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**RULE PROPOSALS**

**LABOR AND WORKFORCE DEVELOPMENT  
HEALTH**

**DIVISION OF PUBLIC SAFETY AND OCCUPATIONAL SAFETY AND HEALTH  
PUBLIC HEALTH SERVICES BRANCH**

**DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICES**

**CONSUMER, ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICE**

**ENVIRONMENTAL AND OCCUPATIONAL HEALTH ASSESSMENT PROGRAM**

**PUBLIC EMPLOYEES OCCUPATIONAL SAFETY AND HEALTH UNIT**

*48 N.J.R. 935(a)*

**Proposed Repeals and New Rules: N.J.A.C. 12:100-7.1 and 12:100-7 Appendices A and B**

**Proposed Amendments: N.J.A.C. 12:100-1.3, 3.2, 3.3, 3A.2, 7.3, 7.8 and 13.2**

**Proposed Repeals: N.J.A.C. 12.100-7.2, 7.4 through 7.7, and 7.9, and N.J.A.C. 12:100-7 Appendices C through E**

Click here to view Interested Persons Statement

**Health and Safety Standards for Public Employees**

**Standards for Hazard Communication**

Authorized By: Harold J. Wirths, Commissioner of Labor and Workforce Development and Cathleen D. Bennett, Acting Commissioner of Health, in consultation with Charles A. Richman, Commissioner of Community Affairs and in consultation with the Public Employees Occupational Safety and Health Advisory Board.

Authority: N.J.S.A. 34:5A-1 et seq., particularly 34:5A-13h, 34:6A-25 through 50, particularly 34:6A-30 and 32; and 29 CFR Part 1956, Subpart G.

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

Proposal Number: PRN 2016-083.

Submit written comments electronically by August 5, 2016, to <http://www.nj.gov/health/legal/ecomments.shtml> or by regular mail postmarked by August 5, 2016, 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

The Occupational Safety and Health Act of 1970 *Pub. L. 91-596 (29 U.S.C. §§ 651-678)* (OSH Act) declares at section 2 (*29 U.S.C. § 651*) the purpose and policy of Congress "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources" by, among other actions and programs, "encouraging [states] to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws." Section 18(a) of the OSH Act prevents any state agency or court from asserting jurisdiction under state law over any occupational safety or health issue with respect to which a Federal standard is established pursuant to § 6 of the OSH Act.

Section 18 of the OSH Act, *29 U.S.C. § 667*, authorizes states to assume responsibility for the development and enforcement of occupational safety and health standards relating to any occupational safety and health issue with respect to which a Federal standard has been promulgated by submitting for the approval of the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) a state plan documenting in detail the proposed program. State and local government workers are excluded from Federal coverage under the OSH Act and are provided protection only by means of a state plan approved pursuant to Section 18 of the Act.

29 CFR Part 1956 contains the regulations promulgated pursuant to the OSH Act that establish the process by which the Assistant Secretary reviews and approves state plans for the development and enforcement of occupational safety and health standards applicable only to employees of a state and its political subdivisions (public employees). Pursuant to 29 CFR Part 1956, the Assistant Secretary will approve a state plan for public employees that identifies how the state will develop and enforce standards relating to hazards in public employment that are, or would be, at least as effective in providing safe and healthful places of employment for public employees as standards promulgated and enforced under § 6 of the OSH Act.

In accordance with the New Jersey Public Employees' Occupational Safety and Health Act, N.J.S.A. 34:6A-25 through 50 (PEOSH Act), particularly at N.J.S.A. 34:6A-29, and pursuant to 29 CFR Part 1956, the State of New Jersey submitted and, on January 11, 2001, the Assistant Secretary issued initial certification of, a state plan as a developmental plan pursuant to § 18 of the OSH Act for the development and enforcement of occupational safety and health standards relating exclusively to New Jersey public employees (State plan). *66 FR 2273* (January 11, 2001); 29 CFR Part 1956, Subpart G. The Occupational Safety and Health Administration of the United States Department of Labor (OSHA) retains jurisdiction over the implementation and enforcement of the OSH Act with respect to non-public employees in New Jersey.

In accordance with the State plan and the PEOSH Act, the New Jersey Department of Labor and Workforce Development (Department) serves as the lead State agency for State plan implementation, while the New Jersey Departments of Health and Community Affairs have consultative and surveillance roles in State plan implementation. See, for example, N.J.S.A. 34:6A-30 (identifying the lead role of the Commissioner of Labor and Workforce Development and the consultative roles of the Commissioners of Health and Community Affairs with respect to the establishment of standards more stringent than those the OSHA establishes, and identifying the areas, including toxic and hazardous substances, with respect to which the Commissioner of Health is charged with inspection, investigation, and other activities) and 34:6A-32 (identifying the Department's rulemaking obligations in consultation with the Departments of Health and Community Affairs).

The State plan and N.J.S.A. 34:6A-30 require the State, through the Department, to adopt and make applicable to public employees all existing and future standards that the OSHA promulgates, by publication thereof in their entirety in the New Jersey Register. In most cases, the Department adopts these standards without change. N.J.S.A. 34:6A-30.c and N.J.A.C. 12:100-3A.2(b) authorize the State to establish standards that provide protections to public employees that are greater or more stringent than those OSHA establishes under the OSH Act.

N.J.A.C. 12:100, Safety and Health Standards for Public Employees, is the State rule establishing safety standards to protect public employees that are "at least as effective as the standards" that OSHA promulgates pursuant to the OSH Act, N.J.A.C. 12:100-1.1, and serves as a collection of the OSHA standards that the Department has adopted and made applicable to public employees pursuant to the PEOSH Act and the State Plan.

The Departments propose to amend N.J.A.C. 12:100-1.3 to correct the cross-reference to the rule containing explanations of standards and publications to which the chapter refers.

The Departments propose to amend N.J.A.C. 12:100-3A.2(b) to correct a grammatical error and to add the phrase, "and establish," to indicate that the Commissioners are not only to develop, but also to establish, that is promulgate, standards in accordance with applicable law.

N.J.A.C. 12:100-4.2 identifies the subparts of 29 CFR Part 1910, General Industry Standards, and any subsequent amendments thereto, that the State incorporates by reference. Among the subparts N.J.A.C. 12:100-[page=936] 4.2 incorporates by reference is Subpart Z, Toxic and Hazardous Substances, which consists of 29 *CFR 1910.1000* through 1910.1499. N.J.A.C. 12:100-4.2(a)20; see also N.J.A.C. 12:100-19.1(a)2.

