

ADOPTIONS SECTION

HEALTH

PUBLIC HEALTH SERVICES BRANCH

DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL AND OCCUPATIONAL HEALTH

CONSUMER, ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICE

Notice of Readoption

Worker and Community Right to Know Act Rules

Readoption with Technical Changes: N.J.A.C. 8:59

Authorized By: Shereef M. Elnahal, MD, MBA, Acting Commissioner, Department of Health.

Authority: N.J.S.A. 34:5A-1 et seq., specifically 34:5A-30.

Effective Dates: February 20, 2018, Readoption;
March 19, 2018, Technical Changes.

New Expiration Date: February 20, 2025.

Take notice that, pursuant to N.J.S.A. 52:14B-5.1, the Acting Commissioner (Commissioner) of the Department of Health (Department) hereby readopts N.J.A.C. 8:59, Worker and Community Right to Know Act Rules, which was scheduled to expire on March 23, 2018.

The Worker and Community Right to Know Act, P.L. 1983, c. 315 (approved August 29, 1983, and effective August 29, 1984), codified at N.J.S.A. 34:5A-1 through 33 (Act), states, "it is in the public interest to establish a comprehensive program for the disclosure of information about hazardous substances in the workplace and the community, and to provide a procedure whereby residents of this State may gain

access to this information,” N.J.S.A. 34:5A-2. The Act provides the respective responsibilities of the Departments of Health, Environmental Protection, and Labor and Workforce Development, to establish the program and the procedure. N.J.A.C. 8:59 establishes rules by which the Department implements its responsibilities pursuant to the Act.

N.J.A.C. 8:59-1 establishes general information. N.J.A.C. 8:59-2 establishes standards applicable to public employers for the creation and submission to the Department of Right to Know Surveys addressing hazardous substances at their facilities. N.J.A.C. 8:59-3 establishes standards for trade secret claims. N.J.A.C. 8:59-4 establishes standards applicable to public employers for the preparation, maintenance, and distribution of hazardous substance fact sheets and material safety data sheets. N.J.A.C. 8:59-5 establishes standards for container labeling. N.J.A.C. 8:59-6 establishes standards applicable to public employers for education and training of their employees. N.J.A.C. 8:59-7 establishes standards applicable to public employers addressing public access to Right to Know information. N.J.A.C. 8:59-8 establishes standards for the Department’s enforcement of the Act and the chapter, and establishes available sanctions and penalties for noncompliance. N.J.A.C. 8:59-9 establishes standards for, and incorporates by reference, at N.J.A.C. 8:59 Appendix A, the Right to Know Hazardous Substance List. N.J.A.C. 8:59-10 establishes standards for, and incorporates by reference, at N.J.A.C. 8:59 Appendix B, the Special Health Hazard Substance List. N.J.A.C. 8:59-11 establishes standards applicable to private employers to implement the provisions of the Act that address community members’ right to know of hazardous substances used by private employers in their communities.

The Department is reviewing existing N.J.A.C. 8:59, in consultation with the Departments of Environmental Protection and Labor and Workforce Development, and in consideration of comments and recommendations that the Department receives in its ongoing communications with stakeholders. In addition, the Department is reviewing the chapter for consistency with changes to comparable Federal standards, such as the hazard communication standard at 29 CFR 1910.1200, which was the impetus for the Department's recent joint rulemaking with the Department of Labor and Workforce Development to update the hazard communication standard in the Safety and Health Standards for Public Employees at N.J.A.C. 12:100-7. See 48 N.J.R. 935(a); 49 N.J.R. 1423(a). Moreover, amendments are necessary to reflect P.L. 2010, c. 87, § 48 (approved November 3, 2010), which repealed N.J.S.A. 34:5A-18 through 20, the laws that established the Right to Know Advisory Council and specified its powers and duties.

Following the conclusion of this review, the Department expects to develop a rulemaking that would simplify the chapter, such as by the elimination of provisions that conflict with or are redundant of comparable Federal standards that can be incorporated by reference, and at the same time would maintain consistency with the Act by the retention of provisions that establish greater protection of workers and community members than those established under Federal law. The Department will propose this rulemaking in the ordinary course.

However, the required review and attendant rulemaking activity would not be concluded prior to the expiration of existing N.J.A.C. 8:59. The Acting Commissioner has reviewed existing N.J.A.C. 8:59 and determined that, pending the conclusion of the

anticipated rulemaking process described above, the existing chapter remains necessary, proper, reasonable, efficient, understandable, and responsive to the purposes for which the Department originally promulgated it, as amended and supplemented over time, and should be readopted. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), N.J.A.C. 8:59 is readopted and shall continue in effect for seven years.

In addition, the Department is making technical changes throughout the chapter:

1. To reflect the reorganization and renaming of the Department pursuant to P.L. 2012, c. 17 (N.J.S.A. 26:1A-2.1);

2. To correct grammatical, spelling, capitalization, and punctuation errors, including the deletion of masculine pronouns and the addition in their place of gender-neutral language, the deletion of animate pronouns for inanimate entities and the addition in their place of inanimate pronouns and other appropriate language, the deletion of improper uses of the word, “which,” and the addition of the word, “that,” in their place, the correction of split infinitives and uses of the passive voice, and the reconciliation of inconsistent uses of singular and plural nouns and verbs for the same subject in the same sentence or paragraph.

3. To delete terms for which a shortened term or abbreviation exists, and to replace those terms with the shortened term or abbreviation;

4. To delete references to the “Department” and the “department” in Subchapter 3 that are potentially ambiguous as to whether the reference is to the Department of Environmental Protection and/or the Department of Health collectively, or only to the Department of Health, and to replace them with references to the “DOH/DEP,” when the reference means either or both agencies, depending on the context, while retaining

references to the “Department” when its use means only the Department of Health (see N.J.A.C. 8:59-3.3; compare to the definition of “Department” at N.J.A.C. 8:59-1.3), thereby ensuring that regulated community members direct their submissions and inquiries to the contact information of the appropriate entity with jurisdiction pursuant to the Worker and Community Right to Know Act; and

5. To update contact information and references to publications that the chapter incorporated by reference as amended and supplemented.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 8:59.

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

SUBCHAPTER 1. GENERAL INFORMATION

8:59-1.3 Definitions

The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

...

“Chemical Abstracts Service number” or “**CAS number**” means the unique identification number assigned by the Chemical Abstracts Service to chemicals.

...

“Department” [and “Department of Health and Senior Services”] means the [New Jersey State] Department of Health [and Senior Services unless the context clearly indicates otherwise].

...

“Designated representative” means an employee of the [department designated in writing by] **Department whom** the Commissioner **designates in writing**.

...

“Hazardous substance” means any substance, or substance contained in a mixture, included on the hazardous substance list [developed by] **that** the Department [of Health and Senior Services] **develops** pursuant to N.J.S.A. 34:5A-5, introduced by an employer to be used, studied, produced, **or** otherwise handled at a facility.

Hazardous substance shall not include:

1. – 2. (No change.)

3. Any hazardous substance [which] **that** is a special health hazard substance constituting less than the threshold percentage established by the Department [of Health and Senior Services] for that special health hazard substance when present in a mixture. The threshold percentage for carcinogens, mutagens and teratogens shall be 0.1 percent;

4. – 12. (No change.)

“Hazardous substance fact sheet” means a written document [prepared by] **that** the Department [of Health] **prepares** for each hazardous substance except for generic categories, and [transmitted by the Department] **transmits** to public employers, county

health departments, county clerks, designated county lead agencies, and the public pursuant to the provisions of the Act.

...

“[Requestor] **Requester**” means any person who makes a request for the disclosure of the information for which a trade secret claim has been made.

...

“Right to Know Enforcement Officer” means an employee of the Department [of Health and Senior Services] who enforces the Worker and Community Right to Know Act.

...

“Special health hazard substance list” means the list of special health hazard substances [developed by] **that** the Department [of Health and Senior Services] **develops** pursuant to N.J.S.A. 34:5A-5 for which an employer [may not] **cannot** make a trade secret claim.

...

“Trade secret registry number” means a code number **that the Department** temporarily or permanently [assigned] **assigns** to the identity of a substance in a container [by the Department of Health and Senior Services] pursuant to N.J.S.A. 34:5A-15 and N.J.A.C. 8:59-3.6.

“Workplace Hazardous Substance List” means the list of hazardous substances [developed by] **that** the Department [of Health and Senior Services] **develops** pursuant to N.J.S.A. 34:5A-5. The Workplace Hazardous Substance List is incorporated into the Right to Know Hazardous Substance List.

“Workplace survey” means a written document[, prepared by] **that** the Department [of Health and Senior Services] **prepares** and [completed by] a public employer **completes** pursuant to the Act, on which the employer shall report each hazardous substance present at his **or her** facility. The workplace survey is incorporated into the Right to Know Survey.

8:59-1.4 Covered employers exempt from provisions of the law

(a) Any public employer [whose] **that transmits to the Department a** Right to Know survey [transmitted to the Department of Health and Senior Services], **which** indicates that no hazardous substances are present at the facility, shall be exempt from the provisions of the Act for that facility, except for the requirement to annually update the Right to Know Survey pursuant to N.J.A.C. 8:59-2, and except for the provisions of N.J.S.A. 34:5A-33 and N.J.A.C. 8:59-8 providing [for] enforcement of violations of the Act. Any residential dwelling [which] **that** meets this condition, including those located in State, county, and local parks, shall be exempt from meeting the requirement of N.J.A.C. 8:59-2.

(b) Any public employer exempted from the provisions of the Act pursuant to this section [who] **that** transmits to the Department [of Health and Senior Services] an update of the Right to Know Survey, which indicates that a hazardous substance is present at the public employer’s facility, [shall] immediately **shall** be subject to all the provisions of the Act.

SUBCHAPTER 2. RIGHT TO KNOW SURVEY—FOR PUBLIC EMPLOYERS

8:59-2.1 General provisions

(a) [A] **The Department shall prepare a** Right to Know Survey [shall be prepared by the Department of Health and Senior Services] and [mailed] **mail it** to every public employer covered under the New Jersey unemployment insurance law who is also covered by the Act.

