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RULE PROPOSALS

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

46 N.J.R. 329(a)

Proposed Readoption: N.J.A.C. 12:185

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

Pits and Quarries

Authorized By: Harold J. Wirths, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:6-98.4.a.*

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

Proposal Number: PRN 2013-160.

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

Tuesday, March 11, 2014
10:00 A.M. to 12:00 Noon
NJ Department of Labor and Workforce Development
John Fitch Plaza
2nd Floor 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 April 19, 2014, 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

The agency proposal follows:

Summary

Pursuant to *N.J.S.A. 52:14B-5.1.c(2)*, *N.J.A.C. 12:185*, Pits and Quarries, is scheduled to expire on May 7, 2014. The Mine Safety Act, *N.J.S.A. 34:6-98.1* et seq., was enacted to ensure that "the physical plant, operations and methods of the mining industry or any part thereof including mines abandoned prior to the passage of this act and mines abandoned subsequent to the passage of this act shall be so constructed, equipped, arranged, operated, maintained and conducted in all respects as to provide for reasonable and adequate protection to the lives, health and safety of miners, others employed in the mining industry and frequenting the same, the owners of the surface of the ground above such mines and the general public, as well as the protection of property." *N.J.S.A. 34:6-98.4*. The rules that implement this law are promulgated at *N.J.A.C. 12:185*. The Department has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purposes for which they were originally promulgated. Accordingly, the Department proposes that *N.J.A.C. 12:185* be readopted.

A summary of the subchapters of *N.J.A.C. 12:185* follows:

N.J.A.C. 12:185-1 sets forth the purpose and scope of the chapter and establishes the conditions under which the Commissioner of Labor and Workforce Development may grant exceptions to the requirements of the chapter.

N.J.A.C. 12:185-2 defines the words and terms used throughout the chapter.

N.J.A.C. 12:185-3 sets forth general provisions for the chapter, including a statement regarding health and safety requirements to the effect that every pit and quarry shall be so excavated, equipped, arranged, operated, maintained, and conducted in all respects as to provide reasonable and adequate protection for the life, health and safety of all persons employed therein or legally frequenting the same and to provide for protection of property. The subchapter also contains sections pertaining to (1) requirements imposed by the Commissioner of Labor and Workforce Development and (2) the use of existing equipment.

N.J.A.C. 12:185-4 prohibits persons from entering or being permitted to enter or to loiter about any pit or quarry, buildings, or other part of the working premises while under the influence of intoxicating liquors, beverages, or drugs. The subchapter also states that no intoxicating liquors, beverages, or drugs shall be permitted in, at, or around any pit or quarry, building, or other parts of the working premises.

N.J.A.C. 12:185-5 addresses the reporting of accidents involving serious personal injury to any person or persons.

N.J.A.C. 12:185-6 concerns the investigation of accidents by the employer and by the Commissioner of Labor and Workforce Development.

N.J.A.C. 12:185-7 addresses employment limitations within pits and quarries.

N.J.A.C. 12:185-8 sets forth requirements for employers regarding the appropriate assignment of employees.

N.J.A.C. 12:185-9 requires that the Commissioner be notified of a change in name or ownership of a pit or quarry and also that the Commissioner be notified of the resumption of operations at a pit or quarry which has not been in production for one year.

N.J.A.C. 12:185-10 sets forth requirements pertaining to abandoned mining operations, such as the filing of a plan by the employer showing the workings of the quarry up to the time of abandonment and the boundaries of the property in which these workings are situated, the maintenance of a permanent record of this plan, and safeguards to be put in place in and around the abandoned operation.

N.J.A.C. 12:185-11 concerns the maintenance of maps and plans by employers showing all workings of mining operations.

N.J.A.C. 12:185-12 addresses fire protection.

N.J.A.C. 12:185-13 concerns the storage of and use of flammable materials.