Existing N.J.A.C. 12:100-7 establishes the standards for communication to public employees of information about chemical hazards in the workplace. This subchapter is nearly verbatim to the OSHA Hazard Communication Standard at 29 CFR Subpart Z at 1910.1200, as published in the Code of Federal Regulations in 1994 (HazCom 1994). See 59 *FR 6126* (adopting final rule). Substantive differences between the Federal and State rules generally relate to the implementation of New Jersey standards that exceed Federal standards with respect to the need for refresher training and the content of both initial and refresher training for public employees in the communication and disclosure of hazardous substances in workplaces, and attendant reporting and recordkeeping standards. These New Jersey standards that exceed OSHA standards with respect to hazard communication stem from the mandate of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq. (Right to Know Act), particularly N.J.S.A. 34:5A-13.a, and the Worker and Community Right to Know Act Rules, N.J.A.C. 8:59. The Department of Health promulgates N.J.A.C. 8:59 in consultation with other agencies pursuant to the Right to Know Act at N.J.S.A. 34:5A-13.h. Technical differences between HazCom 1994 and N.J.A.C. 12:100-7 relate to internal cross-referencing, codification, and identification of State entities that serve as counterparts to Federal entities having functions under the respective rules.

On March 26, 2012, OSHA promulgated a final rule, which became effective May 25, 2012, that revised the HazCom 1994 to incorporate therein the "Globally Harmonized System of Classification and Labelling of Chemicals (GHS)" (hereinafter referred to as the "GHS"), specifically, Revision 3 of the GHS. 77 *FR 17574* through 17896, and see 29 *CFR 1910.1200(a) 1* (HazCom 2012).

The HazCom 1994 is a performance-oriented standard that provides guidance for defining hazards and for performing hazard determinations, but does not specify an approach or format to follow. The GHS has certain aspects that are performance-oriented, but the key provisions are a uniformity-oriented approach for the classification and presentation, through labeling and safety data sheets, of hazard information.

As described above, the State plan and the PEOSH Act oblige the Department to adopt the HazCom 2012 as a standard applicable to public employees. The Department intends to publish the required notice of adoption of HazCom 2012, including the full text thereof, in the same issue of the New Jersey Register in which the notice of adoption of this rulemaking would appear, to ensure an organized transition for the regulated community. A side-by-side comparison of the HazCom 1994 to the changes OSHA made thereto in the HazCom 2012 to implement the GHS is available at <http://www.osha.gov/dsg/hazcom/side-by-side.html>.

To address the changes to the HazCom 2012, and to eliminate redundancy, the Department and the Department of Health (Departments), in this joint rulemaking, are proposing to delete from N.J.A.C. 12:100-7 all portions thereof that reprint the HazCom 1994 verbatim, except for technical changes that establish cross-references to the New Jersey Administrative Code rather than to the Code of Federal Regulations, and that establish references to State entities that perform functions that the HazCom 1994 assigns to Federal entities. The Departments are proposing to add a cross-reference to the Department's adoption of HazCom 2012 as being applicable to public employees pursuant to N.J.A.C. 12:100-4.2, and to provide alternative definitions of certain Federal entities to which HazCom 2012 assigns functions, so that references to these entities in HazCom 2012 would mean instead the State entities that are the counterparts of the Federal entities.

The Departments are proposing amendments to retain and reorganize the parts of existing N.J.A.C. 12:100-7 that implement purely State laws that are in addition to requirements imposed under OSHA standards. The Departments are

proposing technical amendments throughout the chapter to improve sentence structure and grammar, remove jargon, add and correct cross-references, reorganize codification, comport with Office of Administrative Law style conventions, delete excess verbiage from definitions where cross-reference to these terms as defined by statute would suffice, and reflect the change in the name of the Department of Health pursuant to N.J.S.A. 26:1A-2.1.

A summary of the proposed substantive amendments, repeals, and new rules follows:

The Departments propose to repeal N.J.A.C. 12:100-7.1, Purpose, and replace it with a new rule to delete the existing statement of purpose, which is verbatim to the stated purpose of the HazCom 1994, and to establish the purpose of the subchapter as being the mechanism to implement the HazCom 2012 (which the chapter incorporates by reference, as amended and supplemented), as supplemented by the PEOSH Act and the Right to Know Act.

The Departments propose to repeal existing N.J.A.C. 12:100-7.2, Scope, which is verbatim to the stated scope of the HazCom 1994. As a result, the scope of the chapter at existing N.J.A.C. 12:100-1.2 would apply.

The Departments propose several amendments at existing N.J.A.C. 12:100-7.3, Definitions, which establishes definitions of terms used in the subchapter.

The Departments propose to recodify existing N.J.A.C. 12:100-7.3 as 7.2. The Departments propose to delete from recodified N.J.A.C. 12:100-7.2, the definitions of the following terms, which are verbatim to the HazCom 1994: "article," "chemical," "chemical manufacturer," "chemical name," "combustible liquid," "commercial account," "common name," "compressed gas," "container," "designated representative," "director," "distributor," "employee," "explosive," "exposure" or "exposed," "flammable," "flashpoint," "foreseeable emergency," "hazardous chemical," "hazard warning," "health hazard," "identity," "immediate use," "importer," "label," "label elements," "material safety data sheet (MSDS)," "mixture," "organic peroxide," "oxidizer," "physical hazard," "produce," "produce," "pyrophoric," "responsible party," "specific chemical identity," "trade secret," "unstable (reactive)," "use," "water reactive," "work area," and "workplace." These deletions are necessary to prevent redundant restatement of terms that the HazCom 2012 defines and to prevent conflict with any revisions to the HazCom 1994 contained in the HazCom 2012.

The Departments propose to recodify the remaining existing text of recodified N.J.A.C. 12:100-7.2 as new subsection (a), and to establish therein a definition of the "Global Harmonization Standard" or "GHS" by means of cross-reference to the incorporation by reference, as amended and supplemented, of the HazCom 2012 at N.J.A.C. 12:100-4.2. The Departments are proposing to use "Global Harmonization Standard" or "GHS" rather than "HazCom 2012" to refer to the adoption of Revision 3 of the GHS as a final rule by OSHA. This is because the regulated community more commonly uses the expression "GHS" to refer to HazCom 2012, and this would prevent confusion and the need for additional amendments in future should OSHA determine to adopt final rules implementing subsequent Revisions of the GHS.

The Departments propose to add, at proposed new subsection (a), definitions of the following terms that the HazCom 2012 does not define and that the subchapter uses to implement State laws, specifically, the PEOSH Act and the Right to Know Act: "American Board of Industrial Hygiene," "Board of Certified Safety Professionals," "certified industrial hygienist," "certified safety professional," "Environmental and Occupational Health Assessment Program" or "EOHAP," "environmental hazardous substance list," "environmental survey," "New Jersey State Safety Council," "registered professional nurse," "Right to Know brochure" and "Right to Know poster."

The Departments propose to amend the existing definition of "technically qualified person" in several ways. The Departments propose to reorganize the definition to improve readability and delete redundancy. The Departments propose to delete occurrences of the unnecessary phrase, "for training purposes," as the chapter only uses the term, "technically qualified person," in the context of training. The Departments propose to delete occurrences of the phrase, "and understands the health risks associated with exposure to hazardous substances," because there is no mechanism to confirm a trainer's "understanding of health risks" apart from confirming that the trainer has the education and/or qualifications described elsewhere in the definition of a "technically qualified person." To the extent onsite surveillance activity by the EOHAP of the Department of Health identifies a lack of such understanding on the part of trainer, the Department of Health has [page=937] undertaken and would continue to undertake corrective measures as necessary, which may include performance of "train the trainer" activities by the EOHAP and requiring employers to submit correction plans to address trainer inadequacy.

