

CHAPTER 23**FLOOD CONTROL BOND GRANTS****Authority**

N.J.S.A. 13:1D-1 et seq. and P.L. 1978, c.78.

Source and Effective Date

R.1994 d.308, effective May 27, 1994.
See: 26 N.J.R. 1334(a), 26 N.J.R. 2599(a).

Executive Order No. 66(1978) Expiration Date

Chapter 23, Flood Control Bond Grants, expires on May 27, 1999.

Chapter Historical Note

Chapter 23, Flood Control Bond Grants, was filed on May 17, 1979 and became effective on June 22, 1979 as R.1979 d.202. See: 11 N.J.R. 121(a), 11 N.J.R. 277(a). Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1984 d.277, filed June 18, 1984. See: 16 N.J.R. 668(a), 16 N.J.R. 1765(a). Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1989 d.348, effective June 9, 1989. See: 21 N.J.R. 1051(a), 21 N.J.R. 1903(a).

Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1994 d.308. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS**7:23-1.1 Scope and construction of rules**

(a) The following shall constitute the rules governing disposition of appropriations for the purposes of acquiring, developing, constructing and maintaining flood control facilities pursuant to the Emergency Flood Control Bond Act, P.L. 1978, c.78. These rules prescribe procedures for application, award, and administration of grants, accounting procedures, minimum standards of conduct for grantees, and standards for construction of flood control facilities.

(b) These rules shall be liberally construed to permit the Department to effectuate the purposes of the law. The Commissioner, the Director, or persons authorized to act in their behalf may, in the public interest modify the application of these rules where circumstances warrant such modification.

7:23-1.2 Purpose of rules

(a) These rules are promulgated for the following purposes:

1. To implement the purposes and objectives of the Emergency Flood Control Bond Act, P.L. 1978, c.78;
2. To establish policies and procedures for distribution of funds appropriated pursuant to the Act for the purpose of making State grants to local governmental agencies for acquisition, development, construction and maintenance of flood control facilities;
3. To protect the public and the State of New Jersey by insuring that funds appropriated are spent in a proper manner and for the intended purposes;
4. To assure that the distribution and use of funds are consistent with the laws and policies of the State of New Jersey;
5. To establish minimum standards of conduct to prevent conflicts of interest and insure proper administration of grants;

6. To establish accounting procedures for the administration of grants.

7:23-1.3 Authority

These rules are promulgated pursuant to section 5 of the Emergency Flood Control Bond Act, (P.L. 1978, c.78).

7:23-1.4 Practice where rules do not govern

The Commissioner may rescind, amend, or expand these rules from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:23-1.5 Annual budget request

(a) The Commissioner shall submit to the State Treasurer and the New Jersey Commission on Capital Budgeting and Planning with the Department's annual budget request, a plan for the expenditure of funds from the "Emergency Flood Control Fund" for the upcoming fiscal year.

(b) The plan shall include the following information:

1. A performance evaluation of the expenditures made from the fund to date;
2. A description of programs planned during the upcoming fiscal year;
3. A copy of these rules governing the purposes conducted pursuant to P.L. 1978, c.78;
4. An estimate of expenditures for the upcoming fiscal year.

7:23-1.6 Report of Special Joint Legislative Committee

The Commissioner shall report to and consult with the Special Joint Legislative Committee created pursuant to Assembly Concurrent Resolution No. 66 of the 1968 Legislature and reconstituted and continued from time to time by the Legislature, not less than 30 days prior to the Commissioner entering into any contract, lease, obligation, or agreement to effectuate the purpose of P.L. 1978, c.78.

7:23-1.7 Request for legislative appropriations

The Department shall annually request that the Legislature appropriate funds under the Emergency Flood Control Bond Act, P.L. 1978, c.78.

7:23-1.8 Procedure for obtaining a flood control grant

(a) Each potential applicant for a flood control grant shall:

1. Determine if it meets the eligibility criteria of N.J.A.C. 7:23-2.3.
2. Arrange for a preapplication conference as suggested in N.J.A.C. 7:23-2.4, if such a conference is desired.
3. Complete the application procedures required by N.J.A.C. 7:23-2.5.

Amended by R.1980, d.297, effective July 1, 1980.
See: 12 N.J.R. 257(a), 12 N.J.R. 462(b).

Amended by R.1994 d.308, effective June 20, 1994.
See: 26 N.J.R. 1334(a), 26 N.J.R. 2599(a).

7:23-1.9 Severability

If any section, subsection, provision, clause or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

SUBCHAPTER 2. GRANT PROCEDURES AND REQUIREMENTS

Subchapter Historical Note

Subchapter 2 was amended by R.1981 d.223, effective June 8, 1981.
See: 13 N.J.R. 192(a), 13 N.J.R. 403(b). See, also, section annotations.

7:23-2.1 Scope

This subchapter shall prescribe procedures and requirements for the award of State grants pursuant to section 4a of the Emergency Flood Control Bond Act, P.L. 1978, c.78.

7:23-2.2 Definitions

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

"Act" means the Emergency Flood Control Bond Act, P.L. 1978, c.78.

"Administrator" means the Administrator of the Engineering and Construction Division, Natural and Historic Resources, New Jersey Department of Environmental Protection and Energy.

"Allowable Project Costs" means costs which are determined under the Emergency Flood Control Bond Act, P.L. 1978, c.78 and these regulations to be eligible for a flood control grant.

"Applicant" or "local unit" means any municipality or county that applies for a grant pursuant to the provisions of these rules and regulations.

