



NATIONAL TRANSPORTATION SAFETY BOARD - **Public Hearing**

Conrail Derailment in Paulsboro, NJ with Vinyl Chloride Release

GROUP	3
EXHIBIT	
AA	

Agency / Organization

New Jersey

Title

New Jersey Public Employees
Occupational Safety and Health Act

Commissioner Harold J. Wirths

[Business Services](#) | [Job Seekers](#) | [Non-Profits](#) | [Individuals with Disabilities](#) | [Public Notices](#) | [Frequently Asked Questions](#)

[LWD Home](#) [LWD Home > Safety & Health > Laws and Regulations > Public Employees Occupational Safety and Health Act](#)

[About LWD](#)

[Appeal a Decision](#)

[Business Services](#)

[Career Development](#)

[Family Leave Insurance](#)

[Labor Market Information](#)

[Safety & Health](#)

[Employers](#)

[Employees](#)

[Laws and Regulations](#)

[Programs and Services](#)

[Forms](#)

[Social Security Disability Programs](#)

[Temporary Disability](#)

[Unemployment Insurance](#)

[Vocational Rehabilitation](#)

[Wage & Hour](#)

[Workers' Compensation](#)

[Workforce Development](#)

Public Employees Occupational Safety and Health Act

Please note that as of July 1, 2004, the formal name of the Department as denoted below as "The Department of Labor and Industry" or the "Department of Labor" will henceforth be denoted as "The Department of Labor and Workforce Development".

This statute and rule reprint is for ready reference only. For official text consult the New Jersey Statutes Annotated and the New Jersey Administrative Code.

N.J.S.A. 34:6A-25 et seq. NEW JERSEY PUBLIC EMPLOYEES' OCCUPATIONAL SAFETY AND HEALTH ACT	
34:6A-25.	Short title
34:6A-26.	Legislative findings
34:6A-27.	Definition
34:6A-28.	Advisory board
34:6A-29.	Plan for health and safety standards
34:6A-30.	Adoption of standards
34:6A-31.	Promotion of goals of the act
34:6A-32.	Promulgation of regulations.
34:6A-33.	Responsibilities of employers
34:6A-34.	Duty of compliance by public employees
34:6A-35.	Inspections; compliance
34:6A-36.	Notice of safety violation
34:6A-37.	Repealed
34:6A-38.	Notice of health standard violation
34:6A-39.	Variances
34:6A-40.	Employer records; reports
34:6A-41.	Compliance orders; violations; penalties
34:6A-42.	Occupational Safety and Health Review Commission
34:6A-43.	Appeals from decision of review commission
34:6A-44.	Restraining orders
34:6A-45.	Retaliatory discrimination prohibited
34:6A-46.	Repealed
34:6A-47.	Advisors to commission of capital budgeting and planning on workplace safety and health
34:6A-48.	Act inapplicable to right to strike
34:6A-49.	Uniform codes not superseded, permits required
34:6A-50.	Annual report
N.J.A.C. 12:100 BY SUBCHAPTER	
CHAPTER 100. Safety and Health Standards for Public Employees	
SUBCHAPTER 7. STANDARD FOR HAZARD COMMUNICATION	
12:100-7.1	Purpose
12:100-7.2	Scope and application
12:100-7.3	Definitions
12:100-7.4	Hazard determination
12:100-7.5	Written hazard communication program
12:100-7.6	Labels and other forms of warning
12:100-7.7	Material safety data sheets
12:100-7.8	Employee information and training
12:100-7.9	Trade secrets
APPENDIX A	Health Hazard Definitions (Mandatory)
APPENDIX B	Hazard Determination (Mandatory)
APPENDIX C	(RESERVED)
APPENDIX D	Definition of Trade Secret (Mandatory)
APPENDIX E	Guidelines for Employer Compliance (Advisory)
SUBCHAPTER 8. STANDARDS FOR INDOOR FIRING RANGES FOR PUBLIC EMPLOYEES	
12:100-8.1	Scope
12:100-8.2	Definitions
12:100-8.3	Lead standard
12:100-8.4	Ammunition
12:100-8.5	Ventilation system
12:100-8.6	Noise exposure
12:100-8.7	Water drains
12:100-8.8	Work practices
SUBCHAPTER 10. STANDARDS FOR FIREFIGHTERS	