(b) — (c) (No change.)

(d) Within 90 days of receipt of a Right to Know Survey, or by July 15, whichever is later, a public employer shall complete and transmit the survey to the Department [of Health and Senior Services]; the county health department, county clerk, or designated county lead agency, of the county in which the employer's facility is located; the local health department; the local emergency planning committee; the local fire department[,]; and the local police department.

(e) (No change.)

SUBCHAPTER 3. TRADE SECRETS

8:59-3.1 Authority

(a) (No change.)

(b) This subchapter is a jointly adopted rule of the Departments of Health [and Senior Services] and [the Department of] Environmental Protection ([See] **see** N.J.A.C. 7:1G-6).

8:59-3.2 Purpose

(a) Trade secret claims will be filed or maintained by employers who are subject to the Act to maintain the confidentiality of information requested on the Right to Know Survey or the environmental survey and for the names of substances on container labels. It is the purpose of this subchapter to prescribe:

1. (No change.)
2. The information required by the [department] **DOH/DEP** for determination of a trade secret claim;
- 3.—7. (No change.)

8:59-3.3 Definitions

["Department"] "**DOH/DEP**" means, for purposes of this subchapter, [both] the [New Jersey] Department of Health [and Senior Services and] **and/or** the [New Jersey] Department of Environmental Protection, **as applicable in the context of the section**, unless otherwise indicated.

8:59-3.4 General provisions

(a) Except as provided in N.J.A.C. 8:59-3.15, the [department] **DOH/DEP** shall not disclose any trade secret claim and supporting information[,] that is pending or has been approved.

(b) An employer shall report the information for which a trade secret claim is being made to the appropriate [Department] **DOH/DEP** in accordance with N.J.A.C. 8:59-3.6 (7:1G-6.6), or maintain this information in accordance with the provisions of N.J.A.C.

8:59-3.6.

(c) — (d) (No change.)

(e) All documents containing the information claimed to be a trade secret and supporting information [which are submitted,] shall be submitted to the [appropriate Department] **DOH/DEP** by certified mail return receipt requested, by personal delivery, or by other means [which] **that** requires verification of receipt, the date of receipt, and the name of the person who receives the document at the [Department] **DOH/DEP**. Such documents concerning the Right to Know Survey or labeling of containers shall be mailed or delivered to:

Manager, Right to Know [Program] **Unit**
Environmental and Occupational Health Assessment Program
Division of Epidemiology, Environmental and Occupational Health
New Jersey Department of Health [and Senior Services]
PO Box 368
Trenton, NJ 08625-0368

Such documents concerning the environmental survey shall be mailed or delivered to:

Chief, Office of Pollution Prevention and Right to Know
New Jersey Department of Environmental Protection
Mail Code 22-03C
401 East State Street
PO Box [405] **420**
Trenton, NJ 08625-[0405] **0420**

(f) — (g) (No change.)

(h) The [department] **DOH/DEP** shall determine the validity of a trade secret claim when a request is made by any person for the disclosure of the information for which the trade secret claim was made and at any time that the [department] **DOH/DEP** deems appropriate. The employer shall be notified before the [department] **DOH/DEP** makes its determination and shall be provided 30 days to submit any information pursuant to N.J.A.C. 8:59-3.6 except when the employer has filed a trade secret claim prohibited by N.J.A.C. 8:59-3.5. The [department] **DOH/DEP** shall make its determination on a trade secret claim in accordance with the criteria in N.J.A.C. 8:59-3.9. The [department] **DOH/DEP** may approve a trade secret claim based on information provided pursuant to N.J.A.C. 8:59-3.6.

(i) The [department] **DOH/DEP** may revoke an approved trade secret claim upon the receipt of new information from any person regarding the information previously submitted by an employer pursuant to N.J.A.C. 8:59-3.6. In the event of such revocation, N.J.A.C. 8:59-3.11 and 3.13 shall apply in the same manner as where the [department] **DOH/DEP** rejects a trade secret claim.

(j) Nothing in these regulations shall be construed as prohibiting the incorporation of trade secret information into cumulations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow persons outside the [department] **DOH/DEP**, not otherwise having knowledge of such information, to deduce from it the trade secret information, or the identity of the employer who supplied it to the [department] **DOH/DEP**.

(k) Any failure by an employer to submit additional information relevant to the trade secret claim requested by the [department] **DOH/DEP** or to allow inspection of its facility

by the [department] **DOH/DEP** for purposes of determining the validity of a trade secret claim shall constitute valid cause for denial of the trade secret claim.

(l) (No change.)

8:59-3.5 Prohibited claims

(a) A trade secret claim [may not] **cannot** be made to the Department [of Health and Senior Services] for the following information:

1. — 3. (No change.)

8:59-3.6 Procedure for filing trade secret claims and maintaining trade secret information

(a) Reporting shall be done as follows:

1. A public employer [who] **that** claims that disclosing information on a Right to Know Survey would reveal a trade secret shall list a trade secret registry number in place of the trade secret information in the Right to Know Survey to be distributed to the Department and all county and local agencies [which] **that** are required by law, rule, or regulation to receive the survey. The employer shall derive the registry number by adding a numeral beginning with “5000” at the end of its [New Jersey] Department of Labor **and Workforce Development** employer identification number (EIN) separated by a dash and preceded by the words, “Trade secret registry #[”].” See (b)2 below for examples. Each new trade secret claim shall be numbered consecutively. A second version of the Right to Know Survey [which] **that** includes both the trade secret registry

number and the trade secret information shall be filed with the Department along with the information required in (c) below, at the time of submission of the first survey.

2. (No change.)

(b) Labeling shall be done as follows:

1. An employer [who claims], **claiming** that labeling a container at his **or her** facility with the chemical name and [Chemical Abstracts Service] **CAS** number of the hazardous or other substance in the container would reveal a trade secret, shall file a trade secret claim with the Department [of Health and Senior Services] by:

i. (No change.)

ii. Notifying the Department, in writing, that the employer intends to conceal the chemical name and [Chemical Abstracts Service] **CAS** number of ingredients on a label for one or more ingredients or products. If a notification is filed, the employer shall certify that the trade secret information required in (b)4 below is being maintained, advise the Department of the trade secret registry numbers being assigned, and provide the Department [with] the name(s) and emergency phone number(s) of the employer representative(s) available in case of a public health or medical emergency[, who is authorized by] **whom** the employer **authorizes** to release trade secret information to the Department, or to others under such circumstances. The notification must be updated if the employer assigns a new employee to communicate with the Department regarding trade secrets, if the employer assigns a new emergency representative, or if the employer uses a new alpha and/or numeric numbering system for its trade secret registry numbers. One notification may be filed by an

employer for the trade secret claims at each facility, and an employer with multiple facilities may file one notification for the trade secret claims at all of its facilities.

2. An employer shall derive the trade secret registry number to use on containers in either of two ways:

i. By adding a numeral beginning with “5000” at the end of its [New Jersey] Department of Labor **and Workforce Development** employer identification number (EIN), separated by a dash, and preceded by the words “Trade Secret Registry #.” Each new trade secret registry number shall be numbered consecutively. Examples of acceptable numbers include:

Trade Secret Registry Number 12345600-5000

Trade Secret Registry # 12345600-5000

TSRN 12345600-5000

NJ TSRN 12345600-5000; or

ii. (No change.)

3. (No change.)

4. If an employer chooses to file a notification with the Department pursuant to (b)1 above, [he] **the employer** shall maintain the trade secret information on site or at the corporate facility. This information shall include the chemical names and [Chemical Abstracts Service] **CAS** numbers of all trade secret ingredients and products and the trade secret registry numbers that the employer has assigned to the ingredients and products.

5. — 6. (No change.)

7. The [Department] **DOH/DEP** may request complete trade secret information from an employer in order to make a determination on the validity of the trade secret claim or for public health or medical emergencies. The employer shall submit the information to the [Department] **DOH/DEP** within 30 days of the request unless emergency circumstances apply, in which case the **employer shall submit the** information [shall be submitted] within a shorter period of time as [specified by] the [Department] **DOH/DEP specifies**. Trade secret information submitted to the [Department] **DOH/DEP** shall include the information required in (c) below.

8. Trade secret information [which] **that** is currently on file with the [Department] **DOH/DEP** will be returned to the employer upon request.

(c) An employer shall submit a summary of the following information at the time of submittal of the trade secret claim except when a notification is filed pursuant to (b) above:

1. Prior trade secret determinations concerning the trade secret claim [by] **of** the [Department] **DOH/DEP**, [other] **another** agency, or **a** court, and a copy of such determination or reference to it;

2. — 8. (No change.)

9. The name(s) and emergency phone number(s) of the employer representative(s) available in case of a public health or medical emergency, [who is (are) authorized by] **whom** the employer **authorizes** to release trade secret information to the [Department] **DOH/DEP**, or to others under such circumstances.

(d) The [Department may] **DOH/DEP**, at any time subsequent to the filing of a trade secret claim, **may** request, in writing, the information listed in (d)1 through 5 below.

Within 30 days of such written request, an employer shall answer the request in writing. The [Department] **DOH/DEP** may extend the period for submitting an answer for good cause shown.

1. — 4. (No change.)

5. Any other relevant information to assist the [Department] **DOH/DEP** in determining the validity of a trade secret claim.

(e) — (g) (No change.)

(h) The [Department] **DOH/DEP** may limit the length of a claim or submission and require that they be made on forms [provided by] **that** the [Department] **DOH/DEP provides.**

(i) (No change.)

(j) At the time a public employer receives notification from the Department that a determination of a trade secret claim is being considered, this notification shall be posted on bulletin boards readily accessible to employees. Every public employer [who] **that** employs persons whose native language is Spanish shall also post the notice in Spanish, such notice to be provided by the Department. The notice shall state for which survey the claim was made and shall invite any person to submit comments on the claim to the Department.

8:59-3.7 Confidentiality and security of trade secret information

(a) — (b) (No change.)

