of water in the certification that had been allocated to that area.

2. The agricultural development plan shall include at a minimum:

i. A map of the farm management unit with the area currently under cultivation depicted;

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ii. A map of the farm management unit with the area planned to be cultivated during the effective period of the certification depicted;

iii. List of crop types currently cultivated and the area in acres of each crop type irrigated;

iv. List of crop types planned to be cultivated during the effective period of the certification and the area in acres of each crop type to be irrigated;

3. The agricultural development plan shall be submitted with the application.

(e) (No change.)

(f) The Department shall review the application, the county **agricultural** agent's recommended water allocation and conditions, and the applicant's historical water usage as reported in accordance with N.J.A.C. 7:20A-2.6(a)5 in consultation with the county agricultural agent, and shall determine if the allocation is reasonably required for future use **as described in the plan at (d)1 through (d)3 above to determine if the allocation is reasonably required for future use.**

(g) If the Department determines under (f) above that the allocation is reasonably required for the applicant's future use, [the Chief of the Bureau of Water Allocation within] the Department, [or his or her designee], [shall issue to the certification holder a letter of approval and a certification for a renewal term of five years,] **shall renew the certification** with the

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appropriate allocation and conditions as outlined at N.J.A.C. 7:20A-2.6(a) **for a term of five years.**

(h) If the Department determines under (f) above that the allocation is not reasonably required for future use and the certification holder's allocation should be reduced **below the amount requested in the application or in the existing certification** on renewal, the Department shall:

1. – 2. (No change.)

3. [Publish in a newspaper of general circulation in the area of the certification holder's diversion source a notice of the proposed reduction in allocation, providing an opportunity for submission to the Department, within 30 days of publication of the notice, of written comments and/or requests for a public hearing on the proposed reduction.] **Provide an opportunity for the water usage certification holder to submit to the Department, within 30 days of the notification of the reduced allocation, written comments and/or a request for a public hearing, on the proposed reduction in allocation.**

(i) If the Department does not receive any requests for a hearing on the proposed reduction in allocation within the [public] comment period established under (h)3 above, [the Chief of the Bureau of Water Allocation within] the Department [,or his or her designee, shall issue to the certification holder a letter of approval and a certification for a renewal term of five years] **shall renew the certification for a term of five years** with the appropriate allocation and

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conditions as outlined at N.J.A.C. 7:20A-2.6(a), **or issue a water usage registration if the recommended allocation is less than 100,000 gallons per day,** and shall include a summary of responses to all written comments timely received.

(j) If the Department [does receive] **receives** a **written** request for a public hearing on the proposed reduction in allocation within the comment period established under (h)3 above, the Department shall hold a public hearing and subsequently [issue to] **shall renew the certification for a term of five years** [holder a certification for a renewal term of five years] in accordance with the following:

1. – 2. (No change);

3. Within 60 days after the public hearing, [the Chief of the Bureau of Water Allocation within]the Department[, or his or her designee,] shall [issue to the certification holder a letter of approval and a certification for a renewal] **renew the certification for a** term of five years, **or issue a water usage registration if the recommended allocation is less than 100,000 gallons per day,** with the appropriate allocation and conditions as outlined at N.J.A.C. 7:20A-2.6(a), and shall include a summary of responses to all comments received within the public comment period established under (h)3 above and at the public hearing.

[(k) Any certification with an approved diversion amount of more than 15.5 million gallons per month, and with an expiration date in 2001 or 2002 is extended for a period of two years to 2003 or 2004, respectively.]