"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection and Energy or his or her designated representative.

"Costs" means the cost of acquisition or construction of all or any part of a flood control project and of all or any real or personal property, agreements and franchises deemed by the Department to be necessary or useful and convenient therefor or in connection therewith, including cost of geological and hydrological services, planning, engineering and inspection costs and legal expenses, cost of financial, professional and other estimates and advice, organization, administrative, operating and other expenses prior to and during such acquisition or construction, and all such other expenses as may be necessary or incident to the financing, acquisition, construction and completion of such project or part thereof and placing of the same in operation.

"Damage" means economic loss caused by flood, including inundation, erosion and deposition of sediment, evaluated in terms of cost of replacement, repair or rehabilitation, reduction in market or sales value, and losses in income and production.

"Department" means the New Jersey Department of Environmental Protection and Energy.

"Development and Construction Grant" includes construction, reconstruction, replacement, extension, improvement and betterment.

"Division" means the Engineering and Construction Division of Natural and Historic Resources.

"Flood control" means the prevention of flood damage by preserving natural detention areas, by returning such areas to their natural state, by developing warning systems, by constructing or reconstructing storage reservoirs, dikes, diversions, dams, spillways, levees, revetments, drains, ditches, culvert enlargement and replacements, or channel improvements, such as widening, deepening, straightening, clearing, sloping, building, filling in and other alterations.

"Flood control project" means any program proposed or undertaken to alleviate or eliminate an existing flooding problem.

"Grant" means a grant awarded pursuant to the Act and these rules.

"Grantee" means an applicant which has received a grant pursuant to the Emergency Flood Control Bond Act, P.L. 1978, c.78 and these rules and which has executed a grant award document.

"True value of property" is a measurement of property and shall be determined by use of the current State equalization table adopted by the Director of the Division of Taxation pursuant to N.J.S.A. 54:1-35.1.

Amended by R.1989 d.348, effective July 3, 1989.
See: 21 N.J.R. 1051(a), 21 N.J.R. 1903(a).

In "Assistant Director" definition: changed "Water Supply and Flood Plan Management" to "Engineering and Construction" and changed "Division of Water Resources" to "Division of Coastal Resources."

Added new definition: "Division."

In "True value of property" definition: added language "is a measurement of property and . . ."

Amended by R.1994 d.308, effective June 20, 1994.
See: 26 N.J.R. 1334(a), 26 N.J.R. 2599(a).

7:23-2.3 Eligibility criteria

(a) Any applicant with a flood control program is eligible for a grant in any year where it satisfactorily completes the application process in a timely manner, meets the eligibility criteria set out in this subchapter, receives the minimum priority score, and ranks high enough on the priority list to

be funded. To receive a grant the project shall meet the following criteria:

1. The minimum priority score set out in N.J.A.C. 7:23-2.13.

2. The applicant shall have sought all other Federal, State and local funds for the project and shall submit with its application copies of the application documents and copies of the documents from the agency applied to showing its decision and reasons therefor.

3. The project shall be an independent and complete flood control project. An independent and complete flood control project is a project that will not create flood control problems upstream or downstream and a project that will accomplish the purpose set forth in the application.

4. The project shall not be excessively expensive.

5. The project shall not conflict with any U.S. Army Corps of Engineers or U.S. Soil Conservation Service plans or projects.

6. Prior to receiving a grant the applicant must submit to the Department certified copies of documents stating how it is going to pay for its share of the flood control project and evidence, satisfactory to the Department, of its irrevocable commitment to fund the project.

7. The project shall conform with and further all environmental and land use plans adopted at the time the grant is made.

8. The application documents shall clearly state and document how the grant will accomplish the goal set out in the application.

9. The applicant shall not request a grant in excess of \$1,000,000 if the flood control project benefits only one municipality. The grant request for a flood control project providing 100-year flood protection to more than one municipality may be increased by an amount equal to the contribution made by each additional benefiting municipality but in no case exceeding \$100,000 per additional municipality.

10. The project shall be designed to protect against the 100 year flood except consideration can be given to waiving this requirement when the project is a portion of a plan for future protection which will meet the 100 year flood level.

11. No flood control project is eligible for a grant if construction on the project has commenced prior to November 7, 1978, the day on which the voters approved the Emergency Flood Control Bond Act.

12. Municipalities in which flood control projects are to be implemented shall be participants in the Federal Flood Insurance Program.

(b) Due to limited amount of funds available, the Department may, when two or more applicants have equal total priority points, take geographic distribution into consideration when making grants.

Amended by R.1980 d.297, effective July 1, 1980.
See: 12 N.J.R. 257(a), 12 N.J.R. 462(b).
Amended by R.1994 d.308, effective June 20, 1994.
See: 26 N.J.R. 1334(a), 26 N.J.R. 2599(a).

7:23-2.4 Preapplication procedures

(a) Every applicant should request an informal conference prior to making formal application for a grant. During the conference the Department shall identify and explain all grant application documents and review the requirements of the Environmental Assessment specified in section 5 of this subchapter. It shall also identify and answer questions concerning other Departmental permits the applicant must obtain prior to being awarded a grant. This conference is not part of the application procedure and neither written nor verbal statements made during the conference shall bind the Department.

(b) Questions concerning the grant program and requests for a preapplication conference should be directed to:

Chief, Flood Plain Management Section
Engineering and Construction Division
CN 419
Trenton, New Jersey 08625
(609) 292-2296

Amended by R.1980 d.297, effective July 1, 1980.
See: 12 N.J.R. 257(a), 12 N.J.R. 462(b).
Amended by R.1989 d.348, effective July 3, 1989.
See: 21 N.J.R. 1051(a), 21 N.J.R. 1903(a).