(c) [Any] **The DOH/DEP shall transmit any** document [transmitted by the Department], **which contains information that the employer claims to be a trade secret,** to the

employer or any other authorized person[, which contains information claimed to be a trade secret, shall be sent] by certified mail return receipt requested, by personal delivery, or by other means [which] **that** requires verification of receipt, the date of receipt, and the name of the person who receives the document.

(d) The [Department] **DOH/DEP** shall communicate only with the employer's chief executive officer or [his] **the chief executive officer's** designated representatives, such designation to be made in writing, regarding the trade secret claim. The **DOH/DEP shall consider the** individual signing the **submitted** trade secret claim [submitted to the Department shall be considered] **to be** the designated representative if **the DOH/DEP receives** no other communication [is received] from the employer.

(e) Any document [prepared by] **that** the [Department] **DOH/DEP prepares** for the employer, which contains information claimed to be a trade secret, shall display the word "CONFIDENTIAL" in bold type [to stamp], **stamped** on the top of each page. The envelope containing such document shall be addressed to the employer's chief executive officer or [his] **the chief executive officer's** designated representative and shall display the word "CONFIDENTIAL" in bold type on both sides. This envelope shall be enclosed in a plain envelope addressed for mailing.

(f) Except as provided in N.J.A.C. 8:59-3.15 (7:1G-6.15), no person other than the Commissioner [and his] **of the DOH/DEP, the Commissioner's** designated representatives, [and] administrative law judges, and their necessary staff, conducting hearings on trade secret claims, shall have access to information regarding a trade secret claim. All designated representatives shall be employees of the State. Designations shall be made in writing. Designated persons other than administrative

law judges shall sign an agreement to protect the confidentiality of the information before access is granted. Administrative law judges shall have access to trade secret information as necessary to preside over prehearing activities, conduct the hearing, **and** render an initial decision, and **shall** return the record to [either] the [Department of Environmental Protection or the Department of Health and Senior Services] **DOH/DEP** pursuant to N.J.A.C. 1:21.

(g) All documents containing information regarding a trade secret claim shall be stored in a locked file or safe in a locked office in the [Department] **DOH/DEP**. The file or safe and office containing such documents shall be locked when not being used by authorized persons.

(h) Persons authorized to use trade secret documents pursuant to (f) above shall do so in the office in which the trade secret documents are stored unless [authorized to remove the documents by] the Commissioner **of the DOH/DEP** or [his] **the Commissioner's** designated representative **authorizes the persons to remove the documents**. All trade secret documents [which] **that** are removed shall be returned to the office in which the documents are stored each day by the end of the regular workday. The [Department] **DOH/DEP** shall maintain a log of persons who use documents containing trade secret information. The log shall include the person's name, title, the name of the document used, and the time of commencing and finishing use of the document. No trade secret document shall be delivered between offices by persons who are not authorized to handle said documents. Such documents shall not be duplicated unless necessary for purposes of N.J.A.C. 8:59-3.15 or if the [Department] **DOH/DEP** determines that it is absolutely necessary to carry out its

responsibilities under the Act. If so duplicated, the document shall be marked as a copy, but treated as if it was an original document. The copy shall be destroyed immediately after completion of the use for which it was intended.

8:59-3.8 Decision-making agency on a trade secret claim

(a) The Department [of Health and Senior Services] is authorized to approve or deny a trade secret claim concerning:

1. — 2. (No change.)

(b) (No change.)

(c) Trade secret claims for labeling and reporting filed with both **the Department[s] and the Department of Environmental Protection** shall be approved or denied jointly by the [Department of Health and Senior Services and the Department of Environmental Protection] **DOH/DEP**.

8:59-3.9 Criteria for determination of the validity of a trade secret claim

(a) — (b) (No change.)

(c) In determining whether a trade secret claim meets the requirements of (a) or (b) above, the [Department] **DOH/DEP** shall consider information provided by the employer or any other person, including the information in (c)1 through 6 below:

1. — 6. (No change.)

8:59-3.10 Request for trade secret information

(a) Any person may submit, at any time, a written request for the disclosure of information for which a trade secret claim is pending or has been approved[,] to the [appropriate Department] **DOH/DEP** at the address provided in N.J.A.C. 8:59-3.4 (**N.J.A.C. 7:1G-6.4**). The request shall state the requestor's name, address, and affiliation, and may include information concerning the validity of a pending or approved trade secret claim. The names of employees making requests for trade secret information on a Right to Know Survey or a label shall be kept confidential.

(b) (No change.)

(c) The Department [of Health and Senior Services] shall render a decision on a request for the disclosure of trade secret information from a single employer within 120 days of receipt of the request and shall notify the requestor of its determination. The Department may extend this deadline for an additional 120 days if the request involves a large number of substances.

8:59-3.11 Notification of determination of the validity of a trade secret claim

(a) Upon making a determination on the validity of a trade secret claim, the [department] **DOH/DEP** shall notify the employer and the requestor of the determination by certified mail, return receipt requested. The notice shall state that the employer has 45 days from receipt of the [department's] determination to file a written request with the [department] **DOH/DEP** for an administrative hearing on the determination.

(b) Within 15 days of receiving an approval of a trade secret claim from the Department, a public employer shall post on bulletin boards readily accessible to employees a notice

of the determination. Every public employer [who] **that** employs persons whose native language is Spanish shall also post the notice in Spanish, such notice to be provided by the Department.

8:59-3.13 Appeal of determination

(a) If the [department] **DOH/DEP** denies an employer's trade secret claim, the employer shall have 45 days from the receipt of the [department's] determination to file with the [department] **DOH/DEP** a written request for an administrative hearing on the determination.

(b) Within 15 days after filing a request for an administrative hearing, a public employer shall post on bulletin boards readily accessible to employees a notice of the request. Every public employer filing a request shall send a copy of the notice to the county health department, county clerk, or designated county lead agency in which the employer's facility is located. Every public employer filing a claim [who] **that** employs persons whose native language is Spanish shall also post a notice in Spanish. The notice shall state for which survey the request was made and the date of the request and shall invite any person to submit comments to the Department and provide testimony at the administrative hearing on the trade secret claim.

(c) If a request for an administrative hearing is made pursuant to (a) above, the [department,] **DOH/DEP** shall refer the matter to the Office of Administrative Law for a hearing thereon.

(d) Within 45 days of receipt of the administrative law judge's initial decision containing a recommendation on a matter referred to in (c) above, the [Department] **DOH/DEP**

shall affirm, reject, or modify the recommendation. The [Department] **DOH/DEP** shall inform the employer of its decision on the administrative law judge's recommendation by certified mail, return receipt requested. The [Department's] action **of the DOH/DEP** shall be considered final agency action for purposes of the "Administrative Procedure Act," N.J.S.A. 52:14B-1 et seq., and shall be subject only to judicial review as provided in the Rules of Court.

(e) [In the event that] **If** the [department] **DOH/DEP** determines, pursuant to (d) above, that the trade secret claim is not valid, the employer shall have 45 days from receipt of the [department's] determination to notify the [department] **DOH/DEP**, in writing, that it has filed to appeal the [department's] decision **of the DOH/DEP** in the courts. If the employer does not so notify the [department] **DOH/DEP**, the [department] **DOH/DEP** shall disclose the information for which the trade secret claim was made in the manner set forth in N.J.A.C. 8:59-3.14.

(f) (No change.)

8:59-3.14 Disclosure of information determined not to be a trade secret

(a) After a trade secret claim has been denied and all appeals and the right to bring an appeal have been exhausted, the [Department] **DOH/DEP** shall take the following action:

1. Modify the employer's Right to Know Survey or environmental survey, as the case may be, on file with the [Department] **DOH/DEP** to substitute the omitted information for the trade secret docket or registry number and add the information wherever else appropriate; and

2. Direct the employer to modify the Right to Know Survey or environmental survey on file at [his] **the employer's** facility to include the information for which the trade secret claim was denied and add the information wherever else appropriate; to send modified copies of the revised Right to Know Survey or environmental survey to the [appropriate Department] **DOH/DEP** and all county and local agencies that are required by law, rule, or regulation to receive the survey containing this information; and to replace the trade secret registry number with the chemical name and [Chemical Abstracts Service] **CAS** number on its fact sheets and container labels, if applicable.

8:59-3.15 Restricted access to trade secret information retained by the [Department] **DOH/DEP**

(a) (No change.)

(b) An officer or employee of the State may be granted access to trade secret information protected by this subchapter, only in accordance with this section, upon a demonstration to the satisfaction of the [department] **DOH/DEP** that such request is in connection with the official duties of the officer or employee under any law for the protection of public health.

1. An officer or employee of the State designated by the head of an agency may make a written request to the [department] **DOH/DEP** for information on a pending or approved trade secret claim. Such request shall state:

i. — iv. (No change.)

2. If the [department] **DOH/DEP** proposes to release trade secret information to an officer or employee of the State, the [department] **DOH/DEP** shall notify, in writing

and by certified mail, return receipt requested, the employer [who] **that** submitted the trade secret claim of the intent to release such information.

(c) A contractor of the State and its employees may be granted access to trade secret information protected by this subchapter if the [Department] **DOH/DEP** determines that such disclosure is necessary for the completion of any work contracted for in connection with the implementation of the Act, and that the requirements of (c)1 through 3 below have been satisfied. Such approval shall restrict access to the trade secret information to persons approved by the Department. [Employers] **The DOH/DEP** shall [be notified] **notify employers** of this determination [by the Department] prior to disclosure of the trade secret information. A contractor shall not receive any trade secret information unless:

1. The contractor has submitted a plan to the [Department which] **DOH/DEP that** describes measures for adequately protecting trade secret information from unauthorized disclosure, and **the DOH/DEP approves** such plan [has been approved by the Department];

2. The contractor has provided written documentation demonstrating, to the satisfaction of the [Department] **DOH/DEP**, that the contractor maintains [Professional Liability Insurance] **professional liability insurance** or suitable indemnity insurance and [Comprehensive General Liability Insurance] **comprehensive general liability insurance** in forms and [in] amounts to be set by the [Department] **DOH/DEP**; and

3. In addition to the requirement of (e) below, the contractor has signed an agreement developed by the [Department] **DOH/DEP**, protecting trade secret information from unauthorized disclosure. The agreement shall include a provision

whereby the contractor assumes liability for any damages to an employer resulting from the intentional or negligent release of trade secret information by the contractor and its employees.

