

CHAPTER 59

WORKER AND COMMUNITY RIGHT TO KNOW ACT RULES

Authority

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

Source and Effective Date

R.1999 d.363, effective September 24, 1999.
See: 31 N.J.R. 1589(a), 31 N.J.R. 3106(a).

Executive Order No. 66(1978) Expiration Date

Chapter 59, Worker and Community Right to Know Act Rules, expires on September 24, 2004.

Chapter Historical Note

Chapter 59, Workplace Hazardous Substances, was adopted as R.1984 d.247, effective June 18, 1984. See: 16 N.J.R. 478(a), 16 N.J.R. 1519(a).

Chapter 59, Workplace Hazardous Substances, was renamed "Worker and Community Right to Know Act Rules" by R.1984 d.441, effective October 1, 1984. See: 16 N.J.R. 1869(a), 16 N.J.R. 1924(a) and 16 N.J.R. 2555(a).

Pursuant to Executive Order No. 66(1978), Chapter 59, Worker and Community Right to Know Act Rules, was readopted as R.1989 d.543, effective September 29, 1989, and Subchapter 11, Community Right to Know; Labeling, Private Employers, was adopted as new rules by R.1989 d.543, effective November 6, 1989. See: 21 N.J.R. 1253(a), 21 N.J.R. 3516(a).

Subchapter 12, Certification of Consultants and Consulting Agencies for Public Employers, was adopted as R.1991 d.291, effective June 17, 1991. See: 22 N.J.R. 1892(a), 23 N.J.R. 1939(a).

Pursuant to Executive Order No. 66(1978), Chapter 59, Worker and Community Right to Know Act Rules, was readopted as R.1994 d.535, effective September 28, 1994. See: 26 N.J.R. 2888(a), 26 N.J.R. 4380(b).

Pursuant to Executive Order No. 66(1978), Chapter 59, Worker and Community Right to Know Act Rules, was readopted as R.1999 d.363, effective September 24, 1999. See: Source and Effective Date. See, also, section annotations.

The following is a complete listing of employer groups who are currently covered by the Right to Know law:

SIC	Description
	AGRICULTURAL SERVICES
0782	Lawn and garden services
20	FOOD AND KINDRED PRODUCTS (ENTIRE GROUP)
21	TOBACCO PRODUCTS (ENTIRE GROUP)
22	TEXTILE MILL PRODUCTS (ENTIRE GROUP)
23	APPAREL AND OTHER TEXTILE PRODUCTS (ENTIRE GROUP)
24	LUMBER AND WOOD PRODUCTS (ENTIRE GROUP)
25	FURNITURE AND FIXTURES (ENTIRE GROUP)
26	PAPER AND ALLIED PRODUCTS (ENTIRE GROUP)
27	PRINTING AND PUBLISHING (ENTIRE GROUP)
28	CHEMICALS AND ALLIED PRODUCTS (ENTIRE GROUP)
29	PETROLEUM AND COAL PRODUCTS (ENTIRE GROUP)
30	RUBBER AND MISCELLANEOUS PLASTIC PRODUCTS (ENTIRE GROUP)
31	LEATHER AND LEATHER PRODUCTS (ENTIRE GROUP)

