

LABOR AND WORKFORCE DEVELOPMENT

HEALTH

DIVISION OF PUBLIC SAFETY AND OCCUPATIONAL SAFETY AND HEALTH

PUBLIC HEALTH SERVICES BRANCH

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

CONSUMER, ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICE

ENVIRONMENTAL AND OCCUPATIONAL HEALTH ASSESSMENT PROGRAM

PUBLIC EMPLOYEES OCCUPATIONAL SAFETY AND HEALTH UNIT

Health and Safety Standards for Public Employees

Standard for Hazard Communication

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

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

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

Proposed: June 6, 2016, at 48 N.J.R. 935(a).

Adopted: May 5, 2017, by Aaron R. Fichtner, Ph.D., Acting Commissioner of Labor and Workforce Development, and May 5, 2017, by Cathleen D. Bennett, Commissioner of Health, in consultation with Charles A. Richman, Commissioner of Community Affairs and in consultation with the Public Employees Occupational Safety and Health Advisory Board.

Filed: May 5, 2017, as R.2017 d.115, **with non-substantial changes** not requiring

additional public notice or comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: June 5, 2017.

Expiration Date: November 21, 2017.

Summary of Public Comments and Agency Responses:

Dan Fatton, Executive Director, Work Environment Council of New Jersey, Ewing, NJ, submitted comments “on behalf of” the following:

Donna M. Chiera, President, American Federation of Teachers New Jersey,

Amy Goldsmith, State Director, Clean Water Action New Jersey

Avery Grant, P.E., Executive Director, Concerned Citizens Coalition of Long Branch

The Reverend Fletcher Harper, Executive Director, GreenFaith

Lou Kimmel, Director, New Labor

David LeGrande, Director, Occupational Safety and Health Department, Communications Workers of America

Adam Liebtag, President, Local 1036, Communications Workers of America

Dominick Marino, President, Professional Firefighters Association of New Jersey

Doug O'Malley, Director, Environment New Jersey

John Pajak, President, Local 877, International Brotherhood of Teamsters

Hetty Rosenstein, District 1 Area Director, Communications Workers of America

Timothy Rudolph, President, Local 195, International Federation of Professional and Technical Engineers

Elizabeth Smith, Executive Director, Statewide Education Organizing Committee

Rich Spieler, President, Burlington County Central Labor Council

Sean M. Spiller, Secretary-Treasurer, New Jersey Education Association

Jeff Tittel, Director, New Jersey Chapter, Sierra Club

The Reverend Ronald Tuff, Second Vice-Chair, New Jersey Black Issues
Convention

Ann Twomey, President, Health Professionals and Allied Employees

David Weiner, President, Local 1081, Communications Workers of America

John Shinn, Director, District 4, United Steelworkers

1. COMMENT: The commenters “support the proposed changes to N.J.A.C. 12:100 [and] are pleased that the proposed changes keep intact our State’s strong Right to Know (RTK) laws, as it updates the Public Employees Occupational Safety and Health (PEOSH) HazCom standard to address the 2012 Occupational Safety and Health Administration (OSHA) promulgation of a revised HazCom standard. OSHA’s Hazard Communication Standard integrated the ‘Globally Harmonized System of Classification and Labelling of Chemicals’ (GHS).”

“[The State] RTK law requires that labels be affixed to chemical containers in factories, hospitals, schools, and other workplaces. The RTK labeling requirements contain important information including the top five ingredients of the product, whether hazardous or not, and any other hazardous chemicals in the product identified by their real chemical name. This information is essential so workers know what the chemicals are and understand their health and safety effects and how to protect themselves.”

RESPONSE: The Departments acknowledge the commenters’ support of the proposed

new rules, amendments, repeals, and recodifications. The Departments take no position on the commenters' description of the requirements of the New Jersey Right to Know law and the importance of the information conveyed pursuant thereto, because this comment does not appear to address the proposed new rules, amendments, repeals, and recodifications, and thus exceeds the scope of the rulemaking.