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7:20A-2.5 Application requirements and procedures for a new water usage certification, renewal of a certification with major modification, or major modification of a certification

(a) **In addition to the requirements in N.J.A.C. 7:20A-2.3** [T] the applicant for a new water usage certification, renewal of a certification with major modification, or major modification of a certification shall **also** submit **to the appropriate county agricultural agent** a completed application form including the following information:

1. The name, address, and telephone number [of the certification holder, and the name, address, and telephone number] of the **property** owner [or] **and** [operator] **authorized representative, if different;**

i. In those instances where the owner of the farm management unit allows an authorized representative to utilize the property included in the water usage certification or agricultural water usage registration for agricultural, aquacultural or horticultural purposes, the owner shall provide in writing any subsequent changes in the authorized representative information to the county agricultural agent within 30 days of the change. The county agricultural agent shall notify the Department in writing of the change within 30 days of notification from the owner.

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2. The total number of acres owned or operated for agricultural, aquacultural, or horticultural purposes, the number of acres actively being farmed or otherwise utilized for agricultural, aquacultural, or horticultural purposes, the number of acres planned to be farmed or otherwise utilized for agricultural, aquacultural, or horticultural purposes, and the crop types by acre identified in the agricultural development plan required at N.J.A.C. 7:20A-2.4(d)3, the U. S. Department of Agriculture soil mapping unit, the amount of impervious surface in acres currently on the entire farm management unit and/or planned in the future, the acreage planted in each crop type, and the number of acres of each crop type that is under irrigation;

3. A description of the location of each diversion source, and the name and pumping capacity for each diversion source [, including, if the diversion source is a well, the State of New Jersey assigned well permit number];

4. The location of each diversion source shall be identified in accordance with the requirements at N.J.A.C. 7:20A-2.3(e);

5. If the diversion source is a well, the State of New Jersey assigned well permit number, the well depth and diameter, installed pump capacity, and the date the well was drilled;

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6. If the diversion is a surface water diversion other than an off-stream pond, the drainage area in square miles, upstream of the intake. Drainage area information is available from the United States Geological Survey by calling 609-771-3900 or www.dcnj@usgs.gov;

7. If the diversion source is an on-stream or off-stream pond, the average depth, surface area in acres, and the source of water, including any wells or stream that are used for supplementation;

[4] **8.** A description of the irrigation or water use practices and irrigation equipment used;

[5] **9.** A description of the method used to measure the amounts of water diverted from each diversion source;

[6] **10.** For a renewal with major modification and for **a** major modification, **in order to demonstrate the method used to determine water use**, a copy of the daily and/or monthly hours of operation of each diversion source, and[/or] the quantity of water diverted monthly **for calculated diversions or a copy of the month end flow meter readings** from each diversion source **for metered diversions** for the last month of operation prior to application, as taken from the log or other appropriate record, as required pursuant to N.J.A.C. 7:20A-2.6(a)4[; and].

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i. For a cranberry growing operation, the applicant shall provide the method used to measure water usage to ensure the same volume of water is not counted multiple times if it is transferred within the bog system of the cranberry growing operation.; and

[7] **11.** Sufficient information to demonstrate that under standard operating conditions:

i. – ii (No change.)

iii. In the case of a ground water diversion, the diversion shall not cause an increase in [saline] **saltwater** intrusion that renders the water resource unfit for use; shall not spread ground water contamination; and shall not interfere with any ground water remediation plan or activity; [and]

iv. The diversion shall not reduce the dry season flow or level of a river, stream, lake, or pond so as to adversely affect sanitary conditions downstream, **ecologically based flows as determined by the Department,** or otherwise unduly injure public or private interests, including the maintenance of fish life[.]; **and**

v. The diversion shall not reduce surface flow or water levels of freshwater wetlands so as to adversely affect the viability of the wetland to support sustainable and diverse flora and fauna populations, or adversely impact the wetlands functions and values as determined by the Department.

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(b) [The applicant for a new water usage certification or for a major modification of a certification or a renewal with major modification of a certification shall submit the copy of the portion of the United States Geological Survey Quadrangle map or county road map provided to the applicant under N.J.A.C. 7:20A-2.3 with the locations of all the applicant's existing and/or proposed diversion sources identified.]

