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State of New Jersey  
Department of Labor and  
Workforce Development  
PO Box 110  
Trenton, New Jersey  
08625-0110

**RE: Proposed Readoption with Amendments:  
N.J.A.C. 12:102 Seasonal Farm Workers**

Attached please find the above-referenced matter which was published in the Monday, April 21, 2005 *New Jersey Register*.

If you have any questions, please contact Frederick S. Cohen, Executive Director at 609-777-2960.

(a)

**LABOR STANDARDS AND SAFETY ENFORCEMENT****Seasonal Farm Workers****Proposed Readoption with Amendments: N.J.A.C.  
12:102**

Authorized By: Thomas D. Carver, Acting Commissioner, Department of Labor and Workforce Development.

Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 34:9A-37 et seq.

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

Proposal Number: PRN 2005-137.

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

Monday, May 16, 2005

10:00 A.M. to 12:00 noon

New Jersey Department of Labor and Workforce Development

John Fitch Plaza

13th Floor Auditorium

Trenton, New Jersey 08625

Please call the Office of Regulatory Services at (609) 292-7375 if you wish to be included on the list of speakers.

Submit written comments by June 17, 2005 to:

Frederick S. Cohen, Regulatory Officer

Office of Regulatory Services

New Jersey Department of Labor and Workforce Development

PO Box 110, 13th Floor, Suite G

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The agency proposal follows:

#### Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 12:102, Seasonal Farm Workers, is scheduled to expire on September 23, 2005. The Department of Labor and Workforce Development has reviewed these rules and, with the exception of the amendments described below, has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated.

N.J.A.C. 12:102, Seasonal Farm Workers, provides reasonable standards for drinking, toilet and washing facilities for seasonal farm workers when 10 or fewer thereof are working in a field. A summary of the sections in N.J.A.C. 12:102 follows:

N.J.A.C. 12:102-1.1 sets forth the purpose and scope of the subchapter.

N.J.A.C. 12:102-1.2 defines the words and terms used throughout the subchapter.

N.J.A.C. 12:102-1.3 addresses the availability of water to field workers.

N.J.A.C. 12:102-1.4 sets forth standards concerning water containers.

N.J.A.C. 12:102-1.5 lists the requirements for toilet facilities, and provides a table with specifications for the number of seat-type facilities which must be provided.

N.J.A.C. 12:102-1.6 addresses handwashing facilities.

N.J.A.C. 12:102-1.7 provides penalties for failure to comply with the provisions of the chapter.

N.J.A.C. 12:102-1.8 provides for exemptions from certain requirements set forth in the subchapter.

N.J.A.C. 12:102-1.2 is being amended to reflect the formal name change of the agency from the Department of Labor to the Department of Labor and Workforce Development. In addition, the definition of "unreasonable distance," which presently means a travel distance from a working area in a field of more than 500 feet for drinking facilities and a travel distance of more than 1,300 feet for toilet or washing facilities, is being amended. The proposed amended definition will now read that an "unreasonable distance" means a travel distance from a working area in a field of more than 500 feet for drinking, toilet and washing facilities. The proposed definitional amendment reflects the Department's on-going concern that seasonal farm workers be afforded proper sanitation and hygienic facilities within a reasonable distance from their work location. The aforesaid distance mandate of 500 feet from the original 1,300 is now also reflected in N.J.A.C. 12:102-1.5(a)1 and 2. The latter provide, respectively, that toilet facilities must be available to workers at a central facility within 500 feet travel distance of the work area and to the workers at a location separate from a central facility, within 500 feet of the work area. Likewise, N.J.A.C. 12:102-1.6(a)1 and 2, which reference the availability to seasonal workers of handwashing facilities, has been amended to reflect the necessity thereof within 500 feet of the work area at the central facility and within 500 feet at a location separate from the central facility.

In addition to the foregoing, N.J.A.C. 12:102-1.5 concerning toilet facilities has been amended by the deletion therefrom of a reference to "pit privies," while N.J.A.C. 12:102-1.8, which pertains to exceptions to these rules, has been amended by the deletion of paragraph (b)1, which provided that toilet facilities are not required where workers perform work in a given field for a period of three hours or less. Paragraph (b)2 has been merged into subsection (b) which now provides that toilet facilities are not required where workers operate mobile equipment, as such workers can carry an adequate supply of potable water on the equipment and are able to travel to toilet and handwashing facilities in accordance with time frames set forth at N.J.A.C. 12:102-1.5 and 1.6. The objective of all of the proposed amendments is, as heretofore noted, to further address the sanitation and hygiene needs of a class of workers whose basic needs have not always been met.

As the Department has provided a 60-day comment period on 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 with amendments will further advance the basic sanitation and hygiene requirements of a group of workers whose working conditions have hitherto been problematical. It is hoped that by addressing those needs as they pertain to access by the seasonal workers to toilet and handwashing facilities, as well as to potable water, their working conditions will prove to be less onerous. From a social perspective, improving the lot of seasonal workers, even marginally, reflects upon the Department's concern for worker's whose collective lot has been historically problematical. Ameliorating the working conditions of seasonal workers can only be of benefit to them and to the State at large.

