

RULE PROPOSALS

INTERESTED PERSONS

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

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

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

COMMUNITY AFFAIRS

(a)

DIVISION OF FIRE SAFETY

Uniform Fire Code

Proposed Amendments: N.J.A.C. 5:70-2.7 and 3.2

Authorized By: Lt. Governor Sheila Y. Oliver, Commissioner,
Department of Community Affairs.

Authority: N.J.S.A. 52:27D-198 and P.L. 2017, c. 92.

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

Proposal Number: PRN 2018-047.

Submit written comments by August 31, 2018, to:

Geraldine Callahan
Department of Community Affairs
PO Box 800
Trenton, New Jersey 08625
E-mail: Geraldine.Callahan@dca.nj.gov
Fax Number: (609) 984-6696

The agency proposal follows:

Summary

Amendments are proposed at N.J.A.C. 5:70-2.7(a)4viii and 3.2(a)2ii(22) to establish requirements for the storage and retail sales to the public of sparkling devices and novelties. This rulemaking amends the Uniform Fire Code to comply with the provisions of P.L. 2017, c. 92.

Amendments are proposed at N.J.A.C. 5:70-2.7(a)4viii and 3.2 to establish requirements for the storage and retail sales to the public of sparkling devices and novelties in any temporary or permanent structure, when the pyrotechnic content exceeds 125 pounds. Additionally, modification of the definition of fireworks is proposed; more specifically, the existing definition of fireworks is proposed to be deleted in its entirety and replaced with new text drafted to comply with the mandate of the enabling legislation and to effectuate the intent of said legislation.

Under the proposed new definition of fireworks, the term shall not include sparkling devices and novelties. The terms sparkling devices and novelties are proposed to mean wood sticks or wire sparklers containing less than 100 grams of pyrotechnic mixture per item; hand-held or ground-based sparkling devices that are non-explosive and non-aerial, that may produce a crackling or whistling effect, and contain no more than 75 grams of pyrotechnic composition per tube or a total of no more than 500 grams for multiple tubes; snakes, glow worms, smoke devices, and trick noisemakers, including party poppers, snappers and drop pops, each consisting of .25 grains or less of explosive mixture; and automobile flares, paper caps containing not more than an average of

0.25 grain (16 mg) of explosive content per cap, and toy pistols, toy canes, toy guns, and other devices utilizing such caps. In sum, these types of sparkling devices and novelties are not considered fireworks under the proposed amendments, and their sale and utilization would be permitted at all times.

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

Social Impact

The Department believes that the proposed amendments will provide a positive social impact by regulating the storage and retail sales to the public of sparkling devices and novelties, thereby allowing for increased safety of the stored or sold sparkling devices and novelties. Pursuant to the provisions of P.L. 2017, c. 92, the lawful storage, sale, possession, or use of sparkling devices and novelties are authorized, thereby allowing for increased enjoyment by consumers.

Economic Impact

The Department anticipates that the proposed amendments would have the following economic impact. Pursuant to the provisions of proposed new N.J.A.C. 5:70-2.7(a)4viii, the storage or retail sales to the public of sparkling devices and novelties would require a new type 2H08 permit when the pyrotechnic content exceeds 125 pounds, which would have the associated cost of the permit fee. However, pursuant to the proposed amendments and the enabling legislation, P.L. 2017, c. 92, it is now lawful for certain sparkling devices and novelties to be offered for sale, exposed for sale, or to sell or store sparkling devices and novelties, which would likely generate sales and associated revenue to vendors and distributors of such products.

Federal Standards Statement

No Federal standards analysis is required because the proposed amendments are not being proposed in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

Job Impact

The Department does not anticipate that any jobs would be created or lost as a result of the proposed amendments.

Agriculture Industry Impact

The Department does not anticipate that the proposed amendments would have any impact on the agriculture industry.

Regulatory Flexibility Analysis

The Department expects that the proposed amendments will not impose any added recordkeeping or reporting requirements on small businesses, as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Department believes that no additional professional services would be required for any property or business

owner required to comply, whether small business or otherwise. Pursuant to the provisions of proposed new N.J.A.C. 5:70-2.7(a)4viii, the storage or retail sales to the public of sparkling devices and novelties would require a new type 2H08 permit when the pyrotechnic content exceeds 125 pounds, which would require the business owners to apply for the permit, whether small business or otherwise. Because the permit requirement, however, is mandated necessary for the public safety and welfare, there is no basis for differential treatment of small businesses.

Housing Affordability Impact Analysis

The proposed amendments concern only sparkling devices and novelties, which are lawful to offer for sale, expose for sale, sell, store, possess, or use as set forth in P.L. 2017, c. 92, and as such, would be highly unlikely to have any impact upon housing production costs or affordability. The Department does not anticipate that the proposed amendments would have any effect upon the cost or the supply of affordable housing.