An applicant for a new water usage certification, or for a modification where an increase in allocation is requested, from a source that is located within the Highlands Preservation Area as defined in N.J.A.C. 7:38 shall submit:

1. A copy of an approved farm conservation plan, prepared in accordance with the Highlands Water Protection and Planning Act (N.J.S.A. 13:20-1 et seq.), and the implementing rules at N.J.A.C. 7:38 if the activity will result in an increase in impervious surface, as defined at N.J.A.C. 7:38 of 3 percent or greater of the farm management unit;
or

2. A copy of an approved resource management plan, prepared in accordance with the Highlands Water Protection and Planning Act (N.J.S.A. 13:20-1 et seq.) and the implementing rules at N.J.A.C. 7:38 if the activity will result in an increase in impervious surface, as defined at N.J.A.C. 7:38 of 9 percent or greater of the farm management unit.

(c) (No change.)

(d) [On] **Upon** receipt of a complete application, the appropriate county **agricultural** agent shall calculate a water allocation adequate to meet the applicant's water usage

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requirements based upon the information submitted under (a) and (b) above and the agent's knowledge of agriculture, aquaculture, and horticulture conditions.

1. The amount of water requested shall be limited to the type of crop under cultivation and the area in acres of the farm management unit actually under cultivation or where there is a formal written agricultural development plan of future use or expansion into non-cultivated areas during the effective term of the water usage certification. If upon renewal of the water usage certification the area in the agricultural development plan has not been cultivated in accordance with the plan, the Department may reduce the amount of water, in accordance with N.J.A.C. 7:19-2.4(h), in the water usage certification that had been allocated to that area or for that purpose.

(e) (No change);

(f) The Department shall review the application and any other relevant information to determine if the requirements of (a)[7] **11** above are met. The Department shall, in consultation with the county agricultural agent, request any additional information necessary for this determination.

(g) [On] **Upon** completion of its review under (f) above, the Department shall:

1. Notify the county agricultural agent and the applicant; and
2. [Notify, in writing,] **Issue a Notice of Application that shall be sent to** the governing bodies of all municipalities and counties and water supply allocation permit holders and water

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usage certification holders within a one-mile radius of the proposed diversion. **The Notice shall contain information as described below in (h) 1 and 2 and shall provide a 30-day period for submission of comments and/or a request for a public hearing on the application to the Department.**

(h) [On receipt of the notice under (g)1 above, the applicant,] **The Department**, in consultation with the county **agricultural** agent, shall publish [within 30 days] a notice of application in a newspaper of general circulation in the area of the applicant's diversion source. The applicant shall pay **to the Department** the cost of publishing the notice. **The certification shall not be issued by the Department until such time as the applicant pays the cost of publishing the notice in full to the Department.** The notice shall:

1.-3. (No change.)

(i) After the close of the comment period established under **(g) and** (h) above, the Department shall review any written comments received, and all other relevant data including the county **agricultural** agent's recommendation of water allocation.

(j) If the Department does not receive a request for a public hearing on an application within the public comment period established under **(g) and** (h) above, the application shall be processed as follows:

1. For each application, the Department, in [conjunction] **consultation** with the appropriate county agricultural agent, shall [prepare a written analysis supporting either] **issue**

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an approval or denial of the application, **provide the basis for the decision**, and [incorporating]

incorporate a summary of responses to all comments timely received;

2. If the [written analysis under] **the decision at** (j)1 above [supports approval of an] **is to approve the** application, the applicant shall be notified and issued a certification as follows:

i. For the approval of a new water usage certification, **the Department in consultation with** the appropriate county agricultural agent shall issue the certification with the appropriate allocation and conditions as outlined at N.J.A.C. 7:20A-2.6(a);

ii. (No change.)

3. If the [written analysis under] **decision at** (j)1 above [supports denial of an] **is to deny the** application, the applicant shall be notified as follows:

i. For the denial of a new water usage certification, **the Department, in consultation with** the appropriate county agricultural agent, shall issue a letter of denial, which shall state the reasons for the denial; and

ii. (No change.)