SIC	Description
32	STONE, CLAY AND GLASS PRODUCTS (ENTIRE GROUP)
33	PRIMARY METAL INDUSTRIES (ENTIRE GROUP)
34	FABRICATED METAL PRODUCTS (ENTIRE GROUP)
35	INDUSTRIAL MACHINERY AND EQUIPMENT (ENTIRE GROUP)
36	ELECTRONIC AND OTHER ELECTRIC EQUIPMENT (ENTIRE GROUP)
37	TRANSPORTATION EQUIPMENT (ENTIRE GROUP)
38	INSTRUMENTS AND RELATED PRODUCTS (ENTIRE GROUP)
39	MISCELLANEOUS MANUFACTURING INDUSTRIES (ENTIRE GROUP)
	TRANSPORTATION BY AIR
4512	Air transportation, scheduled
4513	Air courier services
4581	Airports, flying fields, and airport terminal services
46	PIPELINES, EXCEPT NATURAL GAS (ENTIRE GROUP)
	TRANSPORTATION SERVICES
4741	Rental of railroad cars
4783	Packing and crating
4785	Fixed facilities and inspection and weighing services for motor vehicle transportation
4789	Transportation services, not elsewhere classified
	COMMUNICATION
4812	Radiotelephone communications
4813	Telephone communications, except radiotelephone
4822	Telegraph and other message communications
49	ELECTRIC, GAS AND SANITARY SERVICES (ENTIRE GROUP)
	WHOLESALE TRADE--DURABLE GOODS
5085	Industrial supplies
5087	Service establishment equipment and supplies
5093	Scrap and waste materials
	WHOLESALE TRADE--NONDURABLE GOODS
5122	Drugs, drug proprietaries, and druggists' sundries
5162	Plastics materials and basic forms and shapes
5169	Chemicals and allied products, not elsewhere classified
5171	Petroleum bulk stations and terminals
5172	Petroleum and petroleum products wholesalers, except bulk stations and terminals
5181	Beer and ale
5182	Wines and distilled alcoholic beverages
5191	Farm supplies
5193	Flowers, nursery stock, and florists' supplies
5194	Tobacco and tobacco products
5198	Paints, varnishes, and supplies
5199	Nondurable goods, not elsewhere classified
	AUTOMOBILE DEALERS AND GASOLINE SERVICE STATIONS
5511	Motor vehicle dealers (new and used)
5521	Motor vehicle dealers (used only)
5541	Gasoline service stations
	PERSONAL SERVICES
7216	Dry cleaning plants, except rug cleaning
7217	Carpet and upholstery cleaning
7218	Industrial launderers
	AUTOMOTIVE REPAIR, SERVICES, AND GARAGES
7532	Top, body, and upholstery repair shops and paint shops
7533	Automotive exhaust system repair shops
7534	Tire retreading and repair shops
7536	Automotive glass replacement shops
7537	Automotive transmission repair shops
7538	General automotive repair shops
7539	Automotive repair shops, not elsewhere classified
	MISCELLANEOUS REPAIR SERVICES
7692	Welding repair
	HEALTH SERVICES
8062	General medical and surgical hospitals
8063	Psychiatric hospitals
8069	Specialty hospitals, except psychiatric

SIC	Description
	EDUCATIONAL SERVICES
8211	Elementary and secondary schools
8221	Colleges, universities, and professional schools
8222	Junior colleges and technical institutes
8249	Vocational schools, not elsewhere classified
	ENGINEERING, ACCOUNTING, RESEARCH, MANAGEMENT, AND RELATED SERVICES
8734	Testing laboratories
	STATE, COUNTY AND LOCAL GOVERNMENT, including any agency, authority, department, bureau, or instrumentality thereof

Amended by R.1986 d.373, effective September 8, 1986.

See: 18 N.J.R. 1363(a), 18 N.J.R. 1821(a).

Amended by R.1993 d.384, effective August 2, 1993.

See: 25 N.J.R. 864(a), 25 N.J.R. 3543(a).

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APPENDIX A AND APPENDIX B

SUBCHAPTER 1. GENERAL INFORMATION

8:59-1.1 Authority

The regulations contained in this chapter are promulgated pursuant to the authority of the Worker and Community Right to Know Act, L.1983, c.315, N.J.S.A. 34:5A-1 et seq.

Case Notes

Right to Know Act and regulations preempted as to manufacturing employers by Federal Occupational Safety and Health Act and regulations; trade secrets are constitutionally protected property rights; mandated disclosure of trade secrets not a taking triggering compensation right; Circuit Court modified preemption to pertain only by employee health and safety in the manufacturing sector. *New Jersey State Chamber of Commerce v. Hughey*, 600 F.Supp. 606 (D.N.J.1985), modified 774 F.2d 587 (3rd Cir.1985).

8:59-1.2 Purpose

(a) It is the purpose of these regulations to:

1. Provide a procedure and comprehensive program whereby residents of the State may gain access to information about hazardous substances in the workplace and the community;
2. Protect the public health, safety, and welfare;
3. Make it easier to monitor and detect any adverse health effects attributable to hazardous substances;
4. Enable individuals to detect and minimize effects of exposure to hazardous substances by making them aware of the identity of substances to which they are exposed and the early symptoms of unsafe exposure;
5. Provide individuals with the information to enable them to handle hazardous substances in a safe manner;
6. Provide individuals with information explaining the full range of the risks they face from exposure to hazard-

ous substances so that they are in a position to make knowledgeable decisions;

7. Provide local health, fire, police, safety and other governmental officials with detailed information about the identity, characteristics, and quantities of hazardous substances used and stored in their communities in order to adequately plan for, and respond to, emergencies; and

8. Implement the New Jersey Worker and Community Right to Know Act, L.1983, c.315, N.J.S.A. 34:5A-1 et seq.

8:59-1.3 Definitions

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

“Act” means the Worker and Community Right to Know Act, L.1983, Chapter 315, N.J.S.A. 34:5A-1 et seq.

“Article” means a manufactured item: (1) which is formed to a specific shape or design during manufacture; (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use; and (3) which does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

“Carcinogen” means a substance that can directly, or after transformation, act to initiate or promote the development of malignant neoplasia.