2. COMMENT: With respect to N.J.A.C. 12:100-7.3, which the Departments propose to recodify as new N.J.A.C. 12:100-7.2, and to amend to establish a definition of the term "Global Harmonization Standard" or "GHS," the commenters acknowledge that the Departments are proposing to define this term by "cross-reference to the incorporation by reference, as amended and supplemented, of the HazCom 2012 at N.J.A.C. 12:100-4.2" and "proposing to use 'Global Harmonization Standard' or 'GHS' rather than 'HazCom 2012' to refer to the adoption of Revision 3 of the GHS as a final rule by OSHA." The commenters state that while they "understand the reasoning behind [the proposed amendment to refer to] the standard as GHS, OSHA continues to reference the regulation as HazCom 2012. Since New Jersey is required to follow OSHA regulations, using the term HazCom 2012 is more appropriate." The commenters "recommend that the Departments use the term HazCom 2012, rather than GHS, to be aligned with OSHA and avoid confusion if OSHA updates the HazCom 2012 in the future."

RESPONSE: The proposed amendment at recodified N.J.A.C. 12:100-7.2, would establish the term, "Global Harmonization Standard" or "GHS," as a shorthand reference to 29 CFR 1910.1200, entitled Hazard Communication, and would cross-refer

to the existing incorporation by reference of that section of the Code of Federal Regulations, as amended and supplemented, elsewhere within N.J.A.C. 12:100.

As the notice of proposal Summary describes, existing 29 CFR 1910.1200 reflects the OSHA revisions to the HazCom 1994 to incorporate therein the third revised edition of the “Globally Harmonized System of Classification and Labelling of Chemicals (GHS)” (© United Nations, 2009). However, that publication is “updated, revised and improved” approximately every two years, and already exists, under the same title, as a sixth revised edition (© United Nations, 2015). See “About the GHS” at http://www.unece.org/trans/danger/publi/ghs/ghs_welcome_e.html (retrieved October 20, 2016).

Thus, as the commenters acknowledge, it is a foreseeable possibility that the OSHA likewise may elect once again, and repeatedly thereafter, to update 29 CFR 1910.1200 to maintain consistency with the biennial revisions to the international version of the standard, and would likely refer to it by reference to the year of promulgation, as it did with HazCom 1994 and HazCom 2012. If this were to occur, then the use of the term, “HazCom 2012,” as the commenter suggests, within N.J.A.C. 12:100 to refer not only to HazCom 2012 but also to subsequent versions of 29 CFR 1910.1200 that the OSHA might promulgate, could itself cause the confusion the commenters’ suggestion seeks to avoid. This potential confusion would continue until the Departments were able to promulgate rulemaking to make technical changes to N.J.A.C. 12:100 to refer to subsequent iterations of 29 CFR 1910.1200 by reference to their year of issuance. The Departments generally strive to promulgate rules that maintain their clarity and ease of use, and continue to be understandable, despite

changes to the underlying Federal standards they might implement. Therefore, the Departments decline to make the change the commenter suggests.

However, in an effort to respond to the commenters' concern that the use of "Global Harmonization Standard" or "GHS" to refer to 29 CFR 1910.1200 could confuse the regulated community, the Departments will make a change upon adoption to delete the proposed definition of the term, "Global Harmonization Standard" and "GHS," from recodified N.J.A.C. 12:100-7.3, to delete all references throughout the chapter to "Global Harmonization Standard" and "GHS," and to add in place thereof, references to "29 CFR 1910.1200."

3. COMMENT: The commenters address recodified N.J.A.C. 12:100-7.2 at which the Departments propose to amend the existing definition of the term, "technically qualified person," to delete occurrences of the phrase, "and understands the health risks associated with exposure to hazardous substances," among other changes. The commenters acknowledge that the Departments are proposing this deletion "because there is no mechanism to confirm a trainer's 'understanding of health risks' apart from confirming that the trainer has the education and/or qualifications described elsewhere in the definition of a 'technically qualified person,'" quoting the notice of proposal Summary, 48 N.J.R. 935(a), 937.