(d) The [department] **DOH/DEP** shall provide any information for which a trade secret claim is pending or has been approved to a physician or osteopath when such information is needed for medical diagnosis or treatment. The physician or osteopath who will receive confidential information shall be required to sign an agreement developed by the [department] **DOH/DEP** protecting the confidentiality of the information disclosed. This agreement shall include a provision prohibiting the physician or osteopath from revealing the trade secret information to any person.

Where feasible, the employer shall be notified prior to disclosure of the information.

(e) Any person granted access to trade secret information pursuant to [N.J.A.C. 8:59-3.15] **this section** shall sign an agreement developed by the [department] **DOH/DEP** protecting the confidentiality of the information prior to receipt of the information.

(f) Any person who receives trade secret information pursuant to this section shall take appropriate measures to protect the information from unauthorized disclosure [which] **that** shall include, but not be limited to:

1.—2. (No change.)

3. Using the information only for the use approved by the [department]

DOH/DEP;

4. (No change.)

5. Returning all material on which the trade secret information has been recorded to the [department] **DOH/DEP** within 30 days or when finished using the information, whichever is sooner.

(g) For emergency public health or medical purposes, the [department] **DOH/DEP** may waive the requirements of (b)1 (written request by State officer or employee), (b)2 (notice to employer prior to release of trade secret information), and (e) (signing a confidentiality agreement prior to receipt of trade secret information) above, and shall follow the procedures set forth in [1] **(g)1** and 2 below, if the [department] **DOH/DEP** determines that waiver of said requirements is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment or is necessary for an emergency medical diagnosis or treatment by a physician or osteopath.

1.—2. (No change.)

8:59-3.16 Penalties for unauthorized disclosure of trade secret information

(a) (No change.)

(b) Disclosure of trade secret information by any contractor or agent of the [department] **DOH/DEP** or its employees in violation of the Act shall constitute grounds for debarment, suspension, and disqualification from contracting with the [department] **DOH/DEP**.

SUBCHAPTER 4. HAZARDOUS SUBSTANCE FACT SHEETS—FOR PUBLIC EMPLOYERS

8:59-4.1 General provisions

(a) [A] **The Department shall develop a** hazardous substance fact sheet [shall be developed by the Department of Health and Senior Services] for each hazardous substance on the Right to Know Hazardous Substance List. This requirement does not include generic categories of substances.

(b) — (e) (No change.)

(f) A public employer shall maintain, and make available to employees, material safety data sheets that have been developed or acquired for substances listed on the Right to Know Hazardous Substance List for which hazardous substance fact sheets have not been completed and for mixtures, in the same manner as hazardous substance fact sheets. The material safety data sheets shall be distributed in addition to hazardous substance fact sheets and not as a substitute. The material safety data sheets shall be made available to the [department] **Department** upon request.

8:59-4.2 Contents of hazardous substance fact sheet

(a) A hazardous substance fact sheet shall be a written document [which] **that** includes, but is not limited to, the following information:

1.— 4. (No change.)

5. A description, in nontechnical language, of the acute and chronic health effects of exposure to the hazardous substance, including the medical conditions that might be

aggravated by exposure, and any permissible exposure limits established by the [federal] **Federal** Occupational Safety and Health Administration;

6.—8. (No change.)

(b) A hazardous substance fact sheet shall be updated when, in the opinion of the [department] **Department**, significant new information becomes known.

8:59-4.3 Transmittal to employer

(a) Upon receipt of a completed Right to Know Survey from a public employer, the Department [of Health and Senior Services] shall transmit to that employer a hazardous substance fact sheet for each hazardous substance reported by the employer on the Right to Know Survey.

(b) — (d) (No change.)

8:59-4.4 Trade secret claims

(a) If a public employer makes a trade secret claim for a substance on the Right to Know Survey pursuant to N.J.A.C. 8:59-3, the Department shall transmit to the public employer a hazardous substance fact sheet for the substance with the employer's trade secret registry number for the substance listed in place of the name of the substance and the [Chemical Abstracts Service] **CAS** number, unless the public employer notifies the [department] **Department** that it desires to prepare its own hazardous substance fact sheet in accordance with (b) below.

(b)—(c) (No change.)

SUBCHAPTER 5. LABELING CONTAINERS

8:59-5.1 General provisions

(a) (No change.)

(b) Every container at an employer's facility in which more than one percent of the contents of the container are unknown[,] shall bear a label stating "Contents Unknown" or "Contents Partially Unknown["]," as appropriate, in addition to other labeling required [by N.J.A.C. 8:59-5] **under this subchapter.**

(c) (No change.)

(d) Labels shall be affixed to containers before containers are opened or within five working days of the container's arrival at the facility, whichever is sooner. No employer [may] **shall** use the contents of a container unless the container is appropriately labeled. In warehouses, storage or transfer facilities associated with employers covered by this Act, where containers are not opened, labeling required by or consistent with United States Department of Transportation[,] **requirements at** 49 CFR 172.101 [requirements,] may be used.

(e) Laboratories or other facilities [which] **that** receive containers with unknown materials or old pressurized gas cylinders with unknown contents for analysis of the contents shall label the containers as substances are identified. In the interim period until the contents are identified, these containers shall be labeled in accordance with [N.J.A.C. 8:59-5.1(b)] **(b) above.**

(f) Containers of materials, [for] **of** which the employer does not know the contents[,] and the manufacturer is unknown or no longer in business, shall be labeled pursuant to the Act or the Federal Resource Conservation and Recovery Act. The employer shall

be responsible for determining the components of the container and attaching appropriate labeling.

(g) — (h) (No change.)

(i) Containers [which] **that** are 56.7 grams (two ounces) or smaller may be labeled by means of a code or number system if the code or number system will allow a public employee or emergency responder free and ready access at all times to a fact sheet [which] **that** will provide the public employee or emergency responder with the chemical name or common name permitted by N.J.A.C. 8:59-5.7, and [Chemical Abstracts Service] **CAS** number of the substance contained in the container, or the trade secret registry number assigned to the substance and, in the case of a public employee, allow access to this information without the permission or assistance of management, and be available to the public employee at close proximity to [his or her] **the employee's** specific job location or locations.

(j) — (k) (No change)

(l) Public employers [who] **that** operate prisons or jails [who] **and** believe that container labeling will constitute a security risk at the institution[,] may request a waiver of the labeling requirements of this subchapter. The waiver shall [insure] **ensure** that the employees of the public employer receive all of the information about hazardous and other substances in containers [that] **to which** they are entitled [to] under the Act, although in a modified manner.

(m) — (q) (No change.)

8:59-5.3 Research and development laboratories

(a) Alternative labeling system requirements follow:

1. Instead of labeling pursuant to this subchapter, **an** employer[s who] **that** follows the procedure in (c) below and [are approved by] **that** the Department **approves** as a research and development laboratory may label containers in the research and development laboratory by means of a code or number system. The code or number system must enable a public employee or emergency responder to readily make a cross reference to a hazardous substance fact sheet or documentary material **that is** retained on file by the employer at the facility, which will provide the public employee or emergency responder with the chemical name or common name permitted by N.J.A.C. 8:59-5.7, and [Chemical Abstracts Service] **CAS** number of the substance contained in the container, if it exists, or the trade secret registry number assigned to the substance. The labeling threshold based on container size set forth in N.J.A.C. 8:59-5.6 shall apply to research and development laboratories using the alternative labeling system.

2. (No change.)

(b) OSHA Laboratory Standard requirements follow:

1. Instead of labeling pursuant to this subchapter or (a) above, **an** employer[s who] **that** follows the procedure in (c) below and [are approved by] **that** the Department **approves** as a research and development laboratory[,], may label containers in accordance with the Occupational Safety and Health Standard adopted by the United States Occupational Safety and Health Administration (OSHA), for private employers, and by the New Jersey Department of Labor **and Workforce Development**, for public employers, entitled “Occupational Exposure to Hazardous Chemicals in Laboratories”

(Laboratory Standard), at 29 CFR [Part 1910, Section 1450 (]1910.1450[)], promulgated on January 31, 1990, at 55 FR 3300,] for private employers, and at N.J.A.C. 12:100-4.2[, promulgated on June 21, 1993, at 25 N.J.R. 2688(b),] for public employers.

2. In order for **a** public employer[s] to qualify for the labeling exemption in (b)1 above, **the public employer shall comply with** all other requirements of the Laboratory Standard [shall be complied with by the public employer], including the chemical hygiene plan, information and training, and hazard identification. Such training shall be given to all public employees exposed or potentially exposed to hazardous chemicals in the research and development laboratory, including maintenance personnel and persons washing laboratory equipment.

3. (No change.)

(c) An employer that wishes to obtain a research and development laboratory exemption shall comply with the following procedure:

1. For public employers, the employer shall submit to the Department [of Health and Senior Services] a completed research and development laboratory exemption application on forms approved by the Department.

2. –3. (No change.)

4. Upon receipt of a completed research and development laboratory exemption application, the Department of Health [and Senior Services] and **the** Department of Environmental Protection [shall] jointly **shall** make a determination to grant or deny the application. A letter will be sent by the Department [of Health and Senior Services] (to public employers) or the [DEP] **Department of Environmental Protection** (to private employers) to the applicant advising [them] **the applicant** of the approval or denial of

the application. The research and development laboratory exemption shall become effective upon receipt by the employer of a letter from the Department [of Health and Senior Services] or [DEP] **the Department of Environmental Protection** approving the application.

