

HEALTH

PUBLIC HEALTH SERVICES BRANCH

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL, AND OCCUPATIONAL HEALTH

CONSUMER, ENVIRONMENTAL, AND OCCUPATIONAL HEALTH SERVICE

ENVIRONMENTAL AND OCCUPATIONAL HEALTH ASSESSMENT PROGRAM

Standards for Lead Certification

Proposed Readoption with Amendments: N.J.A.C. 8:62

Authorized By: Shereef Elnahal, M.D., M.B.A., Commissioner, Department of Health.

Authority: N.J.S.A. 26:2Q-1 et seq., particularly 26:2Q-12.

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

Proposal Number: PRN 2019-030.

Submit electronic comments to <http://www.nj.gov/health/legal/ecomments.shtml>, or written comments to the address below, by May 17, 2019, to:

Joy L. Lindo, Director

Office of Legal and Regulatory Compliance

New Jersey Department of Health

PO Box 360

Trenton, NJ 08625-0360

The agency proposal follows:

Summary

N.J.A.C. 8:62, Standards for Lead Certification, establishes standards for the permitting of lead abatement workers, supervisors, inspectors/risk assessors, and planner/project designers, and the certification of training providers that provide lead worker training courses. The rules protect the health and safety of lead abatement workers and supervisors, building occupants, the public, including highly susceptible children, and protect the environment.

A complete summary of the regulatory history of the chapter and its underlying statutory framework until March 2011 appears in the notice of proposal to readopt the chapter at 43 N.J.R. 715(a). The Department of Health (Department) last readopted the chapter in February 2012. 44 N.J.R. 591(a).

N.J.A.C. 8:62 was scheduled to expire on February 7, 2019, pursuant to N.J.S.A. 52:14B-5.1. The Department has reviewed the rules at N.J.A.C. 8:62 and has determined that they remain necessary, adequate, reasonable, efficient, understandable, responsive, and proper for the purposes for which they were promulgated. In addition, the Department has determined that minor amendments are necessary to update certain definitions, provide for expanded hearing rights, and clarify certain deadlines. Therefore, the Department has determined to readopt the chapter with amendments. The filing of this notice of proposal with the Office of Administrative Law prior to the expiration date operated to extend the expiration date of N.J.A.C. 8:62 by 180 days to August 6, 2019, pursuant to N.J.S.A. 52:14B-5.1.c(2).

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

The following is a summary of the rules proposed for readoption and the proposed amendments.

Subchapter 1 establishes general provisions. N.J.A.C. 8:62-1.1 establishes the title and citation of the chapter. N.J.A.C. 8:62-1.2 and 1.3 establish the purpose and scope of the chapter, respectively.

Subchapter 2 establishes definitions. N.J.A.C. 8:62-2.1 provides definitions of terms used throughout the chapter. The Department proposes to amend the definition of “applicant” at N.J.A.C. 8:62-2.1 to provide that the term includes an individual applying for approval as a training manager or course instructor. Similarly, the Department proposes to amend the definition of “certificant” to provide that the term also includes an individual certified by the Department. In addition, the Department proposes to amend the definition of “certificant” by deleting the reference to Subchapter 4 of N.J.A.C. 8:62.

Subchapter 3 establishes the requirements and procedures for obtaining and renewing a permit for a lead abatement worker, lead abatement supervisor, lead inspector/risk assessor, and lead abatement planner/project designer for housing and public buildings, and for a lead abatement worker and lead abatement supervisor for commercial buildings and superstructures.

N.J.A.C. 8:62-3.1 establishes the scope of the subchapter.

N.J.A.C. 8:62-3.2 specifies the educational and experiential requirements.

N.J.A.C. 8:62-3.3 establishes the application process and the required training course and examination.

N.J.A.C. 8:62-3.4 makes interstate reciprocity available to individuals who possess a valid permit, license, or certification from another state that has received U.S. Environmental Protection Agency (EPA) authorization to administer and enforce a state certification and training program.

N.J.A.C. 8:62-3.5 establishes standards for "grandfathered" permit issuance.

N.J.A.C. 8:62-3.6 establishes the content and duration of permits.

N.J.A.C. 8:62-3.7 establishes standards for presentation, holding, and replacement of a permit.

N.J.A.C. 8:62-3.8 establishes standards for suspension and revocation of permits.

N.J.A.C. 8:62-3.9 establishes the process for renewal of a permit.

