



2 of 21 DOCUMENTS

NEW JERSEY REGISTER
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VOLUME 42, ISSUE 16

ISSUE DATE: AUGUST 16, 2010

RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
LABOR STANDARDS AND SAFETY ENFORCEMENT**

42 N.J.R. 1846(a)

Proposed Readoption: N.J.A.C. 12:102

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

Seasonal Farm Workers

Authorized By: Harold J. Wirths, Commissioner, Department of Labor and Workforce Development.

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

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

Proposal Number: PRN 2010-169.

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

Monday, September 13, 2010
10:00 A.M. to 12:00 Noon
NJ Department of Labor and Workforce Development
John Fitch Plaza
2nd 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 October 15, 2010 to:

David Fish, Regulatory Officer
Office of Legal and Regulatory Services
NJ Department of Labor and Workforce Development
P.O. Box 110 - 13th Floor
Trenton, New Jersey 08625-0110

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 12:102, Seasonal Farm Workers, is scheduled to expire on January 4, 2011. The Department of Labor and Workforce Development 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 re adoption follows:

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

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

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

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

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

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

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

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

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 re adoption would continue to have a positive social impact in that they would assist the Department in ensuring a sanitary and hygienic workplace for seasonal farm workers. Ameliorating the working conditions of seasonal farm workers can only be of benefit to them and to the State at large.

Economic Impact

The rules proposed for re adoption should have no impact upon existing farm operators, as they have already established facilities that comply with both State and Federal requirements for field sanitation. Of course, new farm operators will incur whatever costs are associated with the installation of water containers and the establishment of toilet and hand washing facilities.

Federal Standards Analysis

The rules proposed for re adoption impose minimum field sanitation standards upon all farm operators, including farm operators where 10 or fewer seasonal farm workers are working in a field, whereas the Federal regulations (*29 CFR 1928.110*) apply such standards only to farms where there are more than 10 seasonal farm workers working in a field. It is in this regard that the rules proposed for re adoption exceed Federal requirements.

N.J.S.A. 34:9A-38 explicitly states that "[a]t any farm where seasonal farm workers labor in a field that is an unreasonable distance from central facilities, the farm operator shall provide in the working area a sufficient supply of cool, potable water, and for each sex sufficient, suitable and separate privies or other toilet facilities which shall be properly screened, ventilated and kept clean and suitable facilities for washing of hands." The law makes no distinction between farm operators based on the [page=1847] number of farm workers working in the field. Rather, it requires the application of appropriate sanitation standards to all farm operators. The Department has no discretion to deviate from this statutory mandate.

Regarding cost, as indicated in the Economic Impact above, the Department believes that most farm operators already possess the equipment necessary to comply with these rules. For those farm operators who do not already possess

the necessary equipment, the cost of such items would not be unduly burdensome. Furthermore, the cost would be outweighed by the need to provide farm workers laboring long hours in open fields with sufficient drinking, washing and toilet facilities in an appropriate location proximate to the worksite.

Jobs Impact

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

Agriculture Industry Impact

The rules proposed for readoption would continue to promote clean and convenient facilities for seasonal farm workers.

Regulatory Flexibility Analysis

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

Smart Growth Impact

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

Housing Affordability Impact

The rules proposed for readoption would not evoke a change in the average costs associated with housing. The basis for this finding is that the rules proposed for readoption pertain to field sanitation for seasonal farm workers, not housing.

Smart Growth Development Impact

The rules proposed for readoption would not evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the rules proposed for readoption pertain to field sanitation for seasonal farm workers and have nothing whatsoever to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

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