In (b): Updated address by deleting "Bureau of" from Flood Plain Management; changing "Water Resources" to "Coastal Resources"; changing "P.O. Box CN 029" to "CN 401" and changing phone number to "2296" from "4869."

Amended by R.1994 d.308, effective June 20, 1994.
See: 26 N.J.R. 1334(a), 26 N.J.R. 2599(a).

7:23-2.5 Application procedures

(a) To apply for a flood control grant, an applicant shall comply with all the pertinent requirements of this section. The application shall be submitted to the Division on the forms provided for that purpose. An applicant with a flood control project to only acquire an interest in land shall comply with all the subsections of this section except subsection (c) of this section. An applicant with a flood control project not involving the acquisition of an interest in land shall comply with all the subsections of this section except subsection (b). An applicant with a flood control project including an acquisition of an interest in land and development and construction on that land shall comply with all the provisions of this section.

(b) An applicant for a grant to acquire an interest in land shall submit:

1. A completed Flood Control Grant Application;
2. A Title Insurance Report;
3. A survey of the property;
4. Documented evidence of the fair market value of the land to be acquired;
5. A description of how it plans to pay its share of the project, the steps it has taken to implement this plan and the steps it plans to take before receiving a grant that will guarantee that at the time of the grant it will be irrevocably committed to pay its share of the project;
6. Evidence that all Federal, State, regional and local agencies with jurisdiction over the area have been notified of the project. Such notification shall include a site plan and brief description of the project.

(c) An applicant for a Development and Construction Grant shall submit:

1. A completed Flood Control Grant Application.
2. Construction plans, specifications and cost estimates prepared by a New Jersey licensed engineer.
3. A description of how it plans to pay its share of the project, the steps it has taken to implement this plan and the steps it plans to take before receiving a grant that will guarantee that at the time of the grant it will be irrevocably committed to pay its share of the project.
4. Evidence that all Federal, State, regional and local agencies with jurisdiction over the area have been notified of the project. Such notification shall include a site plan and brief description of the project.
5. An Environmental Assessment conforming to the requirements of subsection (d) of this section.

(d) All applicants except those excluded by subsection (e) of this section shall submit with their application an Environmental Assessment which will include but not be limited to:

1. A written explanation of the need for the grant including:
 - i. The flooding history, since January 1, 1965 of the area to be protected;
 - ii. The current number of people residing in the area to be protected by the project;
 - iii. The current number of people working in the area to be protected by the project;
 - iv. The true value of residential, commercial and industrial property in the area to be protected by the project.

2. A map showing the location and boundaries of the area to be protected by the project; the specific location of the project; all existing structures, filling and excavation, all known proposed structures, filling and excavations.

3. A statement describing and analyzing possible direct and indirect effects of the proposed activity on the site itself as well as on adjacent and noncontiguous areas both up and downstream with particular reference to the effect of the project on public safety, health and welfare, the protection of public and private property, the effect on water quality and quantity, the preservation of areas, sites, structures and objects determined to have significant historical, archeological, architectural or cultural value, the public trust in wetlands and wildlife and fisheries, the protection, preservation and enhancement of the natural environment. It shall describe and analyze:

- i. The reasons why this land and/or structures are the most appropriate for the project;
- ii. Temporary and permanent physical changes which would be caused by the proposed activity and the impact of these changes on the activity area and immediate environs;
- iii. Alternatives to the proposed project which would reduce or avoid environmental damage. This includes an assessment of no project;
- iv. All measures to be taken during and after the completion of the project to reduce detrimental onsite and offsite effects;
- v. Adverse environmental impacts which cannot be avoided;
- vi. The specific flood control benefits of the project.

(e) At the preapplication conference the Department will specify for each project those aspects of the Environmental Assessment it wants emphasized. The Department reserves the right to waive the Environmental Assessment requirement for those projects having no significant impact on the environment.

(f) Signature rules include:

1. Application shall be signed for the applicant by a person authorized to obligate the applicant to the terms and conditions of the grant.
2. Each application shall constitute an undertaking to accept the requirements of this subchapter and the terms and conditions of the grant agreement.

(g) Applications should be submitted well in advance of the application closing date for the year in which the applicant wishes to be awarded a grant. The application closing date shall be announced each year and the Department shall notify municipalities and counties six months in advance of the closing date by printing an announcement in

the New Jersey Register. Generally, processing of a completed application by the Division will be completed 90 calendar days after the application closing date for that year. No grant shall be made until a State appropriation is made.

(h) Applications shall be sent to:

Chief, Flood Plain Management Section
Engineering and Construction Division
CN 419
Trenton, New Jersey 08625
(609) 292-2296

(i) The following additional completed forms shall be submitted with an application:

1. Resolution of the applicant authorizing the filing of an application for State Aid;
2. Statement of Assurances;
3. Assurance of Compliance-Civil Rights;
4. All other forms, agreements and subagreements the Department may require.

Amended by R.1980 d.297, effective July 1, 1980.

See: 12 N.J.R. 257(a), 12 N.J.R. 462(b).

Amended by R.1989 d.348, effective July 3, 1989.

See: 21 N.J.R. 1051(a), 21 N.J.R. 1903(a).

In (g): added new language to clarify application procedures. Deleted closing date "August 20 of ..." for applications.

In (h): revised address with technical changes.