5. Employers [who] **that** have received a research and development laboratory exemption as of August 2, 1993, need not reapply according to the procedure set forth in (c)1 through 4, above, and the terms and scope of existing exemptions are not affected by these amendments. Any changes [which] **that** the employer wishes to make to the terms and scope of an existing exemption would require an application to be made pursuant to (c)1 through 4, above, reflecting those changes.

8:59-5.5 Exceptions to labeling requirements; Federal and State labeling laws

(a) — (h) (No change.)

(i) Labels on shipping containers of controlled substances regulated by the Federal Controlled Substances Act and/or the Controlled Substances Import and Export Act [which] **that** purposefully do not indicate the contents of the container as controlled substances in order to guard against storage and in-transit losses may be substituted for the information required by N.J.A.C. 8:59-5.1.

(j) (No change.)

8:59-5.6 Exclusions from the requirement to label

(a) Containers containing the following categories of hazardous or other substances shall be exempt from the requirements of labeling:

1.—2. (No change.)

3. Any hazardous or other substance [which] **that** is a special health hazard substance constituting less than the threshold percentage [established by] **that** the Department [of Health and Senior Services] **establishes** for that special health hazard substance when present in a mixture. The threshold percentage for carcinogens, mutagens, and teratogens shall be 0.1 percent;

4. Any product [which] **that** contains a hazardous or other substance in the same form and concentration as a product packaged for distribution and use by the general public, if the primary use container of the product is two kilograms (4.4 pounds) or two liters (0.53 gallons) or smaller.

i.—iii. (No change.)

5. — 7. (No change.)

8. Food, drugs, cosmetics, or alcoholic beverages in a retail establishment [which] **that** are packaged for sale to consumers;

9. — 10. (No change.)

11. Substances [which] **that** are an integral part of a facility structure or furnishings; or

12. Products [which] **that** are the personal property and are for the personal use of an employee.

(b) Process containers and directly associated piping, [whose] **of which the** contents change with the same frequency as the contents of the process containers, and sample valves from the process containers and directly associated piping, need not be labeled.

This exclusion shall not apply to pipeline labeling requirements in N.J.A.C. 8:59-5.2, which regulates the labeling of valves, outlets, vents, drains, and sample connections.

(c) A container [which] **that** is removed from a larger container that is labeled in accordance with this subchapter, [which is] intended only for the immediate use of the employee who performs the removal, and [which] is used up during the employee's workshift, need not be labeled.

(d) Articles that are excluded by (a)¹ above shall include solid articles that contain some amount of liquid or powder [which] **that**, due to the design and use of the article, is not released from the article and thus does not cause any exposure to public employees and emergency responders. The following solid articles, which are examples and do not represent an exclusive list of excluded articles, meet the requirements of (a)¹ above and are excluded from labeling:

1. — 13. (No change.)

(e) — (f) (No change.)

(g) All containers that are two kilograms (4.4 pounds) or two liters (0.53 gallons) or smaller shall be exempt from labeling.

1. The container thresholds in (g) above shall not apply to products that contain carcinogenic, mutagenic, or teratogenic substances [which] **that** are listed on the Special Health Hazard Substance List. (See N.J.A.C. 8:59-10.2.) For products that are below the two-kilogram/two-liter threshold and contain carcinogens, mutagens, or teratogens, the chemical names and [Chemical Abstracts Service] **CAS** numbers of all carcinogens, mutagens, and teratogens shall be listed on the product's label. Other ingredients do not need to be listed on the label.

2. The container thresholds in (g) above shall not apply to products that contain flammable, reactive, or corrosive substances [which] **that** are listed on the Special Health Hazard Substance List, and that meet the Special Health Hazard Substance List's criteria for flammability, reactivity, or corrosivity. (See N.J.A.C. 8:59-10.2). For products that are below the two-kilogram/two-liter threshold and meet the Special Health Hazard Substance List's criteria for flammability, reactivity, or corrosivity, the chemical names and [Chemical Abstracts Service] **CAS** numbers of the flammable, reactive, or corrosive substances [which] **that** contribute to the Special Health Hazard of the product[,] shall be listed on the product's label. Other ingredients do not need to be listed on the label.

(h) Even though public employers [who] **that** comply with the PEOSH Hazard Communication Standard, N.J.A.C. 12:100-7, may not be required to label containers below the threshold set forth in (g) above according to the requirements of the Right to Know Act, the hazardous substances in these containers still have to be reported on the Right to Know Survey, and Material Safety Data Sheets and Hazardous Substance Fact Sheets still have to be maintained in the Right to Know Central File for these chemicals.

8:59-5.7 Common name

(a) Only common names [specified by] **that** the [department] **Department specifies** may be substituted for required chemical names on labels.

(b) [Four] **For** hazardous substances listed on the Right to Know Hazardous Substance List:

1. The first name shall be considered the common name for the hazardous substance for purposes of labeling containers. If there is only one name listed for a hazardous substance on the Right to Know Hazardous Substance List, no other name [may] **shall** be used for purposes of labeling containers;

2. (No change.)

3. Generic names (designated as “gen”) listed on the Right to Know Hazardous Substance List can only be used on container labels if there is a CAS number next to the generic name, except [for Fuel Oil and Petroleum Oil] **fuel oil and petroleum oil**, which can be used without a CAS number. The phrase “[Fuel Oil] **fuel oil**” should be used to label heating oil.

(c) For substances not listed on the Right to Know Hazardous Substance List, any synonym accepted by the [Chemical Abstracts Service] **CAS** shall be considered the common name for the substance for purposes of labeling containers.

8:59-5.9 Trade secret registry number

(a) (No change.)

(b) [Upon notification by the department that a trade secret claim has been denied, and after all appeals have been exhausted, an] **An** employer shall replace the trade secret registry number on the container with the chemical name or common name permitted by N.J.A.C. 8:59-5.7, and [Chemical Abstracts Service] **the CAS** number, pursuant to N.J.A.C. 8:59-3, within 10 days of notification **by the Department that a trade secret claim has been denied and after all appeals have been exhausted.**

SUBCHAPTER 6. EDUCATION AND TRAINING PROGRAM--FOR PUBLIC EMPLOYERS

8:59-6.1 General provisions

(a) The requirements for training public employees about hazardous chemicals can be found in the PEOSH Hazard Communication Standard, N.J.A.C. 12:100-7, adopted [by the New Jersey Department of Labor and Workforce Development] and enforced by the Public Employees Occupational Safety and Health (PEOSH) Programs in the Departments of Labor and Workforce Development and [the Department of] Health [and Senior Services].

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

(d) All public employers shall submit, attached to their Right to Know Survey, a certification that employees who are exposed or are potentially exposed to hazardous substances in the course of their employment, have received an education and training program [which] **that** meets the requirements of N.J.A.C. 8:59-6.3 that were in effect prior to April 18, 2005, within the deadlines set forth in N.J.A.C. 8:59-6.2 that were in effect prior to April 18, 2005. Research and development laboratories shall certify by letter that all employees have received an education and training program [which] **that** meets the requirements of N.J.A.C. 8:59-6.3 by January 1 of each year. This requirement shall end after the 2003 Right to Know Survey.

(e) (No change.)

8:59-6.3 Contents of program

(a)-(c) (No change.)

(d) Every public employer shall post, on bulletin boards or in other conspicuous areas in the facility, any posters [designed and provided by] **that** the Department **designs and provides**, to inform employees of their rights under the Act.

(e) Research and development laboratories shall provide their employees [with] appropriate hazardous substance fact sheets and available material safety data sheets upon request.

8:59-6.4 Documentation for program

(a) A public employer must maintain the following documentation of all initial and biennial Right to Know education and training programs given to employees prior to adoption of the PEOSH Hazard Communication Standard on May 3, 2004:

1.—2. (No change.)

3. Rosters of attendance, which shall include the names and signatures of participants for each session. If the classroom and walkthrough sessions are given at different times, separate rosters must be maintained. The participant's title or job description shall also be listed. For emergency responders who have taken the State Police or other [Department approved] **Department-approved** Hazardous Materials Emergency Responder Awareness and Operational training courses, certificates from these courses shall be sufficient proof of attendance at these courses;

4.—9. (No change.)

(b) — (c) (No change.)

SUBCHAPTER 7. EMPLOYEE AND PUBLIC ACCESS TO INFORMATION

8:59-7.1 Department [of Health and Senior Services] obligations

(a) The Department [of Health and Senior Services] shall maintain a file of all completed Right to Know Surveys received from public employers and hazardous substance fact sheets prepared by the Department or by public employers.

(b) The Department shall retain hazardous substance fact sheets [prepared by the Department] **that it prepared**, and each Right to Know survey and hazardous substance fact sheet received from public employers, for 30 years.

(c) — (d) (No change.)

(e) [Any] **The Department shall treat as confidential any** request **made pursuant to (c) above** by an employee for material pertaining to the facility [where] **at which** he or she is employed [made pursuant to (c) above shall be treated by the Department as confidential].

(f) Any person who requests the disclosure of information for which a trade secret claim has been made or approved[,] shall follow the procedures set forth in N.J.A.C. 8:59-3.10.

(g) — (h) (No change.)

8:59-7.2 Employer obligations

(a) (No change.)

(b) Every public employer shall post, on bulletin boards in the facility, readily accessible to employees, a notice of the availability of Right to Know Surveys, hazardous substance fact sheets, material safety data sheets, and the Right to Know Hazardous

Substance List, from the employer, from the Department [of Health and Senior Services], from the Department of Environmental Protection, and from the county health department, county clerk, or designated county lead agency. A poster provided by the Department shall be used to meet the requirements of this subsection.

(c) A public employer [shall], upon request, **shall** provide an employee whose native language is Spanish or employee representative[, with] a Spanish translation of a Right to Know survey, hazardous substance fact sheet and, if applicable, a material safety data sheet. Every employer with employees whose native language is Spanish shall post the notice required in (b) above in Spanish.

(d) A public employer [shall], upon written request, **shall** provide an employee or employee representative [with] a copy of a Right to Know survey, appropriate hazardous substance fact sheets and, if applicable, material safety data sheets, at no cost. This information shall be provided as soon as possible but at the latest within five working days of the request. For a mixture, a public employer [shall], upon written request, **shall** provide an employee or employee representative [with] a copy of the appropriate material safety data sheet.