12:100-10.1	Scope; standards information
12:100-10.2	Definitions
12:100-10.3	Organization, training and education
12:100-10.4	Personnel; limitations on ability to perform
12:100-10.5	Protective clothing
12:100-10.6	Protective clothing; foot and leg protection
12:100-10.7	Protective clothing; body protection
12:100-10.8	Protective clothing; hand protection
12:100-10.9	Protective clothing; head, eye and face protection
12:100-10.10	Respiratory protection devices
12:100-10.11	Life-safety rope, harnesses and hardware
12:100-10.12	Personal alert safety system
12:100-10.13	Hearing protection
12:100-10.14	Filling air cylinders
12:100-10.15	Fire apparatus operations
12:100-10.16	Maintenance of firefighter equipment
N.J.A.C. 12:110 BY SUBCHAPTER	
CHAPTER 110. Occupational Safety and Health Procedural Standards for Public Employees	
SUBCHAPTER 1. GENERAL PROVISIONS	
12:110-1.1	Purpose
12:110-1.2	Scope
12:110-1.3	Documents referred to by reference
12:110-1.4	Construction
12:110-1.5	Reserved
12:110-1.6	Reserved
12:110-1.7	Reserved
SUBCHAPTER 2. DEFINITIONS	
12:110-2.1	Definitions
SUBCHAPTER 3. ADMINISTRATION	
12:110-3.1	Scope of subchapter
12:110-3.2	Program direction
12:110-3.3	Duties of employer
12:110-3.4	Employee responsibilities and rights
12:110-3.5	Dissemination of program information
SUBCHAPTER 4. INSPECTIONS, ORDERS TO COMPLY, AND PENALTIES	
12:110-4.1	Scope of subchapter
12:110-4.2	Authority for inspection
12:110-4.3	Advance notice of inspection
12:110-4.4	Conduct of inspections
12:110-4.5	Representation at inspections
12:110-4.6	Consultation with employees
12:110-4.7	Complaints by employees
12:110-4.8	Inspection not warranted and informal review
12:110-4.9	Imminent danger
12:110-4.10	Order to comply
12:110-4.11	Penalties
12:110-4.12	Contests before the Review Commission
12:110-4.13	Informal conferences
12:110-4.14	Reserved
SUBCHAPTER 5. RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES	
12:110-5.1	Scope of subchapter
12:110-5.2-5.12	Reserved
SUBCHAPTER 6. VARIANCES	
12:110-6.1	Scope of subchapter
12:110-6.2	Effect of variances
12:110-6.3	Notice of a granted variance
12:110-6.4	Form of documents for variance
12:110-6.5	Temporary variance
12:110-6.6	Permanent variance
12:110-6.7	Modification or revocation of orders
12:110-6.8	Action on application
12:110-6.9	Hearing processes
12:110-6.10	Reserved
12:110-6.11	Reserved
SUBCHAPTER 7. DISCRIMINATION AGAINST EMPLOYEES	
12:110-7.1	Scope of subchapter
12:110-7.2	Employer responsibility and employee rights
12:110-7.3	Unprotected activities
12:110-7.4	Filing of complaints
12:110-7.5	Burden of proof
12:110-7.6	Remedies
12:110-7.7	