Paragraph 4 of the definition of "technically qualified person" establishes the eligibility criteria for persons who teach the recruit firefighting course that the Department of Community Affairs (DCA) establishes. The Departments propose to amend paragraph 4 to establish that the eligibility criteria therein also apply to persons who teach the DCA's

hazardous materials training courses to firefighters, to correct the credentialed title of these instructors, to establish that, in addition to "Fire Instructors Level I," persons who hold DCA "Fire Instructor Level II" certification are eligible to teach these courses, and to add a cross-reference to the applicable DCA fire instructor certification rules at N.J.A.C. 5:73-5.

The Departments propose to amend the definition of the term "workplace survey" by cross-referring to the statutory definition of that term and deleting extraneous descriptions. The Departments propose to add new N.J.A.C. 12:100-7.2(b) to establish definitions of several terms the HazCom 2012 uses as necessary to conform those terms to their State-specific counterparts. For example, the HazCom 2012 describes the functions of OSHA with respect to the implementation of the HazCom 2012. Pursuant to the State plan, the Departments of Labor and Workforce Development and/or Health, depending on the nature of the particular activity to be undertaken, generally perform the functions of OSHA in implementing hazard communication standards. Therefore, the Departments propose to define references to OSHA in HazCom 2012 to mean the Department of Labor and Workforce Development and/or the EOHP of the Department of Health, as applicable. The terms that HazCom 2012 uses that proposed new subsection (b) would define by reference to their State counterparts are "Assistant Secretary, "Occupational Safety and Health Administration" or "OSHA," and "Occupational Safety and Health Review Commission."

As discussed above, the State plan and the PEOSH Act oblige the Departments to establish standards that are equivalent to, or more stringent than, the HazCom 2012. At 29 *CFR 1910.1200(c)*, HazCom 2012 establishes a definition of the term, "designated representative," and uses this term to identify persons authorized to exercise certain rights of employees on their behalf, particularly with respect to pursuing access to information about hazardous substances and ingredients therein that manufacturers may claim to be trade secrets and decline to disclose information about their content.

In contrast, the Right to Know Act at N.J.S.A. 34:5A-3 and the PEOSH Act at N.J.S.A. 34:6A-27 establish definitions of "employee representative" that coincide with the term, "representative," as the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., defines that term. N.J.A.C. 12:100-7 uses the term, "employee representative," in describing persons with rights of access to training records. See recodified N.J.A.C. 12:100-7.8, as described more fully below. The Right to Know Act uses the term, "employee representative," in discussing entities that can assert the rights of employees, which can include assertions of rights with respect to manufacturers' assertions of trade secret claims. N.J.S.A. 34:5A-15 and 16. The term, "employee representative," also appears throughout the PEOSH Act in discussing entities that can assert the rights of employees. N.J.S.A. 34:6A-25 et seq.

It is possible that one could construe one of these two terms as being less inclusive than the other with respect to whom employees can appoint as proxy to exercise their rights under the HazCom 2012 as supplemented by State laws. Therefore, the Departments propose to establish at proposed recodified N.J.A.C. 12:100-7.2(a) a definition of the term, "employee representative," as used in N.J.A.C. 12:100-7, and to establish at proposed new N.J.A.C. 12:100-7.2(b) a definition of the term, "designated representative," as used in the HazCom 2012, to each mean the broader, more inclusive of the two terms. This will ensure that whichever term is used, the State satisfies its obligation under the PEOSH Act and the State plan to establish standards that are equivalent to, or more stringent than, the HazCom 2012.

The Departments propose to repeal existing N.J.A.C. 12:100-7.4 through 7.7, and 7.9, as the existing text thereof is verbatim to HazCom 1994, except for technical changes that establish internal cross-references to the New Jersey Administrative Code rather than to the Code of Federal Regulations, and references to State entities that perform functions that the HazCom 1994 assigns to Federal entities.

The Departments propose to recodify existing N.J.A.C. 12:100-7.8 as 7.3, and propose amendments throughout the section. The Departments propose to amend subsections (a) and (b) to restate employers' existing obligation to provide training pursuant to the Global Harmonization Standard, called "initial training," in addition to their existing obligation to provide refresher training, to delete text that is verbatim to the HazCom 1994 to prevent conflict with amendments contained in HazCom 2012, to reorganize and simplify the remaining text, including the addition of new paragraph (a)1, which would restate the existing description, proposed for deletion from subsection (a), of refresher training as an abbreviated version of initial training, and the addition of new subsection (b), which would provide lead-in text to introduce the existing topics that initial and refresher training are to address, in addition to topics as to which the Global Harmonization Standard requires training. The Departments propose to delete existing subsection (c), which is verbatim to the HazCom 1994. The Departments propose to amend existing subsection (d) to recodify it as subsection (c) and to indicate that employers' existing obligation to have technically qualified persons conduct training applies to both initial and refresher training. The Departments propose to amend recodified subsections (d) and (e), to reorder and

simplify the expression therein of employers' existing obligations to establish and maintain training records for the specified period, and to indicate that these obligations apply to records of both initial and refresher training. The Departments propose to amend recodified subsection (f), to simplify the expression therein of employers' existing obligation to make available employee training records, to delete references to the Commissioners having access to records, and to add in their stead, references to representatives of the Departments having access to records. The Departments propose to amend recodified subsection (g) and to indicate that employers' existing obligation to provide audience-appropriate training material applies to both initial and refresher training.

The Departments propose to repeal existing N.J.A.C. 12:100-7 Appendices A through E, which restate Appendices to HazCom 1994.

The Departments propose new N.J.A.C. 12:100-7 Appendices A and B, which are respectively the Right to Know poster and Right to Know brochure. The Departments propose to incorporate these appendices by reference into the respective definitions of those terms.

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

### **Social Impact**

The proposed new rules, amendments, repeals, and recodifications at N.J.A.C. 12:100 would affect all entities within the jurisdiction of N.J.S.A. 34:6A-25 et seq., including public employers and employees. They would have a beneficial social impact on public employees by affording them the same level of protection from recognized occupational safety and health hazards as is afforded to all private sector employees in the State of New Jersey by making New Jersey's public employees' occupational safety and health program at least as stringent as that of the U.S. Department of Labor, Occupational Safety and Health Administration program under the Occupational Safety and Health Act of 1970. The proposed new rules, amendments, repeals, and recodifications would ensure that the New Jersey public employees' occupational safety and health program remains compliant with the State plan.