Amended by R.1994 d.308, effective June 20, 1994.

See: 26 N.J.R. 1334(a), 26 N.J.R. 2599(a).

7:23-2.6 Use and disclosure of information

All grant applications, preapplications, and other submittals, when received by the Department, constitute public records of the Department. The Department shall make them available to persons who request their release, to the extent allowed by New Jersey law.

7:23-2.7 Evaluation of application

(a) The Department shall notify the applicant that it has received the application and is evaluating it pursuant to this section. Each application shall be subjected to:

1. Preliminary administrative review to determine the completeness of the application;
2. Program, technical, scientific and environmental evaluation to determine the merit and relevance of the project to Department of Environmental Protection program objectives;
3. Budget evaluation to determine whether proposed project costs are eligible, reasonable, applicable, and allowable; and
4. Final administrative evaluation.

7:23-2.8 Department approval/disapproval

(a) After a full review and evaluation of an application, the Department shall take one of the following actions:

1. Approve for priority ranking and possible grant;
2. Disapprove the application.

(b) The applicant shall be promptly notified in writing of any approval or disapproval. A disapproval of an application shall not preclude its reconsideration or resubmittal for the next application year.

7:23-2.9 Amount and terms of grant

The amount and term of a grant shall be determined at the time of grant announcement. The amount of the grant shall be based upon allowable project costs as defined in N.J.A.C. 7:23-2.2 and 2.14.

Amended by R.1989 d.348, effective July 3, 1989.

See: 21 N.J.R. 1051(a), 21 N.J.R. 1903(a).

Revised text by adding "announcement" to grant.

Clarified reference to "N.J.A.C. 7:23-2.2 and 2.14" by deleting "sections 2 and 14 of this subchapter."

7:23-2.10 State share

The State share shall be set forth in the grant award document expressed both as a dollar amount and as a percentage of allowable project costs. The dollar amount shall represent the grant ceiling. The State share shall not exceed the lesser of the amount determined by N.J.A.C. 7:23-2.3(a)9 of 50 percent of the allowable project costs not funded by Federal or other State programs.

Amended by R.1980 d.297, effective July 1, 1980.

See: 12 N.J.R. 257(a), 12 N.J.R. 462(b).

7:23-2.11 Grant award document

The Engineering and Construction Division of the Department shall prepare and transmit four copies of the grant award document to the applicant. The applicant shall execute the grant award document and return it within 30 calendar days after receipt. The Department may, in its discretion, extend the time for execution. The grant award document shall set forth the approved project scope, budget, approved project costs, and the approved commencement and completion dates for the project or major phases thereof. The grant award document shall be deemed to incorporate all requirements, provisions, and information in documents or papers submitted to the Department in the application process. After the Department has completed its internal processing of the grant award document, it shall transmit a copy of the executed grant award document to the grantee.

Amended by R.1980 d.297, effective July 1, 1980.

See: 12 N.J.R. 257(a), 12 N.J.R. 462(b).

Amended by R.1989 d.348, effective July 3, 1989.

See: 21 N.J.R. 1051(a), 21 N.J.R. 1903(a).

Changed to "Coastal Resources" from "Water Resources."

Amended by R.1994 d.308, effective June 20, 1994.

See: 26 N.J.R. 1334(a), 26 N.J.R. 2599(a).

7:23-2.12 Effect of grant award

(a) At the time of execution of the grant award document by the Department and the applicant, the grant shall become effective and shall constitute an obligation of the Emergency Flood Control Fund in the amount and for the purposes stated in the grant award document.

(b) The award of the grant shall not commit or obligate the Department to award any continuation grant to cover cost overruns of the project. The Department's policy is that cost overruns for any project or portion thereof are solely the responsibility of the grantee.

7:23-2.13 Priority determination

(a) A project shall be eligible for a grant if it receives at least ten priority points as determined by this section and meets all other requirements of these rules and regulations. Basic eligibility does not mean an applicant shall receive a grant. A project shall be ranked by the number of priority points it receives. The points will be awarded in accordance with the provisions of this section. Applicants are reminded that they must meet the criteria set out in section 3. of this subchapter.

(b) Priority points shall be given for the following factors and in the amount shown.

1. Frequency of flooding causing damage since January 1, 1965:

- i. One point for each flood causing damage of \$10,000 through \$50,000 in the area to be protected by the flood control project;

- ii. Two points for each flood causing damage of \$50,001 through \$200,000 in the area to be protected by the flood control project;

- iii. Three points for each flood causing damage of \$200,001 through \$500,000 in the area to be protected by the flood control project;

- iv. Four points for each flood causing damage of \$500,001 through \$1,000,000 in the area to be protected by the flood control project;

- v. Five points for each flood causing more than \$1,000,000 damage in the area to be protected by the flood control project.

2. People residing and/or working in the area to be protected by the flood control project.

- i. Residential points:

- (1) Two points 10 to 50 people;

- (2) Four points 51 through 200 people;

- (3) Six points 201 through 500 people;

- (4) Eight points 501 through 1,000 people;

- (5) 10 points 1,001 through 2,000 people;
- (6) 12 points 2,001 through 5,000 people;
- (7) 14 points 5,001 through 10,000 people;
- (8) 16 points more than 10,000 people.

ii. Working points:

- (1) One point 50 through 100 people;
- (2) Two points 101 through 500 people;
- (3) Three points 501 through 1000 people;

iii. For those projects where the estimated project cost is less than \$2,000,000 the points awarded shall be increased proportionately using the following formula:

(1) Final points awarded by this paragraph = points for actual number of people multiplied by 2,000,000 and the result divided by the estimated project cost in dollars.