	Processing of complaint
12:110-7.8	Hearing processes
12:110-7.9	Refusal to work
12:110-7.10	Employee refusal to comply with rules
SUBCHAPTER 8. ON-SITE CONSULTATION	
12:110-8.1	Scope of subchapter
12:110-8.2	Goal and purpose
12:110-8.3	Employer obligations
12:110-8.4	Employee participation
12:110-8.5	Request and scheduling
12:110-8.6	Conduct of a visit
12:110-8.7	Relationship to enforcement
12:110-8.8	Effect upon enforcement
SUBCHAPTER 9. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER	
12:110-9.1	Documents referred to by reference
12:110-9.2	Availability of documents for inspection
12:110-9.3	Availability of documents from issuing organization
N.J.A.C. 12:112 BY SUBCHAPTER	
CHAPTER 112. Occupational Safety and Health Review Commission Rules of Procedures	
SUBCHAPTER 1. GENERAL PROVISIONS	
12:112-1.1	Purpose
12:112-1.2	Scope
12:112-1.3	Definitions
12:112-1.4	Computation of time
12:112-1.5	Extension of time
12:112-1.6	Address of record
12:112-1.7	Service and notice
12:112-1.8	Filing
12:112-1.9	Consolidation
12:112-1.10	Severance
12:112-1.11	Reserved
12:112-1.12	Reserved
12:112-1.13	Reserved
SUBCHAPTER 2. PARTICIPATION IN MATTERS BEFORE THE REVIEW COMMISSION	
12:112-2.1	Non-party participation
12:112-2.2	Party and non-party representatives
12:112-2.3	Appearances of parties and non-parties
12:112-2.4	Conduct of parties
12:112-2.5	Withdrawals of parties and non-parties
SUBCHAPTER 3. NOTICES AND MOTIONS	
12:112-3.1	Title of cases
12:112-3.2	Signing of motions
12:112-3.3	Notices of Contest
12:112-3.4	Failure to obey rules
12:112-3.5	Reserved
12:112-3.6	Reserved
12:112-3.7	Reserved
12:112-3.8	Reserved
12:112-3.9	Reserved
12:112-3.10	Reserved
SUBCHAPTER 4. REVIEW OF NOTICE OF CONTEST	
12:112-4.1	Method of review
12:112-4.2	Written record review
12:112-4.3	Burden of proof
12:112-4.4	Stay and interim relief requests
12:112-4.5	Reconsiderations
12:112-4.6	Settlements
12:112-4.7	Adjournment
12:112-4.8	Withdrawals
SUBCHAPTER 5. HEARINGS	
12:112-5.1	Hearings
12:112-5.2	Abstentions
12:112-5.3	Appeals from Review of Commission determinations
SUBCHAPTER 6. REVIEW COMMISSION MEETINGS	
12:112-6.1	Meetings
12:112-6.2	Quorum
12:112-6.3	Voting
SUBCHAPTER 7. RESERVED	
N.J.A.C. 12:122 BY SUBCHAPTER	
CHAPTER 122. Cutting and Grinding of Masonry	
SUBCHAPTER 1. GENERAL PROVISIONS	
12:122-1.1	

	Purpose
12:122-1.2	Scope
12:122-1.3	Definitions
SUBCHAPTER 2. EMPLOYER RESPONSIBILITIES	
12:122-2.1	Cutting and grinding of masonry
SUBCHAPTER 3. INSPECTIONS AND ORDERS TO CEASE	
12:122-3.1	Right to enter and inspect
12:122-3.2	Orders to cease
SUBCHAPTER 4. PENALTIES AND HEARINGS	
12:122-4.1	Penalties
12:122-4.2	Hearings

**N.J.S.A. 34:6A-25 et seq. NEW JERSEY PUBLIC EMPLOYEES' OCCUPATIONAL SAFETY AND HEALTH ACT
34:6A-25. Short title**

This act shall be known and may be cited as the "New Jersey Public Employees' Occupational Safety and Health Act."

[Back to top](#)

34:6A-26. Legislative findings

The Legislature finds that the safety and health of public employees in the workplace is of primary public concern. Personal injuries and illnesses arising out of work situations result not only in wage loss and increased medical expenses for employees, but also in decreased productivity and increased workers' compensation expenses for employers. The Legislature therefore declares: a. that it is the policy of this State to ensure that all public employees be provided with safe and healthful work environments free from recognized hazards, b. that it is the responsibility of the State to promulgate standards for the protection of the health and safety of its public workforce, and c. that it is in the public interest for public employers and public employees to join in a cooperative effort to enforce these standards.

