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ENVIRONMENTAL PROTECTION

NATURAL AND HISTORIC RESOURCES

DIVISION OF PARKS AND FORESTRY

Forestry

Adopted Repeal and New Rule: N.J.A.C. 7:3-3.4

Adopted Amendments: N.J.A.C. 7:3-1.1, 1.2, 1.3, 3.1, 3.3, 3.7, 3.8, and 3.9

Adopted New Rules: N.J.A.C. 7:3-1.4, 3.3, 3.5, 3.6, 5, and 6

Adopted Repeals: N.J.A.C. 7:3-3.2 and 4

Proposed: April 17, 2017, at 49 N.J.R. 690(a).

Adopted: November 16, 2017, by Bob Martin, Commissioner, Department of Environmental Protection.

Filed: November 20, 2017, as R.2017 d.241, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1B-15.100 through 102, 13:1B-15.106, 13:1D-9, 13:1L-1 et seq., 45:1-9, 52:14B-1 et seq., and 54:4-23.1 et seq.

DEP Docket No.: 05-17-03.

Effective Date: December 18, 2017.

Expiration Date: May 4, 2024.

The Department is adopting new rules, amendments, and repeals in N.J.A.C. 7:3, Forestry. Specifically, the Department is adopting new N.J.A.C. 7:3-5 that establishes the

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Forest Stewardship Program, new N.J.A.C. 7:3-6 that establishes and governs the Forest Stewardship Advisory Committee, and amendments to N.J.A.C. 7:3-3 that governs the List of Approved Foresters. The Department is repealing N.J.A.C. 7:3-4 that previously governed the Certified Tree Experts program; the program is now governed by N.J.A.C. 7:3A, Board of Tree Experts. The Department is also adopting miscellaneous amendments to the forestry chapter to correct grammar and cross-references.

The rule adoption can also be viewed or downloaded from the Department's website at www.nj.gov/dep/rules.

Summary of Hearing Officer's Recommendation and Agency's Response:

The Department held a public hearing on the notice of proposal on Wednesday, May 24, 2017, at 6:00 P.M., at the Rutgers EcoComplex. John Sacco, State Forester, was the hearing officer. Five individuals provided written and/or oral comments at the public hearing. After reviewing the comments received during the public comment period, the hearing officer recommended that the Department adopt the proposed new rules, amendments, and repeals with the non-substantial changes described below in the Summary of Public Comments and Agency Responses and in the Summary of Agency-Initiated Changes. The Department accepts the Hearing Officer's recommendation.

The hearing record is available for inspection in accordance with applicable law by contacting:

Office of Legal Affairs

Attention: DEP Docket No. 05-17-03

Department of Environmental Protection

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Summary of Public Comments and Agency Responses:

The Department accepted comments on the notice of proposal through Friday, June 16, 2017. The following persons provided written and/or oral comments:

1. Lester Alpaugh
2. Joseph Bruschetta
3. Don Donnelly
4. Sean Gilson, New Jersey Highlands Coalition
5. Gregory Gorman
6. Steve Kalleser, Chair, New Jersey Division, Allegheny Chapter of the Society of American Foresters
7. Ashley Kerr, New Jersey Farm Bureau
8. Bill Kibler, Raritan Headwaters
9. Andrew Kimm, President, New Jersey Forestry Association
10. Alicia Protus, United States Fish and Wildlife Service, New Jersey Field Office
11. Barbara Sachau
12. Ryan Rebozo, Director of Conservation Science, Pinelands Preservation Alliance
13. Jeff Tittel, Director, New Jersey Sierra Club
14. Jamie Zaccaria, New Jersey Sierra Club

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15. Sean Gilson, New Jersey Highlands Coalition, joined by:
Dr. Emile DeVito, Manager of Science and Stewardship, New Jersey
Conservation Foundation
Wilma Frey, Senior Policy Manager, New Jersey Conservation Foundation
Susan Dorward, Director of Water Quality, Beaver Lake Realty Company
Katherine Evans, Friends of Sparta Mountain

The timely submitted comments and the Department’s responses are summarized below.

The number(s) in parentheses after each comment identify the respective commenter(s) listed above.

Subchapter 3. List of Approved Foresters

General

1. COMMENT: The proposed repeal of N.J.A.C. 7:3-3.2 is extremely problematic because it eliminates virtually all oversight. It eliminates “policies, guidelines and practices approved by the Department in consultation with the Department of Agriculture and the Dean of Cook College at Rutgers, The State University....” As described in this rule, the forestry policies of these organizations are designed out of an obvious need for oversight. They prevent overcutting and other potential abuses of the Code of Ethics adopted by the Society of American Foresters (SAF). Without this rule, landowners and their consulting foresters are not even required to attest to compliance with their forest stewardship plans. (15)

RESPONSE: Prior to this adoption of new rules, repeals, and amendments, N.J.A.C. 7:3-3.2, Purpose, set forth the purpose of N.J.A.C. 7:3-3, Approved Forester List. The section contained no substantive requirements; therefore, the repeal of the section neither removes requirements

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nor lessens oversight. The section referred to the Farmland Assessment Act, and stated that the Act imposes requirements on owners of certain land who desire to qualify for reduced property taxation. The requirements that the section recited remain in the Farmland Assessment Act at N.J.S.A. 54:4-23.3 and the Department of the Treasury, Division of Taxation's implementing rules at N.J.A.C. 18:15.

Regarding the requirement that the owner and consulting forester attest to compliance with a forest stewardship plan, this is mandated by the Farmland Assessment Act at N.J.S.A. 54:4-23.3.b. Accordingly, adopted N.J.A.C. 7:3-3.3 authorizes an Approved Forester to sign certification of compliance on the woodland data form that accompanies an owner's annual application for farmland assessment, but only if the Approved Forester has determined that the owner has a Department-approved forest stewardship plan or woodland management plan and the property is being managed in compliance with the plan. Additionally, adopted N.J.A.C. 7:3-5.3(c) requires the owner or the owner's representative to certify that the owner agrees to implement the forest stewardship plan.

2. COMMENT: Proposed amended N.J.A.C. 7:3-3, List of Approved Foresters, indicates that foresters are assumed to be the only profession that can and should manage a forest. The proposed rule misses the opportunity to create a broad variety of important public benefits (including climate change mitigation, maintenance of biological diversity, ecosystem health, recreation and scenic values) from private forestlands, through a variety of expertise, in exchange for reduced tax assessments on the forested properties. (4 and 15)

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3. COMMENT: In the United States Department of Agriculture (USDA) Forest Service's "Forest Stewardship Program National Standards and Guidelines," to which the proposed rules refer, forest stewardship plans are to be written by a "forest resource manager." The term "forest resource manager" implies something more than a forester on the Department's List of Approved Foresters. It implies a forest ecologist, as forests are comprised of more than the wood resource. See https://www.fs.fed.us/spf/coop/library/fsp_standards&guidelines.pdf. (15)

RESPONSE TO COMMENTS 2 AND 3: For more than two decades the Department has maintained a List of Approved Foresters in accordance with N.J.A.C. 7:3-3 (Subchapter 3). Subchapter 3 establishes the procedures and standards that a forestry professional must meet to gain entry to and remain on the list. The Forest Stewardship Law at N.J.S.A. 13:1L-31 requires that an owner who wants to participate in the Forest Stewardship Program shall prepare a forest stewardship plan "in conjunction with a forester or other professional selected by the owner from a list of foresters approved by the Department, or from a list of other professionals authorized by the Department in consultation with the forest stewardship advisory committee" At present, the List of Approved Foresters is the only Department-approved list of foresters or other professionals.

The Forest Stewardship Law, like the Forest Stewardship Program National Standards and Guidelines to which the commenters refer, does not presume that only individuals who meet the minimum qualifications currently specified in the List of Approved Foresters rules at N.J.A.C. 7:3-3.2 are necessarily the only professionals qualified and able to assist owners in preparing forest stewardship plans. The Forest Stewardship Law at N.J.S.A. 13:1L-36.b directs the Department to establish, in consultation with the Forest Stewardship Advisory Committee,

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professional standards and requirements of persons in addition to foresters on the list approved by the Department, authorized to prepare forest stewardship plans. The adopted rules at N.J.A.C. 7:3-6 establish the Forest Stewardship Advisory Committee. Once the committee is formed, the Department can consult with the committee to determine what other professionals should be authorized to prepare forest stewardship plans.

4. COMMENT: An Approved Forester needs specific forestry standards, especially if adherence to these “standards” is a critical precondition for remaining on the List of Approved Foresters. The proposed rule at N.J.A.C. 7:3-3.4, Standards of conduct, states, “(b) An Approved Forester shall observe recognized professional practices and standards in the provision of professional services to owners.” This is vague, since standards promoted by organizations such as the Forest Stewardship Council and Sustainable Forestry Initiative, as well recognized forestry standards issued by states, vary significantly. (5)

5. COMMENT: In N.J.A.C. 7:3-3.4(b), the examples given as professional practices and standards are poor and/or outdated. Replace the proposed text with “An Approved Forester shall abide by the Society of American Foresters’ Standards of Professional Practice.” Utilizing the Society of American Foresters (SAF) Standards of Professional Practice, by definition, would incorporate both the Best Management Practices manual and all applicable laws and regulations. (6)

6. COMMENT: In N.J.A.C. 7:3-3.4(b), the examples given of recognized professional practices and standards are the “New Jersey Forestry and Wetlands Best Management Practices Manual,” dated October 1995, which is available at

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www.state.nj.us/dep/parksandforests/forest/nj_bmp_manual1995.pdf, and in the “Forestry Handbook” published by the Society of American Foresters, Karl F. Wenger, ed., 2nd edition, 1984, or subsequent edition. Are there no more current standards of practice that could be used or cited? 1995 and 1984 seem a long time ago for best management practices. Do the current SAF standards of practice cover this? (7)

RESPONSE TO COMMENTS 4, 5, AND 6: The standards of conduct at adopted N.J.A.C. 7:3-3.4(b) are the same as the standards in the existing rules at N.J.A.C. 7:3-3.4(b)2. Given the range of the professional responsibilities that professional foresters undertake as they provide services to diverse clients, the Department cannot provide a comprehensive listing of all recognized professional practices and standards that could universally apply. For this reason, the Department has provided examples that show the level of professionalism expected. Wenger’s 1984 handbook is a classic forestry reference. A more recent edition has not been issued. The phrase “or subsequent edition” in the adopted rule indicates that if a new edition of the Wenger handbook is issued, the updated version would be included in the list of examples. Likewise, the 1995 edition of the “New Jersey Forestry and Wetlands Best Management Practices Manual” has not been superseded by a more recent version. The Department is modifying N.J.A.C. 7:3-3.4(b) to insert “or subsequent edition” after the New Jersey Forestry and Wetlands Best Management Practices Manual. The incorporation by reference of subsequent editions of the New Jersey Forestry and Wetlands Best Management Practices Manual is in the existing rule, and its omission from the proposed rule was an oversight, as evidenced by the Department’s proposing to incorporate subsequent editions of the other standards. The references in the rules are only examples of professional practices and standards. The SAF Standards of Professional Practice,

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suggested by one commenter, is another example. An Approved Forester may rely on any professionally recognized standard of practice applicable to the particular context, provided the standards are no less stringent than those in the Department's rules.

7. COMMENT: The requirement to submit additional information in a semi-annual report at N.J.A.C. 7:3-3.6(d) is overly broad and needs to be better defined. Moreover, the citation of N.J.S.A. 13:1K-35 is an error, making it impossible to determine the Department's intent. (6)

RESPONSE: Adopted N.J.A.C. 7:3-3.6(d) provides that in addition to the items specified in subsection (c), an Approved Forester must report such other information as the Department may request; however, the requirement is not open ended. It is limited to information that the Department needs for its use in satisfying planning or reporting responsibilities established either under State law or by the USDA Forest Service. The adopted rule provides examples of such responsibilities, one from State law and one from USDA Forest Service requirements. The commenter correctly notes that the citation given in the State law example (N.J.S.A. 13:1K-35) is incorrect. The correct citation is to the Forest Stewardship Law at N.J.S.A.13:1L-35, which requires the Department to prepare a report every seven years for the Commissioner to transmit to the Governor and Legislature on the extent, condition, and sustainability of all New Jersey forests, whether publicly or privately owned, and any recommendations for legislative or administrative action. The Department may find it necessary to ask Approved Foresters for information to be used in such report. The Department is modifying N.J.A.C. 7:3-3.6(d) on adoption to correct the citation to the Forest Stewardship Law.

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Education Requirement

8. COMMENT: Given the large number of Department-approved foresters who earned their qualifying degree from Rutgers, the removal of Rutgers forestry education as an option for the education requirements of the List of Approved Foresters should have received much more scrutiny than it has. This is a major change to the Department's forestry program.

Although Rutgers does not now offer a forest management option, and the natural resources program offered by that institution meets neither the needs of the private or public forestry sector within this State or those of its students who want to specialize in forestry, the rules should take into account the intent of the Department at the time of the promulgation of rules under the 1986 amendment to the Farmland Assessment Act. At that time, Rutgers' forestry program was not accredited by SAF, but the school was working on accreditation and offered a B.S. in Natural Resource Management that included a forest management option. Rutgers graduates and current and former professors occupy positions of respect within the forestry community in New Jersey and nationwide. In addition, many foresters who graduated from Rutgers prior to 2002 or so have earned the Certified Forester (CF) credential from SAF, having proven that their specific education at that time was equivalent to that of an SAF-accredited program. This is important because of the following four scenarios:

(1) If a forester with a Rutgers education were to remove himself or herself from the List of Approved Foresters, he or she would not be able to successfully reapply or be reinstated.