Subchapter 4 establishes the procedures and qualifications required to obtain, maintain, and renew certification to conduct training.

N.J.A.C. 8:62-4.1 establishes the scope of the subchapter.

N.J.A.C. 8:62-4.2 establishes requirements for initial and refresher training courses.

N.J.A.C. 8:62-4.3 establishes application requirements for certification of training courses.

N.J.A.C. 8:62-4.4 establishes training agency operating requirements. The Department proposes to amend N.J.A.C. 8:62-4.4(g) to provide that a certified training agency must notify the Department at least five calendar days, but not more than 30

calendar days, in advance of the beginning of a training course. The Department intends this change to clarify the timing of the notification requirement pursuant to feedback from the regulated community that indicated the existing requirement of “at least two weeks” is not sufficiently clear. In addition, the Department proposes to add new N.J.A.C. 8:62-4.4(g)1 to provide where Department provided forms may be found.

N.J.A.C. 8:62-4.5 establishes criteria for training manager and training course instructors.

N.J.A.C. 8:62-4.6 and 4.7 establish criteria for topics in the lead abatement worker and supervisor for housing and public buildings training courses.

N.J.A.C. 8:62-4.8 and 4.9 establish criteria for topics in the lead inspector/risk assessor and lead abatement planner/project designer training courses.

N.J.A.C. 8:62-4.10 and 4.11 establish criteria for topics in the lead abatement worker and supervisor for commercial buildings and superstructures training courses.

N.J.A.C. 8:62-4.12 establishes criteria for topics in refresher training courses.

N.J.A.C. 8:62-4.13 establishes the content and duration of certifications.

N.J.A.C. 8:62-4.14 establishes standards for renewal of training agency certification.

N.J.A.C. 8:62-4.15 establishes standards for suspension and revocation of training agency certification and instructor approval.

Subchapter 5 addresses compliance and enforcement.

N.J.A.C. 8:62-5.1 establishes the scope of the subchapter.

N.J.A.C. 8:62-5.2 requires individuals involved in the assessment or abatement of lead-based paint, dust, or soil to obtain a Department permit, and requires individuals involved in training to obtain a Department certification.

N.J.A.C. 8:62-5.3 establishes the authority of the Department to order the cessation and desistence of operations if an applicant or certificant is causing an imminent threat to public health, safety, or welfare.

N.J.A.C. 8:62-5.4 establishes standards for the issuance of civil administrative penalties for violations of this chapter.

N.J.A.C. 8:62-5.5 affords alleged violators the right to a formal hearing. In response to various public inquiries and inconsistent hearing requests indicating that petitioners do not understand the wording of the rule, the Department proposes to amend N.J.A.C. 8:62-5.5 in order to make the language more understandable. The Department proposes to amend N.J.A.C. 8:62-5.5(a) to eliminate the word “violator” and replace it with the term “permit holder,” which is more accurate and appropriate. In addition, the Department proposes to delete language referring to an informal conference from this subsection because it causes confusion with the right to request a formal hearing. Similarly, the Department proposes to delete the phrase “or both” because it also causes confusion for petitioners. The Department proposes to replace N.J.A.C. 8:62-5.5(b) referring to an informal conference or review with language that would provide for an emergent hearing in the event the Department issues an order to cease and desist to a permit holder or certificant pursuant to N.J.A.C. 8:62-5.3. The Department proposes to amend N.J.A.C. 8:62-5.5(c) to delete the term “violator” and replace it with the terms “permit holder, certificant, applicant, or instructor” which are

more accurate and appropriate. In addition, the Department proposes to amend N.J.A.C. 8:62-5.5(c) by adding language that would describe the petitioner's right to contest an agency action under this chapter and also to provide that instead of 10 days, a petitioner would have 30 calendar days after the assessment of an administrative penalty within which to request a hearing. The Department proposes to add new N.J.A.C. 8:62-5.5(c)1 to establish the address to which petitioners should mail hearing requests. The Department proposes to delete existing N.J.A.C. 8:62-5.5(d) because it caused confusion regarding hearing rights as noted above. The Department proposes to amend recodified N.J.A.C. 8:62-5.5(d) and delete the term "violator" and replace it with the terms "permit holder, certificant, applicant, or instructor" which are more accurate and appropriate. The Department proposes to amend recodified N.J.A.C. 8:62-5.5(d) to provide that failure to file a request for a hearing within 30 days, instead of 10 days, would be deemed a waiver of the right to a hearing and the Department's proposed action would become final.