### **Economic Impact**

The proposed new rules, amendments, repeals, and recodifications apply to entities subject to N.J.S.A. 34:6A-25 et seq. The Departments do not anticipate that the proposed new rules, amendments, repeals, and recodifications would result in a change to the existing economic impact of compliance with the existing hazard communication standard that these entities realize. The proposed changes to N.J.A.C. 12:100-7 would implement the continuing obligation of New Jersey, and those within the regulated community, to maintain hazard communication standards that are equivalent to Federal Occupational Safety and Health Standards. Entities that are required to develop hazard communication plans, provide training, and maintain records would continue to incur plan development, [page=938] training, reporting, and recordkeeping costs. The content of plans and training may change to accommodate the changes to the HazCom 1994 as reflected in the HazCom 2012. Hazard communication plan development, training, recordkeeping, and reporting costs would continue to vary based on factors, such as the types and numbers of substances that exist in a particular workplace and the manner in which employers elect to develop these plans and provide training, such as by use of external professionals or in-house staff. The Departments do not anticipate that the proposed changes to N.J.A.C. 12:100 would have an economic impact on public employees, except to the extent that the continued communication of workplace hazardous substances to employees might help them, and their employers, to avoid costs associated with injuries and illnesses that they might otherwise sustain were they not informed of these hazards. These avoided costs include healthcare costs and costs associated with absenteeism.

Private entities, such as trainers and hazard communication plan developers that public employers may elect to retain to comply with N.J.A.C. 12:100 might continue to realize an economic benefit from the existence of the Standard for Hazard Communication.

### **Federal Standards Analysis**

The Departments are proposing the proposed new rules, amendments, repeals, and recodifications pursuant to 29 CFR Part 1956, Subpart G, which reflects the Assistant Secretary's initial certification of the State plan as a developmental plan pursuant to § 18 of the OSH Act for the development and enforcement of occupational safety and health standards relating exclusively to New Jersey public employees. 66 FR 2273 (January 11, 2001). The proposed new

rules, amendments, repeals, and recodifications would implement and fulfill the State's obligations pursuant to HazCom 2012, 29 *CFR 1910.1200*.

The proposed new rules, amendments, repeals, and recodifications would exceed HazCom 2012 to the extent they would continue to maintain existing standards that implement the Right to Know Act at N.J.S.A. 34:5A-13 with respect to public employees. This exceedance consists of existing N.J.A.C. 12:100-7.8, proposed for recodification with amendments as N.J.A.C. 12:100-7.3, which would continue to require, consistent with N.J.S.A. 34:5A-13.a, that public employees receive refresher training (in addition to the initial training that the GHS requires them to receive), and to establish the recordkeeping and reporting obligations associated therewith. However, the recordkeeping and reporting obligations associated with refresher training are consistent with those HazCom 2012 establishes with respect to initial training.

As stated above, N.J.S.A. 34:6A-30.c and N.J.A.C. 12:100-3A.2(b) authorize the State to establish standards that provide protections to public employees that are greater or more stringent than those the OSHA establishes under the OSH Act.

The Departments anticipate that the benefits to entities subject to N.J.S.A. 34:6A-25 et seq., in the avoidance of costs associated with public employee illness and injury, as described in the Economic Impact, above, by means of the administration of refresher training, would continue to outweigh and exceed the costs of providing that training and the recordkeeping and reporting costs associated therewith. The standards that exceed HazCom 2012 are achievable under current technology.

### **Jobs Impact**

Entities subject to N.J.S.A. 34:6A-25 et seq., may continue to elect to retain the services of personnel to assist them in complying with Federal hazard communication standards and the refresher training that the Right to Know Law mandates, such as persons to develop and implement hazard communication plans, provide training, and perform reporting and recordkeeping tasks. The Departments do not anticipate that the proposed new rules, amendments, repeals, and recodifications would result in an increase or a decrease in the demand for such personnel. The Departments anticipate that the existing demand for the services of such personnel would continue, regardless of whether these services are to be performed by in-house personnel or outside consultants.

Except as described above, the proposed new rules, amendments, repeals, and recodifications would not have an impact on the creation or loss of jobs in the State.

### **Agriculture Industry Impact**

The proposed new rules, amendments, repeals, and recodifications would not have an impact on the agriculture industry of the State, except to the extent the agriculture industry could include entities subject to N.J.S.A. 34:6A-25 et seq., in which case, those entities would continue to be subject to the same standards as other entities in other industries. To the extent an entity is not subject to N.J.S.A. 34:6A-25 et seq., but is a private entity subject to the OSHA standards and the Right to Know law, those standards would apply equivalently, regardless of whether the Departments were to establish standards at N.J.A.C. 12:100 to implement the State plan.

### **Regulatory Flexibility Analysis**

As described in the Summary above, the proposed new rules, amendments, repeals, and recodifications would continue to impose, reporting, recordkeeping, and other compliance requirements on the Departments and entities subject to N.J.S.A. 34:6A-25 et seq., particularly "employers" as N.J.S.A. 34:6A-27 defines that term. Of these, only entities that are not public entities but are "acting directly on behalf of, or with the knowledge, and ratification of" certain public entities could be small businesses within the meaning of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Because the State plan requires the State to establish standards that are equivalent to those the OSHA establishes with respect to private entities, the proposed new rules, amendments, repeals, and recodifications would continue to impose standards on such entities that are the same as those imposed on businesses generally that are private entities subject to OSHA standards and the Right to Know Law, except that private entities usually would interact with OSHA and the Federal government generally with respect to compliance with standards issued by those entities, whereas N.J.A.C. 12:100 requires interaction with State agencies in this regard. The Summary describes these requirements.

The proposed new rules, amendments, repeals, and recodifications would continue to authorize, but not require, small businesses subject to N.J.A.C. 12:100 to retain the services of professionals to comply, rather than complying by use of in-house staff, as described in the Jobs Impact, above.

The proposed new rules, amendments, repeals, and recodifications would continue to establish the minimum standards necessary to comply with the State plan and the Right to Know Act, and the State is without authority to establish lesser or differing standards based on business size. Therefore, the Departments have provided no lesser or differing standards for small businesses that, within the meaning of N.J.S.A. 34:6A-27, are "acting directly on behalf of, or with the knowledge, and ratification of" certain public entities. However, the Departments generally anticipate that compliance with N.J.A.C. 12:100 would continue to be self-scaling based on business size, scope of activities involving hazardous substances, and number of employees.

### **Housing Affordability Impact Analysis**

The proposed new rules, amendments, repeals, and recodifications would continue to have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that they would evoke a change in the average costs associated with housing because the rules establish standards for hazard communication in public workplaces and have no bearing on housing costs.

### **Smart Growth Development Impact Analysis**

The proposed new rules, amendments, repeals, and recodifications would continue to have an insignificant impact on smart growth in New Jersey and there is an extreme unlikelihood that they would evoke a change in the housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules establish standards for hazard communication in public workplaces and have no bearing on development and housing matters.

**Full text** of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 12:100-7.1, 7.2, 7.4 through 7.7, and 7.9, and 12:100-7 Appendices A through E.

[page=939] **Full text** of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 12:100-1.3 Documents referred to by reference

The availability of standards and publications referred to in this chapter is explained in N.J.A.C. 12:100-[17]19.

#### SUBCHAPTER 3. ADMINISTRATION

##### 12:100-3.2 Compliance

(a) -(d) (No change.)

(e) Every employer shall take all prudent measures to comply with written recommendations made by the Commissioner or the Commissioner of Health [and Senior Services] to reduce the risk of exposure to unsafe or unhealthy conditions which have been shown to be detrimental to employee health and safety.