Smart Growth Development Impact Analysis

The proposed amendments concern only sparkling devices and novelties, which are lawful to offer for sale, expose for sale, sell, store, possess, or use as set forth in P.L. 2017, c. 92, and as such, would be most unlikely to have any impact upon housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT

5:70-2.7 Permits required

(a) Permits shall be required and obtained from the local enforcement agency for the activities specified in this section, except where they are an integral part of a process or activity by reason of which the use is required to be registered and regulated as a life hazard use. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire official.

1.-3. (No change.)

4. Type 2 permit:

i.-v. (No change.)

vi. Unoccupied or vacant buildings or structures 12,000 square feet or more, but less than 100,000 square feet, in gross floor area; [or]

vii. The use of any building, or portion thereof, previously registered as a Life Hazard Use for mercantile purposes on a temporary basis.

(1) Exception: No permit shall be required for any mercantile use registered as a Life Hazard Use[.]; or

viii. The storage or retail sales of sparkling devices and novelties in any temporary or permanent structure, when the pyrotechnic content exceeds 125 pounds; as defined in Section 202, and shall comply with Section 5609, and NFPA 1124.

5.-7. (No change.)

(b)-(j) (No change.)

SUBCHAPTER 3. STATE FIRE PREVENTION CODE

5:70-3.2 Modifications

(a) The following articles or sections of the State Fire Prevention Code are modified as follows:

1. (No change.)

2. Chapter 2, Definitions, shall be amended as follows:

i. (No change.)

ii. Section 202, General Definitions, shall be amended to include the following definitions:

(1)-(21) (No change.)

(22) The definition of FIREWORKS shall be deleted in its entirety and the following text shall be inserted into the definition of FIREWORKS:

“FIREWORKS. Any composition or device for the purpose of producing a visible or an audible effect for entertainment purposes by combustion, deflagration or detonation that meets the definition of 1.4G fireworks or 1.3G fireworks.

Fireworks, 1.4G. Small fireworks devices containing restricted amounts of pyrotechnic composition designed primarily to produce visible or audible effects by combustion. Such 1.4G fireworks which comply with the construction, chemical composition and labeling regulations of the DOTn for Fireworks, UN 0336, and the U.S. Consumer Product Safety Commission as set forth in CPSC 16 CFR Parts 1500 and 1507, are not explosive materials for the purpose of this code.

Fireworks, 1.3G. Large fireworks devices, which are explosive materials, intended for use in fireworks displays and designed to produce audible or visible effects by combustion, deflagration or detonation. Such 1.3G fireworks include, but are not limited to, firecrackers containing more than 130 milligrams (2 grains) of explosive composition, aerial shells containing more than 40 grams of pyrotechnic composition and other display pieces which exceed the limits for classification as 1.4G fireworks. Such 1.3G fireworks are also described as Fireworks, UN 0335 by the DOTn.

Fireworks include any combustible or explosive composition, and any substance and combination of substances and articles prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation. Fireworks shall include blank cartridges, toy pistols, toy cannons, toy canes and toy guns in which explosives are utilized; firecrackers, torpedoes, skyrockets, Roman candles, sparklers and other devices of similar construction; any device containing any explosive or flammable compound; and any tablets and other devices containing any explosive substance.

The term “fireworks” shall not include [automobile flares, paper caps containing not more than an average of 0.25 grain (16 mg) of explosive content per cap, and toy pistols, toy canes, toy guns and other devices utilizing such caps.] **sparkling devices and novelties. Sparkling devices and novelties mean:**

a. wood sticks or wire sparklers of not more than 100 grams of pyrotechnic mixture per item;

b. hand held or ground based sparkling devices which are non-explosive and non-aerial, which may produce a crackling or whistling effect, and contain 75 grams or less of pyrotechnic composition per tube or a total of 500 grams or less for multiple tubes; and

c. snakes and glow worms, smoke devices, and trick noisemakers, which include party poppers, snappers, and drop pops, each consisting of 25/100 grains or less of explosive mixture; and

d. automobile flares, paper caps containing not more than an average of 0.25 grain (16 mg) of explosive content per cap, and toy pistols, toy canes, toy guns and other devices utilizing such caps.

The sale and utilization of the types of [explosive] **sparkling devices and novelties** listed herein which are not considered fireworks shall be permitted at all times. [See Section 5602.1] **See Chapter 56 Explosives and Fireworks.”**

(23)-(52) (No change.)

3.-55. (No change.)

56. Explosives and Fireworks, shall be amended as follows:

i.-xii. (No change.)

xiii. A new Section 5608.2.2.1 shall be inserted as follows: “Section 5608.2.2.1 The use of [what are technically known as fireworks showers, or of any composition containing potassium and sulfur] **proximate pyrotechnics, as defined by NFPA 1126**, in theaters or public halls, shall be subject to prior approval by the fire official and the following conditions shall apply:

1.-5. (No change.)

xiv. Delete section 5609 in its entirety and insert new Section 5609 as follows:

“5609 Temporary Storage and Retail Sales of Consumer Fireworks, Sparkling Devices and Novelties.