N.J.A.C. 12:185-14 requires the taking of appropriate precautions to ensure the safe operation of pits and quarries, including the reporting of unsafe conditions, the use of safety belts when entering any bin, bunker, or other storage place containing material which may cave or run, the use by employees of all safeguards provided for their protection,

and the prohibition against using any apparatus, piece of equipment, machinery, or tool for any purpose for which it is not intended or suited, and the requirement that employees and other persons working in or about a pit.

N.J.A.C. 12:185-15 addresses the sorts of first aid supplies and services which must be provided at pit and quarrying operations.

N.J.A.C. 12:185-16 lists sanitation requirements.

N.J.A.C. 12:185-17 addresses the use of protective equipment such as protective gloves, safety shoes, safety hats, safety goggles, safety belts, and life lines.

N.J.A.C. 12:185-18 concerns employer and employee responsibilities relative to the use of hand tools.

N.J.A.C. 12:185-19 addresses the safe use of crushers.

N.J.A.C. 12:185-20 addresses the safe use of conveyers.

N.J.A.C. 12:185-21 concerns the guarding of equipment and machinery.

N.J.A.C. 12:185-22 addresses the safe treatment of floor openings.

N.J.A.C. 12:185-23 concerns the safe use of electrical equipment.

N.J.A.C. 12:185-24 addresses the safe use of lighting.

N.J.A.C. 12:185-25 concerns the safe storage of materials.

N.J.A.C. 12:185-26 concerns lightning protection.

N.J.A.C. 12:185-27 addresses the hauling of materials by truck and by railroad.

N.J.A.C. 12:185-28 addresses the safe use of loading, mechanical, and hoisting equipment.

N.J.A.C. 12:185-29 concerns the safe construction and maintenance of structures, walkways, and working surfaces.

N.J.A.C. 12:185-30 contains requirements pertaining to the physical condition of pits and quarries.

N.J.A.C. 12:185-31 concerns dust control.

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*.

[page=330] **Social Impact**

The rules proposed for re-adoption would have a positive social impact in that they would continue to protect the health, safety, and welfare of those individuals who work in pits and quarries and continue to protect the health, safety, and welfare of the general public, who live and work near active and abandoned mining operations, by maintaining enforceable standards for the operation of pits and quarries within the State. The rules proposed for re-adoption would also continue to ensure the protection of property which might otherwise be adversely affected by mining operations. The hazards associated with the mining industry can reach beyond the property lines of these facilities. Dust and debris can endanger the public and cause damage to property. The rules proposed for re-adoption greatly reduce risks to the health and safety of the public and also reduce the chances of possible destruction of property resulting from mining operations by requiring such things as boundary limits, dust controls, and the preparation of reclamation plans.

Economic Impact

The rules proposed for re-adoption would have an economic impact on all of those engaged in the operation of pits or quarries throughout the State as well as those who are the owners, agents, or lessees of any abandoned pits or quarries which are determined to be dangerous by reason of their depth or other conditions. Specifically, those engaged in the operation of pits or quarries would be required to adhere to each of the safety requirements listed within the chapter, which in turn would result in the incurring of expenses.

For example, under the chapter, employers are required to thoroughly investigate all accidents involving disabling personal injury; they are required to keep records of investigation reports; they are required to make and maintain or cause to be made and maintained clear and accurate maps showing all workings; they are required to provide adequate

fire protection; they are required to properly store flammable materials; they are required to provide adequate first aid to workers; they are required to provide proper sanitation to workers; they are required to use appropriate protective equipment; they are required to adhere to safety standards pertaining to the use of hand tools, crushers, conveyors, electrical equipment, loading, mechanical, and hoisting equipment; they are required to construct and maintain structures, walkways, and working surfaces in a safe manner; they are required to ensure that the physical condition of pits and quarries is safe; and they are required to take appropriate measures to control. Each of these requirements carries with it a cost, whether it is the expense of hiring staff to conduct investigations, maintain records, or prepare maps, or the expense of obtaining safety equipment such as fire plugs, hoses, and nozzles, chemical extinguishers, safety belts, life lines, goggles, signs, and barriers, equipment guards, properly constructed storage bins, or properly constructed hoists.