1. This provision shall apply for hazards not specifically covered by a standard in this chapter or a standard referenced in this chapter.

##### 12:100-3.3 [Interface] **Jurisdictional roles** of [state] **State** agencies

(a) (No change.)



(b) The New Jersey Department of Health [and Senior Services] shall inspect under the provisions of this chapter where the provisions relate to health issues in accordance with N.J.S.A. 34:6A-38.

(c) (No change.)

#### SUBCHAPTER 3A. ADOPTION OF STANDARDS

12:100-3A.2 Adoption of standards more stringent than Federal standards

(a) (No change.)

(b) Where no Federal standards are applicable or where standards more stringent than the Federal standards are deemed advisable, the Commissioner [shall], in consultation with the Commissioner of Health [and Senior Services] and the Commissioner of Community Affairs, and with the advice of the Public Employees' Occupational Safety and Health Advisory Board, [provide for the development of] **shall develop and establish** State standards as may be necessary.

#### SUBCHAPTER 7. STANDARD FOR HAZARD COMMUNICATION

##### **12:100-7.1 Purpose**

**The purpose of this subchapter is to implement Federal standards for workplace hazard communication pursuant to, and as supplemented by, the New Jersey Public Employees' Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., and the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., applicable to entities subject to N.J.S.A. 34:6A-25 et seq.**

12:100-[7.3]7.2 Definitions

(a) The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Article" means a manufactured item other than a fluid or particle:

1. Which is formed to a specific shape or design during manufacture;
2. Which has end use function(s) dependent in whole or in part upon its shape or design during end use; and
3. Which under normal conditions of use does not release more than very small quantities, for example, minute or trace amounts of a hazardous chemical (as determined under N.J.A.C. 12:100-7.4), and does not pose a physical hazard or health risk to employees.

"Chemical" means any element, chemical compound or mixture of elements and/or compounds.

"Chemical manufacturer" means an employer with a workplace where chemical(s) are produced for use or distribution.

"Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

"Combustible liquid" means any liquid having a flashpoint at or above 100 degrees Fahrenheit (37.8 degrees Celsius), but below 200 degrees Fahrenheit (93.3 degrees Celsius), except any mixture having components with flashpoints of 200 degrees Fahrenheit (93.3 degrees Celsius), or higher, the total volume of which make up 99 percent or more of the total volume of the mixture.

"Commercial account" means an arrangement whereby a retail distributor sells hazardous chemicals to an employer, generally in large quantities over time and/or at costs that are below the regular retail price.

"Common name" means any designation or identification such as code name, code number, trade name and brand name or generic name used to identify a chemical other than by its chemical name.

"Compressed gas" means:

1. A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70 degrees Fahrenheit (21.1 degrees Celsius);
2. A gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130 degrees Fahrenheit (54.4 degrees Celsius) regardless of the pressure at 70 degrees Fahrenheit (21.1 degrees Celsius); or
3. A liquid having a vapor pressure exceeding 40 psi at 100 degrees Fahrenheit (37.8 degrees Celsius) as determined by ASTM D-323-72.

"Container" means any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous chemical. For purposes of this section, pipes or piping systems, and engines, fuel tanks, or other operating systems in a vehicle, are not considered to be containers.

"Designated representative" means any individual or organization to which an employee gives written authorization to exercise such employee's rights under this section. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

"Director" means the Director, National Institute for Occupational Safety and Health, United States Department of Health and Human Services, or designee.

"Distributor" means a business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to employers.

"Employee" means a worker who may be exposed to hazardous chemicals under normal operating conditions or in foreseeable emergencies. Workers such as office workers or bank tellers who encounter hazardous chemicals only in nonroutine, isolated instances are not covered.

"Explosive" means a chemical that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

"Exposure" or "exposed" means that an employee is subjected in the course of employment to a chemical that is a physical or health hazard, and includes potential (for example, accidental or possible) exposure. "Subjected" in terms of health hazards includes any route of entry (for example, inhalation, ingestion, skin contact or absorption).

"Flammable" means a chemical that falls into one of the following categories:

1. "Aerosol, flammable" means an aerosol that, when tested by the method described in *16 CFR 1500.45*, yields a flame projection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) at any degree of valve opening;
2. "Gas, flammable" means a gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of 13 percent by volume or less; or a gas that, at ambient temperature and pressure, forms a range of flammable mixtures with air wider than 12 percent by volume, regardless of the lower limit;
3. "Liquid, flammable" means any liquid having a flashpoint below 100 degrees Fahrenheit (37.8 degrees Celsius), except any mixture having components with flashpoints of 100 degrees Fahrenheit (37.8 degrees Celsius) or higher, the total of which make up 99 percent or more of the total volume of the mixture;

[page=940] 4. "Solid, flammable" means a solid, other than a blasting agent or explosive as defined in 29 *CFR* 1910.109(a), that is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily and, when ignited, burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 *CFR* 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

"Flashpoint" means the minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested as follows:

1. Tagliabue Closed Tester (see American National Standard Method of Test for Flash Point by Tag Closed Tester, Z11.24-1979 (ASTM D 56-79)) for liquids with a viscosity of less than 45 Saybolt Universal Seconds (SUS) at 100 degrees Fahrenheit (37.8 degrees Celsius), that do not contain suspended solids and do not have a tendency to form a surface film under test;
2. Pensky-Martens Closed Tester (see American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, Z11.7-1979 (ASTM D 93-79)) for liquids with a viscosity equal to or greater than 45 SUS at 100 degrees Fahrenheit (37.8 degrees Celsius), or that contain suspended solids, or that have a tendency to form a surface film under test; or
3. Setaflash Closed Tester (see American National Standard Method of Test for Flash Point by Setaflash Closed Tester (ASTM D 3278-78)).

Organic peroxides, which undergo auto-accelerating thermal decomposition, are excluded from any of the flashpoint determination methods specified above.

"Foreseeable emergency" means any potential occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment, which could result in an uncontrolled release of a hazardous chemical into the workplace.

"Hazardous chemical" means any chemical which is a physical hazard or a health hazard.]

**"American Board of Industrial Hygiene" means the entity for which the contact information is American Board of Industrial Hygiene, 6015 W St Joe Hwy, Suite 102, Lansing, MI 48917-4875, telephone: (517) 321-2638, telefacsimile: (517) 321-4624, website: www.abih.org, electronic mail address: abih@abih.org.**

**"Board of Certified Safety Professionals" means the entity for which the contact information is Board of Safety Professionals, 2301 W Bradley Avenue, Champaign, IL 61821, telephone: (217) 359-9263, telefacsimile: (217) 359-0055, website: www.bcsp.org.**

**"Certified industrial hygienist" means a person holding certification as a certified industrial hygienist issued by the American Board of Industrial Hygiene.**

**"Certified safety professional" means a person holding certification as a Certified Safety Professional(R) issued by the Board of Certified Safety Professionals.**

**"Employee representative" means the broader, more inclusive of the following terms:**

1. "Employee representative" as N.J.S.A. 34:5A-3 and 34:6A-27 define that term; and
2. "Designated representative" as the GHS defines that term.