(2) If a forester who has worked in another state after having graduated from Rutgers' forest management option returns to New Jersey he or she would be unable to successfully apply to be on the List.

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(3) Should Rutgers resume offering an adequate forest management option between the rule adoption and its next re-adoption--as many in the conservation community are actively urging it to do--new graduates would be unable to successfully apply to be on the List until the regulations are revised.

(4) A student who decides to pursue forestry later in his or her college career and graduates from a program that is not accredited by SAF, but who takes coursework at another institution that would complete the coursework that would otherwise meet the curriculum requirements of an SAF-accredited degree program would be unable to apply to be on the List unless that later coursework led to a graduate degree. (6)

9. COMMENT: The questions regarding Rutgers “foresters” needs clarification. (1)

10. COMMENT: There should be an opportunity for Rutgers graduates to be able to be included on the Approved Foresters List. Although the degree title has changed slightly from what was previously offered at Cook College (it is now under an ecology title), the course work is the same. The forests of New Jersey are unique and have unique management requirements. They are not like the forests out west with tens of thousands of acres. They are small woodlots, averaging somewhere between seven to 20 acres. In New Jersey, woodlands are not just for timber removal. They may be the owner’s home and management may be for aesthetics, wildlife conservation, habitat, and conservation of soil and water. (2)

11. COMMENT: Rutgers forestry education should remain an option for meeting the educations requirements. The history of Rutgers as a Land Grant College and the role it has played in educating many of our forestry and environmental professionals is well known and respected. Although Rutgers does not currently have an active forestry education program, those

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that have gone through the program should be able to use the program as a credentialing tool. It can also serve as a reason for Rutgers to look into expanding its environmental offerings to include a curriculum that could meet the needs of this program, especially in a state like New Jersey that has two major planning entities designed to protect the forest resources of the State (the Highlands and Pineland regions). (7)

12. COMMENT: A grandfathering clause should be clearly incorporated into the educational qualifications listed at N.J.A.C. 7:3-3.2(c)1 to allow an individual to gain entry onto the Approved Forester List based on a bachelor's degree from Rutgers in the forest management option of the natural resources management program. This becomes particularly relevant if an individual with a Rutgers degree that formerly met the admission criteria and was on the List, leaves the List, and then seeks reinstatement later; under the provisions for reinstatement at N.J.A.C. 7:3-3.8(b)3, someone seeking reinstatement must satisfy the new educational requirements, which does not include a Rutgers degree. (3)

13. COMMENT: In the section that pertains to "Reinstatement to the List of Approved Foresters," at N.J.A.C. 7:3-3.8(b)3, revise the rule text so that, if a forester with a Rutgers education were to remove himself or herself from the List of Approved Foresters, he or she would be able to use the Rutgers degree to reapply or be reinstated. This would explicitly grandfather those currently on the List from the removal of "a bachelor's degree in the forest management option in the natural resource management program at Rutgers--The State University of New Jersey ..." Otherwise, under the revised minimum qualifications at N.J.A.C. 7:3-3.2(c), if a forester with a Rutgers education were to remove himself or herself from the List of Approved Foresters, he or she would not be able to successfully reapply or be reinstated. (6)

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RESPONSE TO COMMENTS 8 THROUGH 13: The Department is modifying N.J.A.C. 7:3-3.2(c) on adoption to allow a bachelor's degree from Rutgers in the forest management option within the natural resource management curriculum to satisfy the education requirement for entry to the List of Approved Foresters, provided the degree was awarded no later than 2007.

Since the List of Approved Forester's rule was first adopted in 1988, the rule has stated that a bachelor's degree from Rutgers in the "forest management option within the natural resource management curriculum" was one of the three degree options that would satisfy the education requirement for entry on the list. See the previous rule at N.J.A.C. 7:3-3.4(a). When the previous rule was promulgated, as one commenter explains, Rutgers' forestry program was not accredited by SAF, but the school was working toward accreditation and offered a B.S. in Natural Resource Management that included a forest management option. The Department considered a degree from the Rutgers program equivalent to a degree from a qualifying SAF-accredited program. Graduates of that program have earned the Certified Forester (CF) credential from SAF, which means that they demonstrated to SAF's satisfaction that their education was equivalent to that of an SAF-accredited program.

As explained in the notice of proposal Summary at 49 N.J.R. at 699, the Department proposed to remove the Rutgers education option because Rutgers no longer offers a bachelor's degree in the forest management option within the natural resource management curriculum. However, the Department did not intend to disqualify existing foresters who qualify for inclusion on the List of Approved Foresters based on a Rutgers education. As stated in the Economic Impact, existing Approved Foresters – not excepting those with the Rutgers bachelor's degree in

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natural resource management with the forest management option – are grandfathered on the List (49 N.J.R. at 703).

If the education of an individual who is now on the Approved Forester list satisfied the requirements for inclusion on the List, it follows that the education should continue to satisfy the requirements, if the individual must apply for reinstatement. Otherwise, a Rutgers graduate on the List is held to a different standard than graduates of other programs, since he or she could never be reinstated to the List, even if all other criteria for reinstatement are met. A person who applies for reinstatement to the list must meet the requirements of the rules at the time he or she applies for reinstatement. In the absence of a modification on adoption, the rules would preclude an otherwise qualified Rutgers graduate from being reinstated, because the rules no longer recognize his or her degree, even though the degree, when offered, was considered the equivalent of a degree from an SAF-accredited program. Such a result is not consistent with the Department's intention, as discussed above.

Similarly, a graduate of Rutgers with a previously qualifying degree who has, for whatever reason, not yet applied for inclusion on the List could not satisfy the education requirements of the proposed rules. Although the Department does not receive many applications for inclusion on the List from Rutgers graduates, as recently as 2012, a forester who graduated from Rutgers in 1975 with a bachelor's degree in forest management within the natural resource management curriculum applied and qualified for inclusion on the List. The rule as modified on adoption would allow such a graduate to continue to qualify for inclusion on the List.

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Although the Department is modifying the rule on adoption to allow a graduate of Rutgers with a B.S. in Natural Resource Management with the forest management option to qualify for inclusion on the List, the Department has determined that it is appropriate to limit the rule to only those degrees awarded no later than 2007. The Department has been unable to ascertain the most recent year that a student was graduated with a qualifying degree; however, the 2005 through 2007 Rutgers course catalog, in the section pertaining to Cook College (see <http://www.rutgers.edu/academics/catalog-archive-rutgers-university%E2%80%9393new-brunswick-undergraduate>), was the last Rutgers catalog to offer the forestry management option as a program of study. After 2007, the qualifying degree was not available.

Should Rutgers resume offering a forestry program at some point in the future, the Rutgers degree would be evaluated under the standards set forth in adopted N.J.A.C. 7:3-3.2(c) to determine whether the degree would satisfy the education requirements for inclusion on the List of Approved Foresters. This is the standard that applies to all other colleges and universities. The Department would support a qualifying program of study. The National Woodland Owner Survey, conducted by the United States Department of Agriculture's Forest Service, confirms that the primary aim of most New Jersey family forest owners is not commercial harvest. Rather the survey documents that the reasons these owners give for why they own their land more frequently are "to enjoy beauty or scenery" and "to protect nature and biologic diversity." A forestry program offered by Rutgers could be tailored to prepare students to address the priorities of New Jersey landowners.

The adopted rules do not accommodate a student who graduates from a program that is not accredited by SAF, but who takes additional coursework at another institution so that his or

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her coursework cumulatively equates to the curriculum requirements of an SAF-accredited degree program. The List of Approved Forester rules have always linked satisfaction of the education criteria to obtaining of a degree from a college or university. Only if course work taken at the other institution leads to a degree awarded by that institution would the student be able to meet the education requirements for entry on the List of Approved Foresters.

14. COMMENT: Revise N.J.A.C. 7:3-3.2(c)1ii to read, “An earned degree at the baccalaureate, masters or doctorate level in forestry or related natural resources that has led to the applicant holding the Certified Forester (CF) or Candidate Certified Forester (CCF) credential of the Society of American Foresters at the time of application.” The reason for this is if there is a judgment call to be made in regard to the adequacy of a forester’s education vis-a-vis an SAF accreditation program, that question would best be answered by the SAF. SAF’s CF credential program is the mechanism used by 12 other states as well as the USDA to verify the adequacy of a forester’s education. (SAF’s CFF credential holds a forester to the exact same educational standard.) The suggested language honors both the intent of the Department to recognize the competency of foresters trained at Rutgers under its forest management option as that program existed in 1986, as well as the desires of both the Department and this organization to protect New Jersey’s ecologically valuable private forestlands from incompetent actors. A forester need not be a member of SAF in order to earn either the CF or the CCF credential. Also N.J.A.C. 7:3-3.2(c)1i should be changed to, “An earned degree at the baccalaureate, masters or doctorate level in forestry or related natural resources program that is accredited by the Society of American Foresters under either the Forestry or the Natural Resources and Ecosystem

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Management standard ...” The reason for this is to disallow honorary or other non-earned degrees, and degrees in programs accredited by SAF under either the Urban Forestry or the Forest Technology standard as part of N.J.A.C. 7:3-3.2(c)1i. (6)

15. COMMENT: Rutgers graduates should be able to be included on the Approved Foresters List by an examination administered by SAF or SAF’s CF program, or through the course work proving that they fulfilled equivalent requirements from Rutgers, an online program, or part-time from another university. (2)

RESPONSE TO COMMENTS 14 AND 15: The commenters present new education criteria for an individual to be included in the List of Approved Foresters. While these criteria may demonstrate that an individual has appropriate education to be a Department-approved forester, modifications to the rules to include these criteria are too substantial to be made on adoption. The Department has not reviewed and assessed the suggested criteria to determine whether they are appropriate and should be included in the rules.

Under the existing and adopted rules, an applicant for inclusion on the List of Approved Foresters meets the education requirements of the rules if he or she has a bachelor’s or graduate degree in an SAF-accredited forestry program “in forest management or an equivalent subject area.” Accordingly, the Department will review an applicant’s transcripts to determine both whether he or she has a degree in an SAF-accredited program, and whether the program is in forest management or an equivalent area.

The Department agrees that only earned degrees should be used to meet the educational requirement to qualify for the List of Approved Foresters. The Department is modifying N.J.A.C. 7:3-3.2(c)1i and ii on adoption to require that the degree be earned, not honorary.

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Unlike an earned degree, the award of an honorary degree is not an indication that the degree holder has satisfied the educational requirements required to obtain a degree in forest management or an equivalent subject area.

16. COMMENT: The proposed educational requirements to qualify to be on the List of Approved Foresters are significantly more difficult to meet than those for the Forester position recently advertised by the Department in job announcement S0417V with a closing date of June 22, 2017. It is incongruous that a forester regulating those on the List would be held to a significantly different educational standard than those he or she is regulating. (6)

RESPONSE: The educational and experience requirements of a Department-employed forester differ from the education and experience requirements for an Approved Forester under N.J.A.C. 7:3-3.2(c)1 because the roles of the Department-employed forester and the forestry professional on the Approved Forester List differ.

As stated in adopted N.J.A.C. 7:3-3.3, an Approved Forester is authorized to provide services directly to the public. These services include preparation of a forest stewardship plan in accordance with N.J.A.C. 7:3-5 or a woodland management plan in accordance with the Farmland Assessment Act rules at N.J.A.C. 18:15-2.10, and certifying a woodland data form that accompanies an application for farmland assessment. The requirements in the adopted rules are narrowly tailored to ensure that the forestry professional on the List has the education and experience to provide those services to the public. Only a forestry professional trained and experienced in forest management possesses the necessary qualifications.

The education requirements for qualification as an Approved Forester and for a candidate for a forester position with the State of New Jersey are comparable. Both must have a bachelor's

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degree or a graduate degree in a relevant program of study. An Approved Forester's program of study must be in forest management or an equivalent forestry program. The State employs foresters for a broad range of programmatic purposes; therefore, a forester position with the Department may be in forest management, but it also may be other forestry specializations, such as natural resource management, urban and community forestry, biometrics, or forest ecology. Accordingly, a wider variety of forestry-related degree programs are appropriate than would relate to providing forest stewardship, woodland management, and farmland assessment services to the public.

The job announcement to which the commenter refers is for an entry level forester position with the Department, and the duties assigned the employee would be commensurate with the employee's experience. An entry-level Department forester does not need to have the level of experience that a forester on the List must possess. He or she will work under the supervision of more senior forestry professionals in higher-level titles, such as Regional Foresters and the State Forester and, unless he or she happens to be qualified to do so, would not be asked initially to provide services directly to the public.

Subchapter 5. Forest Stewardship Program

General

17. COMMENT: The Department and the State Forester have put considerable effort into the proposed regulations. Their attention to detail, willingness to accept information from this organization and others regarding the broader legal, ecological, and taxation context in which this program will operate, and their recognition of stakeholders are to be commended. The

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proposed regulations recognize that New Jersey's forests are dynamic, disturbance-dependent ecosystems, and that their active management is not only advisable from an ecological standpoint, but is required under Article VIII, Section I of the State Constitution for any private property receiving preferential property tax assessment. (6)

18. COMMENT: Forests contribute to clean air, enhanced groundwater re-charge, wildlife habitat, erosion prevention, flood mitigation, natural moderation of summer heat, aesthetic vistas, and recreational opportunities, as well as providing other ecosystem goods and services. Under the proposed regulations, owners of wooded parcels, particularly smaller wooded parcels, will be able to manage their properties and practice sound forest stewardship without unnecessarily harvesting immature trees to meet a prescribed income requirement. Forest stewardship plans will be designed to sustain the productivity of the forest land and its natural resources in perpetuity. The rules will have a positive environmental impact, and should be implemented.