3. Property located in area to be protected by the flood control project. Points shall be awarded based on the true value of developed property located in the area to be protected by the flood control project. Each property included in the total property value must have been damaged in at least one flood since January 1, 1965.

i. Residential property:

- (1) One point for \$250,000 through \$500,000, true value of property;
- (2) Two points for \$500,001 through \$1,000,000 true value of property;
- (3) Three points for \$1,000,001 through \$5,000,000, true value of property;
- (4) Four points for \$5,000,001 through \$10,000,000 true value of property;
- (5) Five points for \$10,000,001 through \$20,000,000 true value of property;
- (6) Six points for over \$20,000,000 true value of property.

ii. Commercial and industrial property:

- (1) One point for \$500,000 through \$1,000,000, true value of property;
- (2) Two points for \$1,000,001 through \$10,000,000, true value of property;
- (3) Three points for \$10,000,001 through \$20,000,000, true value of property;
- (4) Four points for over \$20,000,000 true value of property.

iii. For those projects where the estimated project cost is less than \$2,000,000, the property value for the

award of points shall be proportionately increased by using the following formula:

(1) Dollar value of property to be used in determining number of points awarded equals: true value of property multiplied by 2,000,000 and the result divided by the estimated project cost in dollars.

4. Major transportation systems disrupted by flooding for more than one hour;

i. State highways:

- (1) One point for 5 to 10 disruptions since January 1, 1965, due to flooding;
- (2) Two points for 11 to 20 disruptions since January 1, 1965, due to flooding;
- (3) Three points for more than 20 disruptions since January 1, 1965, due to flooding.

ii. County highways:

- (1) One point for 5 to 15 disruptions since January 1, 1965, due to flooding;
- (2) Two points for 16 to 30 disruptions since January 1, 1965 due to flooding;
- (3) Three points for more than 30 disruptions since January 1, 1965, due to flooding.

iii. Passenger railroads:

- (1) One point for 5 to 10 disruptions since January 1, 1965 due to flooding;
- (2) Two points for 11 to 20 disruptions since January 1, 1965, due to flooding;
- (3) Three points for more than 20 disruptions since January 1, 1965 due to flooding.

iv. Freight railroads:

- (1) One point for 5 to 15 disruptions since January 1, 1965, due to flooding;
- (2) Two points for 16 to 30 disruptions since January 1, 1965, due to flooding;
- (3) Three points for more than 30 disruptions since January 1, 1965, due to flooding.

5. Any road closing due to flooding that would cause an excessive delay in emergency equipment reaching any specific area. An excessive delay is a five or more minute delay in reaching the specific area.

- i. Two points if road closed 5 to 10 times since January 1, 1965, due to flooding,
- ii. Three points if road closed 11 to 20 times since January 1, 1965 due to flooding;
- iii. Four points if road closed more than 20 times since January 1, 1965 due to flooding.

(c) Total priority points shall be determined by totalling all the points awarded an applicant by subsection (b) of this section.

(d) The Department shall establish and maintain a priority list in accordance with the number of priority points awarded each project pursuant to this section.

(e) The Department shall send a Notice of Intent to Award a Grant to those approved applicants ranking high enough on the priority list to receive funds.

(f) The applicants receiving a Notice of Intent to Award a Grant shall obtain all necessary Federal, State and local permits within one year after receipt of the Notice of Intent to Award a Grant. Failure to obtain the required permits within the required time period shall make the project ineligible for a grant for that year.

(g) A priority list shall be established for each year of the program.

(h) The Department shall award a grant to those applicants sent a Notice of Intent to Award a Grant upon receipt by the Department, within one year, of a certified copy of all the permits required by subsection (f) of this section.

(i) Applicants with approved projects on a priority list that are not awarded grants in a year, who wish to apply for a position on any subsequent priority list in any subsequent year, may apply by a timely filing of a new Flood Control Application Form and by updating the other application documents required by section 5 of this subchapter. This application will be treated as a new application for a flood control grant and evaluated and approved in accordance with these rules.

Amended by R.1980 d.297, effective July 1, 1980.
See: 12 N.J.R. 257(a), 12 N.J.R. 462(b).
Amended by R.1994 d.308, effective June 20, 1994.
See: 26 N.J.R. 1334(a), 26 N.J.R. 2599(a).

7:23-2.14 Allowable project costs

(a) Project costs shall be allowed to the extent permitted by this subchapter and the grant award document.

(b) In determining acquisition costs the applicant shall:

1. Contact the Office of Green Acres, Department of Environmental Protection and Energy, CN 412, Trenton, New Jersey 08625-0412, (609) 588-3450, concerning the proposed acquisition and select appraisers from a list supplied by the Office of Green Acres in accordance with the following schedule:

- i. One appraisal shall be required for properties with an estimated value under \$25,000;
- ii. Two appraisals shall be required for properties with an estimated value in excess of \$25,000.

2. Appraisals shall be performed in accordance with standards established in the current contract between the Treasury Department and the appraisers. Three copies of the appraisal(s) shall be forwarded to the Office of Green Acres for certification of fair market value.

(c) Development and Construction project contracts must be awarded in accordance with Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq. and the rules and regulations adopted pursuant thereto, N.J.A.C. 5:30-14.1 et seq.

(d) Grantees shall be paid the actual costs incurred and properly documented for Development and Construction projects up to the maximum specified in the grant award document. The salaries of regular governmental employees and expenses for governmentally owned equipment are not allowable project costs.