With regard to abandoned operations, the rules proposed for readoption require that within one month after the abandonment of any quarry the employer shall file with the Commissioner of Labor and Workforce Development an accurate plan showing the workings of the quarry up to the time of abandonment and the boundaries of the property in which these workings are situated. In addition, the rules proposed for readoption require that the owner, agent, or lessee of any abandoned pit or quarry which is dangerous by reason of its depth or other conditions, shall place or cause to be placed guardrails, fences, or other approved means, sufficient to prevent any accidental fallings into any abandoned pit or quarry and shall keep them in good repair. *N.J.A.C. 12:185-10.5*, proposed for readoption, explicitly states that, "When the Commissioner finds that any such fencing or other safeguards are required in order to avoid danger to persons or property, he or she may cause the work to be done and all expenses incurred thereby shall be chargeable to and shall be paid by the owner, agent or lessee." Thus, there would be certain costs incurred by owners, agents, or lessees of abandoned operations by virtue of the readoption of the chapter.

Those who work in pits and quarries would benefit economically from the rules proposed for readoption due to reductions in wage loss, insurance premiums, medical expenses, disability compensation payments, and other costs attributable to disabilities which might result from the absence of the types of health and safety protections contained within the rules proposed for readoption.

Federal Standards Analysis

Following are instances where the rules proposed for readoption would appear to exceed Federal standards:

1. *N.J.A.C. 12:185-1.1* and *3.1* indicate that the purpose of the chapter is not only to establish reasonable minimum standards for the construction, operation, and maintenance of pits and quarries in the interest of the life, health, and safety of employees, but also "to provide for the protection of property." The stated purpose of the analogous Federal regulations at 30 CFR Part 56 is "the protection of life, the promotion of health and safety, and the prevention of accidents," through the establishment of, "mandatory safety and health standards for each surface metal or nonmetal mine, including open pit mines, subject to the Federal Mine Safety and Health Act of 1977." The Federal regulations make no mention of "the protection of property," within their discussion of purpose. In the interest of protecting property (and, in certain instances, also in the interest of protecting life and promoting health and safety), *N.J.A.C. 12:185-10* contains standards pertaining to abandoned pit and quarry operations. 30 CFR Part 56, which is focused entirely on the protection of employees from occupational hazards, does not contain standards for abandoned pits and quarries. Following are the specific standards imposed by the State for abandoned pit and quarry operations, which standards are not found within 30 CFR Part 56:

i. Within one month after the abandonment of any quarry the employer shall file with the Commissioner an accurate plan showing the workings of the quarry up to the time of abandonment and the boundaries of the property in which these workings are situated. See *N.J.A.C. 12:185-10.1*.

ii. The plan filed under *N.J.A.C. 12:185-10.1* must be preserved as a permanent record, but no persons except officials of the Department shall be permitted, without the consent of the owner, to see the plans so filed until after a lapse of 10 years abandonment, except when in the opinion of the Commissioner, it is necessary in the interests of safety to show the plan to the owner of the adjoining property or the owner of surface rights. See *N.J.A.C. 12:185-10.2*.

iii. The owner, agent, or lessee of any abandoned pit or quarry which is dangerous by reason of its depth or other conditions, shall place or cause to be placed "guardrails, fences or other approved means, sufficient to prevent any accidental fallings into any abandoned pit or quarry and shall keep them in good repair." See *N.J.A.C. 12:185-10.3*.

iv. The fence referred to in *N.J.A.C. 12:185-10.3* shall not be less than six feet high and signs marked "Danger-Keep Out" shall be placed thereon or in the vicinity of any excavation. See *N.J.A.C. 12:185-10.4*.

v. When the Commissioner finds that any fencing or other safeguards are required in order to avoid danger to persons or property, he or she may cause the work to be done and all expenses incurred thereby shall be chargeable to and shall be paid by the owner, agent, or lessee. See *N.J.A.C. 12:185-10.5*.