[Back to top](#)

34:6A-27. Definition

As used in this act:

- a. "Advisory board" means the Public Employees Occupational Safety and Health Advisory Board created by section 4 of this act.
- b. "Commissioner" means the Commissioner of Labor or his designee.
- c. "Employer" means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of: (1) the State, or any department, division, bureau, board, council, agency or authority of the State, except any bi-state agency; or (2) any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purposes district created pursuant to law.
- d. "Employee" means any public employee, any person holding a position by appointment or employment in the service of an "employer" as that term is used in this act and shall include any individual whose work has ceased as a consequence of, or in connection with, any administrative or judicial action instituted under this act; provided, however, that elected officials, members of boards and commissions and managerial executives as defined in the "New Jersey Employer-Employee Relations Act," P.L.1941, c. 100, C. 34:13A-1 et seq. shall be excluded from the coverage of this act;
- e. "Employee representative" means a "representative" as that term is defined in the "New Jersey Employer-Employee Relations Act," P.L.1941, c. 100, C. 34:13A-1 et seq.;
- f. "Review commission" means the Occupational Safety and Health Review Commission created by section 18 of this act;
- g. "Secretary" means the Secretary of the United States Department of Labor;
- h. "Workplace" means a place where public employees are assigned to work.

[Back to top](#)

34:6A-28. Advisory board

There is created a Public Employees' Occupational Safety and Health Advisory Board to assist the commissioner in establishing standards for the occupational safety and health of public employees. The board shall make itself available to receive information regarding matters of concern to public employees in the areas of occupational safety and health. The advisory board, under the chairmanship of the commissioner, shall consist of the Commissioner of Education, the Commissioner of Health, the Commissioner of Environmental Protection, the Commissioner of Community Affairs, the State Treasurer, or their designees, and 18 members to be appointed by the Governor, as follows: one member representing the fire service, one member representing municipalities, one member representing municipal employees, one member representing county government, one member representing employees of county government, one member representing State employees, one member representing public health care facilities, one member representing employees of public health care facilities, one member representing correctional institutions, one member representing employees of correctional institutions, one member representing law enforcement employees, one member representing local school boards, one member representing local school board employees, one member representing Rutgers, The State University, one member representing employees in institutions of higher education, and three members representing the public. The members selected by the Governor shall be selected on the basis of their experience and competence in the field of occupational safety and health. No more than nine members appointed by the Governor shall be from the same political party. Each member shall serve for a term of three years and until his successor is appointed and qualified. A vacancy shall be filled by appointment by the Governor to the unexpired term. The members of the advisory board shall serve without

compensation but shall be entitled to reimbursement for their actual traveling expenses and other expenses incurred in the performance of their duties.

[Back to top](#)

34:6A-29. Plan for health and safety standards

The commissioner shall, in consultation with the Commissioner of Health, the Commissioner of Community Affairs and the advisory board, promulgate a plan for the development and enforcement of occupational safety and health standards with respect to public employers and public employees, in accordance with section 18(c) of the "Occupational Safety and Health Act of 1970," Pub.L.91-596 (29 U.S.C. s.651 et seq.). The Department of Labor shall be the sole agency responsible for administering and enforcing this plan throughout the State. The plan shall:

- a. Provide for the development and enforcement of safety and health standards;
- b. Provide for the right of entry and inspection in all workplaces by the commissioner;
- c. Provide for the right of entry and inspection in all workplaces by the Commissioner of Health;
- d. Prohibit advance notice of inspections;
- e. Contain satisfactory assurances that the Department of Labor and the Department of Health have the legal authority and qualified personnel necessary to carry out their responsibilities under this act;
- f. Give satisfactory assurances that the State will devote adequate funds to the administration and enforcement of the standards;
- g. Contain satisfactory assurances that the State will, to the extent permitted by law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the corresponding provisions of the "Occupational Safety and Health Act of 1970," Pub.L.91-596 (29 U.S.C. s.651 et seq.);
- h. Provide that the Department of Labor shall make such reports to the secretary in the form and containing the information that the secretary from time to time requires; and
- i. Provide for such cooperation with the Department of Community Affairs in implementing the plan as is consistent with the provisions of P.L.1983, c.516 (C.34:6A-25 et seq.) and the "Occupational Safety and Health Act of 1970," Pub.L.91-596 (29 U.S.C. s.651 et seq.).