Social Impact

Lead is a heavy metal that, when absorbed into the body, affects the blood, kidneys, and nervous system. The effects of lead on the nervous system are particularly serious and can cause learning disabilities, hyperactivity, decreased hearing, developmental disabilities, and possible death. Children who have suffered from the adverse effects of lead exposure for extended periods are frequently in need of special health and educational services.

The primary method for lead to enter the body is through the ingestion of lead-containing substances, such as paint, dust, and soil. In recognition of the danger that it

presents to children, lead-based paint was banned from residential use in New Jersey in 1972 and nationwide in 1978. These bans have reduced the risk of lead exposure for children who live in houses built after 1978. Houses built before 1950, when paints contained a very high percentage of lead, present the highest risk to children. A significant percentage of housing in New Jersey (68 percent according to the Census) was built before 1980. Every county in the State has more than 20,000 housing units built before 1980. Therefore, it is necessary to safeguard children from the dangers of lead exposure.

The rules proposed for readoption with amendments have provided, and would continue to provide, a procedure for the issuance of permits to lead abatement workers and supervisors, inspectors/risk assessors, and planners/project designers. The permit process has played, and would continue to play, a vital role in the State's efforts to reduce public exposure to the hazards associated with lead abatement and evaluation by ensuring that knowledgeable and competent professionals perform these activities in accordance with scientifically accepted work practices.

The rules proposed for readoption with amendments that require the certification of training programs have assured, and would continue to assure, that lead abatement workers, supervisors, inspectors/risk assessors, and planners/project designers participate in training programs that provide them with necessary information, competence, knowledge, and skills to safely evaluate, design, and perform lead abatement remediation projects without endangering their own health, the health of building occupants, the general public, and the environment.

The rules proposed for readoption with amendments have benefited, and would continue to benefit, the public and building owners by providing assurance that lead abatement workers possess the requisite knowledge and competence to evaluate the presence of lead-containing materials and minimize public exposure to the dangers associated with lead abatement projects, thus, preventing lead-related diseases.

Since 1995, the Department has certified 37 training providers and 138 courses. During this period, 31,394 individuals have completed training and the Department has issued 24,529 permits to individuals.

Economic Impact

The rules proposed for readoption with amendments have had, and would continue to have, a beneficial economic impact on building owners by assuring them that they are paying qualified, competent, and knowledgeable individuals to perform lead-related activities.

The rules proposed for readoption with amendments have had, and would continue to have, a beneficial economic impact on permitted lead inspector/risk assessors, lead abatement planner/project designers, and lead abatement supervisors and workers by the establishment of sanctions on unpermitted individuals that perform lead activities in violation of the regulatory requirements of the chapter, which reduces unfair competition to individuals who have obtained permits.

The rules proposed for readoption with amendments have had, and would continue to have, a beneficial economic impact on the public by helping to avoid the occurrence of lead-related disabilities and attendant wage losses, insurance costs,

medical expenses, disability compensation payments, legal expenses, and other costs resulting from lead-related disability.

The rules proposed for readoption with amendments have required, and would continue to require, permit and certification fees. The fees proposed for readoption offset administrative costs associated with the permitting and certification programs. The Department is proposing no fee increase. Fees required pursuant to this chapter have not increased since the initial establishment of this chapter in February 1995. Training providers applying for certification would continue to incur a fee of \$500.00 per discipline. Individuals applying for permits would continue to incur a permit fee of \$80.00 for each worker, \$150.00 for each supervisor or inspector/risk assessor, and \$200.00 for each planner/project designer.

The rules proposed for readoption with amendments have benefited, and would continue to benefit, training providers by establishing a program through which providers can become certified to offer Department-approved training courses and can collect training fees from individuals participating in their courses. The rules proposed for readoption with amendments have enhanced, and would continue to enhance, employment opportunities for individuals who have been permitted by enabling them to perform lead-related activities required by Federal mandates. The rules proposed for readoption with amendments have assisted, and would continue to assist, in meeting public demand for a well-trained workforce through establishment of the certification of training courses and the permitting of lead workers.

Failure to readopt N.J.A.C. 8:62 would result in the State falling out of compliance with Federal standards, potentially resulting in Federal takeover of lead

activities in the State if the EPA were to disapprove the State Lead Program. Failure to readopt the chapter could result in economic harm to the public, property owners, building residents, and lead workers through personal injury and disability losses, property damage, and environmental injury.

