



LEXSTAT 42 N.J.R. 128(A)

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RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
PUBLIC SAFETY AND OCCUPATIONAL SAFETY AND HEALTH**

42 N.J.R. 128(a)

Proposed Readoption with Amendments: *N.J.A.C. 12:100*

[Click here to view Interested Persons Statement](#)

Safety and Health Standards for Public Employees

Authorized By: David J. Socolow, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1-20, 34:1A-3(c)* and *34:6A-25* et seq., specifically *34:6A-30, 31* and *32*.

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

Proposal Number: PRN 2010-024.

A public hearing on the proposed readoption with amendments will be held on the following date at the following location:

Tuesday, February 9, 2010
10:00 A.M. to 12:00 Noon
NJ Department of Labor and Workforce Development
John Fitch Plaza
2nd Floor Large Conference Room
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by March 20, 2010 to:

David Fish, Regulatory Officer
Office of Legal and Regulatory Services
NJ Department of Labor and Workforce Development
P.O. Box 110 - 13th Floor
Trenton, New Jersey 08625-0110

If you need this document in Braille, large print or audio cassette, contact the Office of Marketing at (609) 292-7832 or NJ Relay (TTY) 1-800-852-7899.

[page=129] The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, *N.J.A.C. 12:100*, the chapter which implements *N.J.S.A. 34:6A-25* et seq., the New Jersey Public Employees Occupational Safety and Health Act (PEOSHA), is scheduled to expire on June 6, 2010. PEOSHA was enacted to ensure that all public employees are provided with safe and healthful work environments from recognized hazards. The Department has reviewed *N.J.A.C. 12:100* and, with the exception of technical amendments throughout the chapter, which reflect the change in the name of the Department from the Department of Labor to the Department of Labor and Workforce Development, the Department has determined the chapter to be necessary, reasonable and proper for the purposes for which it was originally promulgated. Accordingly, the Department proposes that *N.J.A.C. 12:100* be readopted, with amendments.

A summary of the chapter follows:

Subchapter 1 addresses the purpose and scope of the chapter and lists the documents referred to by reference.

Subchapter 2 contains definitions for terms used throughout the chapter.

Subchapter 3 discusses the administration of the chapter, including matters of compliance and the interface of the State agencies involved with the enforcement of the chapter.

Subchapter 3A addresses the adoption by the Department of Federal health and safety standards, so that the State is in compliance therewith.

Subchapter 4 sets forth general standards, including a section for standards which are adopted from the Federal rules by reference.

Subchapter 5 addresses construction standards.

Subchapter 6 provides for agricultural standards.

Subchapter 7 sets forth the standards for hazard communication, which includes labels and other forms of warning, material safety data sheets, employee information and training, along with handling matters pertaining to trade secrets.

Subchapter 8 addresses work practices and conditions for indoor firing ranges for public employees.

Subchapter 9 is reserved.

Subchapter 10 addresses standards for safety equipment for firefighters.

Subchapters 11 and 12 are reserved.

Subchapter 13 contains indoor air quality standards.

Subchapter 14 contains shipyard employment standards.

Subchapter 15 contains marine terminal standards.

Subchapter 16 contains safety and health regulations for longshoring.

Subchapter 17 addresses gear certification.

Subchapter 18 contains safety standards applicable to workshops and rehabilitation facilities assisted by vocational rehabilitation grants.

Subchapter 19 lists the standards and publications, which are referred to throughout the chapter.

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

Social Impact

The rules proposed for readoption with amendments will permit the Department to continue to help protect the safety and health of public employees in their work environments. Enforcement of the rules will provide safe and healthful work conditions free from recognized hazards, which is in the best interest of both employers and employees.

Economic Impact

Pursuant to *N.J.S.A. 34:6A-26*, the Legislature mandated that all public employees be provided with a safe and healthful work environment free from recognized hazards. The safety and health standards contained in the rules proposed for readoption were established in accordance with this legislative mandate. The rules proposed for readoption with amendments, by providing a safe and healthful workplace, will reduce the number of occupational injuries and illnesses among employees. They will also reduce the expenditure of workers' compensation benefits, medical expenses and lost wages. While public employer compliance could require costs in the form of equipment modifications and employee training, the Department is mandated by law to adopt these programs. Furthermore, the Department feels that the benefits provided by the rules outweigh any costs associated with employing the standards.