(9)

19. COMMENT: One of the highlights of the last century in New Jersey is the return of forests to our landscape. Clearcutting throughout the northeast and in New Jersey for a couple of centuries resulted in the loss of forests and soil, and destroyed a lot of clean water in the process. The return of those forests is so critical to all those resources that New Jersey depends on, including the clean air and the clean water. The forests in the Highlands are critical to the State's water quality. The Department's promulgation of regulations that address forest management helps move forestry in New Jersey toward a process where managing forests is not simply about harvesting timber. Although harvesting timber is one of the major uses of the forest, all of the

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other critically important uses of forests must be recognized and valued. These include limiting climate effects, limiting flooding, and protecting clean water. (8)

20. COMMENT: In addition to giving private landowners opportunities to manage, the Forest Stewardship Program gives landowners the incentive to manage. The fact that private landowners spend money on the services and supplies that are necessary to “manage” their forests will add to the economy. Yield of wood products also adds to the economy, as do people working in the woods (harvesting timber, cedar, firewood, and specialty products). (1)

21. COMMENT: The rules regarding forest stewardship plans and their implementation by landowners ensure that activities on the land that not only improve forest health and productivity but that those activities are measurable. The Department and the staff at the State Forest Service are to be commended. (7)

RESPONSE TO COMMENTS 17 THROUGH 21: The Department acknowledges the commenters’ support for the adopted rules.

22. COMMENT: The proposed rule essentially requires that all forest stewardship plans would require the employment of professional foresters, who are trained in managing forests to produce products, although the landowner may not be interested in the production of wood products. (15)

RESPONSE: The Forest Stewardship Law at N.J.S.A. 13:1L-31.3.a establishes that an owner must prepare a forest stewardship plan “in conjunction with a forest or other professional” selected by the owner from a list approved by the Department. This is reflected in the Forest Stewardship Program rules at N.J.A.C. 7:3-5.1(e)1i. This requirement ensures that a trained and experienced forestry professional is involved in the preparation of a plan. Whether the

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landowner's primary aim is managing the property for the production of wood products, for ecological purposes, or for a combination of these purposes, the landowner will benefit from the aid of a knowledgeable professional in the design of the plan. The cost of consulting with a forestry professional involved is one of the factors a landowner will need to take into consideration in deciding whether to participate in the Forest Stewardship Program.

Tree Removal: Sustainability and Conservation of Environmental Resources

23. COMMENT: Applying part 2 of the definition of "conservation" in SAF's Dictionary of Forestry to the context of forests is incorrect, as it appears to be concerned with only one resource, that being wood. Forest resources are, by their nature, interdependent. The phrase within the definition, "the objective of sustaining its productivity in perpetuity while providing for human use compatible with sustainability of the resource" (once again only the one wood resource), makes no mention of biodiversity, wildlife habitat, soils, groundwater, carbon sequestration, or other essential components of forests. The use of wood product as the sole resource is in contradiction to the "Resource Elements" section in the USDA Forest Service's "Forest Stewardship Program National Standards and Guidelines," which require that multiple resource elements be considered, including soil, water, wetlands, biodiversity, threatened/endangered species and carbon cycle. These guidelines are for state and private forest stewardship plans: https://www.fs.fed.us/spf/coop/library/fsp_standards&guidelines.pdf. (15)

RESPONSE: In the notice of proposal Summary, 49 N.J.R. at 694, under the heading "Forest Stewardship Plan Criteria," the Department states that the meaning of "principal of conservation" is based on the second definition of the term "conservation" in the SAF's

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“Dictionary of Forestry.” The definition refers generically to “management of a renewable natural resource,” and is not limited to wood. Rather, as the commenters recommend, the adopted Forest Stewardship Program rules are based on a multi-resource perspective. At N.J.A.C. 7:3-5.2(b), in its explanation of the principle of conservation, the rule establishes that a plan must be designed to sustain the productivity of the forest land and “its natural resources in perpetuity.” The rule specifically refers to resources in the plural, not singular.

24. COMMENT: The Department should not adopt the Forest Stewardship rules. The rules do not do enough to protect New Jersey's forests. The rules should be about managing the State's forests, but seem to be more about cutting them so wealthy landowners can save money on property taxes.

The rules create open season on forests without any environmental protections. Landowners can cut down big parts of the forest and only need to maintain 10 percent of the forest canopy. This is unsound because you get to destroy 90 percent of the forest. Even golf courses have more forest canopy than this.

The rules also do nothing to encourage carbon sequestration or good management of the lands like protecting buffers and getting rid of invasive species. Cutting down trees reduces important wildlife habitat. Opening up the canopy will lead to a loss of biodiversity in our forests as more deer and invasive species take over. Many of these forests will become useless to the wildlife if they are logged to 10 percent. Invasive species infestations will require herbicide use, which could impact sensitive streams and areas above reservoirs and water supply intakes. Cutting down the trees causes siltation and impacts pristine trout streams. It increases

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flooding and pollution in waterways. The canopy itself is an important protection to waterways, including many important headwaters located in deep forests.

According to the notice of proposal, around 42 percent of New Jersey's land is forested, with two-thirds of it being privately owned. The stewardship itself is not even defined enough so it can include logging. This stewardship option is just logging by another name. (11, 13, and 14)

25. COMMENT: The definition of the term "ecosystem services" broadly includes provisioning services, regulating services, supporting services, and cultural services. But the sole focus in these proposed rules is on only one "provisional" ecosystem service, and that is wood production. The rules will, therefore, deplete what are known as "regulating" and "supporting" ecosystem services, such as pollination, nutrient cycling, carbon sequestration, and water and air filtration. These ecosystem services will certainly not withstand removal of up to 90 percent of a forest canopy, and in most cases the damage will be permanent. The destruction of vernal habitat is just one example. Salamanders control insect/arthropod populations and sequester carbon within the soil. They lay eggs only in the pools from which they hatched. Destruction of vernal pools and their associated upland forest area, means that future generations of regulating and supporting ecosystem services will be lost forever at the expense of an extremely temporary "provisional" ecosystem service. (15)

RESPONSE TO COMMENTS 24 AND 25: The Forest Stewardship Program rules are intended to encourage private landowners to actively manage forest lands to ensure their sustainability. The Forest Stewardship Law is based on a finding by the State Legislature that "it is in the public interest to establish a forest stewardship program to develop and promote the long-term active management of the State's forest resources in order to preserve and enhance those resources and

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realize the benefits thereof.” The Forest Stewardship Program rules have been developed with this purpose in mind (see the Social Impact statement, 49 N.J.R. at 701).

The notice of proposal stated that around 42 percent of New Jersey’s land is forested. This data is taken from a USDA Forest Service report (“New Jersey’s Forests 2008,” USDA Forest Service, Northern Research Station, 2011), which also reported that the percentage had been 46 percent in 1956. A more recent USDA report states that the amount of New Jersey’s land area that is forested has dropped to 40 percent (“New Jersey’s Forests 2013,” USDA Forest Service, Northern Research Station, 2016). The portion of forested land held privately was close to two-thirds (62 percent) in 2008; by 2013 this portion had fallen to 48 percent. If New Jersey is to continue to enjoy the benefits afforded by forest lands and the multiplicity of ecosystem services they yield, it is clearly in the public interest to stem this decline and undertake programs that encourage private landowners to continue to maintain their lands as forested lands. Avoiding further loss of forest land is perhaps the most certain contribution that a forestry program can render toward carbon sequestration. Relieving the tax pressure that impels development of forest land is a fundamental aim of the Forest Stewardship Law.

Under the Forest Stewardship Program, the private landowner has great latitude in setting the goals and objectives in a forest stewardship plan and specifying the prescriptions and practices that will be carried out. But participation does entail constraints. As stated at N.J.A.C. 7:3-5.2(b), management of the forest land and its natural resources must be based on the principle of conservation. The plan must be designed to sustain the productivity of the forest land and its natural resources in perpetuity. “If the plan includes cutting and removal of trees, it shall ensure regeneration sufficient to maintain the forest and its ecosystem” (N.J.A.C. 7:3-

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5.2(c)). The plan must also prescribe active management to sustain and enhance forest productivity and yield of ecosystem services.

As one commenter notes, “ecosystem services” is broadly defined and includes provisioning services, regulating services, supporting services, and cultural services. A plan that would harm and deplete the forest ecosystem would not meet the criteria of sustaining and enhancing ecosystem services. Merriam-Webster defines “maintain” as “to keep in an existing state, preserve from failure or decline.” In the context of the adopted rules, then, any tree cutting or removal must be performed in a manner, and only to an extent, that keeps the forest and its ecosystem from failing or declining.

The Forest Stewardship Program does not promote tree removal that is detrimental to the forest. Also, nothing in the rules empowers the landowner to remove trees beyond what would be legally allowed in the absence of these rules. Rather, as a consequence of the Forest Stewardship Law’s linkage of the Forest Stewardship Program with the Farmland Assessment Program, the Forest Stewardship Program will encourage conservation of forest lands. Previously, New Jersey forest landowners have been able to qualify non-appurtenant woodlands for farmland assessment only through harvest and sale of forest products under a woodland management plan. The woodland management plan approach to qualifying for farmland assessment continues to be available. The Department expects that many owners who have been qualifying their woodlands through compliance with a woodland management plan will continue to do so. But, the establishment of the Forest Stewardship Program makes available an alternative approach under which harvest and sale of forest products is not required for woodlands to qualify for farmland assessment.

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Tree removal need not result in degradation of the forest ecosystem. Removal, carried out in a sustainable manner, may be part of a forest stewardship plan. An owner may want to harvest trees to generate some income, possibly to help defray management costs, but an owner may also choose to remove trees for any number of ecologically conscious stewardship purposes, such as protecting the health of the remaining trees from infestation or disease, creating the preferred habitat of wildlife species, removing invasive species and hazardous trees, or thinning a stand to promote more vigorous growth of the remaining stock.

Participation in the Forest Stewardship Program is not restricted to landowners who want to manage their lands solely for ecological and other environmental purposes. Neither the Forest Stewardship Law nor these implementing rules mandate such restriction. Production of commercial forest products can be one of the long-term goals of a forest stewardship plan. Whatever goals and objectives the landowner chooses, the Department anticipates that multiple ecosystem services will nonetheless be rendered, such as preservation of wildlife habitat, replenishment of water supply, and protection of threatened and endangered species. These benefits would surely be diminished or lost if the forest land were to be converted to other uses.

The “10 percent canopy cover” in adopted N.J.A.C. 7:3-5.1(c) and 5.2(d) is not a management goal, but a minimum criterion for classifying land as forest land. Ten percent canopy cover is a threshold to both to determine whether a property has sufficient forest land to qualify for the Forest Stewardship Program and, within a qualifying property, to differentiate land eligible to be classified and managed as “forest land” under a forest stewardship plan.

N.J.A.C. 7:3-5.6 states that all land identified as “forest land” in a plan must be managed as forest land. However, this was not also stated in proposed N.J.A.C. 7:3-5.1(c), which lists the

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criteria for land to qualify in a plan as “forest land.” Some commenters pointed out that proposed N.J.A.C. 7:3-5.1(c) could be read to mean that land with trees, even though used for non-forest purposes, could be claimed as “forest land.” The commenters suggested that even a golf course could qualify. The Department agrees that N.J.A.C. 7:3-5.1(c), as well as N.J.A.C. 7:3-5.6, should make clear the requirement to manage as forest land all land so classified. The Department is modifying N.J.A.C. 7:3-5.1(c) to re-state that only land that is to be managed as forest land can be considered to be forest land in a forest stewardship plan. A manicured golf course fairway would not qualify as forest land even if it had 10 percent canopy cover, because the manicured portion is not being maintained as forest land. However, other land on a golf course property might be managed as forest land. In such case, provided the other criteria are met (for example, the property is privately held and includes one or more areas, each a half-acre or more in size, that are to be managed as forest land and collectively total at least five acres), the owner could choose to prepare and obtain the Department’s approval of a forest stewardship plan and manage the qualifying forest land in compliance with the plan.

26. COMMENT: Logging sensitive areas bring in siltation and run-off, and impact pristine C1 trout streams with the highest water quality in the State. Although the Forest Stewardship rules require the landowner to obtain permits, such as freshwater wetlands and flood hazard area control permits, for activities undertaken on regulated land, the Freshwater Wetlands Rules and Flood Hazard Area Control Act rules contain loopholes that allow landowners to get around the permitting requirements and clear-cut buffers that protect important high quality C1 streams by

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controlling stormwater runoff and preventing erosion of sediments into the waterway. (13 and 14)

RESPONSE: Trees can help prevent erosion and slow and filter runoff, and their shade can be important for keeping waters from warming to an extent that is harmful to the life in the waterways. When it is necessary to cut trees in sensitive areas, such as freshwater wetlands or flood hazard areas, the Department grants approval for such cutting pursuant to the provision of its land use rules, which require that any such cutting be carried out in accordance with best management practices. Provided certain conditions are met, the Freshwater Wetlands Protection Act (FWPA) rules at N.J.A.C. 7:7A exempt certain forestry activities and the Flood Hazard Area Control Act (FHACA) rules at N.J.A.C. 7:13 allow certain forestry activities to be carried out under a permit-by-rule. The Department has pre-determined that the allowed practices, when performed in accordance with the specific requirements of the permit-by-rule, will not result in significant environmental impact.