5609.1, General. Where the temporary storage and retail sales of consumer fireworks, sparkling devices and novelties, 1.4G is allowed by Section 5601.1.3, Exception 4, such storage shall comply with the applicable requirements of NFPA 1124.”

57.–81. (No change.)

LABOR AND WORKFORCE DEVELOPMENT

(a)

DIVISION OF PUBLIC SAFETY AND OCCUPATIONAL SAFETY AND HEALTH

Safe Dispensing of Retail Gasoline

Proposed Readoption: N.J.A.C. 12:196

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

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), and 34:3A-4 et seq., specifically 34:3A-11.

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

Proposal Number: PRN 2018-060.

A public hearing on the notice of proposed readoption will be held on the following date at the following location:

Wednesday, July 25, 2018

10:00 A.M.

NJ Department of Labor and Workforce Development

John Fitch Plaza

5th Floor, Large Conference Room

Trenton, New Jersey

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

Submit written comments by August 31, 2018, to:

David Fish, Executive Director

Office of Legal and Regulatory Services

NJ Department of Labor and Workforce Development

PO Box 110-13th Floor

Trenton, New Jersey 08625-0110

E-mail: David.Fish@dol.nj.gov

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1.c, N.J.A.C. 12:196, Safe Dispensing of Retail Gasoline, was scheduled to expire on June 1, 2018. As the Department of Labor and Workforce Development (Department) submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date was extended 180 days to November 28, 2018, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Department has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purposes for which they were originally promulgated.

A summary of the sections proposed for readoption follows:

N.J.A.C. 12:196-1.1 sets forth the purpose and scope of this chapter.

N.J.A.C. 12:196-1.2 defines the words and terms used throughout the chapter.

N.J.A.C. 12:196-1.3 sets forth attendant duties.

N.J.A.C. 12:196-1.4 addresses the training of attendants.

N.J.A.C. 12:196-1.5 concerns the certification of attendants.

N.J.A.C. 12:196-1.6 discusses the portable containers that are acceptable for holding fuel.

N.J.A.C. 12:196-1.7 requires emergency shut-off switches to be provided at a place distant from dispensing devices.

N.J.A.C. 12:196-1.8 addresses sources of ignition and other prohibited activity in the vicinity of pumps and during fueling operations.

N.J.A.C. 12:196-1.9 mandates that retail gasoline stations have at least one portable fire extinguisher in certain areas for fire control.

N.J.A.C. 12:196-1.10 provides for the posting of warning signs in the fuel dispensing area.

N.J.A.C. 12:196-1.11 sets forth documents referenced throughout the chapter.

N.J.A.C. 12:196-1.12 provides for the inspection of documents referenced in this chapter.

N.J.A.C. 12:196-1.13 addresses violations and penalties.

N.J.A.C. 12:196-1.14 affords violators the opportunity for an administrative hearing before any penalty is levied.

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

Social Impact

The rules proposed for readoption would have a positive social impact. By providing reasonable standards for the dispensing of retail gasoline, these rules protect the health, safety, and welfare of the general public.

Economic Impact

The rules proposed for readoption would have minimal, if any, economic impact on retail gasoline operators governed by these rules, since the majority of them have already established the procedures necessary to comply with the requirements for safe dispensing of retail gasoline. New retail gasoline operators will incur the costs associated with ensuring that their employees are trained and certified, installing safety signs and equipment and establishing safety procedures as required by these rules. However, the cost of implementing these requirements is minimal and is outweighed by the need to protect the health, safety, and welfare of the general public. The Department will not incur any additional costs as a result of the rules proposed for readoption.

Federal Standards Statement

No Federal standards or requirements are applicable to the subject matter of this rulemaking. The rules set forth at N.J.A.C. 12:196 provide reasonable standards for the safe dispensing of retail gasoline as required by N.J.S.A. 34:3A-4 et seq. As a result, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for readoption would not have an impact on jobs. The Department does not anticipate an increase or decrease in jobs as a result of the rules proposed for readoption.

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

The rules proposed for readoption maintain established standards for the safe dispensing of retail gasoline. As noted above, most existing retail gasoline operators have already complied with these requirements. However, retail gasoline operators seeking to commence operations in the State, including those that are small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., would incur costs associated with employee training and certification, installation of safety signs and equipment, and the establishment of safety procedures. These costs, however, are far outweighed by the need to provide a healthy and safe environment for the general public. The Department makes no exception in its application of these standards for small businesses, but rather limits exemptions to those listed at N.J.A.C. 12:196-1.1(c). No professional services would be required to comply with the standards for the safe dispensing of retail gasoline.

Housing Affordability Impact Analysis

The rules proposed for readoption would not evoke a change in the average costs associated with housing and have nothing to do with the affordability of housing. The basis for this finding is that the rules proposed for readoption pertain to the safe dispensing of gasoline and have nothing to do with housing.