(k) If the Department [does receive] **receives** a request for a public hearing on an application within the public comment period established under **(g) and** (h) above, the application will be processed as follows:

1. The Department shall notify the applicant, the appropriate county agricultural agent and the Department of Agriculture of the request and shall convene an informal advisory panel,

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consisting of a representative of the Bureau of Water Allocation, the designated representative of the Secretary of Agriculture, and a representative of the Dean of Cook College, **Rutgers University, The State University of New Jersey**;

2. The advisory panel shall schedule an informal meeting [among] **including** the applicant **or their authorized representative**, the advisory panel, any person(s) who have requested a public hearing on the application, and, **if appropriate**, the County Agricultural Development Board (if one has been established in the county where the diversion source is located) to discuss the application;

3. If the meeting results in an agreement **among the involved parties** regarding the application that obviates the need for a public hearing on the application, the advisory panel shall prepare a report outlining the agreement and, based upon the report, a certification, **incorporating the agreed upon conditions resulting from the meeting**, shall be issued **by the Department** in accordance with (j)2 above;

4. If the meeting **of the advisory panel** does not result in an agreement regarding the application, the Department shall schedule a public hearing on the application and designate a hearing officer. The Department shall notify the applicant, the advisory panel, all persons who submitted written comments during the comment period established under **(g) and** (h) above, and all other persons who participated in the informal meeting with the advisory panel and shall, in addition, publish notice of the public hearing on the application in a newspaper of general circulation in the area of the applicant's diversion source at least 30 days before the date of the scheduled public hearing. The notice shall contain a description of the application, the date, time

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and place of the public hearing, and a statement that written comments on the application may be submitted until [20] **14** days after the scheduled public hearing date, **or as may be extended by the hearing officer at the public hearing;**

5. For each application, the Department shall prepare [a] written [analysis of its] findings regarding the application and shall present the [analysis] **findings** at the public hearing on the application if one is held under (k)4 above. In addition, the Department shall, at least five days before the date of the public hearing, provide the [analysis] **findings** to any person who submits a written request for it;

6. [The hearing officer shall prepare a hearing officers report, based upon the comments received;]

The hearing shall be held before a hearing officer appointed by the Department, and the hearing officer shall have reasonable discretion to conduct the public hearing and shall:

i. Allow the Department an opportunity to present their findings on the application;

ii. Allow the applicant an opportunity to make a presentation on the application;

iii. Allow other persons an opportunity to comment in favor of or in opposition to the application;

iv. Set the date the hearing record closes;

v. Give the applicant reasonable time to respond to comments received at the hearing;

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vi. Review all comments received to ensure they have been addressed and indicate in the hearing officer's report that all comments received during the public comment period and the public hearing have been addressed; and

vii Submit the hearing officer's report to the decision maker or his/her designee within the Department.

7. The [administrator of the Water Supply Element] **Chief, Bureau of Water Allocation or other person so delegated by the Commissioner,** as decision maker on the application, shall review the hearing officer's report, the application, the water allocation recommended by the appropriate county agent, the Department's [written analysis of its] findings and **recommendations,** any written comments received, the transcripts from the public hearing, the Department's responses to the comments, and any other information relevant to the application, and shall approve or deny the application as follows:

i. If the application is denied, the applicant shall be so notified in a letter of denial, which shall state the reasons for the denial. The letter of denial shall be issued in accordance with (j)3 above, and a copy of the letter of denial shall be sent to each person who submitted written comments or who attended the public meeting regarding the application **and requested a copy of the decision;**

ii. If the application is approved, the applicant shall be so notified in a letter of approval, which shall state the reasons for approval. The water usage certification, with the appropriate allocation and conditions as outlined in N.J.A.C. 7:20A-2.6(a) shall be issued in accordance with (j)2 above. A copy of the letter of approval, **the signed certification document,** **and** the hearing