**"Environmental and Occupational Health Assessment Program" or "EOHAP" means the Environmental and Occupational Health Assessment Program of the New Jersey Department of Health, for which the contact information is PO Box 369, Trenton, NJ 08625-0369.**

**"Environmental hazardous substance list"** means environmental hazardous substance list, as N.J.S.A. 34:5A-3 defines that term.

**"Environmental survey"** means an environmental survey, as N.J.S.A. 34:5A-3 defines that term.

**"Global Harmonization Standard" or "GHS"** means 29 CFR 1910.1200, incorporated herein by reference, as amended and supplemented, pursuant to the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., and this chapter, particularly at N.J.A.C. 12:100-4.2.

**"Hazardous [Substance Fact Sheet] substance fact sheet"** means a [written document prepared by the New Jersey Department of Health and Senior Services for each] hazardous substance [on the Right to Know Hazardous Substance List except for generic categories, and transmitted by the Department to public employers, county health departments, county clerks, designated county lead agencies and the public pursuant to the provisions of the Worker and Community Right to Know Act,] **fact sheet, as N.J.S.A. 34:5A-[1 et seq.]3 defines that term.**

["Hazard warning" means any words, pictures, symbols, or combination thereof, appearing on a label or other appropriate form of warning which convey the specific physical and health hazard(s), including target organ effects, of the chemical(s) in the container(s). (See the definitions for "physical hazard" and "health hazard" to determine the hazards which must be covered.)

"Health hazard" means a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals, which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents that act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. Appendix A of this subchapter, incorporated herein by reference, provides further definitions and explanations of the scope of health hazards covered by this subchapter, and Appendix B of this subchapter, incorporated herein by reference, describes the criteria to be used to determine whether or not a chemical is to be considered hazardous for purposes of this standard.

"Identity" means any chemical or common name, which is indicated on the material safety data sheet (MSDS) for the chemical. The identity used shall permit cross-references to be made among the required list of hazardous chemicals, the label and the MSDS.

"Immediate use" means that the hazardous chemical will be under the control of and used only by the person who transfers it from a labeled container and only within the work shift in which it is transferred.

"Importer" means the first business with employees within the Customs Territory of the United States, which receives hazardous chemicals produced in other countries for the purpose of supplying them to distributors or employers within the United States.

"Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

"Material safety data sheet (MSDS)" means written or printed material concerning a hazardous chemical, which is prepared in accordance with N.J.A.C. 12:100-7.7.

"Mixture" means any combination of two or more chemicals if the combination is not, in whole or in part, the result of a chemical reaction.

"Organic peroxide" means an organic compound that contains the bivalent-O-O-structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

"Oxidizer" means a chemical other than a blasting agent or explosive as defined in *29 CFR 1910.109(a)*, that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

"Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.

"Produce" means to manufacture, process, formulate, blend, extract, generate, emit, or repackage.

"Pyrophoric" means a chemical that will ignite spontaneously in air at a temperature of 130 degrees Fahrenheit (54.4 degrees Celsius) or below.

"Responsible party" means someone who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary.]

**"New Jersey State Safety Council" means the entity by that name for which the contact information is:**

**1. For the training center: New Jersey State Safety Council Training Center, 6 Commerce Drive, Cranford, NJ 07016; and**

**2. For the administration office: New Jersey State Safety Council, 25 Commerce Drive, Cranford, NJ 07016; telephone: (908) 272-7712 [page=941] or (800) 228-3834; telefacsimile: (908) 276-6622; website: <http://www.njsafety.org>.**

"Registered professional nurse" means a person holding licensure as a registered professional nurse by the State Board of Nursing pursuant to N.J.S.A. 45:11-23 et seq., and N.J.A.C. 13:37.

"Right to Know brochure" means the document at N.J.A.C. 12:100-7 Appendix A, incorporated herein by reference, also available at <http://www.nj.gov/health/forms>, and paper copies of which are available upon request from the EO-HAP.

"Right to Know [Hazardous Substance List] **hazardous substance list**" [includes] **means** the workplace hazardous substance list and the environmental hazardous substance list.

**"Right to Know poster" means the document at N.J.A.C. 12:100-7 Appendix B, incorporated herein by reference, also available at <http://www.nj.gov/health/forms>, and paper copies of which are available upon request from the EOHAP program.**

"Right to Know [Survey" includes the] **survey" means a** workplace survey and **an** environmental survey.

["Specific chemical identity" means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.]

"Technically qualified person" means: 1. For training purposes,] a person who [is]:

**1. Is a registered professional nurse, a certified safety professional, or a certified industrial hygienist[, or has];**

**2. Has a bachelor's degree or higher in industrial hygiene, environmental science, health education, chemistry, or a related field[, and understands the health risks associated with exposure to hazardous substances];**

[2. For training purposes, a person who]

**3. Has at least one year of experience handling or working with hazardous substances and has completed at least 30 hours of [hazardous materials] training in one or more hazardous materials training courses offered by [the]:**

- i. The New Jersey State Safety Council[, the];
- ii. The New Jersey Department of Health [and Senior Services, an];
- iii. An accredited public or private educational institution[.];
- iv. A labor union[.];
- v. A trade association[.];
- vi. A private organization; or
- vii. A government agency[, and understands the health risks associated with exposure to hazardous substances, and has at least one year of experience handling hazardous substances or working with hazardous substances. The 30-hour requirement may be met by the combination of one or more hazardous materials training courses]; or

[3.] **4.** For **the** purpose[s] of teaching the recruit firefighting **and hazardous materials** training courses established by the New Jersey Department of Community Affairs (**DCA**), a person [who has fulfilled the requirements of Firefighter] **whom the DCA certifies as a Fire Instructor Level I** [as certified by the Department of Community Affairs] **or Level 2 pursuant to N.J.A.C. 5:73-5.**

["Trade secret" means any confidential formula, pattern, process, device, information or compilation of information that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it. Appendix D of this subchapter, incorporated herein by reference, sets out the criteria to be used in evaluating trade secrets.

"Unstable (reactive)" means a chemical, which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shocks, pressure or temperature.

"Use" means to package, handle, react, emit, extract, generate as a byproduct, or transfer.

"Water-reactive" means a chemical that reacts with water to release a gas that is either flammable or presents a health hazard.

"Work area" means a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

"Workplace" means an establishment, job site, or project, at one geographical location containing one or more work areas.]

"Workplace [Hazardous Substance List] **hazardous substance list**" means [the list of] **workplace** hazardous substance[s developed by the New Jersey Department of Health and Senior Services pursuant to] **list, as N.J.S.A. 34:5A-[5]3 defines that term.** [The Workplace Hazardous Substance List is incorporated into the Right to Know Hazardous Substance List.]

