

54 N.J.R. 1777(a)

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RULE PROPOSALS

Reporter

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Interested Persons Statement

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

Agency

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

Administrative Code Citation

Proposed Readoption: N.J.A.C. 12:190

Text

Explosives

Authorized By: Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 21:1A-128 et seq., specifically, 21:1A-131.

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

Proposal Number: PRN 2022-127.

Submit written comments by November 18, 2022, to:

David Fish, Executive Director
Office of Legal and Regulatory Services
NJ Department of Labor and Workforce Development
PO Box 110-13th Floor
Trenton, New Jersey 08625-0110

Email: david.fish@dol.nj.gov

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1.c, N.J.A.C. 12:190, Explosives, was scheduled to expire on August 13, 2022. As August 13, 2022, was a Saturday, pursuant to N.J.A.C. 1:30-6.4(g), the expiration date was extended to the next business day, Monday, August 15, 2022. As the Department of Labor and Workforce Development (Department) filed this notice of readoption on August 15, 2022, it was timely filed and, pursuant to N.J.S.A. 52:14B-5.1.c(2), the expiration date was extended 180 days to February 9, 2023. The chapter implements N.J.S.A. 21:1A-128 et seq., the Explosives Act, which governs the manufacture, storage, transportation, use, and sale of explosives. The Department has reviewed N.J.A.C. 12:190 and 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. 12:190 be readopted.

A summary of the subchapters at N.J.A.C. 12:190 follows:

N.J.A.C. 12:190-1 sets forth the general provisions, including the purpose and scope of the chapter.

N.J.A.C. 12:190-2 contains definitions of words and terms used throughout the chapter.

N.J.A.C. 12:190-3 lists the procedures for the issuance of permits, the payment of fees, the recordkeeping required for permit holders, and reporting procedures.

N.J.A.C. 12:190-4 addresses the manufacture and storage of explosives.

N.J.A.C. 12:190-5 concerns the manner in which explosives should be stored.

N.J.A.C. 12:190-6 addresses the transportation of explosives off-the-highway.

N.J.A.C. 12:190-7 concerns the use of explosives.

N.J.A.C. 12:190-8 continues to be reserved.

N.J.A.C. 12:190-9 applies to the storage, handling, and mixing of blasting agents.

N.J.A.C. 12:190-10 applies to the storage of smokeless powder and black powder for the reloading of small arms ammunition and the channels of distribution for the users of smokeless powder and black powder.

N.J.A.C. 12:190-11 addresses the sale of explosives.

N.J.A.C. 12:190-12 sets forth the administrative penalties for violating the Explosives Act and addresses the right of an alleged violator to an administrative hearing prior to the levying of administrative penalties.

N.J.A.C. 12:190-13 lists the standards and publications referred to throughout the chapter.

[page=1778] 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 would have a positive social impact in that they would continue to protect the health, safety, and welfare of the public by maintaining enforceable standards for the manufacture, sale, transportation, storage, use, possession, and disposition of explosives. In addition, the rules proposed for readoption would provide the Department with funding to maintain the inspection regimen established within the Explosives Act, N.J.S.A. 21:1A-128 et seq. They also provide alleged violators of the Explosives Act with a due process framework within which to challenge notices of violation and penalties.

Economic Impact

The rules proposed for readoption would have an economic impact on all persons who manufacture, store, use, sell, possess, or dispose of explosives in that they impose on those persons permit fees and penalties for noncompliance with the chapter. Moreover, there would be costs to such persons associated with the acquisition of special precautionary equipment for storage and special signs for off-the-highway transportation of the explosives. In addition, those individuals subject to this chapter would bear the administrative and maintenance costs associated with the reporting and recordkeeping requirements as described in the regulatory flexibility analysis below.

Continued compliance with the chapter will help prevent a significant negative economic impact, such as that resulting from a public disaster caused by the unsafe use of explosives. As in the past, operators found in violation during inspections would still be required to take corrective actions. Only violators would incur additional costs in the form of penalties for noncompliance. As a result of the rules proposed for readoption, the public would continue to benefit from the reduced risk of injuries and loss of life and property.

Federal Standards Statement

The rules proposed for readoption are governed by N.J.S.A. 21:1A-128 et seq., and are not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

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 impose some recordkeeping and reporting requirements upon the explosive industry sector, some of which may be considered small businesses as that term is defined pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The recordkeeping and reporting requirements are specified at N.J.A.C. 12:190-3, Administration. These statutory requirements call upon the explosives industry to maintain accurate information regarding the supplier, quantities, brand, type, and manufacturer's identifying marks, the date of all invoices and transactions, and the disposition and/or disposal of all explosives. A set time frame is also established by the rules indicating how long these

permanent records must be maintained. The rules request detailed information for each individual permit to manufacture, sell, store, or use explosives. All accidents resulting in injury to a person or serious property damage, as well as, losses by theft or otherwise must be immediately reported by the permit holder for the explosive(s) involved to the Division of Public Safety and Occupational Safety and Health. All persons holding permits to store, use, or sell commercial explosives must also file monthly reports on special forms, which may be secured from the Division of Public Safety and Occupational Safety and Health.

Those individuals subject to this chapter are also required to obtain permits, to acquire special precautionary equipment for storage, and to obtain and display special signs for off-the-highway transportation of the explosives. The costs of these requirements are discussed in the Economic Impact above.

The employment of professional services outside the regulated explosives sector is not necessary in order for this regulated industry to come into compliance with the rules that require the acquisition of permits, precautionary equipment for storage, and the display of special signs for off-the-highway transportation of explosives. As stated above, the vast majority of this regulated industry already possess the permits, precautionary equipment for storage, and the special signs for off-the-highway transportation of explosives. New businesses to this industry will be able to comply with all the chapter's requirements without the assistance of outside professional services. They will be able to pay the permit fees as stated in the rules at N.J.A.C. 12:190-3.14, buy the precautionary storage equipment, and make the special signs for off-the-highway transportation of explosives by following the detailed specifications contained at N.J.A.C. 12:190-6.4.

Any exemption from the rules proposed for readoption would endanger the health, safety, and general welfare of the public. Due to the dangerous and sometimes disastrous nature of injuries caused by the unsafe use of explosives, no differentiation based on business size is necessary or appropriate. All businesses must comply.

Housing Affordability Impact Analysis

It is not anticipated that the rules proposed for readoption would evoke a change in the average costs associated with housing or on the affordability of housing. The basis for this finding is that the rules proposed for readoption pertain to the manufacture, storage, transportation, use, and sale of explosives and have nothing to do with housing.

Smart Growth Development Impact Analysis

It is not anticipated that the rules proposed for readoption would evoke a change in the housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the rules proposed for readoption pertain to the manufacture, storage, transportation, use, and sale of explosives and do not pertain to housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere else in the State of New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commissioner of the Department has evaluated this rulemaking and determined that it would 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. 12:190.