#### Economic Impact

The rules proposed for readoption with amendments will have no impact upon existing farm operators, as they have already established facilities which comply with both State and Federal requirements for field sanitation. Of course, new farm operators will incur whatever costs are associated with the installation of water containers and the establishment of toilet and handwashing facilities. Moreover, relocation of the toilet facilities utilized by seasonal workers will normally consist of moving a porta-potty. Thus, cost factors will not trench upon those who employ seasonal workers in that regard. Similarly, relocation of handwashing facilities or access to potable water by 800 feet should not prove to be unduly burdensome from a cost perspective. Thus, the expected economic impact of the proposed amended rules will be minimal at most. Indeed, the costs which will be incurred by farm operators in order to provide their workers with basic tools of cleanliness is far outweighed by the interests of the workers who are entitled to work in a reasonably clean and safe environment.

#### Federal Standards Analysis

The rules proposed for readoption with amendments impose minimum field sanitation standards upon farm operators where 10 or fewer seasonal farm workers are working in a field, whereas the Federal regulations, found at 29 C.F.R. 1928.110, apply such standards only to farms where there are more than 10 seasonal farm workers working in a field. It is in this regard that the rules proposed for readoption with amendments exceed Federal requirements.

It is the firm belief of the Department that these rudimentary requirements for cleanliness and safety, namely, a sufficient supply of cool potable water and, for each sex, sufficient, suitable and separate privies or other toilet facilities, as well as suitable facilities for washing of hands, should be provided to all seasonal farm workers, at the distance herein amended including those not covered by Federal law. It is toward this end that N.J.S.A. 34:9A-37 et seq. (Drinking Water and Toilet Facilities) covers such individuals and that the rules promulgated in accordance therewith are similarly inclusive. Thus, the Department, which is cognizant of the fact that its rules can never be less stringent than those imposed by Federal law, note that they may in all circumstances, be more stringent in protecting the public welfare.

As stated in the Economic Impact above, the Department believes most farm operators already possess the equipment necessary to comply with these rules. The Department believes that the cost of these items to farm operators is not unduly burdensome and is outweighed by the need to provide farm workers laboring long hours in open fields, at the very least, with sufficient drinking, washing and toilet facilities in an appropriate location to the worksite.

#### Jobs Impact

The rules proposed for readoption with amendments will have no impact on jobs and, therefore, the Department does not anticipate an increase or decrease in jobs as a result thereof.

#### Agriculture Industry Impact

The rules proposed for readoption with amendments will promote cleaner, more convenient facilities for seasonal farm workers, thereby making their workplace more sanitary and more reasonably comfortable.

#### Regulatory Flexibility Analysis

The rules proposed for readoption with amendments will have minimal impact in terms of imposing additional burdens upon businesses of any type, including small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As indicated above, existing farmers have already established facilities which comply with both State and Federal requirements for field sanitation and new farmers will incur whatever costs are associated with the installation of water containers and the establishment of toilet and handwashing facilities. The costs are minimal and are intended to ensure that the most rudimentary needs of farm workers are met; namely, clean water for drinking and handwashing and appropriate toilet facilities. Any costs incurred by farmers in order to comply with these rules is far outweighed by the necessity to provide a healthy and safe working environment for farm workers. No professional services will be required to comply with the field sanitation standards.

#### Smart Growth Impact

The rules proposed for readoption with amendments will not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for reoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:102.

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

#### 12:102-1.2 Definitions

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

...  
"Commissioner" means the Commissioner of the Department of Labor and Workforce Development of the State of New Jersey or his or her designee.

...  
"Unreasonable distance" means a travel distance from a working area in a field of more than 500 feet for drinking [facilities and a travel distance of more than 1,300 feet for], toilet [or] and washing facilities.

#### 12:102-1.5 Toilet facilities

(a) Toilet facilities shall be provided for workers in the working area, except when toilet facilities:

1. Are available to the workers at a central facility within [1,300] 500 feet travel distance or a five-minute walking time of the working area in the field;

2. Are available to the workers at a location, separate from a central facility, within [1,300] 500 feet travel distance or a five-minute walking time of the working area in the field; or

3. (No change.)

(b) (No change.)

(c) Toilet facilities shall be a suitable type acceptable for the elimination of bodily wastes and may consist of the following types:

[1. Pit privies;]

Recodify existing 2.-6. as 1.-5. (No change in text.)

(d)-(f) (No change.)

#### 12:102-1.6 Handwashing facilities

(a) Adequate handwashing facilities shall be provided for workers in the working area and in the vicinity of toilet facilities required by this subchapter, except when handwashing facilities:

1. Are available to the workers at a central facility within [1,300] 500 feet travel distance of the working area in the field and in the vicinity of toilet facilities required by this subchapter;

2. Are available to the workers at a location, separate from a central facility and in the vicinity of toilet facilities; within [1,300] 500 feet travel distance or five minutes walking time of the working area in the field; or

3. (No change.)

(b)-(c) (No change.)

#### 12:102-1.8 Exceptions

(a) (No change.)

(b) Toilet facilities are not required where[

1. Workers perform work in a given field for a period of three hours or less, including travel time, provided that at the conclusion of such period the workers are at a location where the facilities are available; or

2. Workers] workers operate mobile equipment, as such workers can carry an adequate supply of potable water on the equipment and are able to travel to toilet and handwashing facilities in accordance with the time-frames set forth at N.J.A.C. 12:102-1.5 and 1.6.