[Back to top](#)

34:6A-30. Adoption of standards

a. The commissioner shall provide for the adoption of all applicable occupational health and safety standards, amendments or changes adopted or recognized by the secretary under the authority of the "Occupational Safety and Health Act of 1970." Whenever the United States Secretary of Labor adopts a standard pursuant to the provisions of the "Occupational Safety and Health Act of 1970" (29 U.S.C. s.651 et seq.), the commissioner shall publish that federal standard in the New Jersey Register in accordance with the provisions of section 5 of P.L.1968, c.410 (C.52:14B-5) and, notwithstanding the provisions of section 4 of P.L.1968, c.410 (C.52:14B-4), that federal standard shall be deemed to be duly adopted as a State regulation upon its publication by the commissioner.

b. The commissioner shall not adopt any standard within the scope of the State uniform construction code adopted pursuant to P.L.1975, c.217 (C.52:27D-119 et seq.) or the uniform fire safety code adopted pursuant to P.L.1983, c.383 (C.52:27D-192 et al.), unless the standard is a standard adopted pursuant to subsection a. of this section. If the Commissioner of Community Affairs determines that a standard for building or structural safety adopted by the commissioner pursuant to subsection a. of this section is more stringent than the applicable standards adopted into code pursuant to the State uniform construction code or the uniform fire safety code, he shall adopt a rule incorporating the more stringent standard into the relevant code. If the Commissioner of Community Affairs determines that there is a difference between a provision of any new or existing standard adopted pursuant to subsection a. of this section and a provision of the uniform construction code or the uniform fire safety code, and he determines that the provision of the code is as effective as the provision of the standard, he shall prepare and submit to the commissioner an application for submission to the Secretary of Labor seeking (1) the approval of that provision of the uniform construction code or the uniform fire safety code as being as effective as the provision of the standard and (2) the approval of the incorporation of the code provision into the State plan.

c. Where no federal standards are applicable or where standards more stringent than the federal standards are deemed advisable, the commissioner shall, in consultation with the Commissioner of Health and the Commissioner of Community Affairs and, with the advice of the advisory board, provide for the development of State standards as may be necessary in special circumstances.

d. The commissioner and the Commissioner of Health, or their designees, shall meet with the advisory board at each scheduled meeting for these purposes. The advisory board shall meet not less than four times each year.

e. The Commissioner of Health shall not adopt standards or issue orders to comply in any area but shall be charged with inspection, investigation and related activities in the following areas:

- 1) Occupational health and environmental control;
- 2) Medical and first aid;
- 3) Toxic and hazardous substances;
- 4) Respiratory protective equipment; and
- 5) Sanitation

The Commissioner of Labor shall be charged with inspection, investigation and related activities for all other regulated areas and with adopting of standards and issuing orders to comply in all regulated areas.

[Back to top](#)

34:6A-31. Promotion of goals of the act

The commissioner, in consultation with the Commissioner of Health and the Commissioner of Community Affairs and with the advice of the advisory board, shall:

- a. Provide for a method of encouraging employers and employees in their efforts to reduce the number of safety and health hazards arising from undesirable, inappropriate, or unnecessarily hazardous or unhealthful working conditions at the workplace and of stimulating employers and employees to institute new, and to perfect existing, programs for providing safe and healthful working conditions;
- b. Provide for the publication and dissemination to employers, employees, and labor organizations, and the posting, where appropriate, by employers of informational, educational and training materials calculated to aid and assist in achieving the objectives of this act;
- c. Provide for the establishment of new, and for the perfection and expansion of existing, programs for occupational safety and health education for employers and employees and institute methods and procedures for the establishment of a program for voluntary compliance by employers and employees with the standards established pursuant to this act.