(e) Costs of land acquired prior to submission of an application by a local unit shall not be an allowable project cost.

(f) Project design development costs incurred prior to November 7, 1978, the day on which the voters approved the Emergency Flood Control Bond Act, shall be an allowable project cost.

Amended by R.1989 d.348, effective July 3, 1989.
See: 21 N.J.R. 1051(a), 21 N.J.R. 1903(a).

In (b)1: Deleted old address and replaced with new address for office of Green Acres.
Amended by R.1994 d.308, effective June 20, 1994.
See: 26 N.J.R. 1334(a), 26 N.J.R. 2599(a).

7:23-2.15 Allocation of grant entitlement

A grantee may allocate the proceeds of any grant it receives pursuant to the act and these rules to a joint flood control commission, a mosquito commission, a soil conservation district or any other agency authorized to plan or to construct flood control projects or to an interlocal project.

7:23-2.16 Unused funds

(a) Where the State is scheduled to fund 50 percent of a flood control bond project and the project's actual cost is less than the amount set forth in the grant award document, the State shall only fund 50 percent of the actual cost of the project.

(b) Where the State is scheduled to fund less than 50 percent of the total cost of a flood control bond project and the project's actual cost is less than the amount set forth in the grant award document, the State shall fund 50 percent of the actual cost of the project or \$1,000,000, whichever is less. This subsection is not applicable where the applicant is receiving funds for the project from other grant programs sponsored by the Department.

(c) Funds saved due to the provisions of (a) and (b) above shall be retained by the State and applied to new flood control bond projects pursuant to the Emergency Flood Control Bond Act, P.L. 1978, c.78 and this chapter.

7:23-2.17 Fraud and other unlawful or corrupt practices

(a) The grantee shall administer grants, acquire property pursuant to the grant award document, award contracts and subcontracts under those grants free from bribery, graft, and other corrupt practices. The grantee bears the primary responsibility for prevention, detection, and cooperation in the prosecution of any such conduct. The State shall also pursue administrative or other legally available remedies.

(b) The grantee shall pursue available judicial and administrative remedies, and take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices. The grantee shall notify the Assistant Director immediately when such allegation or evidence comes to its attention, and shall periodically advise the Assistant Director of the status and ultimate disposition of any matter.

7:23-2.18 Grant conditions

(a) The following requirements, in addition to such other statutes and rules as may be applicable to particular grants, are conditions of each grant and conditions precedent to each payment under a grant award document:

1. The project or phase of the project must have been initiated and completed in accordance with the time schedule specified in the grant award document:
2. The grantee must submit proof of its and its contractors and subcontractors compliance with all hazard insurance requirements of the grant award document and certify that the insurance is in full force and effective and that the premiums have been paid.
3. The grantee shall certify that it and its contractors and subcontractors are maintaining their financial records in accordance with standard accounting procedures.
4. The grantee shall certify it and its contractors and their subcontractors are in compliance with the discrimination and affirmative action provisions of N.J.S.A. 10:2-1 through 10:2-4, and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and the rules and regulations promulgated pursuant thereto.
5. The grantee shall include in all its construction or development contracts for the flood control project a requirement that the contractor post a performance bond or other performance guarantee in an amount equal to the full cost of the project. This performance bond or guarantee shall remain in effect until the Department's final inspection of the project and determination in writing that the project is satisfactorily completed. The performance bond or performance guarantee shall be both

nondiscriminatory and financially satisfactory to the Department.

6. The grantee shall certify it is in compliance with all other requirements and conditions of the grant award document.

7. The grantee shall certify that in the construction of the project, including letting of contracts in connection therewith, it has conformed to all applicable requirements of Federal, State and local laws, ordinances, rules, and regulations.

7:23-2.19 Administration and performance of grant

The grantee bears primary responsibility for the administration and success of the flood control project, including any subagreements made by the grantee for accomplishing grant objectives. Although grantees are encouraged to seek the advice and opinion of the Department on problems that may arise, the giving of such advice shall not shift the responsibility for final decisions to the Department. The primary concern of the Department is that grant funds awarded be used in conformance with these rules and the grant award documents to achieve grant objectives and to insure the public safety by controlling flooding in ways which are cost effective, environmentally acceptable and implementable.

7:23-2.20 Access

The grantee and its contractors and subcontractors shall provide access to the Department personnel and any authorized representative of the Department to the facilities, premises and records related to the project. The grantee shall submit to the Department such documents and information as requested by the Department. All grantees, contractors and subcontractors may be subject to a financial audit. Records shall be retained and available to the Department for a minimum of three years after submission of the final request for payment.

As amended, R.1980 d.297, effective July 1, 1980.
See: 12 N.J.R. 257(a), 12 N.J.R. 462(b).

7:23-2.21 State payment

State funds shall be released to the grantee upon completion of the entire project to the satisfaction of the Department, or on an interim basis. If interim payments are made, they will be equal to the State's share of the percent of the total project completed. Ten percent of all payments shall be withheld until the whole project has been completed to the satisfaction of the Department. No payments shall be made until the Department receives satisfactory cost documentation which shall include all forms required by the Department and completed in a manner satisfactory to the Department.

As amended, R.1980 d.297, eff. July 1, 1980.
See: 12 N.J.R. 257(a), 12 N.J.R. 462(b).

7:23-2.22 Assignment

With the exception of the allocation permitted by section 15 of this subchapter, the right to receive payment from the State under a grant may not be assigned, nor may payments due under a grant be similarly encumbered.

