

Guidance for Delegation, Authorization, and Assumption

N.J.A.C. 7:1B (Waiver Rule) prohibits the Department from waiving rules under certain circumstances. The Waiver Rule at N.J.A.C. 7:1B-2.1(b)2 provides that a waiver shall not be issued in the following circumstance:

A rule providing for a Federally delegated, authorized, or assumed program where the waiver would not be consistent with New Jersey's delegation, authorization, or assumption of authority pursuant to a Federal program.

Many of the Department's rules are adopted as part of regulatory programs intended to implement federal law through a delegation, authorization, or assumption agreement. A waiver may be approved under these programs so long as the Department's decision is consistent with the particular delegation, authorization, and assumption agreement. Applicants for waivers under these programs should be mindful of these facts and may want to submit a short analysis explaining why approving a waiver for a particular program rule would not violate N.J.A.C. 7:1B-2.1(b)2.

Further, the Department is prohibited from waiving rules implementing a State Implementation Plan adopted pursuant to the Federal Clean Air Act. The Waiver Rule provides at 7:1B-2.1 (b)3 that a waiver shall not be issued for:

A rule that implements a Federally enforceable program pursuant to a State Implementation Plan (SIP), as defined at N.J.A.C. 7:27-18.1.

DEP Rules

The following are program rules that are in whole, or in part, subject to a delegation, authorization, or assumption agreement or enforceable pursuant to a SIP.

Pesticide Code	N.J.A.C. 7:30-1 et seq.
Hazardous Waste Regulations	N.J.A.C. 7:26G-1 et seq.
New Jersey Pollution Discharge Elimination System	N.J.A.C. 7:14A-1 et seq.
Underground Injection Control Program	N.J.A.C. 7:14A-8.1
Safe Drinking Water	N.J.A.C. 7:10-1 et seq.
National Shellfish Sanitation Program	N.J.A.C. 7:12-1.1 et seq.
Surface Water Quality Standards	N.J.A.C. 7:9B-1 et seq.

Resource Conservation and Recovery Act	N.J.A.C. 7:26G-1 et seq.
Air Pollution Control	N.J.A.C. 7:27-1 et seq.
Freshwater Wetlands Protection Act	N.J.A.C. 7:7A-1.1 et seq.
Water Quality Management Planning	N.J.A.C. 7:15-1.1 et seq.
Toxic Catastrophe Prevention Act	N.J.A.C. 7:31-1.1 et seq.
Radiation Protection Act	N.J.A.C. 7:28-1.1 et seq.