[Back to top](#)

34:6A-32. Promulgation of regulations.

The commissioner shall, in consultation with the Commissioner of Health and Senior Services and the Commissioner of Community Affairs and with the advice of the advisory board, promulgate all regulations which he deems necessary for the proper administration and enforcement of this act. A variance may be granted if the commissioner determines that the applicant is in compliance with the requirements for a permanent variance as set forth in subsection c. of section 15 of this act. The variance shall not be deemed to be a variation approved pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) or the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et al.) or any other building or fire safety standard or code.

Space leased by a public employer shall be subject to current health or safety rules and regulations. Any deficiency, including a deficiency resulting either from occupant use or deferred maintenance by the lessor, shall be subject to correction in accordance with the governing rules and regulations at the time that the deficiency is cited by the commissioner or the Commissioner of Health and Senior Services. However, a lease of any duration may not be entered into unless the leased property is in conformance with such rules and regulations as are in effect at the time the lease is executed.

No fire company, first aid or rescue squad, whether paid, part-paid, or volunteer, shall be required to pay to the Department of Labor or the Department of Health and Senior Services any registration or inspection fee imposed by rule or regulation with regard to the filling of air cylinders for respiratory equipment used by the fire company, first aid or rescue squad.

[Back to top](#)

34:6A-33. Responsibilities of employers

Every employer shall:

- a. Provide each of his employees with employment and a place of employment which are free from recognized hazards which may cause serious injury, physical harm or death to his employees; and
- b. Comply with occupational safety and health standards promulgated under this act.

[Back to top](#)

34:6A-34. Duty of compliance by public employees

Every public employee shall comply with occupational safety and health standards and all regulations promulgated under this act which are applicable to his own actions and conduct.

[Back to top](#)

34:6A-35. Inspections; compliance

- a. The commissioner and the Commissioner of Health shall be charged with making inspections in their jurisdictional areas as specified in section 6 of P.L.1983, c.516 (C.34:6A-30). The commissioner may call on the professional staff of other departments whenever he deems their assistance necessary.
- b. Each commissioner shall have the right of immediate entry at reasonable hours and without advance notice into any workplace to conduct such investigations as he may deem necessary. Each commissioner shall maintain records of the results of any investigation under his jurisdiction, which, after a final agency or judicial action is taken regarding any order to comply which results from the inspection, shall be made available to the public upon request, except that any information which identifies an individual employee shall be confidential. The authority of each commissioner to inspect any premises for purposes of investigating an alleged violation under his jurisdiction shall not be limited to the alleged violation but shall extend to any other area of the premises in which he has reason to believe that a violation of any provision of this act under his jurisdiction exists. The Commissioner of Health shall make his inspection records available to the commissioner for purposes of enforcement.
- c. If either commissioner concludes that conditions or practices in violation of any provision of this act under his jurisdiction exist in any workplace, he shall inform the affected employees and employers of the danger.
- d. Each order to comply issued under this section, or a copy or copies thereof, shall be prominently posted at or near each place where a violation referred to in the order to comply occurred and the commissioner shall make the order available to employee representatives, affected employees and, upon request, to the public.
- e. Any employee who accompanies either commissioner on an inspection shall receive payment of normal wages for the time spent during the inspection.
- f. Where there is no authorized employee representative, each commissioner or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

g. Any person who gives advance notice of any inspection to be conducted under this act, without authority from the commissioner, the Commissioner of Health or their designees, shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both.

[Back to top](#)

34:6A-36. Notice of safety violation

a. Any employee, group of employees or employee representative who believes that a violation of a safety standard exists, or that an imminent danger exists, may request an inspection by giving notice to the commissioner of the violation or danger. The notice and request shall be in writing, shall set forth the grounds for the notice and shall be signed by the employee, a group of employees or an employee representative. Upon the request of the person giving the notice, his name or the name of any employee representative giving the notice shall be withheld. The commissioner shall conduct an appropriate inspection at the earliest time possible.