(e) A public employer [shall], upon written request, **shall** provide an employee or employee representative [with] the chemical name of a substance in a container labeled with a common name. This information shall be provided as soon as possible but at the latest within five working days of the request.

(f) A public employer [shall], upon written request, **shall** provide an employee or employee representative [with] the chemical name and [Chemical Abstracts Service] **CAS** number or trade secret registry number of all hazardous substances and the five

most predominant substances contained in any container [which] **that** is not labeled pursuant to the Act. This information shall be provided as soon as possible but at the latest within five working days of the request.

(g) (No change.)

(h) If a public employer cannot supply a hazardous substance fact sheet or the chemical name and [Chemical Abstracts Service] **CAS** number of a substance to an employee who requested it, because the employer has not received the hazardous substance fact sheet [which] **that** the employer requested from the Department, or does not know the name of the substance or substances constituting the components of the product and has reported this to the Department, the public employer shall:

1. Inform the employee in writing that it has requested and not received the hazardous substance fact sheet from the Department, and provide the employee [with] the appropriate material safety data sheet; or

2. Inform the employee in writing that it has reported to the Department that it does not know the name of the substance or substances constituting the components of the product, and provide the employee [with] the appropriate material safety data sheet.

(i) — (j) (No change.)

8:59-7.3 County health department, county clerk, or designated county lead agency obligations

(a) — (b) (No change.)

(c) A county health department, county clerk, or designated county lead agency [shall], upon request, **shall** provide [to] any person copies of the Right to Know Survey and

hazardous substance fact sheet in a Spanish translation provided by the Department of Health [and Senior Services], **the** Department of Environmental Protection, or an employer.

(d) [Any] **The county health department, county clerk, or designated county lead agency, shall treat as confidential any** request **made pursuant to (b) and (c) above** by an employee for material pertaining to the facility [where] **at which** he or she is employed [made pursuant to (b) and (c) above shall be treated by the county health department, county clerk, or designated county lead agency as confidential].

8:59-7.5 Employee rights

(a) (No change.)

(b) A public employee shall have the right to refuse to work with a hazardous substance for which a request was made for a Right to Know survey, appropriate hazardous substance fact sheet, or material safety data sheet, and shall have the right to refuse to work with any substance for which a request was made for the chemical name and [Chemical Abstracts Service] **CAS** number of a substance in a container [which] **that** is not labeled pursuant to N.J.A.C. 8:59-5 or the chemical name of a substance labeled with a common name, for the facility at which he or she is employed, and not honored within five working days of the request, without loss of pay or forfeit of any other privilege until the request is honored, except in the case of (c) below.

(c) (No change.)

SUBCHAPTER 8. ENFORCEMENT

8:59-8.1 Violations

Whenever, on the basis of information available to [him,] the Commissioner of the Department [of Health and Senior Services], **the Commissioner** finds that an employer is in violation of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., or any rule or regulation adopted pursuant thereto, the Commissioner [of the Department of Health and Senior Services] shall issue an order requiring the [employee] **employer** to comply, shall bring a civil action, shall levy a civil administrative penalty, or shall bring an action for a civil penalty, in accordance with N.J.S.A. 34:5A-31. The exercise of any of the remedies provided in this subchapter shall not preclude recourse to any other remedy so provided.

8:59-8.2 Civil administrative penalty

(a) The Commissioner of the Department [of Health and Senior Services] is authorized pursuant to N.J.S.A. 34:5A-31(a)(3) and (d) to impose a civil administrative penalty of not more than \$2,500 for each violation and additional penalties of not more than \$1,000 for each day during which a violation continues after receipt of an order from the Commissioner to cease the violation.

(b) The penalty [which] **that** may be assessed for a violation is to be determined by application of factors indicative of the seriousness and type of the violation, as set forth below.

1. Seriousness:

- i. (No change.)

ii. Within the Commissioner's discretion, major violations shall include, but not be limited to:

(1) — (3) (No change.)

(4) Failure to make a good faith effort to obtain the chemical names and [Chemical Abstracts Service] **CAS** numbers of the components of a product, which are unknown to the employer, from the manufacturer or supplier of the product;

(5) Failure to supply the chemical name or common name and [Chemical Abstracts Service] **CAS** number of a substance claimed to be a trade secret on the trade secret claim form [which] **that** is filed with the Department;

(6) — (11) (No change.)

(12) Failure by a public employer to provide public employees [with] material provided by the Department;

(13) (No change.)

(14) Failure by a public employer to provide a public employee [with] a copy of a Right to Know survey, appropriate hazardous substance fact sheets, and, if applicable, material safety data sheets, as soon as possible but at the latest within five working days of the request;

(15) — (16) (No change.)

(17) Failure by a public employer to establish and maintain a central file [which] **that** contains a Right to Know survey, appropriate

hazardous substance fact sheets and material safety data sheets, and **the** Right to Know Hazardous Substance List;

(18) Failure by a public employer to provide a public employee [with] the chemical name of a substance in a container labeled with a common name, or in a container [which] **that** is not labeled pursuant to the provisions of N.J.A.C. 8:59-5, as soon as possible or at the latest within five working days of the request.

iii. Any other violations of the Act or these rules [shall] generally **shall** be considered to be non-serious violations. The Commissioner reserves the right to find other violations of the Act to be serious.

2. Type factor: The type factor reflects the circumstances of the violation and the responsibility of the violator. There are three types of violations:

i. Willful: A willful violation is one [which] **that** is the result of some deliberate, knowing, or purposeful action or inaction by the violator.

ii. Highly foreseeable: A highly foreseeable violation is one [which] **that**, while not willful, was so clearly likely to have happened under all the circumstances that the violator can be charged with having known it was going to happen and failing to prevent it.

iii. Unintentional but foreseeable: An unintentional but foreseeable violation is one [which] **that** the violator, by the exercise of reasonable diligence, could and should have foreseen and prevented.

3. The following presumptions shall be applied in the determination of the appropriate type factor:

i. (No change.)

ii. Any violation known to the violator [which] **that** continues for a period of 30 days or more without the violator taking steps to eliminate it, shall be presumed a willful violation.

4. — 5. (No change.)

(c) (No change.)

(d) The employer shall have 20 calendar days from receipt of the notice of imposition of a civil administrative penalty within which to deliver to the Commissioner a written request for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1[-1 et seq].

Subsequent to the hearing and upon finding that a violation has occurred, the Commissioner may issue a final order imposing the amount of the fine specified in the notice or such lesser amount as [he] **the Commissioner** may assess pursuant to the provisions on compromise of [N.J.A.C. 8:59-8.2(h)] **(h) below**.

(e) If no hearing is requested, the notice of imposition of a civil administrative penalty shall become a final order upon expiration of the [20 calendar day] **20-calendar-day** period following receipt of the notice by the employer.

(f)-(g) (No change.)

(h) [A] **The Commissioner may compromise** a civil administrative penalty imposed pursuant to this subchapter [may be compromised by the Commissioner], in whole or in part, upon the posting by the employer of a performance bond in an amount and upon terms and conditions [deemed satisfactory by] **that** the Commissioner **deems satisfactory**.

8:59-8.3 Standing to sue

(a) Any person may bring a civil action in law or equity on his or her own behalf against any employer for a violation of any provision of the Act or any rule and regulation promulgated pursuant thereto, or against the Department [of Health and Senior Services] for failure to enforce the provisions of the Act or any rule or regulation promulgated pursuant thereto.

(b) (No change.)

8:59-8.4 Right to enter employer's facility

(a) The Department [of Health and Senior Services] shall have the right to enter an employer's facility during the normal operating hours of the facility to determine the employer's compliance with the Act pursuant to N.J.S.A. 34:5A-29(a).

(b) Any local or county health department or regional health agency [which] **that** has entered into an interagency agreement with the Department[,] shall have the right to enter an employer's facility to determine the employer's compliance with the provisions of the Act and rules and regulations adopted pursuant thereto, within the territory under its jurisdiction. The local or county health department or regional health agency shall conduct this inspection during the normal operating hours of the facility and in accordance with guidelines [established by] **that** the Department [of Health and Senior Services] **establishes** for inspection of employer's facilities. Inspection reports and recommendations of the local health officials shall be transmitted to the Department [of

Health and Senior Services]. All enforcement action shall be taken by the Department [of Health and Senior Services].

8:59-8.5 Employee health and exposure records

(a) Within 30 days of a request by the [department] **Department**, an employer shall provide the [department with] **Department** copies of employee health and exposure records, including those maintained for, and supplied to, the Federal government.

(b) [When the department] **Within 10 days of a Department** request[s] for employee medical records that include the individuals' names, the employer shall[, within 10 days,] grant the [department] **Department** access to the employees, either in person or by supplying home addresses, in order to request permission to review their medical records.

(c) An employer [who] **that** wishes to file a trade secret claim for the name of a substance on employee health and exposure records may do so. Said employer shall contact the [department] **Department** for instruction regarding the filing of such a claim.

(d) The use of the employee health and exposure records obtained pursuant to (a) and (b) above is not limited to the evaluation of an employee's health and exposure to hazardous substances. The information obtained will be used in epidemiological studies to determine the impact of hazardous substances on worker and community populations. The study of worker exposure to a hazardous substance indicates the health effect of that substance on a person, whether [he] **that person** is in the workplace or in the community. Such data from health and exposure records are

necessary for determining the health effects to community residents from hazardous substances.

(e) (No change.)

8:59-8.6 Civil administrative order

(a) Whenever, on the basis of information available to [him,] the Commissioner of the Department [of Health and Senior Services], **the Commissioner** finds that an employer is in violation of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., or any rule or regulations adopted pursuant thereto, the Commissioner [of the Department of Health and Senior Services may], pursuant to N.J.S.A. 34:5A-31(a)(1) and (b), **may** issue an order:

1. — 4. (No change.)

(b) (No change.)

