



LEXSTAT 42 NJR 2882(A)

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RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
PUBLIC HEALTH SERVICES
DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH
CONSUMER AND ENVIRONMENTAL HEALTH SERVICES
DIVISION OF PUBLIC SAFETY AND OCCUPATIONAL SAFETY AND HEALTH**

42 N.J.R. 2882(a)

Joint Proposed Readoption: N.J.A.C. 8:60 and 12:120

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

Asbestos Licenses and Permits

Authorized By: Harold J. Wirths, Commissioner, Department of Labor and Workforce Development and Poonam Alaigh, MD, MSHCPM, FACP, Commissioner, Department of Health and Senior Services.

Authority: N.J.S.A. 34:5A-32 et seq., specifically, 34:5A-39 and Reorganization Plan No. 002-2002.

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

Proposal Number: PRN 2010-302.

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

Tuesday, December 28, 2010
10:00 A.M. to 12:00 Noon
N.J. Department of Labor and Workforce Development
John Fitch Plaza
2nd Floor Conference Room
Trenton, New Jersey

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

Submit written comments by February 4, 2011 to:

David Fish, Regulatory Officer
Office of Legal and Regulatory Services

N.J. Department of Labor and Workforce Development
P.O. Box 110 - 13th Floor
Trenton, New Jersey 08625-0110
Fax to: (609) 292-8246

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 8:60 and 12:120, Asbestos Licenses and Permits, are scheduled to expire on April 25, 2011. The Departments of Health and Senior Services and Labor and Workforce Development have jointly reviewed these rules and have determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated.

A summary of the subchapters proposed for readoption follows:

N.J.A.C. 8:60-1 and 12:120-1 indicate where within the Administrative Code (citation) and under what name (title) these chapters appear; address the statutory authority pursuant to which the chapters are promulgated; set forth the purpose and scope of the chapters; state that the availability of standards and publications referred to in the chapters is set forth at N.J.A.C. 12:120-9 and 8:60-9; and, provide that if any section, paragraph, sentence or word of these chapters is determined to be invalid by any court of competent jurisdiction, such determination shall not affect or impair the validity of the remainder of the chapters.

[page=2883] N.J.A.C. 8:60-2 and 12:120-2 provide the definitions and terms used throughout the chapters.

N.J.A.C. 8:60-3 and 12:120-3 address the administration of the licensing, permitting and certification standards required by the chapters.

N.J.A.C. 8:60-4 and 12:120-4 set forth the licensure requirements for employers.

N.J.A.C. 8:60-5 and 12:120-5 set forth the requirements and procedures for obtaining an asbestos worker or an asbestos supervisor permit.

N.J.A.C. 8:60-6 and 12:120-6 establish the procedures and qualifications required to obtain, maintain or renew certification to conduct training courses for asbestos abatement.

N.J.A.C. 8:60-7 and 12:120-7 establish the requirements for notifying the Departments of Labor and Workforce Development and Health and Senior Services as to when and where asbestos work will be undertaken.

N.J.A.C. 8:60-8 and 12:120-8 set forth the procedures for appealing any action or inaction by the Commissioner of Health and Senior Services or the Commissioner of Labor and Workforce Development under the Asbestos Control and Licensing Act (Act), N.J.S.A. 34:5A-32 et seq. These subchapters also establish procedures for filing citizen complaints alleging violations of the Act.

N.J.A.C. 8:60-9 and 12:120-9 list standards and publications referred to in the chapters.

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

Social Impact

These rules are necessary for the implementation of the Act, which is intended to assure that only properly qualified people are involved in asbestos abatement work. Airborne asbestos fibers constitute a serious health hazard and it is, therefore, necessary for the protection of public health and safety that, if asbestos in buildings is removed or encapsulated, it be done by knowledgeable and competent workers, supervisors and contractors operating in accordance with scientifically accepted engineering practices, so that building occupants and members of the public who are in or around those buildings will not be endangered. Building owners who contract with licensed asbestos contractors who, in turn,

employ permitted workers and supervisors are provided assurance that asbestos remediation is being performed by persons who have been properly trained and successfully tested.