"Workplace survey" means a [written document, prepared by the New Jersey Department of Health and Senior Services and completed by a public employer pursuant to the Worker and Community Right to Know Act, on which the employer shall report each hazardous substance on the Right to Know Hazardous Substance List present at its facility. The] workplace survey [is incorporated into the Right to Know Survey], **as N.J.S.A. 34:5A-3 defines that term.**

**(b) As used in this subchapter, the following words and terms used in the Global Harmonization Standard shall have the following meanings, unless the context clearly indicates otherwise:**

**"Assistant Secretary" means the New Jersey Department of Labor and Workforce Development and/or the EOHAP, as applicable under the circumstances.**

**"Designated representative" means the broader, more inclusive of the following terms:**

- 1. "Employee representative" as N.J.S.A. 34:5A-3 and 34:6A-27 define that term; and**
- 2. "Designated representative" as the GHS defines that term.**

**"Director" means the New Jersey Department of Labor and Workforce Development and/or the EOHAP, as applicable under the circumstances.**

**"Occupational Safety and Health Administration" or "OSHA" means the Department of Labor and Workforce Development and/or the EOHAP, as applicable under the circumstances.**

**"Occupational Safety and Health Review Commission" means the New Jersey Public Employees Occupational Safety and Health Review Commission established pursuant to N.J.S.A. 34:6A-42.**

12:100-[7.8]7.3 Employee information and training

(a) [Employers] **In addition to the training required pursuant to the Global Harmonization Standard (hereinafter referred to as "initial training"), employers shall provide refresher training to all** employees [with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new physical or health hazard the employees have not previously been trained about is introduced into their work area. Refresher training, which shall be an abbreviated version of initial training, shall be conducted] every two years[. Employers shall ensure that all employees participate in a training program that must be provided] at no cost to [the] employees and during working hours. [Information and training may be designed to cover categories of hazards (for example, flammability, carcinogenicity) or specific chemicals. Chemical-specific information must always be available through labels, hazardous substance fact sheets, and material safety data sheets.

(b) Employees shall be informed of:

1. The requirements of this section;
2. Any operations in their work area where hazardous chemicals are present;]

**1. Refresher training is to be an abbreviated version of initial training.**

**(b) In addition to the information that the GHS requires employees to receive, initial and refresher training shall include:**

[3.] **1.** The location and availability of the written hazard communication program, [including] the list(s) of hazardous chemicals [required by the hazard communication program], hazardous substance fact sheets, the Right to Know [Survey] **survey, and** the Right to Know [Hazardous Substance List, and material safety data sheets required by this section] **hazardous substance list;** [and]

[4.] **2.** The applicable provisions of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq.;

[(c) Employee training shall include at least:

1. Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring [page=942] conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);
2. The physical and health hazards of the chemicals in the work area;

3. The measures employees can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used;

4. The details of the hazard communication program developed by the employer, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information;

5. Information about the applicable provisions of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., which shall include an]

**3. An** explanation of the Right to Know [Survey] **survey**, labeling, hazardous substance fact sheets, the Right to Know [Hazardous Substance List] **hazardous substance list**, and the Right to Know poster, and how employees can obtain these documents and use appropriate hazard information from these sources; and

[6.] **4. [A] Distribution of a** copy of the Right to Know brochure. [When refresher training is given, the Right to Know brochure shall be distributed to all employees.]

[(d)] **(c)** An employer shall use a technically qualified person to conduct [its] **initial and refresher** training [session].

[(e)] **(d)** [Training] **Employers shall establish and maintain** records [shall] **of initial and refresher training that** include the following information:

1.-4. (No change.)

[(f)] **(e)** [Training] **Employers shall maintain training** records [shall be maintained] for the duration of [the] **each** employee's employment.

[(g)] Training records shall be available as follows:]

[1.] **(f)** [The employer] **Employers** shall ensure that all training records required to be maintained by this [standard shall be made] **subchapter are** 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] **and representatives of** the [Commissioner] **Departments** of Labor and Workforce Development[, ] and [to the Commissioner of] Health [and Senior Services].

[(h)] **(g)** [Material] **Employers shall ensure the provision of initial and refresher training using material that is** appropriate in content and vocabulary to **the** educational level, literacy, and language of **the** employees [shall be used] **receiving training**.

## APPENDIX A



The following three agencies work together to implement the *Worker and Community Right to Know (RTK)* Act:

**New Jersey Department of Health  
EOHAP**  
PO Box 368  
Trenton, NJ 08625-0368  
(609) 984-2202  
[www.nj.gov/health/rtkweb](http://www.nj.gov/health/rtkweb)

Enforces all provisions of the *RTK* Act in public workplaces and *RTK* labeling in private workplaces. The Program prepares Hazardous Substance Fact Sheets, the *RTK* brochure, and other materials to increase awareness of hazardous chemicals and help employers comply with the *RTK* Act. Printed materials are available upon request. Many are translated into Spanish.

**New Jersey Department of Environmental Protection  
Office of Pollution Prevention and Right to Know**  
MC 22-03C, PO Box 420,  
Trenton, NJ 08625-0420  
(609) 292-6714  
[www.nj.gov/dep/oppcc/rtki/](http://www.nj.gov/dep/oppcc/rtki/)

Enforces the community provisions of the *RTK* Act in the private sector (except for labeling). The Department is also responsible for implementing Title III (Emergency Planning and *Community Right to Know*) of the federal Superfund Amendments and Reauthorization Act (SARA), which establishes requirements for industry regarding emergency planning and reporting of hazardous chemicals.

**New Jersey Department of Labor and Workforce Development  
Office of Public Employees Occupational Safety and Health**  
PO Box 395  
Trenton, NJ 08625-0395  
(609) 292-7036  
[http://wd.state.nj.us/foia/employer/Public\\_Employees\\_OSH.html](http://wd.state.nj.us/foia/employer/Public_Employees_OSH.html)

Collects *RTK* fees from private employers and investigates complaints by public employees who suspect they are being discriminated against for exercising their rights under the *RTK* Act.


### HOW TO OBTAIN INFORMATION LOCALLY

You can obtain copies of the *Right to Know Survey*, *Community Right to Know Survey*, and Hazardous Substance Fact Sheets from your designated *Right to Know* county agency listed below:


Atlantic.....	(609) 645-5971	Ext. 4376
Bergen.....	(201) 634-2785	
Burlington.....	(909) 265-5521	Ext. 5521
Camden.....	(856) 374-6051	
Cape May.....	(800) 463-6413	
Cumberland.....	(856) 327-7602	Ext. 7129
Essex.....	(973) 497-9401	
Gloucester.....	(856) 218-4103	
Hudson.....	(201) 223-1133	
Hunterdon.....	(908) 788-1110	
Mercer.....	(609) 278-7185	
Middlesex.....	(732) 745-8480	
Monmouth.....	(732) 431-7456	
Morris.....	(973) 631-5492	
Ocean.....	(732) 341-9700	Ext. 7477
Passaic.....	(973) 225-3651	
Salem.....	(856) 935-7510	Ext. 8489
Somerset.....	(908) 231-7506	
Sussex.....	(973) 579-0370	
Union.....	(908) 654-9730	
Warren.....	(908) 475-7980	

**YOU HAVE A  
RIGHT TO KNOW  
ABOUT HAZARDOUS  
SUBSTANCES  
IN YOUR  
WORKPLACE AND  
COMMUNITY.  
USE IT.**

**YOU HAVE THE  
RIGHT TO  
KNOW**



**ABOUT HAZARDOUS SUBSTANCES IN  
YOUR WORKPLACE AND COMMUNITY**

Chris Christie, Governor      Mary O'Donnell, R.F.H. Commissioner  
 Kim Guadagno, Lt. Governor     

Public Health Services  
 Division of Epidemiology, Environmental and  
 Occupational Health  
 Consumer, Environmental and  
 Occupational Health Service  
 EOHAP

### THE RIGHT TO KNOW ACT

The New Jersey Worker and Community *Right to Know* Act requires public and private employers to provide information about hazardous substances at their workplaces. The Act:

- ❑ informs public employees about chemical hazards at their workplace so they can work safely with these hazardous substances;
- ❑ helps firefighters, police, and other emergency responders adequately plan for and respond to incidents such as fires, explosions or spills;
- ❑ provides data for monitoring and tracking hazardous substances in the workplace and the environment.