(c) The employer shall have 20 calendar days from receipt of the civil administrative order within which to deliver to the Commissioner a written request for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., **and 52:14F-1 et seq.**, and the Uniform Administrative **Procedure** Rules [of Procedure], N.J.A.C. 1:1[-1 et seq]. Subsequent to the hearing and upon finding that a violation has occurred, the Commissioner may issue a final order requiring the employer to comply with the provisions of the Act or the rules and regulations adopted pursuant thereto of which the employer is in violation, as specified in the civil administrative order.

(d) If no hearing is requested, the civil administrative order shall become a final order upon expiration of the [20 calendar day] **20-calendar-day** period following receipt of the order by the employer.

(e) (No change.)

8:59-8.7 Civil action

The Commissioner of the Department [of Health and Senior Services] is authorized to commence a civil action in Superior Court for appropriate relief from a violation of the Act pursuant to N.J.S.A. 34:5A-31(a)(2) and (c). The relief may include an assessment against the violator for the costs of any investigation, inspection, or monitoring survey [which] **that** led to the discovery and establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subchapter.

8:59-8.8 Civil penalty

(a) An employer [who] **that** violates the Act, an order issued pursuant to N.J.A.C. 8:59-8.6, or a court order issued pursuant to N.J.A.C. 8:59-8.7, or [who] fails to pay in full a civil administrative penalty levied pursuant to N.J.A.C. 8:59-8.2, shall be subject, upon order of a court, to a civil penalty not to exceed \$2,500 for each day during which the violation continues, pursuant to N.J.S.A. 34:5A-31(a)(4) and (e).

(b) An employer [who] **that** willfully or knowingly violates the Act[, or who]; willfully or knowingly makes a false statement, representation, or certification in any document filed or required to be maintained under the Act[.]; or [who] falsifies, tampers with, or knowingly renders inaccurate, any monitoring device required to be maintained

pursuant to the Act, is subject upon order of a court, to a civil penalty of not less than \$10,000, [nor] **and not** more than \$5,000, per day of violation, pursuant to N.J.S.A. 34:5A-31(a)(4) and (e).

(c) Any penalty imposed pursuant to this section may be collected, and any costs incurred in connection therewith may be recovered, in a summary proceeding pursuant to the “Penalty Enforcement Law[”],” N.J.S.A. 2A:58-1 et seq. The Superior Court shall have jurisdiction to enforce the “Penalty Enforcement Law[”].”

8:59-8.9 Inspection procedures

(a) Right to Know Enforcement Officers [of the Department of Health and Senior Services] are authorized to enter during normal operating hours any facility or other area where work is performed by a public or private employee of an employer; to inspect and investigate during normal operating hours within reasonable limits and in a reasonable manner, any such facility; and to review records required by the Act and rules and regulations promulgated pursuant thereto, and other records [which] **that** are directly related to the purpose of the inspection.

(b) Upon a refusal to permit the Right to Know Enforcement Officer[, in exercise of his] **exercising** official duties[,], to enter an employer’s facility during normal operating hours, to inspect, to review records, or to question any employer, owner, operator, agent, or public or private employee, the Department shall take appropriate action, including compulsory process, if necessary. The term “compulsory process” [shall] **means** the institution of any appropriate action, including [ex parte] **ex parte** application for an inspection warrant or its equivalent.

(c) — (e) (No change.)

8:59-8.10 Representatives of employers and public employees

(a) Right to Know Enforcement Officers shall be in charge of inspections and questioning of persons. A representative of the employer and, for public employers, a representative authorized by the public employees, shall be given an opportunity to accompany the Right to Know Enforcement Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Right to Know Enforcement Officer may permit additional employer representatives and, for public employers, additional representatives authorized by public employees, to accompany [him where he] **the Right to Know Enforcement Officer if the Right to Know Enforcement Officer** determines that such additional representatives will further aid the inspection. A different employer and, for public employers, a public employee representative may accompany the Right to Know Enforcement Officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

(b) — (d) (No change.)

8:59-8.11 Complaints by public or private employees

(a) Any public or private employee, or representative of public or private employees, who believes that a violation of the Act exists in any workplace where such public or private employee is employed, may request an inspection of such workplace by giving notice of the alleged violation to the Department or a Right to Know Enforcement Officer. Upon the request of the person giving such notice, **the Department shall keep**

confidential his or her name and the names of individual public or private employees [referred] to [therein shall be kept confidential by the Department] **whom the request or the notice refers.**

(b) Prior to or during any inspection of a workplace, any public or private employee or representative of public or private employees employed in such workplace may notify the Right to Know Enforcement Officer of any violation of the Act [which he or she] **that the employee or representative** has reason to believe exists in such workplace.

8:59-8.12 Posting of orders, penalties, and notices of contest

(a) Upon receipt of any civil administrative order, civil administrative penalty, court order, or civil penalty under the Act, a public employer [shall] immediately **shall** post such order or penalty, or a copy thereof, unedited, at or near each place an alleged violation referred to in the order or penalty occurred, and a private employer shall send a copy of such order or penalty to the local fire department. [Where] **if**, because of the nature of a public employer's operations, it is not practicable to post the order or penalty at or near each place of alleged violation, such order or penalty shall be posted, unedited, in a prominent place where it will be readily observable by all affected public employees.

(b) (No change.)

(c) Any public employer [who] **that** contests the provisions of a civil administrative order, civil administrative penalty, court order, or civil penalty, shall post such notice of contest next to the order or penalty being contested for as long as the order or penalty is

required to be posted. A private employer shall send such notice of contest to the local fire department.

SUBCHAPTER 9. RIGHT TO KNOW HAZARDOUS SUBSTANCE LIST

8:59-9.1 General provisions

(a) (No change.)

(b) The absence of any substance from the Right to Know Hazardous Substance List or the provision of any information by an employer to an employee or any other person pursuant to the provisions of the Act, shall not [in any way] affect **in any way** any other liability of an employer with regard to safeguarding the health and safety of an employee or any other person exposed to the substance, [nor] **and** shall [it] **not** affect any other duty or responsibility of an employer to warn ultimate users of a substance of any potential health hazards associated with the use of the substance pursuant to the provisions of any law or rule or regulation adopted pursuant thereto.

8:59-9.2 Contents of the Right to Know Hazardous Substance List

(a) (No change.)

(b) The Right to Know Hazardous Substance List identifies the Chemical Abstract Service number, a common name, the chemical name, the Right to Know Substance Number assigned by the Department, the [U.S.] **United States** Department of Transportation Number, and the source or sources, which provides scientific evidence supporting selection of the substance to the [list] **Right to Know Hazardous Substance List**, for each substance.

8:59-9.3 Modification of the [list] **Right to Know Hazardous Substance List**

(a) The Department shall periodically review the Right to Know Hazardous Substance List and shall make any necessary revisions in accordance with the procedures set forth in (b) through (f) below. The [list shall be revised by the department] **Department shall revise the Right to Know Hazardous Substance List**, if necessary, every three years unless the Department determines that special circumstances warrant an earlier revision.

(b) The **Department shall revise the** Right to Know Hazardous Substance List [shall be revised] to reflect revisions to the following sources, which are hereby incorporated by reference, as from time to time supplemented or amended:

1. (Source #1) **United States Code of Federal Regulations, Title 29 — Labor, Subtitle B — Regulations Relating to Labor, Chapter XVII — Occupational Safety and Health Administration, [29 CFR] United States Department of Labor, Part 1910 — Occupational Safety and Health Standards, Subpart Z — Toxic and Hazardous Substances**[, July 1, 2008.];

2. (Source #2) “[2009] **2018 TLVs® and BEIs® Based on the Documentation of the Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices**,” American Conference of Governmental Industrial Hygienists (ACGIH), [2009.] **1330 Kemper Meadow Drive, Cincinnati, OH 45240, telephone: (513) 742-2020;**

3. (Source #3) [Office of Hazardous Materials, Safety, Research and Special Programs Administration, U.S. Department of] **United States Code of Federal**

Regulations, Title 49 — Transportation, [49 CFR] Subtitle B — Other Regulations Relating to Transportation, Chapter I — Pipeline and Hazardous Materials Safety Administration, Department of Transportation, Subchapter C — Hazardous Materials Regulations, Part 172[.101-] — Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans, Subpart B — Hazardous Materials Table[, October 1, 2008.] and Special Provisions;

4. (Source #4) “NIOSH Pocket Guide to Chemical Hazards,” National Institute for Occupational Safety and Health (NIOSH), [U.S.] **Centers for Disease Control and Prevention, United States** Department of Health and Human Services, **Publication** No. 2005-149, September [2005.] **2007, available in print, online, PDF, and mobile web application formats, at <https://www.cdc.gov/niosh/npg>, and from NIOSH Publications, 4676 Columbia Parkway, Cincinnati, OH 45226-1998, telephone: (800) 356-4674, telefacsimile: (513) 533-8573;**

5. (Source #5) “[Eleventh] Report on Carcinogens[, 2004] **2016, Fourteenth Edition,**” National Toxicology Program, National Institute of Environmental Health Sciences, Public Health Service, [U.S.] **United States** Department of Health and Human Services, [2004.] **available in print, online, and in PDF formats, at <https://ntp.niehs.nih.gov/pubhealth/roc/index.html>, and from Office of the Report on Carcinogens, National Toxicology Program, National Institute of Environmental Health Sciences, PO Box 12233, MD K2-14, Research Triangle Park, NC 27709, telephone: (984) 287-3155;**

6. (Source #6) **New Jersey Administrative Code, Title 7. Environmental Protection, Chapter 1G. Worker and Community Right to Know Regulations, Subchapter 2.** [“]Environmental Hazardous Substance List[,” New Jersey Department of Environmental Protection, N.J.A.C. 7:1G-2, as printed in the Community Right to Know Survey Instruction Book, 2008.];

7. (Source #7) [“IARC Monographs on the Evaluation of Carcinogenic Risks to Humans,” All Supplements, All Volumes,] **“Agents Classified by the IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Volumes 1–120,”** Groups 1, 2A, 2B, and 3 **(last updated January 26, 2018)**, International Agency for Research on Cancer [(IARC)], World Health Organization, [2008.] **available online and in PDF format at <http://monographs.iarc.fr/ENG/Classification/index.php>;**