The Department's regulation of abandoned pits and quarries is dictated by the New Jersey Mine Safety Act, *N.J.S.A. 34:6-98.1* et seq. (the Act), which includes within its general safety requirements a number of provisions relating expressly to abandoned mines, pits, or quarries. Specifically, the Act requires that every operator abandoning or permanently discontinuing any mine, pit, or quarry shall notify the Commissioner and the local governing bodies involved prior to such abandonment or discontinuance; that the operator of an abandoned mine, pit, or quarry must post at the surface entrance, or around the surface extremities of the abandoned mine, pit, or quarry, appropriate, conspicuous, and readily legible warning notices of the existence and dangers of the abandoned mine, pit, or quarry and must also place or cause to be placed guardrails, fences, or "other approved means," sufficient to prevent accidental fallings; that where an abandoned mine, pit, or quarry constitutes an imminent hazard to persons and the order of the Commissioner to protect such mine, pit, or quarry has not been complied with in the time specified, the Commissioner is authorized to take such steps as may be necessary to eliminate the imminent hazard; and that the operator of the mine, pit, or quarry shall reimburse the Commissioner for the actual cost of whatever corrective measures have been employed in eliminating the imminent hazard. In order to meet its [page=331] obligations under the Act, the Department must be aware of the existence of abandoned pits and quarries and must be aware of the nature of the abandoned operation; thus, the notification and plan filing requirements. The remainder of the requirements found within Subchapter 10 relating to abandoned pits and quarries - namely, the guardrail/fencing and sign posting requirements - are expressly dictated by the Act.

2. *N.J.A.C. 12:185-7.1* states that no person under the age of 18 years shall be employed or permitted to be employed in or about any pit or quarry. 30 CFR Part 56 does not contain any age restriction for those working in or about a pit or quarry. The State rule is dictated by *N.J.S.A. 34:6-98.6.n*, which states, "[n]o minor under 18 years of age shall be employed, permitted or suffered to work in, or about, or in connection with any mine." Incidentally, the term "mine" is defined within *N.J.S.A. 34:6-98.2* to "also include quarry, sand pit, gravel pit, clay pit and shale pit."

3. *N.J.A.C. 12:185-9.1* states that whenever there has been a change of a name of the operating company, or a change of ownership of any pit or quarry, the successor employer shall immediately notify the Commissioner in writing, giving the name of the former employer and the name of the new employer, with its address and any change in the name of the pit or quarry. 30 CFR Part 56 does not appear to contain such a requirement regarding change in name or ownership of the operating company. Rather, *30 CFR 56.1000*, entitled "Notification of commencement of operations and closing of mines," states that the owner, operator, or person in charge of any metal and nonmetal mine shall notify the nearest Mine Safety and Health Administration (MSHA) Metal and Nonmetal Mine Safety and Health district office before starting operations, of the approximate or actual date mine operation will commence. The notification shall include the mine name, location, the company name, mailing address, person in charge, and whether operations will be continuous or intermittent. The Federal regulation also requires that when any mine is closed, the person in charge shall notify the nearest district office and indicate whether the closure is temporary or permanent. The New Jersey Mine Safety Act also requires the sort of notification covered by the Federal regulation (that is, notification of the commencement and termination of operations); however, the Department believes that in order to properly enforce the Act, it must also be made aware of changes in name/ownership of operators. The impact of this requirement upon operators is minimal, whereas the benefit to the Department in its effective enforcement of the Act is substantial.

4. *N.J.A.C. 12:185-11.1* through *11.3* require:

- i. That the employer at every quarry shall make and maintain or cause to be made and maintained a clear and accurate map or maps showing all workings of the quarry;
- ii. That all such maps shall include a surface plan showing the boundaries of the property, the location of all plant buildings, railroads, roads, excavations, and elevations; and
- iii. At least once every year, the employer shall cause to be shown clearly and accurately on each map of each quarry all the excavations made therein.