Federal Standards Statement

The rules proposed for readoption with amendments do not exceed standards imposed by Federal law at 29 *U.S.C. §§651* et seq. (Occupational and Safety Health Act of 1970). Consequently, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for readoption with amendments will have no particular effect upon the number of jobs within the State of New Jersey. The Department does not foresee an increase or decrease in jobs due to the readoption of this chapter.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments do not impose any reporting, recordkeeping or compliance requirement on small businesses as defined under the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq., since only public employers are affected by the rules.

Smart Growth Impact

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption with amendments will not evoke a change in the average costs associated with housing. The basis for this finding is that the rules proposed for readoption with amendments pertain to safe and healthful work conditions from recognized hazards for public employees and have nothing whatsoever to do with housing.

Smart Growth Development Impact

The rules proposed for readoption with amendments will not evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the rules proposed for readoption and the proposed amendments pertain to safe and healthful working conditions for public employees, and have nothing whatsoever to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 12:100*.

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

SUBCHAPTER 2. DEFINITIONS

12:100-2.1 Definitions

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

...

"Approved" means acceptable to the Commissioner of Labor **and Workforce Development**.

...

"Commissioner" means the Commissioner of Labor **and Workforce Development** or his or her designee.

"Division of Public Safety and Occupational Safety and Health" means the Division of Public Safety and Occupational Safety and Health of the Department of Labor **and Workforce Development**, PO Box 386, Trenton, New Jersey 08625-0386.

...

[page=130] SUBCHAPTER 3. ADMINISTRATION

12:100-3.3 Interface of state agencies

(a) The New Jersey Department of Labor **and Workforce Development** shall inspect under the provisions of this chapter where the provisions relate to safety issues in accordance with *N.J.S.A. 34:6A-35*.

(b) (No change.)

(c) The provisions of (a) and (b) above shall not be construed to diminish the primary responsibility of the Commissioner of Labor **and Workforce Development** for administering and enforcing the State plan in accordance with *N.J.S.A. 34:6A-29*.

SUBCHAPTER 7. STANDARD FOR HAZARD COMMUNICATION

12:100-7.4 Hazard determination

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

(f) Chemical manufacturers, importers[,] or employers evaluating chemicals shall describe in writing the procedures they use to determine the hazard of the chemical they evaluate. The written procedures are to be made available, upon request, to employees, their designated representatives, the Commissioner of Labor **and Workforce Development** and/or Commissioner of Health and Senior Services and the Director. The written description may be incorporated into the written hazard communication program required under *N.J.A.C. 12:100-7.5*.

12:100-7.8 Employee information and training

(a)-(f) (No change.)

(g) Training records shall be available as follows:

1. The employer shall ensure that all training records required to be maintained by this standard shall be made available upon request to the Commissioner of Labor **and Workforce Development** or the Commissioner of Health and Senior Services for examination and copying.

2. Employee training records required by this standard shall be provided upon request for examination and copying to employees, to employee representatives, to the Commissioner of Labor **and Workforce Development**, and to the Commissioner of Health and Senior Services.

(h) (No change.)

12:100-7.9 Trade secrets

(a)-(g) (No change.)

(h) The health professional, employee[,] or designated representative whose request for information is denied under (c) above may refer the request and the written denial of the request to the Commissioner of Labor **and Workforce Development** and/or the Commissioner of Health and Senior Services for consideration.

(i) When a health professional, employee[,] or designated representative refers the denial to the Commissioner of Labor **and Workforce Development** and/or the Commissioner of Health and Senior Services under (h) above, New Jersey Public Employees Occupational Safety and Health shall consider the evidence to determine if:

1.-3. (No change.)

(j) If the Commissioner of Labor **and Workforce Development** and/or the Commissioner of Health and Senior Services determines that the specific chemical identity requested under (c) above is not a "bona fide" trade secret, or that it is a trade secret, but the requesting health professional, employee[,] or designated representative has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the chemical manufacturer, importer[,] or employer will be subject to citation by the Commissioner of Labor **and Workforce Development**.

(k)-(l) (No change.)