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officer's report, [and the decision maker's statement] shall be sent to each person who submitted written comments or who attended the public hearing regarding the application **and requested a copy of the decision**; and

8. The Department shall certify the costs of the public hearing on the application, including the costs for advertisement and of the stenographic record but excluding expenses for the Department's hearing officer **and Department staff**, and shall bill such costs to the applicant. The Department [or] **in consultation with the** county **agricultural** agent, [as applicable,] shall not issue either a denial letter or an approval letter and water usage certification under (k)7 above unless the applicant pays the costs in full no later than 30 days after the date of the bill.

N.J.A.C. 7:20A-2.6 Water usage certification conditions

(a) The **Department in consultation with the** appropriate county agricultural agent [and the Department] shall include as standard conditions in all water usage certifications the following conditions:

1. – 3. (No change.)

4. That the certification holder shall maintain a log or other appropriate record in which the daily and/or monthly hours of operation [of], **or month end meter readings for metered sources, for** each diversion source is recorded in, and[/or] the quantity of water diverted monthly

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from each diversion source is recorded in indelible ink and is to be maintained on site for a minimum of three years after the end of the year in which the record was created;

5. That by February 28 of each year the certification holder shall submit to the Department, with a copy to the appropriate county agricultural agent, a report for the preceding calendar year of monthly water usage for each diversion source, as recorded in the log or other appropriate record required under (a) 4 above, and the crop types planted and the acres of each crop type that were under irrigation;

6. That the certification holder may transfer the certification provided, in accordance with N.J.A.C. 7:20A-1.6, notification is made to the appropriate county agricultural agent and the Department, and provided no changes or modifications are made in the specified conditions of the water usage certification;

7. (No change.)

8. That the water diverted shall be used only for the approved purposes;

9. That if the authorized diversion privileges are not currently utilized, or are not reasonably required for a demonstrated future need, as described in the Agriculture Development Plan developed pursuant to NJAC 7:20A-2.4(d)1-3, they shall, all or in part, revert back to the State upon renewal or modification of the certification as determined by the Department;

10. That an increase in allocation, the relocation of a diversion source more than 100 feet from an existing diversion source or as authorized under N.J.A.C. 7:20A-2.2(a)1i, the addition of a new diversion source, or an increase in pumping capacity requires prior approval through a

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major modification of the certification , except as exempted pursuant to N.J.A.C. 7:20A-

2.2(b)6; [and]

11. That a certification that includes a diversion source located within a water supply critical aquifer is subject to the water allocation management requirements for areas of critical water supply concern in the Department's Water Supply Allocation Permit rules at N.J.A.C. 7:19-8[.];

12. All water usage certifications that impact or have the potential to impact surface water bodies, may include a passing flow for the affected portion of the waterbody. In establishing the passing flow, the Department shall take into account the needs of other authorized, existing downstream users, existing holders of a valid water supply allocation permit or registration, water usage certification or agricultural water usage registration, aquatic and water-dependent ecological requirements, use and classification of the waterbody, natural streamflow variability (hydrograph) of the impacted waterbody, impacts to the safe yield of existing public water supply systems, and the feasibility of implementing- a passing flow requirement.

i. The Department may implement the use of new passing flow assessment tools as they develop in order to protect the integrity of waterbodies;

13. The certification holder is responsible for mitigating to the Department's satisfaction adverse impacts on ground or surface waters, or appropriately permitted users of wells or surface water resulting directly from the certification holder's diversion; and

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14. The Department may impose additional conditions in a new certification or a major modification to an existing certification to ensure protection of the source water for public community water systems in accordance with the standards at N.J.A.C. 7:10-11.7.

(b) (No change.)

7:20A-2.7 Record of decision

(a) There shall be maintained by the Department and the appropriate county **agricultural** agent for each application reviewed a record consisting of copies of:

1. –2. (No change.)