30 CFR Part 56 does not appear to contain any requirements pertaining to the creation and maintenance of such maps or plans. As with the name/ownership change requirement discussed earlier, the Department believes that in order to properly enforce the Act, it must ensure the availability for inspection by Department staff of the surface plan, prop-

erty boundaries, plant building locations, railroad and road locations, excavations, and elevations, for each quarry operation in the State.

5. N.J.A.C. 12:185-13, Flammable Materials, contains among the following requirements:

- i. That "petroleum products and other dangerous flammable materials" be stored at least 100 feet from other plant buildings and at least 300 feet from any explosives magazine;
- ii. That when petroleum products are stored in a tank or tanks buried in the ground, the tank or tanks shall be provided with proper vents and shall be located at least 300 feet from any explosives magazine;
- iii. That buildings used for the storage of flammable liquids shall be used for no other purpose, and shall be clearly marked by identifying their contents;
- iv. That such buildings shall be of fire-resistant construction; and
- v. That explosion proof electric lights shall be installed in order to "obviate the use of open lights in a building used for the storage of gasoline, distillates, oils or other flammable materials."

30 CFR Part 56 requires that an unburied, flammable storage tank or any group of containers used for storage of more than 60 gallons of flammable liquids not be located within 25 feet of where combustible materials are stored or allowed to accumulate; that storage buildings or storage rooms in which flammable or combustible liquids, including grease, are stored and that are within 100 feet of any person's work station shall be ventilated with a sufficient volume of air to prevent the accumulation of flammable vapors; that buildings or rooms used to store flammable or combustible liquids be constructed to meet a fire resistance rating of at least one hour, or be equipped with an automatic fire suppression system, or be equipped with an early warning fire detection device that will alert any person who could be endangered by a fire, provided that no person's working station is in the building; and adds that flammable or combustible liquids in use for day-to-day maintenance are not considered in storage under this standard.

Thus, whereas the State standard requires that flammable materials be stored in a building used solely for that purpose and requires further that such storage be at least 100 feet from other plant buildings, the Federal regulations permit flammable liquids to be stored in the same building as a person's work station, so long as where the work station is within 100 feet of the storage room, the storage room is ventilated with a sufficient volume of air to prevent the accumulation of flammable vapors. The Federal regulations also contain no "explosion proof electric light[ing]" requirement. However, the Federal regulations do state that "heat sources capable of producing combustion shall be separated from combustible materials if a fire hazard could be created." See *30 CFR 56.4500*.

6. *N.J.A.C. 12:185-15.3* states that in all pits or quarries employing less than 25 workers per shift there shall be at least one stretcher and two blankets and that if more than 25 workers are employed per shift an additional stretcher and blankets for each 25 workers or fraction shall be provided. *30 CFR 56.15001*, First-aid materials, states that adequate first aid materials, including stretchers and blankets, shall be provided at places convenient to all working areas. Thus, the State rule requires a specific stretcher/blanket-to-worker ratio, whereas the Federal regulations require simply that stretchers and blankets be provided at places convenient to all working areas.

7. N.J.A.C. 12:185-16, Sanitation, requires that one "water closet" shall be provided for every 20 persons per shift and one urinal shall be provided for every 50 persons per shift or portion thereof; that the operator of every pit or quarry employing 15 or more workers per shift shall provide a wash and change house at each and every place that necessitates employees changing from work clothes to other wearing apparel, or where the lack of such facilities constitute a hazard to health; that wash and change houses shall be available to the workers at all times when they are going on or coming off shift, and shall be equipped with washing and shower facilities; that for every 10 employees per shift there shall be at least one washing unit and for every 10 employees per shift there shall be at least one shower bath; and that pits or quarries that employ less than 10 workers per shift and have no suitable water available on the property for washing and bathing purposes shall be exempt from the shower bath requirement, but shall provide their employees with washing facilities that are reasonably clean and sanitary. *30 CFR 56.20008*, Toilet facilities, states that toilet facilities shall be provided at locations that are compatible with the mine operation and that are readily accessible to mine personnel. The Federal regulations do not appear to contain any requirements regarding washing or shower facilities.