(m) Notwithstanding the existence of a trade secret claim, a chemical manufacturer, importer[,] or employer shall, upon request, disclose to the Commissioner of Labor **and Workforce Development** and/or the Commissioner of Health and Senior Services any information which this subchapter requires the chemical manufacturer, importer[,] or employer to make available. Where there is a trade secret claim, such claim shall be made no later than at the time the information is provided to the Commissioner of Labor **and Workforce Development** and/or the Commissioner of Health and Senior Services, so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.

(n) (No change.)

APPENDIX E

Guidelines for Employer Compliance (Advisory)

The Hazard Communication Standard (HCS) is based on a simple concept--that employees have both a need and a right to know the hazards and identities of the chemicals they are exposed to when working. They also need to know what protective measures are available to prevent adverse effects from occurring. The HCS is designed to provide employees with the information they need.

Knowledge acquired under the HCS will help employers provide safer workplaces for their employees. When employers have information about the chemicals being used, they can take steps to reduce exposures, substitute less hazardous

materials, and establish proper work practices. These efforts will help prevent the occurrence of work-related illnesses and injuries caused by chemicals.

The HCS addresses the issues of evaluating and communicating hazards to workers. Evaluation of chemical hazards involves a number of technical concepts, and is a process that requires the professional judgment of experienced experts. That is why the HCS is designed so that employers who simply use chemicals, rather than produce or import them, are not required to evaluate the hazards of those chemicals. Hazard determination is the responsibility of the producers and importers of the materials. Producers and importers of chemicals are then required to provide the hazard information to employers that purchase their products.

Employers that do not produce or import chemicals need only focus on those parts of the subchapter that deal with establishing a workplace program and communicating information to their workers. This Appendix is a general guide for such employers to help them determine what is required under the subchapter. It does not supplant or substitute for the regulatory provisions, but rather provides a simplified outline of the steps an average employer would follow to meet those requirements.

1.-3. (No change.)

4. Preparing and Implementing a Hazard Communication Program.

All workplaces where employees are exposed to hazardous chemicals must have a written plan, which describes how the standard will be implemented in that facility. Preparation of a plan is not just a paper exercise--all of the elements must be implemented in the workplace in order to be in compliance with the subchapter. See *N.J.A.C. 12:100-7.5* for the specific requirements regarding a written hazard communication program. The only work operations which do not have to comply with the written plan requirements are laboratories and work operations where employees only handle chemicals in sealed containers. See *N.J.A.C. 12:100-7.2*, Scope and application, for the specific requirements for these two types of workplaces.

The plan does not have to be lengthy or complicated. It is intended to be a blueprint for implementation of your program--an assurance that all aspects of the requirements have been addressed.

Many trade associations and other professional groups have provided sample programs and other assistance materials to affected employers. These have been very helpful to many employers since they tend to be tailored to the particular industry involved. You may wish to investigate whether your industry trade groups have developed such materials.

Although such general guidance may be helpful, you must remember that the written program has to reflect what you are doing in your workplace. Therefore, if you use a generic program, it must be adapted to address the facility it covers. For example, the written plan must list the chemicals present at the site, indicate who is to be responsible for the various aspects of the program in your facility, and indicate where written materials will be made available to employees.

If the Department of Labor **and Workforce Development** and/or the Department of Health and Senior Services inspects your workplace for compliance with the HCS, the compliance officer will ask to see your written plan at the outset of the inspection. In general, the following items will be considered in evaluating your program.

[page=131] The written program must describe how the requirements for labels and other forms of warning, material safety data sheets, and employee information and training, are going to be met in your facility. The following discussion provides the type of information compliance officers will be looking for to decide whether these elements of the hazard communication program have been properly addressed:

A. (No change.)

B. Material Safety Data Sheets.

Chemical manufacturers and importers are required to obtain or develop a material safety data sheet (MSDS) for each hazardous chemical they produce or import. Distributors are responsible for ensuring that their customers are provided a

copy of these MSDSs. Employers must have an MSDS for each hazardous chemical, which they use. Employers may rely on the information received from their suppliers. The specific requirements for material safety data sheets are in *N.J.A.C. 12:100-7.7*. There is no specified format for the MSDS under the rule, although there are specific information requirements. OSHA has developed a nonmandatory format, OSHA Form 174, which may be used by chemical manufacturers and importers to comply with the rule. The MSDS must be in English. You are entitled to receive from your supplier a data sheet that includes all of the information required under the rule. If you do not receive one automatically, you should request one. If you receive one that is obviously inadequate, with, for example, blank spaces that are not completed, you should request an appropriately completed one. If your request for a data sheet or for a corrected data sheet does not produce the information needed, you should contact the Department of Labor **and Workforce Development** and/or the Department of Health and Senior Services for assistance in obtaining the MSDS.