The certification of asbestos training programs has provided prospective license and permit applicants with the necessary information, competence, knowledge and skill to safely perform asbestos remediation without hazard to their health, to the health of building occupants or to the environment. The public benefits from these rules through prevention of asbestos-related diseases and disabilities that might result from improperly performed asbestos work.

Economic Impact

Building owners would continue to benefit from the assurance that they are hiring qualified, competent, knowledgeable licensed and permitted individuals to perform asbestos abatement work. Contractors, workers and supervisors would continue to benefit from the elimination of unfair competition from unlicensed persons performing asbestos abatement work in violation of the rules. Training providers would continue to benefit from the existence of a certification program that allows potential enrollees to have confidence in their course offerings.

Employer license application fees, worker permit application fees and supervisor permit fees would remain unchanged. These fees are necessary in order to offset anticipated enforcement and administrative costs. Similarly, the Department of Health and Senior Services, which would continue to charge an application fee per discipline for training provider certification, needs the revenue thereby generated to offset the cost of the training and certification program.

The general public would benefit from reductions in wage loss, insurance, medical expenses, disability compensation payments and other costs attributable to asbestos-related disabilities.

Federal Standards Statement

In 1986, the Federal government enacted the Asbestos Hazard Emergency Response Act (AHERA), which mandated a regulatory program to address asbestos hazards in schools and which also mandated the training and accreditation of persons to perform asbestos work in schools. AHERA required the United States Environmental Protection Agency (USEPA) to develop a Model Accreditation Plan (MAP) for training those individuals and further required the states to adopt state accreditation programs at least as stringent as described in the MAP. In 1990, the Federal government amended and extended training and accreditation requirements under AHERA to persons performing asbestos work in public and commercial buildings, as well as in schools, by enacting the Asbestos School Hazard Abatement Reauthorization Act (ASHARA).

Readoption of this chapter is necessary in order to allow New Jersey to continue to participate in the USEPA's model Accreditation Program for persons engaged in asbestos abatement. The provisions of this chapter do not exceed any relevant Federal standards. Those relevant Federal standards include the following:

USEPA Model Accreditation Plan, 40 CFR Part 763;

USEPA Asbestos Hazard Emergency Response Act (AHERA), Title II of the Toxic Substance Control Act, 15 U.S.C. §§ 2601 et seq., P.L. 99-519; and

USEPA Asbestos School Hazard Abatement Reauthorization Act of 1990 (ASHARA), P.L. 101-637.

New Jersey was one of the first states recognized by USEPA as meeting USEPA requirements under the MAP and has continued to maintain that recognition to date.

Jobs Impact

The Departments do not anticipate that the rules proposed for readoption would result in either the generation or loss of jobs.

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

The rules proposed for readoption would impose reporting, recordkeeping and compliance requirements on asbestos abatement contractors, workers, supervisors and training agencies. Most of the contractors and training agencies are "small businesses," as defined under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The compliance requirements involved in obtaining licensing or certification are necessary in order to assure that these services are provided by competent persons. Persons seeking licensing must have the necessary training and demonstrate competency by passing a required test. These requirements are necessary to protect the public interest and cannot be waived or modified based on the size or form of organization of the business entity. Costs imposed by the rules would be limited to license and permit fees and fees for training certification. No recordkeeping requirements would be imposed that would exceed the recordkeeping that a business would maintain as part of its ordinary activities. Reporting requirements would be limited to the information included in license, permit and certification applications. Additional professional services would not be required to comply with the rules.

Smart Growth Impact

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

Housing Affordability Impact

The rules proposed for readoption would not evoke a change in the average costs associated with housing. The basis for this finding is that the rules proposed for readoption pertain to asbestos licenses and permits, not to housing.

Smart Growth Development Impact

The rules proposed for readoption would not evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the rules proposed for readoption pertain to [page=2884] asbestos licenses and permits and have nothing whatsoever to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:60 and 12:120.