Federal Standards Statement

The rules proposed for readoption with amendments are consistent with Federal standards relating to the certification of training courses and the issuance of permits to lead workers provided at 40 CFR Part 745, Lead-Based Paint Poisoning Prevention in Certain Residential Structures, particularly Subpart L, Lead-Based Paint Activities, at 40 CFR 745.225, Accreditation of training programs: target housing and child-occupied facilities; and 40 CFR 745.226, Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities.

N.J.A.C. 8:62-4.2 requires 32 hours of training for qualification as a lead abatement worker for housing and public buildings. Federal law requires 16 hours for the same discipline. The difference occurs because the Federal program does not include various topics relating to worker protection. New Jersey law, at N.J.S.A. 26:2Q-4, requires worker protection to be included as an area of instruction in lead abatement worker and supervisor training courses.

Section 404(b) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2684(b), establishes the standards by which the EPA can approve a state's lead program. It says that a state must demonstrate that its program would be at least as protective of human health and the environment as the Federal program and would provide for adequate enforcement. Thus, Federal law authorizes states to implement

lead program requirements that are more stringent than the Federal model. For example, the State's rules require a training course for lead abatement workers and supervisors who are involved with commercial buildings and superstructures. Federal standards are limited to housing and child-occupied facilities.

Jobs Impact

The rules proposed for reoption with amendments have not increased or decreased and would not increase or decrease the number of jobs in the State. Failure to readopt N.J.A.C. 8:62 could result in the loss of jobs among certified training providers and in the lead worker industry.

Agriculture Industry Impact

The rules proposed for reoption with amendments are part of the Statewide lead hazard and abatement program that several State agencies cooperatively administer. This program helps to restore and protect the environment from lead hazard and contamination, thereby supporting the protection of soil, farm animals, and the food supply generally from lead contamination, and the remediation of structures on farms, such as houses and barns, from lead paint contamination. Subject to the foregoing, the rules proposed for reoption with amendments have not had, and would continue not to have, an impact on the agriculture industry of the State.

Regulatory Flexibility Analysis

The rules proposed for reoption with amendments impose requirements on lead inspector/risk assessors, lead planner/project designers, lead abatement supervisors, lead abatement workers, and lead training agencies, most of which are

small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The compliance requirements for lead inspector/risk assessors, lead planner/project designers, lead abatement supervisors, and lead abatement workers include completing and submitting an application to the Department, successfully completing Department-approved lead abatement training, successfully completing a skills assessment evaluation, and passing a written certification examination. Failure to comply with these requirements shall result in the suspension or termination of the permit. The Department estimates that training costs for initial permitting range between \$600.00 and \$850.00, and approximately \$200.00 for refresher training. The rules proposed for readoption with amendments do not regulate training costs. Most training agencies are affiliated with lead worker unions, and the cost of training is incorporated into the worker's union dues. The Department proposes to readopt the existing fee structure for permits issued to lead inspector/risk assessors, lead planner/project designers, lead abatement supervisors, and lead abatement workers without change. These permits operate like licenses to work and range from \$80.00 to \$150.00, depending upon the permit. The Department requires permits to be renewed biennially. The rules proposed for readoption with amendments do not impose any reporting requirements on lead inspector/risk assessors, lead planner/project designers, lead abatement supervisors, and lead abatement workers, other than those associated with the original and renewal permitting process.

The rules proposed for readoption with amendments would require each lead training agency to report to the Department with five to 30 calendar days advance notice

of the date when it is going to conduct a lead training course. The rules proposed for readoption with amendments would continue to require training agencies to notify the Department after a training course is finished. The Department would continue to furnish forms for these purposes at no cost to the training agency. The rules proposed for readoption with amendments would continue to require training agencies to retain records of instructor qualifications and Department approval, student attendance and performance records, course lists, and student identification numbers. The Department has determined that the cost of maintaining these records is *de minimus* and that training agencies would most likely make and retain these records even if it was not required by this chapter. The Department proposes to readopt the existing application fee for biennial certification of training agencies without change. The fee would continue to be \$500.00, which would continue to help offset the cost of processing the application, reviewing all course materials to ensure compliance with Federal standards, and conducting site visits, as appropriate. Compliance with the chapter does not require small businesses to retain the services of professionals.