The role of MSDSs under the subchapter is to provide detailed information on each hazardous chemical, including its potential hazardous effects, its physical and chemical characteristics, and recommendations for appropriate protective measures. This information should be useful to you as the employer responsible for designing protective programs, as well as to the workers. If you are not familiar with material safety data sheets and with chemical terminology, you may need to learn to use them yourself. A glossary of MSDS terms may be helpful in this regard. Generally speaking, most employers using hazardous chemicals will primarily be concerned with MSDS information regarding hazardous effects and recommended protective measures. Focus on the sections of the MSDS that are applicable to your situation.

MSDSs must be readily accessible to employees when they are in their work areas during their work shifts. This may be accomplished in many different ways. You must decide what is appropriate for your particular workplace. Some employers keep the MSDSs in a binder in a central location (for example, in the pick-up truck on a construction site). Others, particularly in workplaces with large numbers of chemicals, computerize the information and provide access through terminals. As long as employees can get the information when they need it, any approach may be used. The employees must have access to the MSDSs themselves--simply having a system where the information can be read to them over the phone is only permitted under the mobile worksite provision, *N.J.A.C. 12:100-7.7(i)*, when employees must travel between workplaces during the shift. In this situation, they have access to the MSDSs prior to leaving the primary worksite, and when they return, so the telephone system is simply an emergency arrangement.

In order to ensure that you have a current MSDS for each chemical in the plant as required, and that employee access is provided, the compliance officers will be looking for the following types of information in your written program:

1. Designation of person(s) responsible for obtaining and maintaining the MSDSs;
2. How such sheets are to be maintained in the workplace (for example, in notebooks in the work area(s) or in a computer with terminal access), and how employees can obtain access to them when they are in their work area during the work shift;
3. Procedures to follow when the MSDS is not received at the time of the first shipment;
4. For producers, procedures to update the MSDS when new and significant health information is found; and
5. Description of alternatives to actual data sheets in the workplace, if used.

For employers using hazardous chemicals, the most important aspect of the written program in terms of MSDSs is to ensure that someone is responsible for obtaining and maintaining the MSDSs for every hazardous chemical in the workplace. The list of hazardous chemicals required to be maintained as part of the written program will serve as an inventory. As new chemicals are purchased, the list should be updated. Many companies have found it convenient to include on their purchase orders the name and address of the person designated in their company to receive MSDSs.

C. Employee Information and Training.

Each employee who may be "exposed" to hazardous chemicals when working must be provided information and trained prior to initial assignment to work with a hazardous chemical, and whenever the hazard changes. See *N.J.A.C. 12:100-7.8* for specific requirements. Information and training may be done either by individual chemical, or by categories of

hazards (such as flammability or carcinogenicity). If there are only a few chemicals in the workplace, then you may want to discuss each one individually. Where there are large numbers of chemicals, or the chemicals change frequently, you will probably want to train generally based on the hazard categories (for example, flammable liquids, corrosive materials, carcinogens). Employees will have access to the substance-specific information on the labels and MSDSs.

Information and training is a critical part of the hazard communication program. Information regarding hazards and protective measures are provided to workers through written labels and material safety data sheets. However, through effective information and training, workers will learn to read and understand such information, determine how it can be obtained and used in their own workplaces, and understand the risks of exposure to the chemicals in their workplaces as well as the ways to protect themselves. A properly conducted training program will ensure comprehensive and understanding. It is not sufficient to either just read material to the workers, or simply hand them material to read. You want to create a climate where workers feel free to ask questions. This will help you to ensure that the information is understood. You must always remember that the underlying purpose of the HCS is to reduce the incidence of chemical source illnesses and injuries. This will be accomplished by modifying behavior through the provision of hazard information and information about protective measures. If your program works, you and your workers will better understand the chemical hazards within the workplace. The procedures you establish regarding, for example, purchasing, storage, and handling of these chemicals will improve, and thereby reduce the risks posed to employees exposed to the chemical hazards involved. Furthermore, your workers' comprehension will also be increased, and proper work practices will be followed in your workplace.