More specifically, at N.J.A.C. 7:7A-2.8(b)4 the FWPA rules exempt the normal harvesting of forest products, including the clear cutting of a non-cultivated, wooded wetland area, from the FWPA rule's permit requirements, if these practices are part of a forest management plan that addresses wetlands, and the plan has been reviewed and approved by the State Forester before the activities are undertaken. This requirement is the subject of a pending notice of proposal to amend the FWPA rules, in part to clarify that any such management plan conforms to best management practices and to clarify that other silviculture activities, such as stewardship activities, may be exempt from the freshwater wetlands permitting requirement (see 49 N.J.R. 834(a)). These best management practices ensure that, while the activities are exempt

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from the requirement to obtain a permit, any forestry activities minimize impacts to freshwater wetlands. If these conditions are not met, the practices are required to obtain a freshwater wetlands permit in accordance with all applicable requirements of N.J.A.C. 7:7A.

Similarly, at N.J.A.C. 7:13-7.26, the FHACA rules authorize some forest management activities to be carried out in a flood hazard area and/or riparian zone pursuant to a permit-by-rule, if the activities are conducted in accordance with a forest management plan approved by the State Forester before the activities are undertaken and certain limiting conditions are met. If practices other than those authorized under N.J.A.C. 7:13-7.26 are to be carried out, or if the attendant conditions will not be satisfied, the proposed practices are required to be reviewed under an individual permit application.

The FHACA permit-by-rule 26, N.J.A.C. 7:13-7.26, expressly prohibits the clear-cutting of trees within a riparian zone unless it is unavoidably necessary as part of a silviculture prescription for one of the following: Atlantic white cedar restoration; regeneration where specific conditions create the need for salvage and regrowth of trees and other vegetation, the site would not naturally reestablish a healthy native ecosystem, and therefore requires human intervention for proper and timely regeneration; and for sanitation, suppression, or salvage, where trees have experienced insect damage, disease outbreaks, and/or death from drought or other conditions. In sum, clear-cutting of trees in a riparian zone is allowed only in a circumstance where doing so is necessary for the restoration of a healthy, native ecosystem; it is not permitted when the main or only goal of clear-cutting is the harvesting of forest products.

Interface with Farmland Assessment

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27. COMMENT: For several decades Governors, legislatures, and the voting public have recognized the importance and value of open space and agriculture to New Jersey. The Pinelands and the Highlands have been protected by State law, and an amendment to the State Constitution to assess farmland based on its agricultural productivity value was overwhelming approved by the voters of New Jersey. Farmland assessment remains the State's primary mechanism for encouraging private landowners to retain land as agricultural and horticultural land. The Forest Stewardship Law and the proposed regulations are an extension of the recognition of the values of forests to the people of New Jersey. (9)

RESPONSE: The Department acknowledges the commenter's support for the adopted rules.

28. COMMENT: The rule should explicitly state, but does not, that a landowner who wants to engage in active management to remove invasive species, reintroduce native species, manage rare species of plants or animals or otherwise conduct forest restoration activities may do so under a forest stewardship plan that does not require removal of trees or sale of forest products. The rule should also state that an owner may qualify a property's woodlands for taxation under farmland assessment based on compliance with the plan and would be exempt from satisfying any minimum income requirement through sale of forest products in order to qualify. This is implied in the summary of the notice of proposal. However, the word "income" is not included in the actual text of the rule; thus, landowners might not even be aware of the opportunity to qualify woodlands for farmland assessment without meeting a minimum income requirement. The Department should also offer better public education and guidance for the public regarding these new regulations. Foresters should be required to inform their clients of the new options

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available to them under the program, particularly relating to active management of properties. (4 and 15)

RESPONSE: The Forest Stewardship Law adds the option of qualifying forest land for farmland assessment by actively managing the forest in compliance with a forest stewardship plan. The law directs the Department to establish a forest stewardship program under which an owner, in conjunction with a forester, may prepare a forest stewardship plan, submit the plan to the Department for approval, and implement the plan as approved. The adopted rules constitute such a program. The rules require an owner to identify goals for the property (N.J.A.C. 7:3-5.4(c)1), and to set forth the objectives directed toward achieving the goals (N.J.A.C. 7:3-5.6(b)). While the goals must include ensuring the sustainability of the property's forest land, the owner may identify any long-term goal that is compatible with sustainability. This may include managing the forest for its ecological enhancement. Although deriving income from the forest is not a prohibited goal, the Forest Stewardship Law does not require an owner to derive income from its forest lands in order to qualify for farmland assessment.

The Department's rules govern the contents of a forest stewardship plan. The rules governing farmland assessment, including qualifying income requirements, as applicable, are set forth in the Farmland Assessment Act and its implementing rules, which the Department of the Treasury, Division of Taxation (Taxation) promulgates. Thus, any discussion of required income-generation is more appropriately included in Taxation's rules. Although in some instances an owner must derive income from a property's agricultural or horticultural lands in order to qualify the property for farmland assessment, the Farmland Assessment Act at N.J.S.A.

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54:4-23.5.d states that there is no income requirement for woodland that is the subject of a forest stewardship plan that is approved by the Department.

The Department has communicated with many persons about the Forest Stewardship Program as the rules were under development, and will continue to do so now that the rules are adopted. New Jersey Forest Service staff have discussed the Forest Stewardship Program with professional forestry consultants, forest landowners, and attendees at meetings of the New Jersey Forestry Association, the Society of American Foresters, and other organizations. The Department participates in training sessions held by Taxation for local assessors. The Department plans to provide training to interested parties and to post guidance on the Department's website.

29. COMMENT: The program includes an option to add value with farmland assessment by enhancing the forest rather than logging it. This should be something that includes removing invasive species and protecting habitat. However, this option is also weak. Landowners will not make any money enhancing the forest, and it may even cost them money. (13)

RESPONSE: These rules, through the tax privilege associated with their linkage under the Forest Stewardship Law with New Jersey's Farmland Assessment Program, are an instrument to encourage landowners to maintain their land as forest land. Sections 13 through 15 of the Forest Stewardship Law (P.L. 2009, c. 256, §§ 13 through 15) amend the Farmland Assessment Act, so as to enable forest land managed in compliance with a plan approved under the Forest Stewardship Program rules to qualify for taxation under farmland assessment. The sale of forest products is allowed, but the sale of forest products is not required to qualify for this tax status.

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This linkage of the Forest Stewardship Program with the Farmland Assessment Program represents an economic incentive for private landowners to carry out active management of their forests free of any obligation to sell trees and other forest products.

30. COMMENT: These forestry guidelines are the same as the weak national guidelines. They not only do not protect the State's forests, but are completely unenforceable. Foresters can come up with a plan and do whatever they want without a penalty. The rules should be much stronger. (13 and 14)

RESPONSE: Participation in the Forest Stewardship Program is voluntary. An owner may choose to participate, and may cease participation at any time. The Forest Stewardship Law does not authorize the Department to issue notices of violations or civil administrative penalties if an owner does not meet plan requirements. Nevertheless, there are consequences to an owner who does not manage forest lands in accordance with an approved plan.

An owner risks the property's eligibility for the differential tax treatment under the Farmland Assessment Program. If a landowner wants to use participation in the Forest Stewardship Program as the basis for qualifying woodlands for taxation under farmland assessment, the owner must manage the property in compliance with the approved forest stewardship plan, and must have done so for at least the two calendar years prior to the tax year for which taxation under farmland assessment is sought (see N.J.S.A. 54:4-23.7b.10).

31. COMMENT: The role and importance of private forests in carbon sequestration and climate change mitigation need to be recognized and certified by a forest stewardship plan. Proposed

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N.J.A.C. 7:3-5.5 requires the property overview and the plan to discuss these issues, but there is no indication of relative importance. Supporting data, or standards that identify carbon sequestration capabilities of various-sized trees and that display how carbon sequestration increases with tree diameters would be useful. Tax deductions could increase as trees grow larger and sequester greater amounts of carbon. (4 and 15)

RESPONSE: The amount of tax deductions, or the specific valuation of land subject to a forest stewardship plan, is beyond the scope of this rulemaking. The Department cannot, through its rules, establish the value of property or the amount of any reduction in taxes that may result from participation in the Forest Stewardship Program.

Nevertheless, preserving forests, such as through the Forest Stewardship Program, contributes to carbon sequestration. By offering the opportunity for a landowner to qualify for farmland assessment through compliance with a forest stewardship plan, New Jersey is broadening the range of incentives intended to encourage private landowners to retain their forest lands, rather than clearing them and converting them to other uses. Both long-term storage of carbon and climate regulation are recognized in the adopted rules as an “ecosystem service” (see definition of the term at N.J.A.C. 7:3-1.3). Adopted N.J.A.C. 7:3-5.2(c) states, “The plan shall prescribe active management to sustain and enhance forest productivity and yield of ecosystem services.” There are many types of ecosystem services that forest land can render, and a landowner may include carbon sequestration as a plan goal or objective. To ensure that the development of the plan takes carbon sequestration into account, adopted N.J.A.C. 7:3-5.5(f)2 requires that the plan, in its Property Overview section, “Assess the condition of the forest land with respect to carbon sequestration, taking into consideration its functioning both as a carbon

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source and a carbon sink.” If a plan includes carbon sequestration as an objective, the plan will need to specify a monitoring method to use to measure progress toward the objective. The Department notes that measuring increase in tree diameter is not necessarily a reliable method of measuring carbon sequestration. The rules do not require precise calculation of carbon sequestration benefit on a single property basis; such calculations would add substantial complexity to preparation of a plan.

Contents of a Plan

32. COMMENT: The Forest Stewardship rules should include appropriate New Jersey forestry standards. An alternative approach would be to establish the effective date for the Forest Stewardship rules effective with the approval of Statewide Forestry Standards. N.J.S.A. 13:1L-36.a requires the Department to establish rules and regulations “setting forth policies, guidelines and best management practices that establish standards designed to ensure the sustainability of forest lands, which may be applicable to any publicly and privately owned forest land.” (5)

RESPONSE: Adopted N.J.A.C. 7:3-5 sets forth the standards necessary for the implementation of the Forest Stewardship Program. The adopted rules governing the Forest Stewardship Program at N.J.A.C. 7:3-5 are designed to ensure the sustainability of privately owned forest lands whose owners participate in the program.

33. COMMENT: N.J.A.C. 7:3-5.4(c)2, which requires a forest stewardship plan to indicate whether the owner intends to manage the property’s forest land in coordination with the management of other neighboring properties, should be deleted. Such “partnership” rarely if

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ever happens and, if it does, it is a private affair. Asking that such information be given goes beyond the scope of the Forest Stewardship Law. (1)

RESPONSE: Although the Forest Stewardship Law does not address coordinated management by multiple parties, the USDA Forest Service in its “Forest Stewardship Program National Standards and Guidelines” (Revised October 2015) does. The USDA guidelines encourage efforts guided by a landscape-scale stewardship plan that encompasses multiple ownerships under the same plan to address resource needs. The adopted rules do not require an owner to participate in a multi-party arrangement; nevertheless, it is appropriate to ask that a plan indicate when the owner is participating in multi-party management initiative. The information may prove useful to the Department for identifying opportunities to seek Federal grant funding in support of landscape-level stewardship initiatives.

34. COMMENT: The rules direct landowners to consult the Natural Heritage Database report for their property. This is problematic in many ways: 1) Most private lands have not been surveyed; 2) If they have been surveyed, GIS locations are not provided; therefore, critical habitat will likely not be excluded from the harvest area; 3) The plans as proposed under these rules are not to include any locations of rare, threatened, or endangered species, to avoid any risk of inadvertent non-redaction before a request for government records is filed, and they do not want to impose burden of redaction on an assessor; and 4) There is no incentive for foresters to utilize this information because under the proposed repeal of N.J.A.C. 7:3-3.2, there will be no oversight, and the forester is paid based on percentage of wood product or by total acreage. (15)

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RESPONSE: The rules ensure that at least the documented information in the Department's Natural Heritage Database is used to identify the State-listed threatened or endangered-species on or near a property. The rules do not require that this information be supplemented by an on-site survey, although the Department may recommend that one be conducted. Also, the landowner may choose to go beyond minimum requirements and arrange for an on-site survey.

Forest stewardship plans are subject to disclosure, as they are public records accessible under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. (OPRA). As a protection for endangered and threatened plant or animal species, N.J.A.C. 7:1D-3.2(a)3 prohibits the release of the precise location of such species. This does not mean that their presence, if known, is not being taken into consideration in the development of a plan. On the contrary, if there is present an endangered or threatened plant or animal species, the activities that can be undertaken on the property may be restricted in order to prevent the loss of the species or critical habitat (see discussion of species protection in the Response to Comment 37).

With respect to the commenters' fourth point, as explained in the Response to Comment 3, the repeal of N.J.A.C. 7:3-3.2 has no impact on the oversight of plan implementation. The assertion that consulting foresters are paid based on percentage of wood product or by total acreage is also not relevant. The terms on which landowners hire professional foresters is negotiated between the two parties and may be on whatever basis the parties agree. Landowners interested in qualifying for taxation under farmland assessment have significant economic incentive to ensure that the property is being managed in compliance with the plan, as a finding of non-compliance results in disapproval of a farmland assessment application. Consulting

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foresters have significant long-term incentive to provide the landowners who are their clients with the services they need.

35. COMMENT: If the intent of proposed N.J.A.C. 7:3-5.5(d) is to require that a plan provide a comprehensive list of State-listed plants, then the language should be amended to include species of special concern to reflect the fact that a “threatened” designation does not exist for listed plant species in New Jersey. (12)

36. COMMENT: Regarding State-listed species, the Property Overview calls for "identification" of "any State-listed threatened or endangered species." The Property Overview makes no mention of rare or special concern species. The identification of threatened or endangered species required is through a search of the Natural Heritage Database, which is highly deficient on private lands. An on-the-ground survey should be required.