3. Written [analysis] **basis** supporting approval or denial of the application;

4. – 8. (No change.)

(b) (No change.)

7:20A-2.8 Appeal procedure

(a) An applicant **or certification holder** who believes himself or herself to be aggrieved by a decision of the Department regarding any water usage certification may contest

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the decision and request a contested case hearing pursuant to the Administrative Procedure Act,

N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules,

N.J.A.C. 1:1, if the Department:

1. – 2. (No change.)

(b) - (c) (No change.)

(d) All requests for a contested case hearing shall be submitted in writing to the Department and shall contain:

1. – 6. (No change.)

7. An indication [if] whether the applicant **or certification holder** is willing to negotiate a settlement with the Department prior to the Department sending the hearing request to the Office of Administrative Law.

(e) – (f) (No change.)

(g) If the applicant **or certification holder** fails to include all the information required under (d) above, the Department may deny the hearing request.

(h) - (i)(No change.)

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7:20A-2.9 Certifications including construction, repair or reconstruction of dams and other
related structures

(a) A water usage certification issued by [an appropriate county agricultural agent]
the Department in consultation with the county agricultural agent may include the right to
construct, repair or reconstruct dams or other related structures provided that any proposed work
to construct, repair or reconstruct dams or other related structures shall comply with N.J.S.A.
58:4-1 et seq. and all other applicable laws and regulations.

(b) (No change.)

SUBCHAPTER 3. **AGRICULTURAL** WATER [USE] **USAGE** REGISTRATION
PROCEDURE

7:20A-3.1 Scope

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This subchapter prescribes the procedures which shall be followed by applicants when applying for, and by county agricultural agents and the Department in the processing of, applications for agricultural water [use] usage registrations.

7:20A-3.2 Procedures for obtaining an agricultural water [use] usage registration

(a) The Department will provide the current application form for agricultural water [use] usage registrations to all county agricultural agents.

(b) Any person who intends to divert less than 100,000 gallons of water per day for agricultural, aquacultural, or horticultural purposes, but who has the capability to divert 100,000 gallons of water per day or more, shall apply for an agricultural water [use] usage registration.

(c) An applicant for an agricultural water [use] usage registration or modification thereof shall contact the appropriate county agricultural agent to obtain an application form[, a photocopy of the appropriate portion of a United States Geological Survey Quadrangle Map or county road map,] and other instructions needed to file a complete application.

(d) The applicant shall follow all the instructions to complete the application form[, including the photocopy of the appropriate portion of the United States Geological Survey

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Quadrangle Map or county road map,] and shall submit the completed application form and other required documents to the appropriate county agricultural agent.

1. The following items will be required as part of the application [form]:

i. The name, [and] address, **and telephone number** of the applicant, **which shall be the property owner or the authorized representative, if different;**

ii. A description of the location of each diversion source, and the name and pumping capacity for each diversion source, [including, if the diversion source is a well, the State of New Jersey assigned well permit number;] **All diversion source locations shall be identified on a map as required at N.J.A.C. 2.3(e);**

iii. [The location of each diversion source on the photocopy of the appropriate portion of the United States Geological Survey Quadrangle or county road map;] **If the diversion source is a well, the State of New Jersey assigned well permit number, the well depth and diameter, the installed pump capacity, and the date the well was drilled;**

iv. **If the diversion source is a pond, the average depth, surface area in acres, and the source of water to the pond, including any wells or streams that are used for supplementation;**

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[iv]**y.** The maximum quantity of water to be diverted from each source on a monthly **and annual** basis;

[v]**vi.** The total number of acres owned or operated for agricultural, aquacultural, or horticultural purposes, the number of acres actively being farmed, **the number of acres intended to be farmed as indicated in the Agriculture Development Plan,** the United States Department of Agriculture soil mapping unit, the acreage planted in each crop, and the number of acres of each crop under irrigation[; and]

[vi]**vii.** A description of the method used to measure the amounts of water diverted from each diversion source.

viii. A description of the irrigation or water use practices and irrigation equipment used[.]; and

(e) (No change.)