“Certified Industrial Hygienist” means a person who has been certified by the American Board of Industrial Hygiene (ABIH), 4600 West Saginaw, Suite 101, Lansing, Michigan 48917-2737, (517) 321-2638.

“Certified Safety Professional” means a person who has been certified by the Board of Certified Safety Professionals (BCSP), 208 Burnwash Avenue, Savoy, Illinois 61874, (217) 359-9263.

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

“Chemical name” means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the Chemical Abstracts Service rules of nomenclature.

“Common name” means any designation or identification such as a code name, code number, trade name, brand name or generic name used to identify a chemical other than by its chemical name.

“Community Right to Know Survey” means the reporting form which combines the chemical inventory reporting requirements of the Environmental Survey, formerly Part I,

and the Superfund Amendments and Reauthorization Act, Section 312.

“Consultant” means a person who is a technically qualified person, as specified in N.J.A.C. 8:59-1.3, who conducts Right to Know education and training programs for public employees, pursuant to N.J.A.C. 8:59-6 and 12, for the purpose of remuneration. “Conducting” means the actual teaching of the program.

“Consulting agency” means an individual who meets, or a corporation or partnership which employs persons who meet, the criteria for a technically qualified person as specified in N.J.A.C. 8:59-1.3, and which develops and provides training objectives, outlines, teaching materials and evaluation tools for the Right to Know education and training program to public employers according to N.J.A.C. 8:59-6 and 12, for the purpose of remuneration. An individual consultant may also be a consulting agency at the same time.

“Container” means a receptacle used to hold a liquid, solid, or gaseous substance, including, but not limited to, bottles, pipelines, bags, barrels, boxes, cans, cylinders, drums, cartons, vessels, vats, and stationary or mobile storage tanks. “Container” shall not include process containers or building structures that are not capable of holding liquids, solids, or gases.

“Corrosive” means a substance, either liquid or solid, that can cause visible destruction or irreversible alterations in human skin at the site of contact.

“Council” means the Right To Know Advisory Council created pursuant to N.J.S.A. 34:5A-18.

“County health department” means a county health agency established pursuant to L.1975, c.329 (N.J.S.A. 26:3A2-1 et seq.), the office of a county clerk in a county which has not established a department, or a designated county lead agency.

“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 county lead agency” means a health agency or office of emergency management designated by the county clerk to be responsible for conducting all county health department activities required by the Act in the county.

“Designated representative” means an employee of the department designated in writing by the Commissioner.

“Emergency responder” means a firefighter, police officer, emergency medical technician, hazardous materials technician, and other similar person who responds to a hazardous substance spill, fire or other incident involving the actual or potential release of a hazardous substance.

“Employee” shall have the same meaning as “public employee.”

“Employee representative” means a certified collective bargaining agent or attorney or individual or organization to whom a public employee gives written authorization to exercise his or her rights to request information pursuant to the provisions of the Act, or a parent or legal guardian of a minor or legally incompetent public employee.

“Employer” means the State and local governments, or any agency, authority, department, bureau, or instrumentality thereof, except for the purposes of the Worker and Community Right to Know Fund, N.J.S.A. 34:5A-26.

“Environmental hazardous substance” or “EHS” means any substance designated by the Department of Environmental Protection in N.J.A.C. 7:1G-2.

“Environmental hazardous substance list” means the list of environmental hazardous substances developed by the Department of Environmental Protection pursuant to N.J.S.A. 34:5A-4 and N.J.A.C. 7:1G-2. The environmental hazardous substance list is incorporated into the Right to Know Hazardous Substance List.

“Environmental survey” means a written form, comprised of the Community Right to Know Survey, and the Release and Pollution Prevention Report, prepared by the Department of Environmental Protection and transmitted to an employer, on which the employer shall provide certain information concerning each of the environmental hazardous substances at the facility. The Community Right to Know Survey is incorporated into the Right to Know Survey.

“Explosive” means a chemical that causes a sudden, almost instantaneous release of pressure, gas, and heat when subjected to sudden shock, pressure, or high temperature.

“Exposed” means that a public employee is subjected to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.), and includes potential (for example, accidental or possible) exposure.

“Facility” means the building, equipment and contiguous area at a single location used for the conduct of business and shall include any area where public or private employees are periodically assigned. Remote installed equipment that is not located in a building, which a public or private employee may occasionally repair, maintain, check for proper operation, expand, remove, or replace shall be considered part of the facility from which public or private employees are assigned to perform this work. Except for the purposes of education and training, N.J.S.A. 34:5A-13(c), labeling, N.J.S.A. 34:5A-14, and communication with the local fire department, N.J.S.A. 34:5A-25(b), “facility” shall not include a research and development laboratory.