A similar problem exists with the requirement to "identify any cultural resources ... that merit protection and preservation ..." Only sites already on the New Jersey or National Register of Historic Places are mentioned, not ones that are under consideration for listing, or that are on a municipal list. (15)

RESPONSE TO COMMENTS 35 AND 36: Adopted N.J.A.C. 7:3-5.5(d)1 requires that the Property Overview section of a plan identify the State-listed threatened or endangered species determined to be on or near the property. As the commenters note, this requirement does not extend to other species, often also considered rare species, which are tracked by the Natural Heritage Program. Primarily these other species are those that are categorized as “animal species of special concern” or “plant species of concern.” State law affords no additional protection to

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these other species, except that no hunting season may be established for an animal species of special concern. Although the Forest Stewardship Program rules do not require that these more informally categorized rare species be cited in a plan, a landowner may elect to do so and may include measures to protect or enhance such populations. A list of animal species of special concern is available on the Department's website

at <http://www.state.nj.us/dep/fgw/ensp/pdf/spclspp.pdf>; and of plant species of concern at <http://www.state.nj.us/dep/parksandforests/natural/heritage/njplantlist.pdf>.

Adopted N.J.A.C. 7:3-5.5(g) requires that the Property Overview section of a plan identify cultural resources on the property that merit protection and preservation. As the commenters note, only resources listed in the New Jersey Register of Historic Places and/or the National Register of Historic Places are required to be given, but the owner may list any other cultural resource he or she judges should be protected and preserved under the plan. This could be a resource that is under consideration for listing or is on a municipal list, but it also could be one that the landowner values, even if it would never qualify for a publicly maintained listing.

37. COMMENT: The notice of proposal requires plans to list threatened and endangered species, but there are no real protections and no regulatory authority to do anything about it. This is dangerous for the threatened and endangered species in New Jersey, such as the Indiana bat, which needs more, not less, protection. New Jersey is home to many threatened and endangered species that depend on forest habitat for survival, including the trout, Swamp Pink, and Timber Rattlesnake. The Highlands is a breeding ground for endangered neo-tropical song birds, that require a deep forest at least 300 feet of undisturbed habitat to protect their nests from

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other species. If these forests are all logged to 10 percent, it will create a huge ecosystem loss for these species. (13 and 14)

RESPONSE: New Jersey's Forest Stewardship Law did not authorize the establishment of any additional species protections. However, as adopted N.J.A.C. 7:3-5.1(l) states, an owner with an approved plan is not authorized to carry out the plan "unless all other applicable legal obligations are satisfied." This includes laws that afford species protections, such as the Federal Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq., the USFWS's Endangered Species Committee regulations at 50 CFR 402.02, and New Jersey's Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-13 et seq.

Further, the rules specify at N.J.A.C. 7:3-5.6(e) that a plan must state, with respect to each prescription and practice, whether the prescription or practice could adversely impact a Federally listed or State-listed threatened or endangered species determined to be on or near the property or destroy or adversely modify its critical habitat and, if so, the plan must identify the measures that will be taken to avoid such impact. This ensures that each plan will take into consideration threatened and endangered species. Also, individual landowners who wish to undertake species protections that go beyond legal mandates may incorporate such protections in a forest stewardship plan. See the Response to Comments 24 and 25 for a discussion of tree removal.

38. COMMENT: In addition to the resource elements explicitly listed in proposed N.J.A.C. 7:3-5.5 that are required to be discussed in a plan, deer herbivory should also be included. Because deer herbivory can impact forest tree and shrub regeneration, plans should be required to discuss

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any anticipated herbivory, any known information on local deer density, and strategies that can limit unintended trajectories in forest regeneration as a result of herbivory pressure. (12)

RESPONSE: Deer herbivory is a challenge in forest management in New Jersey. The adopted rules recognize this at N.J.A.C. 7:3-5.5(f)1, which requires the Property Overview section of a plan to “Identify threats to the sustainability of the forest land or the forest ecosystem, including factors that impair forest health or impede natural succession, such as ... deer ...”

39. COMMENT: In N.J.A.C. 7:3-5.6, remove the extensive descriptions of examples given, as those written are too suggestive of content, limiting to simplistic solutions, and are far more than necessary in the rules. (1)

RESPONSE: N.J.A.C. 7:3-5.6, Forest stands, lists the specific information that a plan must include for each forest stand on the property. The items in the adopted rule are not examples, but are mandatory items.

40. COMMENT: N.J.A.C. 7:3-5.5(c) should include characterization of the property’s soils as paragraph (c)2. Discussion of the soils found on the property reference the soils map, which covers the entire property and which is required to be provided as an appendix to the plan. Delete N.J.A.C. 7:3-5.6(a)3, which would require that soils information be given separately for every stand. This soils information need not be reiterated for each stand. (1)

RESPONSE: The soils map required pursuant N.J.A.C. 7:3-5.8(b)1 is for the entire property, and the soil information for the property is based on this map. As the commenter states, repeating soils information for each stand is not necessary; therefore, the Department is

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modifying the rules on adoption to delete N.J.A.C. 7:3-5.6(a)3, requiring characterization of the property's soils stand by stand, and requiring at N.J.A.C. 7:3-5.5(c)2 that the Property Overview contain a characterization of soils for all of the property's forest land.

41. COMMENT: The forest stand inventory requirements, in particular, call for information that is primarily utilized in wood production efforts, and would be of no interest or use to a landowner who wishes to manage his or her land for ecological purposes. The required stand information would be not only unnecessary, but also costly. Specifically, the information asked for in proposed N.J.A.C. 7:3-5.6(a)4iii through vii should not be required when wood products are not sought as a landowner goal. (15)

RESPONSE: The inventory information required under N.J.A.C. 7:3-5.6(a) consists of parameters that forestry professionals use to characterize a stand and its condition. This is information the Department needs when it reviews a plan to gain an understanding of the property's forest stands and to use as a context for assessing whether the objectives, prescriptions, and practices proposed in the plan are appropriate to conditions on the ground, progress toward the goals for the property, and ensure the sustainability of the forest land. The information is relevant to more than wood production.

42. COMMENT: Proposed N.J.A.C. 7:3-5.6(a)4viii(2) and 4iv ask for the same information twice. Replace "and" with "or" in the former, and delete "the density of the stand and" in the latter. (6)

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RESPONSE: The referenced provisions pertain to the forest inventory information that a plan must provide for each of the property's forest stands. Proposed N.J.A.C. 7:3-5.6(a)4iv asks for "The stocking level of the stand, given as a percentage of full stocking and of any species targeted for management." Proposed N.J.A.C. 7:3-5.6(a)4viii(2) asks for the density of the stand.

Plans must provide the stocking level of all species in a stand, not just the stocking level of a species targeted for management. Therefore, the Department is not modifying the rule on adoption to replace "and" with "or" in N.J.A.C. 7:3-5.6(a)4iv. However, the stocking level of a species targeted for management would be provided as part of the stocking level of the stand; therefore, the phrase "and of any species targeted for management" is redundant. The Department is modifying N.J.A.C. 7:3-5.6(a)4iv on adoption to remove the redundant phrase.

The Department recognizes that "the stocking level of the stand" can be understood to have the same meaning as "stand density." N.J.A.C. 7:3-5.6(a)4iv requires that the stocking level be given in relative terms, as a percent of full stocking. Stand density can also be expressed relative to a standard condition. So interpreted, proposed N.J.A.C. 7:3-5.6(a)4viii(2) would be duplicative of proposed N.J.A.C. 7:3-5.6(a)4iv.

However a relative value is not what is sought. Subparagraph (a)4viii asks that a plan provide information to characterize the condition of the stand. It specifically requires that a number of the stand's attributes be given, each of which reflect aspects of the stand's condition. Among these is stand density. As modified on adoption, recodified N.J.A.C. 7:3-5.6(a)3viii(2) clarifies that stand density is to be expressed as basal area. Basal area is an absolute value. It is

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a quantification of the cross-sectional area of the stems of all trees within a given area that is used in forest management as an indication of the degree to which an area is occupied by trees.

43. COMMENT: Amend N.J.A.C. 7:3-5.6(a)4vii to read, “A stock and stand table if the plan directs or prescribes any cedar or sawtimber harvest during the plan period.” (1)

RESPONSE: N.J.A.C. 7:3-5.6(a)4vii requires a plan to identify all of the property’s forest land, and provide forest inventory based on a recent survey. The forest information must include a stand table and a stock table for the stand only if the plan directs that any prescription or practice be carried out in the stand during the plan period. If no prescription or practice is to be carried out during the plan period, then no stand table and stock table is required. Harvesting of cedar or sawtimber constitutes a prescription or practice; therefore, if the plan calls for harvesting of cedar or sawtimber, a stand table and stock table is required. The modification that the commenter suggests would result in plans providing a stock table or stand table only if the plan prescribes a harvest of cedar or sawtimber. This is an undesirable result, since the Department relies on the information in a stand table and a stock table to provide necessary context for its review of a plan, no matter what prescriptions and practices are set forth in the plan for a stand.

44. COMMENT: Access routes are a property-level concern, not a stand-level concern. This is supported by N.J.A.C. 7:3-5.8(b)3iii(5), which requires the plan’s appendices to contain a map showing any existing or proposed access route that crosses a waterbody, waterway, wetland, transition area associated with the wetland, flood hazard area, and/or riparian zone. Relocate proposed N.J.A.C. 7:3-5.6(a)5 as new N.J.A.C. 7:3-5.5(i). (6)

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RESPONSE: Access routes may serve more than one stand, and would be better addressed at the property level rather than at the stand level. Therefore, the Department is modifying the rules on adoption to delete proposed N.J.A.C. 7:3-5.6(a)5, and requiring at new N.J.A.C. 7:3-5.5(c)4 that the Property Overview section of a plan include access routes.

45. COMMENT: At N.J.A.C. 7:3-5.6(b)2, replace “one or more objectives” with “one or more goals or objectives (with a minimum of at least one objective to be included for at least one stand).” For larger properties with multiple stands, certain low-priority stands may not have recommended management activities during the course of a 10-year period. Specifying an objective, and, thus, “measurable results planned to be achieved,” may not be appropriate or efficient. Further, certain landowner objectives are extremely likely to be on property-level scale, not a stand-level scale, and may not be properly accounted for as the language currently reads. (6)

RESPONSE: As the terms are used in the Forest Stewardship Program rules, “goal” and “objective” are not interchangeable terms. All plans need to have both goals and objectives. Goals are established on a property-level scale and objectives on a stand-level scale.

A plan must set one or more objectives for every stand on the property, even for a stand in which no active management is to be carried out during the plan period. The rules at N.J.A.C. 7:3-5.6(d) allow a stand to be exempt from the requirement for active management for an entire plan period in recognition of the fact that in some instances progress toward forestry objectives can unfold, without intervention, over a longer time frame than a single plan period. However, a stand is not eligible for the exemption unless “progress can be made toward the objective(s) for a

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stand without active management.” The Forest Stewardship Program does not envision that a participating property will have stands for which there are no objectives.

46. COMMENT: Amend proposed N.J.A.C. 7:3-5.6(b)1 to read, “Give the desired future condition of the stand and explain the silvicultural objectives and practices necessary to achieve the desired future condition.” This would eliminate the necessity for a plan to go through a long list of goal interactions that are at least implicit, if not explained, elsewhere. Also, delete N.J.A.C. 7:3-5.6(b)2. The list of parameters required by proposed N.J.A.C. 7:3-5.6(b)2 will be given in the activities presented in the Management Schedule section of plan, as well as given pursuant to N.J.A.C. 7:3-5.6(b)1, as recommended to be changed upon adoption.

Further, the Department should delete proposed N.J.A.C. 7:3-5.6(e)1 through 7. Both N.J.A.C. 7:3-5.6(e)1 (rationale) and 2 (extent and method) are covered by the above-suggested changes to N.J.A.C. 7:3-5.6(b)1. Both N.J.A.C. 7:3-5.6(e)3i and ii are required in the Background and Goals or the Property Overview sections of a plan. N.J.A.C. 7:3-5.6(e)4 pertains to wetlands, but N.J.A.C. 7:3-5.5(c) requires wetlands to be addressed in the Property Overview section; there is no need to discuss wetlands in the plan’s prescriptions and practices. N.J.A.C. 7:3-5.6(e)5 and 6 require a plan to consider the impact of the plan’s prescriptions and practices on Federal and State threatened and endangered (T&E) species, but pursuant to N.J.A.C. 7:3-5.5(d) Federal and State T&E species are addressed earlier in the plan in the Property Overview section. The impact on cultural resources required at proposed N.J.A.C. 7:3-5.6(e)7 will be discussed earlier in the plan as well. (1)

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RESPONSE: N.J.A.C. 7:3-5.6(b)1 and 2 set forth elements that must be provided for each forest stand; no other provision of the rules requires these elements to be included in a plan. N.J.A.C. 7:3-5.6(b)1 requires that a plan give the desired future condition for each stand, and explain how this desired condition has a clear and direct relationship to one or more of the plan's long-term goals. For coherency of a plan, the desired future condition of each stand should have a direct relationship to the overall goals for the property. The relationship between the future condition and the goal may not always be apparent; the Department should not be required to speculate. Therefore, the adopted rule requires the plan to explain the relationships.

N.J.A.C. 7:3-5.6(b)2 requires that the plan set forth one or more objectives for each forest stand that are directed toward achieving its desired future condition. A specific statement of each objective, including the measurable results planned to be achieved within the plan period, is a basic requirement of a Forest Stewardship Plan. Therefore, the adopted rule continues to require a statement of each objective.