Because of the risks associated with lead abatement projects and the need for competently trained inspector/risk assessors, planner/project designers, supervisors, and workers, providing an exemption for small businesses would endanger the health, safety, and welfare of the public and the workers, and would potentially bring the State program into non-compliance with minimum Federal standards. Therefore, the Department has not provided a less stringent or different standard based on business size.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments establish and support activities that facilitate the remediation and occupancy of previously abandoned housing. This, in turn, can lead to additional housing becoming available at market rates, particularly in urban and older areas of the State. Subject to the foregoing, the rules proposed for readoption with amendments have not had and would not have an impact on the affordability of housing in New Jersey, and have not caused and would not cause a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments establish and support activities that facilitate the removal of lead contamination from older homes and other buildings, thereby allowing for their safe occupancy in urban and older areas of the State. The rules proposed for readoption with amendments facilitate the remediation and occupancy of previously abandoned housing, which, in turn, can lead to additional housing becoming available at market rates, particularly in urban and older areas of the State. The rules proposed for readoption with amendments establish and support activities that facilitate performance of lead remediation as part of the demolition of buildings, which in turn can allow the development of new buildings and housing, and the conduct of other development and smart growth activities. Subject to the foregoing, the rules proposed for readoption with amendments have had and would continue to have an insignificant impact on smart growth development and there is an extreme unlikelihood that the rules proposed for readoption with amendments will evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:62.

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

SUBCHAPTER 2. DEFINITIONS

8:62-2.1 Definitions

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

...

“Applicant” means a person applying for certification as a lead abatement worker, a lead abatement supervisor, a lead inspector/risk assessor, a lead abatement planner/project designer, [or] an agency seeking certification to conduct lead training, **or an individual applying for approval as a training manager or course instructor.**

...

“Certificant” means any training agency **or individual** certified by the Department pursuant to N.J.A.C. 8:62[-4].

...

SUBCHAPTER 4. CERTIFICATION OF TRAINING COURSES

8:62-4.4 Training agency operating requirements

(a)–(f) (No change.)

(g) All certified training agencies shall notify the Department at least [two weeks] **five calendar days, but not more than 30 calendar days**, in advance of the beginning of any training course. All notifications shall be in writing and shall be submitted on forms provided by the Department. If any course information changes, the training agency shall notify the Department as soon as that agency becomes aware of such changes.

1. Forms may be found at <https://www.nj.gov/health/forms/ehs-21.pdf>.

(h)–(t) (No change.)

SUBCHAPTER 5. COMPLIANCE AND ENFORCEMENT

8:62-5.5 Hearings

(a) Where the Commissioner assesses an administrative penalty under N.J.A.C. 8:62-5.4 above or proposes to suspend or revoke a permit or certification, denies an application for a permit or certification, or revokes an instructors approval, the [violator] **permit holder**, certificant, applicant, or instructor, as the case may be, shall have the right to [an informal conference under (b) below or] a formal hearing under (c) below [or both].

[(b) Any violator shall have the right to an informal conference or review before the Commissioner's designee. Such conference or review shall be held provided that a

written request for the same has been submitted within 10 calendar days from receipt of the notice of civil administrative penalty assessment issued pursuant to N.J.A.C. 8:62-5.4. When the conference or review is held before the Commissioner's designee, he or she shall state his or her findings and conclusions in writing and transmit a copy to the violator. In the event that the violator does not agree with the findings and conclusions of the Commissioner's designee, he or she may submit a written request for a formal hearing in accordance with (c) below.]

(b) In the event the Department issues an order to cease and desist to a permit holder or certificant pursuant to N.J.A.C. 8:62-5.3, the permit holder or certificant may request an emergent hearing pursuant to N.J.S.A. 52:14B-1 et seq., in accordance with (c) below.

(c) Any [violator] **permit holder, certificant, applicant, or instructor** shall have the right to **contest an agency action under this chapter** at a formal hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, provided that a written request for the same is submitted within [10] **30** calendar days after the assessment of an administrative penalty.

1. Hearing requests shall be sent via U.S. mail to:

New Jersey Department of Health

Office of Legal and Regulatory Compliance

PO Box 360

Trenton, N.J. 08625-0360

[(d) In the alternative, recipients of an administrative penalty assessment may request the initiation of a settlement conference pursuant to N.J.S.A. 26:2Q-8.]

[(e)] **(d)** Where a [violator] **permit holder, certificant, applicant, or instructor** fails to request a hearing within the [10] **30** calendar day period, his or her right to a hearing pursuant to this section shall be deemed waived and the Commissioner's proposed action shall become final.

[(f)] **(e)** (No change in text.)