8. (Source #8) Integrated Risk Information System (IRIS) [Database for Risk Assessments, **Integrated Risk Information System Division, National Center for Environmental Assessment**, Office of Research and Development, [National Center for Environmental Assessment, U.S.] **United States** Environmental Protection Agency [(EPA), September 2008.], **available online at <https://www.epa.gov/iris>;**

9. (Source #14):

i. **New Jersey Administrative Code, Title 7. Environmental Protection, Chapter 30. Pesticide Control Code, Subchapter 2. Pesticide Product Registration, General Requirements,** [“]Prohibited and Restricted Use Pesticides,[” New Jersey Department of Environmental Protection,] **at N.J.A.C. 7:30-2.9, Prohibited pesticides,** and 2.10, [April 22, 2008.] **Restricted use pesticides;**

ii. **United States Code of Federal Regulations, Title 40 — Protection of Environment, Chapter I — Environmental Protection Agency, Subchapter E — Pesticide Programs, Part 152 — Pesticide Registration and Classification Procedures, Subpart I — Classification of Pesticides, § 152.175** Pesticides classified for restricted use[, United States Environmental Protection Agency, 40 CFR 152.175, July 1, 2008.];

10. (Source #15) “Fire Protection Guide to Hazardous Materials,” NFPA 49 (Hazardous Chemicals Data), NFPA 325 (Guide to Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids), and NFPA 704 (Standard System for the Identification of the Hazards of Materials for Emergency Response), National Fire Protection Association (NFPA), 2001[.];

11. (Source #17) [2008] “Emergency Response Guidebook [,Research and Special Programs Administration]: **A guidebook intended for use by first responders during the initial phase of a transportation incident involving dangerous goods/hazardous materials,**” (2016) Pipeline and Hazardous Materials Safety Administration, [U.S.] United States Department of Transportation, [2008.] **available in print, PDF, and mobile web application formats, and online at <https://www.phmsa.dot.gov/hazmat/erg/emergency-response-guidebook-erg>, and from the United States Government Publishing Office, PO Box 979050, St. Louis, MO 63197-9000, telephone (866) 512-1800, <http://bookstore.gpo.gov>;**

12. (Source #18) [List of] **United States Code of Federal Regulations, Title 40, Subchapter J — Superfund, Emergency Planning, and Community Right-To-Know Programs, Part 372 — Toxic[s] Chemical Release [Inventory Chemicals, Section 313,**

Emergency Planning and] **Reporting:** Community [Right to Know Act (EPCRA)] **Right-to-Know, Subpart D — Specific** Toxic[s Release Inventory (TRI) Program, U.S. Environmental Protection Agency, 40 CFR] **Chemical Listings, § 372.65**, [July 1, 2008.] **Chemicals and chemical categories to which this part applies;**

13. (Source #19) **United States Code of Federal Regulations, Title 40, Subchapter J — Superfund, Emergency Planning, and Community Right-To-Know Programs, Part 355 — Emergency Planning and Notification, and Appendix A to Part 355 — The List of Extremely Hazardous Substances and Their Threshold Planning Quantities [(TPQ), Section 302, Emergency Planning and Community Right to Know Act (EPCRA), U.S. Environmental Protection Agency, 40 CFR 355-Emergency Planning and Notification, Appendix A, July 1, 2008.];**

14. (Source #20) **United States Code of Federal Regulations, Title 40, Subchapter J — Superfund, Emergency Planning, and Community Right-To-Know Programs, Part 302 — Designation, Reportable Quantities, and Notification, § 302.4 Designation of hazardous substances, and Table 302.4 List of Hazardous Substances and Reportable Quantities [(RQ), Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), U.S. Environmental Protection Agency, 40 CFR 302, Table 302.4, July 1, 2008.];**

15. (Source #21) **United States Code of Federal Regulations, Title 40, Subchapter I — Solid Wastes, Part 261 — Identification and Listing of Hazardous Waste, Subpart D — Lists of Hazardous Wastes [from the P and U Lists], [Resource Conservation and Recovery Act (RCRA), U.S. Environmental Protection Agency, 40**

CFR] § 261.33[, July 1, 2008.] **Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof; and**

16. (Source #22) **United States Code of Federal Regulations, Title 40, Subchapter C — Air Programs, Part 68 — Chemical Accident Prevention Provisions, Subpart F — Regulated Substances for Accidental Release Prevention, § 68.130 List of substances, and Table 1 to § 68.130 — List of Regulated Toxic Substances and Threshold Quantities for Accidental Release Prevention [(Table 1)], and Table 3 to § 68.130 — List of Regulated Flammable Substances and Threshold Quantities for Accidental Release Prevention [(Table 3), Section 112(r), Federal Clean Air Act Amendments, U.S. Environmental Protection Agency, 40 CFR 68.130, Tables 1 and 3, July 1, 2008].**

(c) The Department shall add to the Right to Know Hazardous Substance List any substance [which] **that** it determines **to** pose[s] a threat to the health or safety of any employee or emergency responder [and is], based on documented scientific evidence.

(d) (No change.)

(e) The Department shall consider relevant scientific information in evaluating a revision to the Right to Know Hazardous Substance List. For substances [which] **that** cause health effects, this information may include, but is not limited to, short-term [in vitro] **in vitro** tests, animal toxicity tests, human epidemiological studies, clinical studies, and scientifically documented reports of symptoms or adverse health effects among employees. The Department may investigate the situation surrounding any studies or reports in order to obtain additional information regarding a revision.

1.— 4. (No change.)

(f) [Notice] **The Department shall publish notices** of proposed revisions to the Right to Know Hazardous Substance List [which] **that** are not included in (b) above [shall be published] as necessary in the New Jersey Register as [a] proposed amendments to these rules in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. At least 30 days shall be allowed for public comment. A public hearing shall be held, if, in the Department's determination, there is significant public interest in the proposal. Notices of revisions made pursuant to (b) above shall be published in the New Jersey Register as [a] public notices and incorporated into the **Hazardous Substance** List.

(g) (No change.)

SUBCHAPTER 10. SPECIAL HEALTH HAZARD SUBSTANCE LIST

8:59-10.1 General provisions

(a) The Special Health Hazard Substance List consists of hazardous substances on the Right to Know Hazardous Substance List [which,] **that pose a special hazard to the health and safety of employees or the community** because of their known carcinogenicity, mutagenicity, or teratogenicity in humans, animals, or [in vitro] ***in vitro*** tests; or because of their flammability, [reactivity/explosivity] **reactivity, explosivity,** or corrosivity[, pose a special hazard to the health and safety of employees or the community].

(b) (No change.)

(c) The absence of any substance from the Special Health Hazard Substance List shall not imply that a substance is not carcinogenic, mutagenic, teratogenic, flammable, [reactive/explosive] **reactive, explosive,** or corrosive. Such absence, or the provision of any information by an employer to an employee or any other person pursuant to the provisions of the Act, shall not **affect**, in any way [affect], any other liability of an employer with regard to safeguarding the health and safety of an employee or any other person exposed to the substance, [nor] **and** shall [it] **not** affect any other duty or responsibility of an employer to warn ultimate users of a substance of any potential special health hazards associated with the use of the substance pursuant to the provisions of any law or rule or regulation adopted pursuant thereto.

(d) An employer shall not make a trade secret claim on the Right to Know survey or for labeling containers for any carcinogenic, mutagenic, or teratogenic substance [which] **that** is listed on the Special Health Hazard Substance List and is present as a pure substance or in a mixture at a concentration of one-tenth of one percent or greater, or for any flammable, explosive, reactive, or corrosive substance [which] **that** is listed on the Special Health Hazard Substance List and is present as a pure substance or at a concentration of one percent or greater in a mixture [which] **that** meets the hazard criteria as defined in N.J.A.C. 8:59-10.2(a).

(e) All carcinogenic, mutagenic, and teratogenic substances listed on the Special Health Hazard Substance List shall be labeled with their chemical name or common name approved by the [department] **Department**, and their [Chemical Abstracts Service] **CAS** number when present as a pure substance or in a mixture at a concentration of one-tenth of one percent or greater. Flammable, explosive, reactive, and corrosive

substances [which] **that** are listed on the Special Health Hazard Substance List shall be labeled according to the provisions of N.J.A.C. 8:59-5.

8:59-10.2 Contents of the Special Health Hazard Substance List

(a) The Special Health Hazard Substance List consists of hazardous substances with the following properties:

1. Carcinogen--Carcinogens, which have met the criteria established by the International Agency for Research on Cancer (IARC) [or], the National Toxicology Program (NTP), or the [Environmental Protection Agency's,] Integrated Risk Information System (IRIS) [are included on the Special Health Hazard Substance List] **of the United States Environmental Protection Agency.**

i. — iii. (No change.)

2.—6. (No change.)

(b) The Special Health Hazard Substance List consists of the hazardous substances listed in Appendix B, which are designated by a “#” on the combined [RTKHSL] **Right to Know Hazardous Substance List** and [SHHSL] **Special Health Hazard Substance List.**

8:59-10.3 Modification of the list

The **Department shall modify the** Special Health Hazard Substance List [shall be modified] in accordance with the procedures set forth in N.J.A.C. 8:59-9.3, and with the use of other reference sources [deemed] **that the Department deems** appropriate [by the department].

SUBCHAPTER 11. COMMUNITY RIGHT TO KNOW; LABELING, PRIVATE
EMPLOYERS

8:59-11.6 Labeling containers

(a) (No change.)

(b) By March 31, 1990, every container at a private employer's facility shall bear a label indicating the chemical name and [Chemical Abstracts Service] **CAS** number of all environmental hazardous substances in the container, and all other substances [which] **that** are among the five most predominant substances in the container, or the trade secret registry number assigned to the substance. This is commonly referred to as "universal labeling[']." Common names specified in N.J.A.C. 8:59-5.7 may be substituted for the chemical name of the substance.