8. N.J.A.C. 12:185-18, Hand Tools, indicates that the employer is responsible for the safe condition of tools furnished to employees, and shall not permit the use of tools that are defective, nor permit the misuse of any tools; that tools, except when they are in actual use, shall at all times be kept in racks, boxes, kits, or "where they will not create a

hazard by falling or a person tripping over them"; and that electric drills or other electrically operated rotating tools to be held in the hands shall have the electric switch constructed, so as to break the circuit when the hand releases the switch or shall be equipped with properly adjusted friction or safety clutches, and must be kept electrically grounded. 30 CFR [page=332] 56.14116, Hand-held power tools, requires that power drills, disc sanders, grinders, and circular and chain saws, when used in hand-held mode shall be operated with controls which require constant hand or finger pressure. However, the Federal regulations do not appear to contain any of the other hand tool-specific requirements which appear within N.J.A.C. 12:185-18.

9. N.J.A.C. 12:185-19, Crushers, contains a host of requirements specific to the operation of crushers. For example, *N.J.A.C. 12:185-19.1* states that every employee working at a crusher shall be protected from falling into the crusher by one of the following means: (a) adequately guarding the crusher opening where practical to do so; (b) use of a working platform with standard railing located in such position that material hung-up in the crusher can be safely dislodged by the employee on the platform; or (c) "other equally safe means." *N.J.A.C. 12:185-19.2* states that any employee who may be required to work over or above the feed opening of a crusher shall use a safety belt and life line, adding that the life line shall be tied sufficiently short to prevent the employee from falling into the crusher. *N.J.A.C. 12:185-19.6* states that crusher operators shall be required to wear goggles while the crusher is operating and when sledging oversize rock. *N.J.A.C. 12:185-19.8* states that when repair work is being done on crushers, the control switches shall be locked and tagged in open position by the person or persons doing the work and that such locks shall not be removed until work is completed. 30 CFR Part 56 contains no standards specific to the safe operation of crushers; however, the Federal regulations do contain general standards regarding the use of guarding, safety belts, and life-lines, eye protection, and lock-out, tag-out procedures, which may encompass the crusher-specific requirements of N.J.A.C. 12:185-19.

10. *N.J.A.C. 12:185-21.8*, Design of guard rails, requires: (a) that guard rails be 42 inches in height and smooth surfaced, with mid-rail between top rails and floor, and of "substantial construction"; (b) that posts shall not be more than eight feet apart, are to be permanent and substantial, smooth, and free from protruding nails, bolts, and splinters; (c) that if made of pipe, posts shall be 1 1/4 inches in diameter, or larger; and (d) that toeboards shall be four inches or more in height and constructed of wood, metal, or of metal grill not exceeding one-inch mesh. 30 CFR 56.14112, Construction and maintenance of guards, states that guards shall be constructed and maintained to: (a) withstand vibration, shock, and wear to which they will be subjected during normal operation; and (b) not create a hazard in their use. This is another instance of the State standard containing specific dimension requirements (for example, posts eight feet apart, 1 1/4 inches in diameter), whereas the Federal regulations speak generally of being able to withstand vibration, shock, and wear, and of not creating "a hazard in their use." Similarly, *N.J.A.C. 12:185-22.3*, Hatch openings, states that "hatch openings shall be protected by standard railings and toeboards, hatch covers, or solid, slat, or grill gates 42 inches high." The Federal regulations do not appear to have any such 42-inch requirement.