N.J.A.C. 7:3-5.6(e) applies to stands in which active management will be carried out during the plan period. It requires that a plan, in its Forest Stand section, identify for each stand the prescriptions and practices to be carried out. Proposed N.J.A.C. 7:3-5.6(e)1 through 7 specify information that a plan must provide with respect to each identified prescription and practice. The Forest Stewardship Law specifies at N.J.S.A. 13:1L-31.3.a(2) that a plan must "provide the rationale for each activity listed"; this mandate is reflected in paragraph (e)1. The Department needs to know the extent to which a practice will be carried out and the methods anticipated to be used, both when it reviews a plan and when it inspects the property for compliance; this is the information required to be provided under paragraph (e)2. The overviews

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of the property's wetlands, threatened and endangered species, and cultural resources, given respectively at N.J.A.C. 7:3-5.5(c), (d), and (g), do not duplicate and cannot replace consideration of the potential for impacts posed by each prescription or practice; such consideration is required under paragraphs (e)4 through 7. Therefore, proposed N.J.A.C. 7:3-5.6(e)1, 2, and 4 through 7 (adopted N.J.A.C. 7:3-5.6(e)1 through 3) are necessary and not required elsewhere in the adopted rules.

Proposed N.J.A.C. 7:3-5.6(e)3 requires that a plan include, for each prescription and practice, a statement as to whether it is designed to ensure the sustainability of the forest land and to eliminate excessive and unnecessary cutting. This requirement was proposed pursuant to the provision in the Forest Stewardship Law at N.J.S.A. 13:1L- 31 that requires plans include "activities designed to ensure the sustainability of the forest" and "activities designed to eliminate excessive and unnecessary cutting." A statement as to whether a plan includes activities as the law requires was not proposed for the Background and Goals section of a plan. However, the Department finds that it would be more effective and less duplicative to require that such statement be given in the Background and Goals section comprehensively for all of the plan's prescriptions and practices, rather than requiring that multiple statements be given, separately practice-by-practice, in the Forest Stand section. The Department is modifying the rules on adoption to delete N.J.A.C. 7:3-5.6(e)3 and recodify the remaining paragraphs, and require at new N.J.A.C. 7:3-5.4(e) that a plan indicate whether the prescriptions and practices in the plan are designed to ensure the sustainability of the forest land and eliminate excessive and unnecessary cutting.

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47. COMMENT: Relocate N.J.A.C. 7:3-5.6(b)3 as new N.J.A.C. 7:3-5.4(b)3iii. The Background and Goals section of the plan is a more appropriate place for this information. (6)

48. COMMENT: Delete N.J.A.C. 7:3-5.6(b)3. The information that proposed N.J.A.C. 7:3-5.6(b)3 requires be provided for each forest stand will, pursuant to N.J.A.C. 7:3-5.4(b)3, be included for all stands in the Background and Goals section of the plan, and need not be reiterated. Also, this information will be recorded on an annual basis pursuant to the monitoring, recordkeeping and reporting requirements at N.J.A.C. 7:3-5.11. (1)

RESPONSE TO COMMENTS 47 AND 48: Under proposed N.J.A.C. 7:3-5.6(b)3, if a prior Forest Stewardship Plan applies to a property, the successor plan must, for each forest stand, report the monitoring data collected for each objective under the prior plan, describe any trend(s) shown by the data, and assess the progress achieved toward the objective under the prior plan. In contrast, N.J.A.C. 7:3-5.4(b)3 requires the Background and Goals section of the plan to include the relevant history of the property generally, including past events or practices that contribute to the present condition. It does not include a requirement to report the monitoring data collected and recorded under the prior plan pursuant to N.J.A.C. 7:3-5.11(b) and (c) and to describe the trends the data shows with respect to progress toward the objectives in the prior plan.

Rather, such a requirement was proposed in paragraph (b)3 within N.J.A.C. 7:3-5.6, Forest stands. Because the requirement relates to prior plans, rather than the current plan, the requirement is more appropriately located in N.J.A.C. 7:3-5.4, Background and goals. The Department is modifying the rules on adoption to delete N.J.A.C. 7:3-5.6(b)3, and add reporting and discussion of the prior plan monitoring information to the Background and Goals section of the plan in accordance with new N.J.A.C. 7:3-5.4(b)4.

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49. COMMENT: Delete N.J.A.C. 7:3-5.6(c)1 through 4. The methods necessary for assessing whether the expectations of management are being met will be provided elsewhere in the plan, such as in the Management Schedule section or pursuant to the monitoring, recordkeeping, and reporting requirements at N.J.A.C. 7:3-5.11. (1)

RESPONSE: Proposed N.J.A.C. 7:3-5.6(c)1 through 4 require a plan to provide, for each objective, the method to be used to monitor progress toward the objective. The method must specify the parameters to be measured, how the measurement is to be taken, and the units to be used in recording the measurement. N.J.A.C. 7:3-5.6(c)4 also requires that the baseline value be given for each parameter. No other provision of the rules requires that monitoring methods be provided. A Management Schedule in accordance with N.J.A.C. 7:3-5.7 does not pertain to monitoring; rather, it provides an overview of the practices to be carried out over the plan. Monitoring methods will also not be provided pursuant to the monitoring, recordkeeping, and reporting requirements at N.J.A.C. 7:3-5.11; the methods that N.J.A.C. 7:3-5.6 requires are those to be used in taking the measurements required at N.J.A.C. 7:3-5.11(b).

50. COMMENT: The Department should make it clear at N.J.A.C. 7:3-5.6(d) that the plan for a property with multiple stands cannot consist of no activity in all of the stands during the plan period. (7)

RESPONSE: A forest stewardship plan must call for active management of the property's forest stands during the plan period. N.J.A.C. 7:3-5.2(c) establishes this and explains that the purpose of the active management is to sustain and enhance forest productivity and yield of ecosystem

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services. N.J.A.C. 7:3-5.6(d) restates the requirement for active management, but establishes an exemption that, provided certain conditions are met, a plan may forgo calling for active management in certain stands. The Department is modifying N.J.A.C. 7:3-5.6(d) on adoption to state more clearly that a plan must prescribe active management for each forest stand, unless the stand qualifies for exemption from the active management mandate. For a stand to qualify, three conditions must be met: i) progress can be made toward the objective(s) for the stand without active management; ii) the property must have multiple stands; and iii) active management must be called for in one or more of the property's other stands.

Requiring active management is consistent with the notice of proposal Summary, 49 N.J.R. at 692, in which the Department cited the legislative findings and declarations that underpin the Forest Stewardship Law, which state that "it is in the public interest to establish a forest stewardship program to develop and promote the long-term active management of the State's forest resources ..." Further, both the Farmland Assessment Act at N.J.S.A. 54:4-23.2 and the State Constitution establish that for land to be eligible to be taxed based on its value in agricultural or horticultural use, the land must be "actively devoted" to such use. This reinforces the mandate that the Forest Stewardship Program require plans to prescribe active management (49 N.J.R. at 693).

51. COMMENT: Proposed N.J.A.C. 7:3-5.2(c) references "active management." This term should be defined and examples provided. Active management is more than just harvesting. It includes, but is not limited to, planning, prescribed burning, thinning, girdling, cutting and leaving, and planting. It is also forestry prescriptions carried out to protect water resources,

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habitats, and rare or declining species, to contain and control diseases and invasive species, and to prevent damage to native vegetation due to over browsing by white-tailed deer in order to enable regeneration of not only forest trees, but also shrubs and herbs. Protection from over browsing can take the form of fencing, deer harvest, or other effective methods. (15)

RESPONSE: The Department has not defined “active management” because it believes its meaning is evident from the common meaning of the words. Adopted N.J.A.C. 7:3-5.2(c) indicates that the purposes of active management are to sustain and enhance forest productivity and yield of ecosystem services. The rules define “forest productivity” to mean, with respect to an objective in a forest stewardship plan, the rate of progress toward the desired future condition or outcome. As discussed above, “ecosystem services” is broadly defined and includes provisioning services, regulating services, supporting services, and cultural services. Active management may or may not entail the harvesting of forest products. It may encompass any of the practices or initiatives undertaken toward any of the outcomes the commenter has identified.

52. COMMENT: Amend proposed N.J.A.C. 7:3-5.7, Management schedule, to read, “The management schedule shall include an enumeration by stand of the activities planned to be carried out during the plan period and for each include parameters to be used to measure outputs, the amount/extent of the planned work, the rate of implementation and timing (i.e., the approximate number of years to complete the work).” (1)

RESPONSE: A management schedule provides only a brief overview of the practices to be carried out on the property during the plan period, presented chronologically in a table format. The relative brevity of a management schedule is essential to its utility. Stand-by-stand

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presentations of the prescriptions and practices in detail is to be given in the plan's Forest Stand section. The adopted rules strike a balance, requiring that some limited information about activities be given in the management schedule, including in which stand or stands a practice is to be carried out, the extent to which a practice will be carried out, and the planned timing of the implementation. Other detail about the practice, such as the parameters to be measured when monitoring is conducted, is to be placed in the Forest Stand section of the plan, not in the Management Schedule section. The Department is not modifying the rule on adoption.

Monitoring and Recordkeeping

53. COMMENT: At N.J.A.C. 7:3-5.2(a), which identifies the contents of a forest stewardship plan, the Department should add paragraph (a)5, "A monitoring, recordkeeping and reporting section in accordance with N.J.A.C. 7:3-5.11." The Department should also delete N.J.A.C 7:3-5.4(d), as new paragraph (a)5 would cover this point. (1)

RESPONSE: N.J.A.C. 7:3-5.2(a) lists the sections to be included in a forest stewardship plan. Monitoring and recordkeeping are not parts of a plan; rather, they are responsibilities, established in the rules at N.J.A.C. 7:3-5.11, that are to be carried out as part of implementation of a plan. As for reporting, the Forest Stewardship Program rules establish no reporting requirements.

The Forest Stewardship Law at N.J.S.A. 13:1L-31.3.a(3) requires the incorporation of "necessary" monitoring, recordkeeping, and reporting into the plan. Monitoring and recordkeeping are necessary, but the Department has not found reporting to be necessary. As the law requires that the "necessary" monitoring and recordkeeping be incorporated in a plan, rather than requiring a plan to have a separate Monitoring and Recordkeeping section, the rules require

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instead that the Background and Goals section of the plan include the owner's acknowledgement of the monitoring and recordkeeping requirements (proposed N.J.A.C. 7:3-5.4(d)). The Department is modifying N.J.A.C. 7:3-5.4(d) on adoption to explain more clearly what must be acknowledged.

Adopted N.J.A.C. 7:3-5.1(e) also cautions that the Department shall not find an owner to be in compliance with a plan if these monitoring and recordkeeping responsibilities are not met. Under N.J.A.C. 7:3-5.1(e)1iv as modified on adoption, an owner must monitor progress toward the plan's objectives and maintain records as required at N.J.A.C. 7:3-5.11(a), (b), and (c). As proposed, N.J.A.C. 7:3-5.1(e)1iv referred only to N.J.A.C. 7:3-5.11(a) and (c), which are recordkeeping requirements. Although N.J.A.C. 7:3-5.11(c) is a requirement to maintain records related to monitoring under (b), meaning that the owner must conduct the monitoring in order to maintain the records, the rule should require the owner to comply with the underlying monitoring requirements at (b) in order to be deemed in compliance with a plan.

54. COMMENT: The heading of N.J.A.C. 7:3-5.11 should be "Monitoring, recordkeeping, and reporting," rather than "Compliance, monitoring, and recordkeeping," since the Forest Stewardship Law at N.J.S.A. 13:1L-31.a(3) requires monitoring, recordkeeping, and reporting.

(1)

RESPONSE: The Forest Stewardship Law at N.J.S.A. 13:1L-31.3.a(3) does refer to monitoring, recordkeeping, and reporting; however, proposed N.J.A.C. 7:3-5.11 contains only monitoring and recordkeeping requirements, not reporting requirements. Since the proposed rule also does not include specific "compliance" requirements, the Department is modifying the heading of the

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rule on adoption to more accurately reflect the contents of the section. The text of the rule is unchanged.

55. COMMENT: Delete N.J.A.C. 7:3-5.11(b)1, 2, 3, and (c). The definition of “monitoring” in the proposed rule is from Helms, but the Helms definition could be combined with one in Webster, which is “to observe, record or detect, or to observe critically,” such as by an informed landowner or forester. “Monitoring” is more than a detailed measurement of parameters. For example, there is no parameter to measure to record the presence of the emerald ash borer. (1)

RESPONSE: N.J.A.C. 7:3-5.11(b) and (c) require that an owner with an approved forest stewardship plan monitor the progress made toward each objective and maintain a monitoring record. “Monitoring,” as defined in the adopted rules, includes the collection of information over time by measuring change in the value of one or more parameters, to determine the extent to which the implementation of the plan is resulting in progress toward a plan objective. This is a quantitatively based approach, which Helms advances in the “Dictionary of Forestry,” an authoritative forestry reference edited by John A. Helms and published by the Society of American Foresters.

The Department recognizes that owners and their professional foresters may well want to observe the forests, rely on their own judgment to assess the overall well-being of the forests and the forest’s response to completed practices, and note changes to the forests. However, for purposes of the monitoring that the rules require, the professionally recognized, quantitatively-based approach is appropriate.

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A forest stewardship plan must provide a method for monitoring progress toward one or more measurable objectives to be attained within the plan period. The method must identify one or more parameters to be measured. The emerald ash borer example that the commenter presents is not associated with an objective that specifies a measurable result. Surveying for the presence of emerald ash borer might be an activity carried out under the plan, but surveying for the presence of the pest would not be an objective.