### HOW THE ACT CAN PROTECT YOU AND YOUR FAMILY

Harmful substances may be present at your workplace and at other workplaces in your community, or may be released into the environment. They may also be carried home to your family on your work clothes.

Hazardous substances can cause irritation to the eyes, skin, and respiratory tract. Exposure to hazardous substances has been linked to health problems such as cancer, birth defects, and heart, lung and kidney diseases. These diseases may develop many years after exposure. As a public employee, you can obtain information about hazardous substances that may harm you or your family from documents in your workplace's *Right to Know (RTK)* central file.

Knowing about hazardous substances and how they harm you can help you obtain the proper diagnosis and treatment if you should become sick. More importantly, awareness about hazardous substances and your potential exposure to them can help you make important decisions about your employment.

### HOW THE ACT WORKS

Employers covered by the Act must complete surveys listing the names and amounts of hazardous chemicals stored and used at their workplaces.

*Right to Know Surveys* are completed by public agencies and sent to the New Jersey Department of Health (NJDOH).

*Community Right to Know Surveys* are completed by private employers and sent to the New Jersey Department of Environmental Protection (NJDEP).

Copies of these surveys are required to be sent to local fire and police departments, designated *Right to Know* county agencies (mostly county health departments), and local emergency planning committees.

Public employers are required to label containers according to the New Jersey *Right to Know* Act and PEOSH<sup>1</sup>, and maintain a *RTK* Central File that contains information about hazardous substances at their facilities. Private employers are required to label containers according to OSHA<sup>2</sup> and the New Jersey *Right to Know* Act.

### HOW PUBLIC EMPLOYERS COMPLY WITH THE RIGHT TO KNOW ACT

Public employers have the responsibility to assist workers in learning about the hazards of the products they work with. The employer must:

- ✓ Complete the *Right to Know Survey*
- ✓ Label Containers
- ✓ Create and Maintain a *Right to Know* Central File
- ✓ Post the *Right to Know* Poster

Public employees can obtain a copy of the survey by contacting their employer, the NJDOH, or the designated county agencies at the numbers listed in this brochure.

1. PEOSH is the Public Employees Occupational Safety and Health Act.  
2. OSHA is the Occupational Safety and Health Act.

### HOW TO USE YOUR WORKPLACE RIGHTS TO PROTECT YOUR HEALTH

The *Right to Know* Act gives employees certain rights and access to information about hazardous chemicals in their workplace. This information, kept in the *RTK* central file, informs workers about the health hazards of chemicals and ways to reduce or prevent their exposure to the chemical hazards. Learn to work safely with chemical hazards to protect your health and the health of your family members. To do so:

1. Work only with labeled containers.
2. Check your workplace *RTK* Survey to find out which products contain hazardous chemicals.
3. Read Material Safety Data Sheets and Hazardous Substance Fact Sheets about the health hazards of the hazardous chemicals in the products. These documents are kept in the *RTK* central file.

You do not have to work with a product if your employer has not given you the ingredient information you requested in writing within five working days. Call the NJDOH for more information before you refuse to work with a product.


You can file a complaint against your employer for not complying with the *RTK* Act. Your name will be kept confidential.

This brochure is being distributed to you as part of your training about hazardous chemicals in the workplace under the PEOSH Hazard Communication Standard. For more information about training, contact Public Employees Occupational Safety and Health (PEOSH), New Jersey Department of Health, PO Box 369, Trenton, NJ 08625-0369, (609) 984-1863, [www.nj.gov/health/ech/peoshweb](http://www.nj.gov/health/ech/peoshweb).

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**NEW JERSEY WORKER AND COMMUNITY RIGHT TO KNOW ACT**  
**YOU HAVE THE**

# RIGHT TO KNOW



**ABOUT HAZARDOUS SUBSTANCES IN YOUR WORKPLACE**  
**ABOUT HAZARDOUS SUBSTANCES IN YOUR COMMUNITY**

## USE YOUR RIGHTS!

- To obtain copies of Hazardous Substance Fact Sheets and Material Safety Data Sheets
- To obtain surveys of hazardous substances in your workplace and community
- To have containers in your workplace labeled with their ingredients

**CONTACT NJDOH OR THE INFOLINE**  
**(609) 984-2202**

**THE RIGHT TO KNOW ACT IS ENFORCED BY:**

*New Jersey Department of Health  
 Public Health Services, Division of Epidemiology,  
 Environmental and Occupational Health, Consumer, Environmental and  
 Occupational Health Service  
 ECHAP  
 PO Box 368, Trenton, NJ 08625-0368  
[www.nj.gov/health/eoh/rtkweb/index.shtml](http://www.nj.gov/health/eoh/rtkweb/index.shtml)*

*New Jersey Department of Environmental Protection  
 Office of Pollution Prevention and Right to Know  
 MC 22-03C, PO Box 420, Trenton, NJ 08625-0420  
[www.nj.gov/dep/appc/ork/](http://www.nj.gov/dep/appc/ork/)*

**EDUCATION AND TRAINING ABOUT HAZARDOUS CHEMICALS IS ENFORCED BY:**

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 Public Health Services, Division of Epidemiology,  
 Environmental and Occupational Health, Consumer, Environmental and  
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 ECHAP  
 PO Box 360, Trenton, NJ 08625-0360  
[www.nj.gov/health/eoh/peoshweb](http://www.nj.gov/health/eoh/peoshweb)*



*New Jersey Department of Labor and Workforce Development  
 Office of Public Employees Occupational Safety and Health  
 PO Box 386, Trenton, NJ 08625-0386  
[http://lwd.dol.state.nj.us/lse/employer/Public\\_Employees\\_OSH.html](http://lwd.dol.state.nj.us/lse/employer/Public_Employees_OSH.html)*

**For information about substances  
 in your workplace, contact:**

NAME \_\_\_\_\_

DEPARTMENT \_\_\_\_\_

PHONE \_\_\_\_\_

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[page=945] SUBCHAPTER 13. INDOOR AIR QUALITY STANDARD

12:100-13.2 Definitions

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

...

"Department" means the Department of Health [and Senior Services].