(f) [On] **Upon** receipt of an application under (e) above, the Department shall issue **an agricultural** water [use]**usage** registration to the applicant.

(g) Each agricultural water usage registrations is subject to the following conditions:

1. Agricultural water usage registration shall include a list of the approved diversion sources and the approved diversion rate for each source;

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2. The agricultural water usage registration holder shall maintain a log or other appropriate record in which the daily and/or monthly hours of operation, or meter readings for metered diversions, of each diversion source is recorded in indelible ink and maintained on site;

3. The agricultural water usage registration holder shall submit to the Department by February 28 of each year, with a copy to the appropriate county agricultural agent, a report for the preceding calendar year of the monthly water usage for each diversion source, as recorded in the log or other appropriate record required under (g)2 above, the crop types planted and the acres of each crop type that were under irrigation;

4. The Department may revoke the agricultural water usage registration, after notice and after an adjudicatory hearing, if requested, for violations of the registration conditions, the rules adopted or the orders issued by the Department, or when deemed necessary for the public interest;

5. The water diverted shall be for the approved purposes; and

6. An increase in diversion, the relocation of a diversion source more than 100 feet from an existing diversion source or as authorized under N.J.A.C. 7:20A-2.2(a)1i, the addition of a new diversion source, or an increase in pumping capacity requires prior approval through a modification of the agricultural water usage registration or may require the agricultural water usage registration holder to obtain a water usage certification prior to using any such increased diversion or alternate diversion source(s).

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7:20A-3.3 Registration Record

(a) There shall be maintained by the Department and the office of the appropriate county agricultural agent a record of all **agricultural** water [use] **usage** registrations for agricultural, aquacultural, or horticultural purposes, consisting of copies of:

1. – 2. (No change.)
 3. The **agricultural** water usage registration; and
 4. (No change.)
- (b) (No change.)

SUBCHAPTER 4. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:20A-4.1 – 4.3 (No change.)

7:20A-4.4 Civil administrative penalty determination

(a) The Department may assess a civil administrative penalty under this subsection against each violator who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building or place by any authorized Department representative. Each day, from the initial day on which the violator refuses, inhibits or prohibits immediate lawful entry and inspection by any authorized Department representative up to and including the day on which the Department receives written notification from the violator that the violator will not refuse, inhibit or prohibit immediate lawful entry and inspection, shall constitute an additional, separate and

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distinct violation. The Department shall assess the penalty in accordance with (a)1 or 2 below, as applicable, except as adjusted pursuant to (d) below:

1. (No change.)

2. For any other refusal, inhibition or prohibition of immediate lawful entry and inspection, the civil administrative penalty shall be in an amount up to \$[800.00] 2,000.

(b) The Department may assess a civil administrative penalty under this subsection against each violator who submits inaccurate information or who makes a false statement, representation or certification in any application, record or other document required to be submitted or maintained, or who fails to submit or maintain any application, record, or other document required to be submitted or maintained, or who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under this chapter or any order adopted or issued by the Department pursuant this chapter. Each day, from the day on which the violator submits the inaccurate information or false statement, representation or certification to the Department up to and including the day on which the Department receives a written correction of the inaccurate information or false statement, representation or certification, shall constitute an additional, separate and distinct violation. The Department shall assess the penalty at the midpoint of the range at (b)1 through 3 below, as applicable, except as adjusted pursuant to (d) below:

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1. For any intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount of not more than \$[3,000] **5,000** or less than \$1,000;

2. For any unintentional but foreseeable act or omission, the civil administrative penalty shall be in an amount not more than \$[1,500] **2,500** nor less than \$500; or

3. For any other violation, the civil administrative penalty shall be in an amount not more than \$[1,000] **2,000**.

(c) – (d) (No change.)