56. COMMENT: Replace N.J.A.C. 7:3-5.11(b) with the following:

(b) The owner shall monitor plan implementation progress and keep the following documents and notes on an annual basis:

1. Copy of farmland assessment application (FA-1, FA-1GS, WD-1 and/or other supplemental forms required by law, rule or local assessors).
2. Narrative of annual work completed tied to stands and/or activity scheduled in an approved Forest Stewardship Plan.
3. Monitoring observations regarding:
 - i. Effectiveness of prescriptions.
 - ii. Resource response to work completed.
 - iii. Forest or environmental conditions with some statement of maintaining, improving or declining condition.
4. Statement estimating time and/or resources spent on forest stewardship.
5. Any changes to priorities or activities.

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6. As needed, notes or maps in Appendix such as location of work completed, dates marked/completed, extent of work. (1)

RESPONSE: The commenter recommends an alternative approach to monitoring progress toward objectives in the plan. Adopted N.J.A.C. 7:3-5.11(b)2 requires measurements of progress of prescriptions or practices to be taken in the third, sixth, and ninth years of the plan. The suggested alternative requires annual monitoring. In light of the amount of time it takes for trees to grow and ecosystems to reproduce, the Department is satisfied that monitoring every three years, as proposed, is appropriate.

Suggested N.J.A.C. 7:3-5.11(b)1 requires owners to maintain copies of farmland assessment applications as part of monitoring; however, the Department's forest stewardship program is independent of the farmland assessment program under the rules of Taxation. While a property managed in accordance with an approved forest stewardship plan may be eligible for farmland assessment, participation in farmland assessment is not required. If an owner with a forest stewardship plan does apply for farmland assessment, the Farmland Assessment Act at N.J.S.A. 54:4-23.3.c requires the owner to submit a copy of the relevant portions of the application (Forms FA-1 and WD-1) to the Department. This ensures that the Department has these records. While it seems reasonable that owners will want to maintain copies of their farmland assessment applications, the Department has no need for them to do so.

Suggested N.J.A.C. 7:3-5.11(b)2 and 6 require owners to prepare a narrative of annual work completed, associating it with the stand(s) in which the work is carried out and with the activities as scheduled in the approved plan, and including notes or maps indicating the location of work completed, and dates and extent of work. Adopted N.J.A.C. 7:3-5.11(a) requires owners

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to maintain records that document the work carried out, although there is no requirement to present it as a narrative. Also, if an owner uses compliance with a forest stewardship plan as a basis for qualifying for farmland assessment, the owner is required to report in his or her annual farmland assessment application, on Form WD-1, the forest management practices carried out or to be carried out during the pre-tax year, including the extent of the work completed, and provide an activity map that shows where the work is being done. As stated above, the owner will submit a copy of Forms FA-1 and WD-1 to the Department. The Department does not need the additional records that the suggested rule requires.

Suggested N.J.A.C. 7:3-5.11(b)3 and 4 require owners to keep a record of observations as to the effectiveness of prescriptions, forest or environmental conditions, and estimates of time and/or resources spent on forest stewardship. The owner or the forestry professional may choose to maintain such records; however, the Department does not anticipate needing them.

Finally, suggested N.J.A.C. 7:3-5.11(b)5 requires owners to document changes to priorities or activities as part of monitoring activities. Although monitoring may lead an owner to determine that plan priorities should change, the owner may not change plan priorities, except through a plan amendment in accordance with adopted N.J.A.C. 7:3-5.12. Otherwise, the owner is not managing the property in compliance with the plan, which would jeopardize the eligibility of the property's woodlands for farmland assessment.

Subchapter 6. Forest Stewardship Advisory Committee

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57. COMMENT: The rules governing the Forest Stewardship Advisory Committee are appropriate. The membership of the Committee accurately meets the stated goals of such a Committee according to the Forest Stewardship Law. (6)

RESPONSE: The Department acknowledges the commenter's support for the rules.

58. COMMENT: The Federal guidelines for a State Forest Stewardship Coordinating Committee direct states to include on the committee, to the extent practicable, a representative of a Native American tribe. The Department should include a representative on the Forest Stewardship Advisory Committee. As of the date of this rulemaking, New Jersey has no Federally recognized Native American Indian tribe; yet, the New Jersey Commission on Native American Affairs recognizes four New Jersey tribes. Native American participation provides a unique perspective to forest management. (5)

RESPONSE: As the commenter notes, in establishing the New Jersey Commission on Native American Affairs at N.J.S.A. 52:16A-53 et seq., State law recognizes several Native American communities. The Commission is within the New Jersey Department of State.

Adopted N.J.A.C. 7:3-6.1(e) provides that "the Commissioner may appoint up to three additional members to the Committee to represent other relevant interests." Rather than modify the rule on adoption to specify that a member of the Forest Stewardship Advisory Committee must be a representative of Native Americans in the State, the Department will consult with the Department of State regarding an appropriate appointment under N.J.A.C. 7:3-6.1(e).

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59. COMMENT: A major component of the proposed rule is establishment of the Forest Stewardship Advisory Committee pursuant to N.J.A.C. 7:3-6. The Committee consists of 18 members, 12 serving ex officio, and six appointed by the Commissioner of the Department. None of the membership categories requires an individual with rare species or ecological forest restoration professional expertise, although a major purpose of the Forest Stewardship Law was to get people to manage their forests for ecological purposes. Only one membership position, that allotted to the New Jersey Field Office of the U.S. Fish and Wildlife Service, might be assumed to be filled by someone with some ecological expertise. The rule provides no guarantee that a person with an ecological background will be on the Committee. It is crucial that professionals with ecological and forest restoration expertise be appointed to the Committee in sufficient numbers to counterbalance the commercial forestry interests. Proposed N.J.A.C. 7:3-6.1(e) states, "The Commissioner may appoint up to three additional members to the Committee to represent other relevant interests as the Commissioner deems appropriate," and such persons should be appointed. (4 and 15)

60. COMMENT: An ecologist should be on the Forest Stewardship Advisory Committee. The intent of these regulations, and indeed the purpose of this program, is to recognize some of the values of forest in addition to timber, and an ecologist is an absolutely critical part of that understanding. (8)

RESPONSE TO COMMENTS 59 AND 60: The Department based the rule governing membership of the Committee on the Federal guidelines, which does not specify that an individual specifically trained as a forest ecologist be appointed to the State Committee. There are a number of types of training and expertise that would be useful to the Committee; if the

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Department were to amend its rules to require a member in each of the types, the Committee would be too large to accomplish its purposes. Given the organizations that will be represented on the Forest Stewardship Advisory Committee and the likely qualifications of the individuals those organizations can be expected to select to represent them on the Committee, the Department anticipates that a number of the individuals who will serve on the Forest Stewardship Advisory Committee will have ecological training, professional knowledge of rare species, and experience with forest restoration. Such training, knowledge, and experience are valuable in enabling the Committee to perform its functions.

Adopted N.J.A.C. 7:3-6.1(e) authorizes the Commissioner to appoint up to three additional members to the Committee to represent other relevant interests as the Commissioner deems appropriate. Through these additional appointments the Commissioner can bring to the Committee the relevant training and experience that the Commissioner determines is necessary for an appropriate balance on the Committee.

61. COMMENT: Regarding the Forest Stewardship Advisory Committee's functions as stated at N.J.A.C. 7:3-6.4, functions of the Committee should include creating or contributing to State forest stewardship and sustainability policies, guidelines, and best management practices, including the New Jersey Best Practices Manual for Forestry and Wetlands, and stronger minimal ecological requirements for forest stewardship in the Highlands Preservation Area, upstream of potable water intakes and reservoirs, and near C1/trout production streams and around vernal pools. (15)

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RESPONSE: Adopted N.J.A.C. 7:3-6.4 identifies the functions of the Forest Stewardship Advisory Committee, which are the functions required under Federal and State law. The general purpose of the Committee, according to the Forest Stewardship Law at N.J.S.A. 13:1L-36.d, is to advise the Department on issues related to forest stewardship and recommend programs, actions and standards, including rules and regulations, policies, guidelines and best management practices, for the conservation and stewardship of forest lands; and with respect to the standards and requirements to be established for persons in addition to foresters on the list approved by the Department who are authorized to prepare forest stewardship plans. Among the specific topics for which the Committee will advise the Department are “forest sustainability criteria and indicators appropriate to the circumstances encountered in New Jersey, as a basis for monitoring, recording, and assessing the extent, condition, and sustainability of all New Jersey forests, whether publicly or privately owned” (N.J.S.A. 13:1L-35.a); and “professional standards and requirements of persons in addition to foresters on the list approved by the [D]epartment” (N.J.S.A. 13:1L-36.b). The functions of the Committee that the commenter recommends fall within the statutory mandate of the Committee. A modification of the rules on adoption is not needed.

62. COMMENT: N.J.A.C. 7:3-6.1, Committee membership, is in accord with the Forest Stewardship Law at N.J.S.A. 13:1D-36.d. To further the professional nature of the Committee, members should be expected to act in accordance with the Society of American Foresters’ Code of Ethics, and to receive ethics training approved by the State Ethics Commission. (7)

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63. COMMENT: The Department should amend N.J.A.C. 7:3-6.5(f) to read “All designees of ex officio members, appointed members, non-Chair officers, and sub-committee heads shall be held to the Society of American Foresters Code of Ethics, under penalty of dismissal by the Commissioner.” This would help to limit the damage that could be done by an unethical actor who finds his or her way onto the Committee, as some have found their way onto such advisory committees of the Department over the years, and specifies a method of recourse that could be taken by the other members of the Committee and interested stakeholders. (6)

RESPONSE TO COMMENTS 62 AND 63: Members of the Forest Stewardship Advisory Committee, whether ex officio or appointed, are subject to the rules of the State Ethics Commission (N.J.A.C. 19:61), and must comply with the State Conflicts of Interest Law (N.J.S.A. 52:13D-12 et seq.). An individual that does not comply with the applicable laws and rules is subject to sanctions including civil administrative penalty, and dismissal from the Committee. In light of the applicability of the relevant State law and rules, it is not necessary for the rules to require members of the Committee to also adhere to the SAF Code of Ethics.

Miscellaneous

64. COMMENT: The public should not be required to become members of the Society of American Foresters or purchase its textbook in order to read full definitions from their Dictionary of Forestry if those definitions (or partial definitions) are being used in government rule proposals. (15)

RESPONSE: The New Jersey Office of Administrative Law’s Rules for Agency Rulemaking at N.J.A.C. 1:30-2.2(b) require that any section of a source incorporated by reference in an

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agency's rules be made available for public inspection by the agency, and shall be available in printed form from the adopting agency or the original source for a reasonable fee.

The Society of American Foresters previously made its Dictionary of Forestry available online at no charge; this is no longer the case. A member of the public may make arrangements to view these materials at the offices of the New Jersey Forest Service consistent with the Office of Administrative Law's rules, or may obtain a copy (for a fee) from the Society of American Foresters.

65. COMMENT: At proposed N.J.A.C. 7:3-5.5(d)2, the address listed for the USFWS's New Jersey Field Office is incorrect. The correct address is: United States Fish and Wildlife Service, New Jersey Field Office, Atlantic Professional Park, 4 East Jimmie Leeds Road, Unit 4, Galloway, New Jersey 08205. (10)

RESPONSE: The Department is modifying the rule on adoption to correct the address.

Summary of Agency-Initiated Changes

In addition to the changes on adoption discussed above in response to comments, the Department is modifying N.J.A.C. 7:3-5.1(c)2ii on adoption to replace the word "plan" with the phrase "forest stewardship plan" to make clear that no other type of plan is being referenced. At N.J.A.C. 7:3-5.8(c)1iii, the Department is removing the word "and" in order to make it clear that "if available" properly applies to the street address, not to a property's block and lot numbers. All forest lands have block and lot numbers, but not all have street addresses. The Department is modifying the Forest Stewardship Advisory Committee rules at N.J.A.C. 7:3-6.1(b)3 to correct

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the nomenclature used to refer to the New Jersey State Office of USDA's Farm Service Agency.

Other modifications on adoption correct grammar and punctuation.

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 that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The adopted new rules, repeals, and amendments are not promulgated under the authority of any program established under Federal law, or under a State statute that incorporates Federal law, Federal standards, or Federal requirements.

The USDA Forest Service has established a Federal forest stewardship program and encourages the participation of partners, including state forest service agencies, in carrying out this program. The USDA Forest Service has issued guidance entitled "Forest Stewardship Program National Standards and Guidelines" (National Forest Stewardship Guidelines) and, through the State Forester, engages state agencies in establishing state-level forest stewardship programs that conform with these guidelines. The guidelines state that the USDA Forest Service will provide participating landowners "enhanced access" to other USDA conservation programs (pp. 3 and 14 in the 2015 version of the National Forest Stewardship Guidelines). These include programs, such as the Environmental Quality Incentives Program (EQIP), through which owners may qualify for grant funding and other assistance to aid in the implementation of forest stewardship practices. To help New Jersey landowners to become eligible for available USDA conservation programs, the New Jersey Forest Service has been approving plans submitted by

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private landowners that conform with the National Forest Stewardship Guidelines since the early 1990s.

The Forest Stewardship Law authorizes and directs the Department to establish a Forest Stewardship Program. See N.J.S.A. 13:1L-29 through 31 and 36. The Forest Stewardship Program adopted at N.J.A.C. 7:3-5 conforms to the stipulations of that law. However, the adopted rules are also designed to satisfy the standards and guidelines for state forest stewardship programs in the National Forest Stewardship Guidelines. The Federal guidelines and State law are compatible, as both have shared philosophical underpinnings and purposes, and their specific program requirements are congruent or complementary. As with the State program, the Federal program seeks to further long-term stewardship of forest lands and encourages landowners to more actively manage their forest and related resources (p. 3 in the 2015 version of the National Forest Stewardship Guidelines).