11. *N.J.A.C. 12:185-27.2*, Railroad haulage, contains the following requirements regarding "minimum clearance for standard gauge tracks": (a) from the gauge line of the nearest rail to loading or unloading docks, walls of depressed tracks, and wheel-barrow platforms, there shall be a minimum clearance of three feet and four inches; (b) from the gauge line of the nearest rail to all stockyards, there shall be a minimum clearance of five feet on tangent track and five feet and six inches on curved track; (c) from the gauge line on the nearest rail to all other structures, there shall be a minimum clearance of six feet; and (d) the minimum distance between the nearest gauge lines of adjacent tracks shall be eight feet and six inches. *N.J.A.C. 12:185-27.2* also contains the following requirements regarding "minimum overhead clearance": (a) from the top of the rail to any structure other than overhead loading pockets, there shall be a minimum clearance of 22 feet; (b) from the top of the rail to any overhead power transmission line when men are permitted to ride on top of standard freight cars, there shall be a minimum clearance of 28 feet. The only railroad haulage clearance standards within 30 CFR Part 56 pertain to clearance on adjacent tracks (30 CFR 56.9103) and clearance for surface equipment (30 CFR 56.9330). The former standard states that, "railcars shall not be left on side tracks unless clearance is provided for traffic on adjacent tracks." The latter standard states that, "continuous clearance of at least 30 inches from the farthest projection of moving railroad equipment shall be provided on at least one side of the tracks at all locations where possible or the area shall be marked conspicuously."

12. *N.J.A.C. 12:185-30.1(e)* states that, "[t]he overburden in all quarries shall be stripped as close to bedrock as it is practicable to do, or to the top of the material being excavated for a distance of at least 15 feet back from the face, and shall then be sloped, where applicable, to its angle of repose for the entire length of the section of the quarry face which is being worked." 30 CFR 56.3131, Pit or quarry wall perimeter, states the following: "In places where persons work or travel in performing their assigned tasks, loose or unconsolidated material shall be sloped to the angle of repose or stripped back for at least 10 feet from the top of the pit or quarry wall. Other conditions at or near the perimeter of the

pit or quarry wall which create a fall-of-material hazard shall be corrected." This is an instance where it would appear that the State standard exceeds the Federal standard in that under the State rule all of the overburden (rock and soil that lies above the bedrock) must be excavated for a distance of at least 15 feet back from the wall face, and shall then be sloped to its angle of repose for the entire length of the quarry face, which is being worked, whereas under the Federal regulation, only "in places where persons work or travel in performing their assigned tasks," loose or unconsolidated material (not necessarily all of the "overburden") must be sloped to the angle of repose or stripped back for at least 10 feet from the top of the pit or quarry wall.

13. *N.J.A.C. 12:185-30.1(h)* states that the employer or some competent employee designated by the employer, shall inspect the pit or quarry face for dangerously loose material after blasting, not less than once each day during thawing weather, after heavy rains or freezes and at least once every day in the working sections of the pit or quarry, including sections used as travel ways by persons and where trucks pass nearby. *30 CFR 56.3401*, Examination of grounds, states that appropriate supervisors or other designated persons shall examine and, where applicable, test ground conditions in areas where work is to be performed prior to work commencing, after blasting, and as ground conditions warrant during the work shift. The Federal regulation also states that highwalls and banks adjoining travelways shall be examined weekly or more often if changing ground conditions warrant. Thus, the regular ground examination required by the Federal regulations (that is, apart from examination prior to commencement of work and after blasting) would be "as ground conditions warrant during the work shift," and as to highwalls and banks adjoining travelways, weekly or more often if changing ground conditions warrant; whereas the State rule requires an inspection of the pit or quarry face "at least once every day in the working sections of the pit or quarry." In a particular circumstance, examination of the pit or quarry face "as ground conditions warrant during the shift," might translate to a more frequent examination than "at least once every day." However, in general, the existence of a State standard that requires a particular frequency of inspection, could be read to exceed a corresponding Federal standard that contains an "as ground conditions warrant," inspection requirement.