The commenters state that a "qualified person must have an understanding of health risks associated with a hazardous substance. This knowledge and understanding enables a professional to appropriately establish control measures." The commenters "believe competency is a combination of education, training, and

experience and should be established by the employer, and verified by the State during inspection” and “recommend not deleting the phrase, ‘and understands the health risks associated with exposure to hazardous substances,’ from the definition ...”

RESPONSE: The definition of the term, “technically qualified person,” as proposed for amendment, would have the effect that the commenters seek, that is, that “competency ... should be established by employer.” Employers would establish competency standards through their selection of trainers, provided they select from among persons who have the credentials that the definition, as proposed for amendment, would establish at paragraphs 1 through 4. As the Departments state in the notice of proposal, “To the extent onsite surveillance activity by the EOHAP of the Department of Health identifies a lack of such understanding on the part of trainer, the Department of Health has undertaken and would continue to undertake corrective measures as necessary, which may include performance of ‘train the trainer’ activities by the EOHAP and requiring employers to submit correction plans to address trainer inadequacy.” See 48 N.J.R. at 936-37. However, the Departments decline to maintain a standard that is not susceptible to objective measurement and that does not enable the regulated community to understand the specific obligations to which they are subject and to rely with reasonable certainty on that understanding as a guide to compliance. To maintain a vague standard that may be susceptible to varying and subjective interpretations would expose the rule to being invalidated as arbitrary and capricious, and, therefore, unenforceable. Based on the foregoing, the Departments will make no change on adoption in response to the comment.

Federal Standards Analysis

The Departments are adopting the new rules, amendments, repeals, and recodifications pursuant to 29 CFR Part 1956, Subpart G, which reflects the Assistant Secretary's initial certification of the State plan as a developmental plan pursuant to § 18 of the OSH Act for the development and enforcement of occupational safety and health standards relating exclusively to New Jersey public employees. 66 FR 2273 (January 11, 2001). The adopted new rules, amendments, repeals, and recodifications would implement and fulfill the State's obligations pursuant to 29 CFR 1910.1200, as amended and supplemented.

The adopted new rules, amendments, repeals, and recodifications would exceed 29 CFR 1910.1200 to the extent they would continue to maintain existing standards that implement the Right to Know Act at N.J.S.A. 34:5A-13 with respect to public employees. This exceedance consists of the adopted recodification with amendments of N.J.A.C. 12:100-7.8 as 7.3, which would continue to require, consistent with N.J.S.A. 34:5A-13.a, that public employees receive refresher training (in addition to the initial training that the GHS requires them to receive), and to establish the recordkeeping and reporting obligations associated therewith. However, the recordkeeping and reporting obligations associated with refresher training are consistent with those 29 CFR 1910.1200 establishes with respect to initial training.

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

The Departments anticipate that the benefits to entities subject to N.J.S.A. 34:6A-

25 et seq., in the avoidance of costs associated with public employee illness and injury, as described in the Economic Impact upon proposal, by means of the administration of refresher training, would continue to outweigh and exceed the costs of providing that training and the recordkeeping and reporting costs associated therewith. The standards that exceed 29 CFR 1910.1200 are achievable under current technology.

Full text of the adopted amendments, new rules, and recodifications follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

12:100-7.2 Definitions

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

...

“Employee representative” means the broader, more inclusive of the following terms:

1. (No change from proposal.)
2. “Designated representative” as *[the GHS]* ***29 CFR 1910.1200***

defines that term.

...

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

...

(b) As used in this subchapter, the following words and terms used *[in the

Global Harmonization Standard] *at 29 CFR 1910.1200* shall have the following meanings, unless the context clearly indicates otherwise:

...