Participation in the Forest Stewardship Program is a voluntary choice of the private landowner. However, if an owner decides to participate, the Department anticipates that, when an owner obtains the Department's approval of a plan pursuant to N.J.A.C. 7:3-5, that owner will have a plan that also satisfies the Federal guidelines and may be used by the owner to help qualify for USDA conservation programs. The Department does not intend to approve a plan as conforming to the National Forest Stewardship Guidelines, unless the plan also fully satisfies the requirements of N.J.A.C. 7:3-5. The Department's administration of the Federal guidelines and State rules will be managed as a single integrated program.

The National Forest Stewardship Guidelines delegates to the state forester in each state participating in the Federal forest stewardship program the responsibility, set forth in Federal law

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at Part (b) of 16 U.S.C. § 2113, for the USDA to establish a Forest Stewardship Coordinating Committee. Its role includes addressing “statewide Forest Stewardship Program implementation issues, opportunities, and concerns and to support overall program coordination” (p. 6 in the 2015 version of the National Forest Stewardship Guidelines). The Department has such a committee, known as the New Jersey Forest Stewardship Coordinating Committee. However, the Forest Stewardship Law, N.J.S.A. 13:1L-36.d directs the Department to establish by regulation a Forest Stewardship Advisory Committee “consistent with the federal requirements for the establishment of a State Forest Stewardship Coordinating Committee ...” N.J.A.C. 7:3-6 establishes the committee that the Forest Stewardship Law requires. The committee supersedes the New Jersey Forest Stewardship Coordinating Committee. The adopted rules charge the Committee with both the responsibilities assigned to a State Forest Stewardship Coordinating Committee under Federal law and the responsibilities assigned to the Committee under State law at N.J.S.A. 13:1L-31, 35, and 36 and 54:4-23.3.

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

7:3-1.3 Definitions

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

...

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“Federal guidelines plan” means a plan that was approved by the Department prior to *[(the operative date of this amendment)]* ***December 18, 2017***, as satisfying the requirements for forest stewardship plans in the National Forest Stewardship Guidelines.

...

SUBCHAPTER 3 LIST OF APPROVED FORESTERS

7:3-3.2 Application procedure, qualifications, and approval criteria

(a) - (b) (No change from proposal.)

(c) The minimum qualifications an applicant shall demonstrate are the following:

1. Education that includes one of the following ***earned (not honorary)**

degrees*:

i. A bachelor’s degree from a college or university in a forest management or equivalent forestry program that is accredited by the Society of American Foresters; *[or]*

ii. A bachelor’s degree from Rutgers—the State University in the forest management option within the natural resource management curriculum awarded no later than 2007; or

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

2. (No change from proposal.)

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

7:3-3.4 Standards of conduct

(a) (No change from proposal.)

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(b) An Approved Forester shall observe recognized professional practices and standards in the provision of professional services to owners. Examples may be found in the document entitled, “New Jersey Forestry and Wetlands Best Management Practices Manual,” dated October 1995, which is available at www.state.nj.us/dep/parksandforests/forest/nj_bmp_manual1995.pdf, ***or subsequent edition;** and in the “Forestry Handbook” published by the Society of American Foresters, Karl F. Wenger, ed., 2nd edition, 1984, or subsequent edition.

(c) (No change from proposal.)

7:3-3.6 Semi-annual reports

(a) - (c) (No change from proposal.)

(d) The Approved Forester shall additionally report in each semi-annual report such other information as the Department may request for its use in satisfying planning or reporting responsibilities under State law (such as pursuant to N.J.S.A. *[13:1K-35]****13:1L-35***) or as established by the USDA Forest Service (such as pursuant to the USDA Forest Service’s administration of the Cooperative Forestry Assistance Act of 1978, as amended, 16 U.S.C. § 2103A).

SUBCHAPTER 5 FOREST STEWARDSHIP PROGRAM

7:3-5.1 General provisions

(a) – (b) (No change from proposal.)

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(c) For the purposes of this subchapter, except as set forth in (d) below, land is forest land if it is a defined and continuous area of land that lies wholly within a property **[and]**,** is at least 0.5 acres in size, ***is to be managed under the plan as forest land,*** and:

1. (No change from proposal.)
2. Does not currently have the canopy cover in (c)1 above, but is:
 - i. (No change from proposal.)
 - ii. Is scheduled in **[a]* ***the forest stewardship* plan *as****

approved by the Department to be afforested or reforested to such a level of canopy cover within the period for which the plan is approved.

(d) (No change from proposal.)

(e) The owner of a qualifying property participates in the Forest Stewardship Program by managing the property in compliance with a forest stewardship plan. The Department shall deem an owner to be in compliance if:

1. The owner:
 - i. - iii. (No change from proposal.)
 - iv. Is monitoring progress toward the plan's objectives and maintaining records as required at N.J.A.C. 7:3-5.11(a)*, (b)* and (c); and
 - v. (No change from proposal.)

2. (No change from proposal.)

(f) - (l) (No change from proposal.)

7:3-5.4 Background and goals

(a) (No change from proposal.)

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(b) With regard to background, the section shall:

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

3. Provide relevant history of the property, including:

i. (No change from proposal.)

ii. For any forestry plan applicable to the property within the past 10 years, the type of plan (such as woodland management plan or forest stewardship plan approved under this subchapter), and date and reason the *[has]* plan ***has*** ended or will end (such as by expiration, termination, or revocation);

4. If a prior forest stewardship plan applies to the property, whether it is not yet expired or has expired within the past 10 years, list for each stand the objectives in the prior plan applicable to the stand, report for each objective the monitoring data collected and recorded pursuant to N.J.A.C. 7:3-5.11(c) during the plan period, describe the trend if any shown by the data, and assess the progress toward the objective achieved under the prior plan;

Recodify proposed 4. - 6. as ***5. - 7.*** (No change in text from proposal.)

(c) (No change from proposal.)

(d) The section shall include the owner's acknowledgement of the ***obligation to carry out*** monitoring*[,]* ***and*** recordkeeping*[, and reporting requirements at]* ***in accordance with*** N.J.A.C. 7:3-5.11.

***(e) The plan shall indicate whether the prescriptions and practices in the plan are designed to:**

1. Ensure the sustainability of the forest land; and

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2. Eliminate excessive and unnecessary cutting.*

7:3-5.5 Property overview

(a) - (b) (No change from proposal.)

(c) The section shall describe:

1. The topography of the property and any distinctive land forms or landscape features; *[and]*

2. Characterize the property's soils and their erodability, and provide reference to the soils map submitted as an appendix pursuant to N.J.A.C. 7:3-5.8(b)1; and

[2.]**3. The hydrological characteristics of the property, including, but not limited to:

i. - ii. (No change from proposal.)

iii. Any area that is a regulated area pursuant to the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, including the regulated water, any associated flood hazard area and its floodway, and the associated riparian zone, and the width of the zone*.[.]**; **and**

4. Any route to be used to access the forest land that crosses a waterbody, waterway, wetland, any transition area associated with the wetland, flood hazard area, and/or a riparian zone, and the infrastructure to be employed for such crossing.*

(d) The section shall describe the ecology and biodiversity of the property, discuss the role, if any, that fire plays in the ecology of the property, and identify:

1. (No change from proposal.)

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2. Any Federally listed threatened or endangered species determined to be on or within the vicinity of the property, or to have critical habitat on or within the vicinity of the property, in accordance with procedures established by the USFWS's New Jersey Field Office.

An owner shall obtain information about these procedures from:

United States Fish and Wildlife Service

New Jersey Field Office

*[927 N. Main Street, Building D

Pleasantville, NJ 08232]*

***Atlantic Professional Park**

4 East Jimmie Leeds Road, Unit 4

Galloway, New Jersey 08205*

Phone: (609) 646-9310

www.fws.gov/northeast/njfieldoffice/endangered/consultation.html.

(e) (No change from proposal.)

(f) With respect to the property's "current" forest land identified pursuant to (b) above, the section shall:

1. (No change from proposal.)

2. Assess *[of]* the condition of the forest land with respect to carbon sequestration, taking into consideration its functioning both as a carbon source and a carbon sink.

(g) - (h) (No change from proposal.)

7:3-5.6 Forest stands

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(a) All of the property's forest land, identified pursuant to N.J.A.C. 7:3-5.5(b) shall be assigned to a stand. The forest stands section shall list the property's stands and, for each stand:

1. (No change from proposal.)
2. State its total acreage, accurate to the nearest hundredth of an acre; ***and***
- *[3. Characterize its soils and erodability, and provide reference to the soils map submitted as an appendix pursuant to N.J.A.C. 7:3-5.8(b)1;]*
- *[4.]***3.*** Provide forest inventory information based on a recent survey.

This shall include:

- i. -iii. (No change from proposal.)
- iv. The stocking level of the stand, given as a percentage of full stocking *[and of any species targeted for management]*;
- v. - vii. (No change from proposal.)
- viii. The condition of the stand, including:
 - (1) (No change from proposal.)
 - (2) The density of the stand*, **expressed as basal area,*** and whether any mortality is evident;
 - (3) - (8) (No change from proposal.)
- ix. If the plan prescribes management of any resource other than trees, the current status of that resource *[*; and]**.*

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[5. Indicate whether any route to be used to access the stand crosses a waterbody, waterway, wetland, any transition area associated with the wetland, flood hazard area, and/or a riparian zone, and describe the infrastructure employed for such crossing.]

(b) For each stand, the forest stands section shall:

1. Give the desired future condition of the stand, and explain how this desired condition has a clear and direct relationship to one or more of the long-term goals set forth in the plan pursuant to N.J.A.C. 7:3-5.4(c)1; ***and***

2. Set forth one or more objectives directed toward achieving the desired future condition, specifying in each objective one or more measurable results planned to be achieved within the plan period ***[; and]**.***

[3. If a prior forest stewardship plan applies to the property, whether it is not yet expired or has expired within the past 10 years, list each objective applicable to the stand in the prior plan, report for each objective the monitoring data collected and recorded pursuant to N.J.A.C. 7:3-5.11(c), describe the trend if any shown by the data, and assess the progress toward the objective achieved under the prior plan.]

(c) (No change from proposal.)

(d) As established at N.J.A.C. 7:3-5.2(c), a plan shall prescribe active management.

[If the property has multiple stands and]** *In accordance with (e) below, the plan shall list the prescriptions and practices to be carried out in each forest stand during the plan period, except that a plan may list none for a stand if* progress can be made toward the objective(s) for *[a]** the* stand without active management, the *[plan may call for no prescriptions or practices to be carried out in the stand during the plan period. Instead, the plan

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may concentrate active management in the property's]* ***property has multiple stands, and the plan prescribes active management for one or more*** other stands. In such case, the section shall state, for *[such]* ***each*** stand ***in which there will be no active management***, that no prescription or practice will be carried out in that stand during the plan period and provide explanation.

(e) For each stand in which active management will be carried out under the plan, the section shall, for each objective set forth for the stand pursuant to (b)2 above, list the prescriptions and practices to be carried out during the plan period and indicate for each:

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

*[3. Whether it is designed to:

i. Ensure the sustainability of the forest land; or

ii. Eliminate excessive and unnecessary cutting;]*

Recodify proposed 4. - 7. as ***3. - 6.*** (No change in text from proposal.)

7:3-5.8 Appendices

(a) - (b) (No change from proposal.)

(c) Each map shall:

1. Have a label that provides:

i. - ii. (No change from proposal.)

iii. The street address of the property *[and]*, if available*[,]**;* the block and lot number of the property's primary lot*[,]**;* and the county and municipality in which that lot is located;

iv. - vi. (No change from proposal.)

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

7:3-5.11 *[Compliance, monitoring,]* ***Monitoring*** and recordkeeping

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

7:3-5.12 Plan amendments

(a)-(c) (No change from proposal.)

(d) A plan amendment shall:

1. (No change from proposal.)

2. Include an amended title page that meets the requirements at N.J.A.C. 7:3-

5.3(a)1 through 6 and additionally includes:

i.-iii. (No change from proposal.)

iv. Space for the New Jersey Forest Service to record the date the amendment was received for review and the date of approval of the amendment; and

[iv.]*v. Certifications in accordance with N.J.A.C. 7:3-5.3(c)

signed and dated by the owner and the Approved Forester;

3.-4. (No change from proposal.)

SUBCHAPTER 6 FOREST STEWARDSHIP ADVISORY COMMITTEE

7:3-6.1 Committee membership

(a) (No change from proposal.)

(b) The following shall serve ex officio:

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

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3. The Executive Director of ***the*** New ***[Jersey's]*** ***Jersey State Office of*** USDA's Farm Service Agency;

4. - 12. (No change from proposal.)

(c) - (g) (No change from proposal.)

7:3-6.2 (Reserved)

7:3-6.3 Appointed members; term and compensation

(a) (No change from proposal.)

(b) Notwithstanding (a) above, of the six members of the Committee to be initially appointed by the Commissioner in accordance with N.J.A.C. 7:3-~~[6.2(d)]~~***6.1(d)***, two shall be appointed for a term of one calendar year (or part thereof), two for a term of two calendar years (or part thereof), two for a term of three years (or part thereof). Thereafter, each appointment under N.J.A.C. 7:3-~~[6.2(d)]~~***6.1(d)*** shall be made for a term of three calendar years, except as set forth in (d) below.

(c)-(f) (No change from proposal.)