7:23-2.23 Publicity and signs

(a) Press releases and other public dissemination of information by the grantee concerning the project work shall acknowledge State grant support.

(b) A project identification sign, at least eight feet long and four feet high, bearing the emblem of the New Jersey Department of Environmental Protection shall be displayed in a prominent location at each publicly visible project site and facility. The sign shall identify the project and State grant support.

7:23-2.24 Debarment

(a) Any grantee shall not enter into a contract for work on a flood control project with any person debarred, suspended or disqualified from Department contracting pursuant to N.J.A.C. 7:1-5.1 et seq.

(b) Grantees shall insert in every contract for work on a flood control project a clause stating that the contractor may be debarred, suspended or disqualified from contracting with the Department if the contractor commits any of the acts listed in N.J.A.C. 7:1-5.2.

(c) Bid Specifications prepared by the grantee shall require bidders to submit a sworn statement of the bidder, or an officer or partner of the bidder, indicating whether or not the bidder is, at the time of the bid, included on the State Treasurer's List of Debarred, Suspended and Disqualified bidders as a result of action by any state agency other than the Department of Environmental Protection.

1. Bid specifications shall also state that the grantee will immediately notify the Department whenever it appears that a bidder is on the Treasurer's List. The Department reserves the right, in such circumstances, to immediately suspend such bidder from the Department contracting, and to take such other action pursuant to N.J.A.C. 7:1-5.1 et seq. as is appropriate.

(d) Whenever a bidder is debarred, suspended or disqualified from Department Contracting pursuant to N.J.A.C. 7:1-5.1 et seq., the grantee may take into account the loss of Department grant funds under these regulations which would result from awarding a contract to such bidder, in determining whether such bidder is the lowest responsible bidder pursuant to law; and the grantee may advise prospective bidders that this procedure will be followed.

(e) Any person included on the Treasurer's List as a result of action by a state agency other than the Department, who is or may become a bidder on any contract which is or will be funded by a grant under these regulations may present information to the Department why this section should not apply to such person. If the Commissioner of the Department determines that it is essential to the public interest and files a finding thereof with the Attorney General, the Commissioner may grant an exception from the application of this section with respect to a particular contract, in keeping with N.J.A.C. 7:1-5.9. In the alternative the Department may suspend or debar any such person, or take such other action as may be appropriate, pursuant to N.J.A.C. 7:1-5.1.

As amended, R.1980 d.297, effective July 1, 1980.
See: 12 N.J.R. 257(a), 12 N.J.R. 462(b).

7:23-2.25 Project changes and grant modifications

(a) A grant modification means any written alteration of the grant terms or conditions, budget or project method or other administrative, technical or financial agreements.

(b) Due to the limited amount of funds available for flood control projects there shall be no grant modification increasing the grant amount. Increased costs resulting from a grant modification shall be the responsibility of the grantee.

(c) The grantee shall promptly notify the Assistant Director in writing (certified mail, return receipt requested) of events or proposed changes which may require a grant modification including but not limited to:

1. Rebudgeting;
2. Changes in approved technical plans or specifications for the project;
3. Changes which may affect the approved scope or objective of a project;
4. Significant, changed conditions at the project site;
5. Declaration in the time for the performance of the project or any major phase thereof;
6. Changes which may increase or substantially decrease the total cost of a project;
7. Changes in key personnel identified in the grant award document or a reduction in time or effort devoted to the project by such personnel.

(d) If the Department decides a formal grant amendment is necessary, it shall notify the grantee and a formal grant award agreement shall be prepared in accordance with N.J.A.C. 7:23-2.26. If the Department decides a formal grant amendment is not necessary, it shall follow the procedures of N.J.A.C. 7:23-2.28.

7:23-2.26 Formal grant award amendments

(a) The Department shall require a formal grant award amendment to change principal provisions of a grant where project changes substantially alter the cost or time of performance of the project or any major phase thereof.

(b) The Department grantee shall effect a formal grant award amendment only by a written amendment to the grant award document.

7:23-2.27 Administrative grant changes

Administrative changes by the Department, such as a change in the designation of key Department personnel or of the office to which a report is to be transmitted by the grantee, or a change in the payment schedule for grants for planning, design, and construction of flood control facilities, constitute changes to the grant award document (but not necessarily to the project work) and do not affect the substantive rights of the Department or the grantee. The Department may issue changes unilaterally. Such changes shall be in writing and shall generally be effected by a letter (certified mail, return receipt requested) to the grantee.

7:23-2.28 Other changes

All other project changes, which do not require formal grant amendment, require written approval of the Assistant Director.

7:23-2.29 Noncompliance

(a) In addition to any other rights or remedies available to the Department pursuant to law, in the event of noncompliance with any grant condition, requirement of this subchapter, or grant document award requirement or specifications, the Department may take any of the following actions or combinations thereof:

1. Issue a notice of noncompliance pursuant to N.J.A.C. 7:23-2.30.
2. Withhold grant funds pursuant to N.J.A.C. 7:23-2.31.
3. Order suspension of project work pursuant to N.J.A.C. 7:23-2.32.
4. Terminate a grant pursuant to N.J.A.C. 7:23-2.33 and 2.34.