“Designated representative” means the broader *[,]* **and** more inclusive of the following terms:

1. (No change from proposal.)
2. “Designated representative” as *[the GHS]* **29 CFR 1910.1200***

defines that term.

...

12:100-7.3 Employee information and training

(a) In addition to the training *[required pursuant to the Global Harmonization Standard]* **that 29 CFR 1910.1200 requires employers to provide*** (hereinafter referred to as “initial training”), employers shall provide refresher training to all employees every two years at no cost to employees and during working hours.

1. (No change from proposal.)

(b) In addition to the information that *[the GHS]* **29 CFR 1910.1200*** requires employees to receive, initial and refresher training shall *[include]* **address***:

- 1.- 4. (No change from proposal.)

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

(d) – (g) (No change from proposal.)

12:100-13.2 Definitions

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

...

APPENDIX A

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

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

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

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

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

New Jersey Department of Labor and Workforce Development
Office of Public Employees Occupational Safety and Health
PO Box 386
Trenton, NJ 08625-0386
(609) 292-7036
http://lwd.state.nj.us/lssse/employer/Public_Employees_OSH.html

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

HOW TO OBTAIN INFORMATION LOCALLY

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

Atlantic.....	(609) 645-5971	Ext. 4376
Bergen.....	(201) 634-2785	
Burlington.....	(609) 265-5521	Ext. 5521
Camden.....	(856) 374-6051	
Cape May.....	(609) 463-6413	
Cumberland.....	(856) 327-7602	Ext. 7129
Essex.....	(973) 497-9401	
Gloucester.....	(856) 218-4103	
Hudson.....	(201) 223-1133	
Hunterdon.....	(908) 788-1110	
Mercer.....	(609) 278-7165	
Middlesex.....	(732) 745-8480	
Monmouth.....	(732) 431-7456	
Morris.....	(973) 631-5492	
Ocean.....	(732) 341-9700	Ext. 7477
Passaic.....	(973) 225-3651	
Salem.....	(856) 935-7510	Ext. 8489
Somerset.....	(908) 231-7506	
Sussex.....	(973) 579-0370	
Union.....	(908) 654-9730	
Warren.....	(908) 475-7980	

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

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**YOU HAVE THE
RIGHT TO
KNOW**



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




Chris Christie, Governor Mary O'Dowd, M.P.H.,
 Kim Guadagno, Lt. Governor Commissioner

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

THE RIGHT TO KNOW ACT

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

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

HOW THE ACT CAN PROTECT YOU AND YOUR FAMILY

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

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

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

HOW THE ACT WORKS

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

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

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

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

Public employers are required to label containers according to the New Jersey *Right to Know* Act and PEOSH¹, and maintain a *RTK* Central File that contains information about hazardous substances at their facilities. Private employers are required to label containers according to OSHA² and the New Jersey *Right to Know* Act.

HOW PUBLIC EMPLOYERS COMPLY WITH THE RIGHT TO KNOW ACT

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

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

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

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

HOW TO USE YOUR WORKPLACE RIGHTS TO PROTECT YOUR HEALTH

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

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

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

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

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

APPENDIX B

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



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

USE YOUR RIGHTS!

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

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

THE RIGHT TO KNOW ACT IS ENFORCED BY:

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

*New Jersey Department of Environmental Protection
 Office of Pollution Prevention and Right to Know
 MC 22-03C, PO Box 420, Trenton, NJ 08625-0420
 www.nj.gov/dep/opppc/crkl*

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

*New Jersey Department of Health
 Public Health Services, Division of Epidemiology,
 Environmental and Occupational Health, Consumer, Environmental and
 Occupational Health Service
 EOHAP
 PO Box 360, Trenton, NJ 08625-0360
 www.nj.gov/health/eoh/peoshweb*

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

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

NAME _____

DEPARTMENT _____

PHONE _____