14. *N.J.A.C. 12:185-30.1(m)* states that when the floor of any pit or quarry is below the natural ground level or a highway, the banks of the pit shall not be removed within 25 feet of the property line or the sideline of the highway, and the bank shall be left in such condition that sloughing of the bank will not cause the top of the bank to be less than 25 feet from the property line of the highway. *N.J.A.C. 12:185-30.1(n)* states that when the floor of any pit or quarry is more than five feet below the average grade of a highway at any point within 50 feet of the highway, an effective and approved barrier shall be erected by the employer along the property line nearest the highway for an approved distance to provide protection against the drop or fall of persons or vehicles. *30 CFR Part 56* does not appear to contain any such specific rules regarding proximity of pit or quarry operations to a highway. Rather, *30 CFR 56.3201*, Location for performing scaling, states that scaling shall be performed from a location that will not expose persons to injury from falling material, or other protection from falling material shall be provided.

15. *N.J.A.C. 12:185-30.3* states that all quarries shall work the face by a multiple bench method with the height of the face not exceeding 50 feet; provided, however, that in circumstances where the surface topography influences the height of the uppermost bench, the height shall not exceed 65 feet. *30 CFR 56.3130*, Wall, bank and slope stability, states [page=333] that mining methods shall be used that will maintain wall, bank, and slope stability in places where persons work or travel in performing their assigned tasks, adding that when benching is necessary, the width and height shall be based on the type of equipment used for cleaning of benches or for scaling of walls, banks, and slopes.

In the instances listed above where State standards exceed Federal standards, there may be a cost to pit/quarry operators associated with the heightened standard. As to the benefit of such State standards, the Department is committed to its mission of establishing reasonable minimum requirements for the construction, operation, and maintenance of pits and quarries in the interest of life, health, and safety of employees, as well as protection of property. Any standards that exceed Federal standards have been determined to be necessary toward achieving those dual objectives. That said, *N.J.A.C. 12:185-1.3* allows for exceptions to the rules. Specifically, it states that in cases of "practical difficulty or unnecessary hardship," the Commissioner may grant exceptions from this chapter provided that a request for such exception has been made in writing. In those instances where State standards exceed Federal standards, petitioning the Commissioner for an exception under *N.J.A.C. 12:185-1.3* may give the regulated community some relief, so long as the regulatory standard - "practical difficulty or unnecessary hardship" - is met.

Jobs Impact

The rules proposed for readoption would have no impact on either the generation or loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption would have no impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption would impose certain reporting, recordkeeping, and compliance requirements on businesses, some of which might be small businesses as that term is defined by the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. Those reporting, recordkeeping, and compliance requirements and the anticipated costs associated therewith are summarized in the Economic Impact statement and Federal Standards Analysis statement above. It is not anticipated that the rules proposed for readoption would require employers to hire any outside professional services. The Department has provided no lesser or differing compliance or reporting requirements based on the size of the business, with the exception of the sanitation requirements at *N.J.A.C. 12:185-16*, Sanitation, proposed for readoption, which would require that a wash and change house be provided only where the mining operation employs 15 or more workers. The requirements imposed and the application of those requirements uniformly to all businesses, large and small (with the one exception listed above), are consistent with *N.J.S.A. 34:6-98.1* et seq., New Jersey Mine Safety Act.

Housing Affordability Impact Analysis

The rules proposed for readoption would have no effect on affordable housing and would not evoke a change in the average costs associated with housing. The basis for this finding is that the rules proposed for readoption pertain to construction, operation, and maintenance of pits and quarries and do not pertain to housing.

Smart Growth Development Impact Analysis

The rules proposed for readoption would have no effect on smart growth and would not evoke a change in the housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Re-development Plan. The basis for this finding is that the rules proposed for readoption pertain to construction, operation, and maintenance of pits and quarries and do not pertain to housing.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 12:185*.