7:23-2.30 Notice of noncompliance

When the Department determines that the grantee is in noncompliance with any condition or requirement of these rules or with any provision, term, condition or requirement of the grant award document, or any other applicable State laws and regulations, it shall notify the grantee, its engineer, and/or the contractor of the noncompliance. The Department may require the grantee, its engineer, and/or contractor to take and complete corrective action within 10 working days of receipt of notice. If the grantee, its engineer,

and/or contractor do not take corrective action or if it is not adequate, then the Department may issue a stop-work order or withhold payment. The Department may, however, withhold payment pursuant to N.J.A.C. 7:23-2.31 or issue a stop-work order pursuant to 7:23-2.32 without issuing a notice pursuant to this section.

7:23-2.31 Withholding of funds

The Department may withhold a grant payment or any portion thereof when it determines in writing that a grantee has failed to comply with any grant condition, provision of this chapter or any grant award requirement or specification.

7:23-2.32 Stop work orders

(a) Use of stop-work order: The Department may order work to be stopped for good cause. Good cause shall include, but not be limited to, default by the grantee or noncompliance with the terms and conditions of the grant. The Department shall limit use of a stop-work order to those situations where it is advisable to suspend work on the project or portion or phase of the project for important program or Department considerations.

(b) Contents of stop-work orders: Prior to issuance, the Department shall afford the grantee an opportunity to discuss the stop-work order with the Department personnel. The Department shall consider such discussions in preparing the order. Stop-work orders shall contain:

1. The reasons for issuance of the stop work order;
2. A clear description of the work to be suspended;
3. Instructions as to the issuance of further orders by the grantee for materials or services;
4. Guidance as to action being taken on subagreements;
5. Other suggestions to the grantee for minimizing costs.

(c) Issuance of stop-work orders: The Department may, by written order to the grantee (certified mail, return receipt requested) require the grantee to stop all, or any part of, the project work for a period of not more than 45 days after the grantee receives the order, and for any further period to which the parties may agree.

(d) Effects of stop work order are:

1. Upon receipt of a stop work order, the grantee shall immediately comply with the terms thereof and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within the suspension period or within any extension of that period to which the parties shall have agreed, the Department shall either:
 - i. Rescind the stop work order, in full or in part;

- ii. Terminate the work covered by such order;
- iii. Authorize resumption of work;

2. If a stop work order is cancelled or the period of the order or any extension thereof expires, the grantee shall promptly resume the previously suspended work, an equitable adjustment shall be made in the grant period, the project, or both of these, and the grant agreement shall be modified accordingly within discretion of the Department.

7:23-2.33 Termination of grants

(a) Termination by Department:

1. The Department may terminate a grant in whole or in part for good cause subject to negotiation and payment of appropriate termination settlement costs. The term "good cause" shall include but not be limited to:

- i. Substantial failure to comply with the terms and conditions of the grant;
- ii. Default by the grantee; or
- iii. Situation where the grant was obtained by fraud.

(b) Project termination by grantee: The grantee shall not terminate the project work except with the consent of the Department. The grantee must show good cause and give prompt written notice to the Department of any proposed complete or partial terminations of the grant project by the grantee.

1. If the Department determines there is good cause for the termination of all or part of the grant project the Department may enter into a termination agreement or unilaterally terminate the grant effective with the date of cessation. The determination to terminate the grant shall be solely within the discretion of the Department and if the Department determines not to terminate the grant, the grantee shall remain bound by the terms and conditions of the grant award document.

2. If the Department determines that a grantee has ceased work on a project without good cause, the Department may unilaterally terminate the grant pursuant to this Section or annul the grant pursuant to N.J.A.C. 7:23-2.34.

(c) Termination by mutual agreement: The Department and grantee may enter into an agreement to terminate the grant at any time pursuant to terms which are consistent with this chapter. The agreement shall establish the effective date of termination of the project and grant, basis for settlement of grant termination costs, and the amount and date of payment of any sums due either party.

(d) Effect of terminators:

1. Upon termination, the grantee shall refund or credit to the State of New Jersey that portion of grant funds paid to the grantee and allocable to the terminated project work, except such portion thereof as may be required to meet legal obligations incurred prior to the effective date of termination and as may be otherwise allowable. The grantee shall make no new commitments without Department approval.

2. The grantee shall reduce the amount of outstanding commitments insofar as possible and report to the Department the uncommitted balance of funds awarded under the grant. The Department shall make the final determination of the allowability of termination costs.

7:23-2.34 Annulment of grant

(a) The Department may, in writing, annul the grant if it determines that:

- 1. Without good cause therefor substantial performance of the project work has not occurred;
- 2. The grant was obtained by fraud; or
- 3. Gross abuse or corrupt practices in the administration of the project have occurred.

(b) At least 10 days prior to the intended date of annulment, the Department shall give written notice to the grantee (certified mail, return receipt requested) of intent to annul the grant. The Department shall afford the grantee an opportunity for consultation prior to annulment of the grant. Upon annulment of the grant, the grantee shall return all grant funds previously paid to the grantee. The Department shall make no further payments to the grantee. In addition, the Department shall pursue such remedies as may be available under Federal, State and local law.

7:23-2.35 Administrative hearings

(a) The Commissioner shall decide all disputes arising under a grant. When a grantee so requests, the Department shall reduce a decision to writing and mail or otherwise furnish copy thereof to the grantee.

(b) A grantee may request a hearing within 15 days of a decision by the Commissioner. The request for a hearing shall be sent to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402. Where required by law the Department shall grant a hearing based upon such request.

(c) The Commissioner shall grant and conduct such hearings in accordance with the provisions of the Administrative Procedure Act N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq., and any rules promulgated pursuant to those Acts.

Administrative change in (b).
See: 23 N.J.R. 3325(b).