If you are going to do the training yourself, you will have to understand the material and be prepared to motivate the workers to learn. This is not always an easy task, but the benefits are worth the effort. More information regarding appropriate training can be found in OSHA Publication No. 2254 which contains voluntary training guidelines prepared by OSHA's Training Institute. A copy of this document is available from OSHA's Publications Office at (202) 219-4667. In reviewing your written program with regard to information and training, the following items need to be considered:

1. Designation of person(s) responsible for conducting training;
2. Format of the program to be used (audiovisuals, classroom instruction, etc.);
3. Elements of the training program (should be consistent with the elements in *N.J.A.C. 12:100-7.8*); and
4. Procedure to train new employees at the time of their initial assignment to work with a hazardous chemical, and to train employees when a new hazard is introduced into the workplace.

The written program should provide enough details about the employer's plans in this area to assess whether or not a good faith effort is being made to train employees. The Department of Labor **and Workforce Development** and/or the Department of Health and Senior Services does not expect that every worker will be able to recite all of the information about each chemical in the workplace. In general, the most [page=132] important aspects of training under the HCS are to ensure that employees are aware that they are exposed to hazardous chemicals, that they know how to read and use labels and material safety data sheets, and that, as a consequence of learning this information, they are following the appropriate protective measures established by the employer. PEOSH compliance officers will be talking to employees to determine if they have received training, if they know they were exposed to hazardous chemicals, and if they know where to obtain substance-specific information on labels and MSDSs.

If you already have a training program, you may simply have to supplement it with whatever additional information is required under the HCS. For example, construction employers that are already in compliance with the construction training standard (*29 CFR § 1926.21*) will have little extra training to do.

An employer can provide employees information and training through whatever means are found appropriate and protective. Although there would always have to be some training on-site (such as informing employees of the location and availability of the written program and MSDSs), employee training may be satisfied in part by general training about the requirements of the HCS and about chemical hazards on the job which is provided by, for example, trade associations, unions, colleges, and professional schools. In addition, previous training, education and experience of a worker may relieve the employer of some of the burdens of informing and training that worker. Regardless of the method relied

upon, however, the employer is always ultimately responsible for ensuring that employees are adequately trained. If the compliance officer finds that the training is deficient, the employer will be cited for the deficiency regardless of who actually provided the training on behalf of the employer.

D. (No change.)

5. (No change.)

6. Further Assistance.

If you have a question regarding compliance with the Hazard Communication Standard, you should contact:

New Jersey Department of Health and Senior Services
 Public Employees Occupational Safety and Health Program
 PO Box 360
 Trenton, New Jersey 08625-0360
 (609) 984-1863
 Fax: (609) 984-2779
 (www.state.nj.us/health/eoh/peoshweb)
 e-mail: peosh@doh.state.nj.us

Or

New Jersey Department of Labor **and Workforce Development**
 Division of Public Safety and Occupational Safety and Health
 PO Box 386
 Trenton, New Jersey 08625-0386
 (609) 292-7036
 (www.state.nj.us/labor/lsse/lspeosh.html)

Free consultation services are also available to assist employers, and information regarding these services can be obtained by contacting the programs listed above.

SUBCHAPTER 10. STANDARDS FOR FIREFIGHTERS

12:100-10.3 Organization, training and education

(a) (No change.)

(b) The organizational statement shall be available for inspection by the Commissioner of Labor **and Workforce Development** and by the employees or their designated representative.

(c) (No change.)

SUBCHAPTER 19. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

12:100-19.2 Availability of documents for inspection

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following Office of the Division of Public Safety and Occupational Safety and Health between the hours of 9:00 [AM] **A.M.** and 4:00 [PM] **P.M.** on normal working days:

New Jersey Department of Labor **and Workforce Development**
 Division of Public Safety and Occupational Safety and Health
 225 East State Street
 Trenton, New Jersey