The commissioner shall so interpret and administer this section so as to encourage any employee, group of employees or employee representative who believes that a violation of a safety standard exists, or that an imminent danger exists, to report that violation or danger in the first instance to the employer's safety officer.

b. A representative of the employer, the employee or employees giving the notice and an employee representative shall be given the opportunity to accompany the commissioner during an inspection for the purpose of aiding in such inspection. Where there is no authorized employee representative, the commissioner shall consult with a reasonable number of employees concerning matters of safety in the workplace.

c. Any employee who accompanies the commissioner on an inspection shall receive payment of normal wages for the time spent during the inspection.

d. The information obtained by the commissioner under this section shall be obtained with a minimum burden upon the employer.

[Back to top](#)

34:6A-37. Repealed

[Back to top](#)

34:6A-38. Notice of health standard violation

a. Any employee, group of employees or employee representative who believes that a violation of a health standard exists, or that an imminent danger exists, may request an inspection by giving notice to the Commissioner of Health of the violation or danger. The notice and request shall be in writing, shall set forth the grounds for the notice and shall be signed by the employee, a group of employees or employee representative. Upon the request of the person giving the notice, his name or the name of any employee representative giving the notice shall be withheld. The Commissioner of Health shall conduct an appropriate inspection at the earliest time possible. In any case of a possible imminent hazard, the commissioner may request the assistance of other State agencies having appropriate expertise.

The Commissioner of Health shall so interpret and administer this section so as to encourage any employee, group of employees or employee representative who believes that a violation of a health standard exists, or that an imminent danger exists, to report that violation or danger in the first instance to the employer's safety officer.

b. A representative of the employer, an employee giving the notice and an employee representative shall be given the opportunity to accompany the Commissioner of Health during an inspection for the purpose of aiding in such inspection. Where there is no authorized employee representative, the Commissioner of Health shall consult with a reasonable number of employees concerning matters of health in the workplace.

c. Any employee who accompanies the Commissioner of Health or the Commissioner of Community Affairs on an inspection shall receive payment of normal wages for the time spent during the inspection.

d. The information obtained by the Commissioner of Health under this section shall be obtained with a minimum burden upon the employer.

[Back to top](#)

34:6A-39. Variances

a. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this act. A temporary order shall be granted only if the employer files an application with the commissioner which meets the requirements of this section and establishes in a hearing conducted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and P.L.1978, c.67 (C.52:14F-1 et seq.) that:

- he is unable to comply with the standard by its effective date because of the unavailability of professional or technical personnel or of materials and equipment needed to comply with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;
- he is taking all available steps to safeguard employees against the hazards covered by the standard; and
- he has an effective program for complying with the standard as quickly as practicable.

Any temporary order issued under this section shall prescribe the practices, means, methods, operations and processes which the employer shall adopt and use while the order is in effect and the order shall state in detail what the employer's program shall be for complying with the standard.

A temporary order may be granted only if notice to the employees is given; provided, however, that the commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. An employee representative or, where one does not exist, the affected employees, may appear at the hearing, with or without counsel, and submit testimony concerning the employer's application for the variance. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed no more than twice so long as the requirements of this section are met and if an application for renewal is filed at least 90 days prior to the expiration

date of the order. No interim renewal of an order may remain in effect longer than 180 days.

b. An application for temporary variance shall contain:

- a specification of the standard or portion thereof from which the employer seeks a variance;
- a representation by the employer, supported by representations from qualified persons who have firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor;
- a statement of the steps he has taken and will take, with specific dates, to protect employees against the hazard covered by the standard;
- a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take, with dates specified, to comply with the standard;
- a certification that he has informed his employees of the application by giving a copy thereof to their employee representative where one exists, and posting a statement at the place where notices to employees are normally posted, giving a summary of the application and specifying where a copy may be examined. A description of the notification procedure used by the employer shall be contained in the certification. The information to the employees shall also inform them of their right to appear and be heard, as set forth in subsection a. of this section, at the hearing on the variance application; and
- a statement, if appropriate, that such a variance is necessary to permit an employer to participate in an experiment approved by him designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

c. Any affected employer may apply to the commissioner for a rule or order for a permanent variance from a standard promulgated under this act. An employee representative or, where one does not exist, the affected employees, shall be given notice of each such application and shall be afforded an opportunity to participate in a hearing pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C. 52:14B-1 et seq.) and P.L.1978, c.67 (C.52:14F-1 et seq.) on the merits of the application, with or without counsel, and to submit testimony. The commissioner shall issue such rule or order if he determines on the record, after an opportunity for an inspection, where appropriate, that the proponent of the variance has demonstrated, by a preponderance of the evidence, that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide workplaces which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer shall maintain and the practices, means, methods, operations and processes which he shall adopt and utilize to the extent they differ from any standard adopted pursuant to this act. Such a rule or order may be modified or revoked upon application by an employer, any employee, group of employees or employee representative, or by the commissioner on his own motion, in the manner prescribed for its issuance under this section at any time after six months from its issuance.

d. In determining whether to grant a variance from a health standard, the commissioner shall consult with the Commissioner of Health.

[Back to top](#)

34:6A-40. Employer records; reports

In accordance with the regulations which shall be adopted by the commissioner, each employer shall make, keep, preserve and make available the following records to the commissioner and the Commissioner of Health:

- a. Records regarding the employer's activities relating to this act as the commissioner deems necessary or appropriate for the enforcement of this act or for developing information regarding the causes and prevention of occupational accidents and illness.
- b. Records regarding work-related deaths, injuries and illnesses other than minor injuries which require only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or of motion, or transfer to another job.
- c. Records regarding employee exposure to potentially toxic materials or other harmful physical agents which the regulations require to be monitored or measured. The regulations shall provide employees or their representatives with an opportunity to observe the monitoring or measurement and access to the records of the monitoring or measurement. Each employee or former employee shall be informed of and have access to all records which will indicate his own exposure to toxic materials or harmful physical agents and the properties, characteristics and effects thereof. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials of harmful physical agents in concentrations or at levels which exceed those prescribed by any safety and health standard promulgated under this act, and shall inform any employee who is being exposed of the corrective action being taken and the time limit for compliance pursuant to subsection a. of section 17 of this act.

Each employer shall, in accordance with regulations which shall be adopted by the commissioner, file with the commissioner periodic reports based on the records kept pursuant to this section. The commissioner shall develop and maintain an effective program of collection, compilation, analysis and reporting to the public of statistics on work-related deaths, injuries and illnesses other than minor injuries which require only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or of motion, or transfer to another job, except that any information which identifies an individual employee shall be confidential. The commissioner shall promote, encourage or directly engage in programs of studies, information and communication concerning occupational safety and health statistics.

[Back to top](#)

34:6A-41. Compliance orders; violations; penalties

a. If the commissioner determines that an employer has violated a provision of this act, or a safety standard or regulation promulgated under this act, if the commissioner receives a certification from the Commissioner of Health that an employer violation has been determined to exist within the Commissioner of Health's jurisdiction, or if the commissioner receives a report from the Department of Labor or the Department of Health, prepared as a result of the investigation of the death or serious injury of one or more firefighters, which indicates the existence of a violation of this act or of a safety standard promulgated under this act, he shall with reasonable promptness, and in no case more than six months after his determination or the receipt of the certificate or report, issue to the employer a written order to comply which shall describe the nature of the violation, including a reference to the provision of the section, standard, regulation or order alleged to have been violated, the sanction therefor, where appropriate, and shall fix a reasonable time for compliance.

b. If the commissioner issues to an employer an order to comply, the employer shall post such order or a copy thereof at or near each location of the violation cited in the order so that it is clearly visible to affected employees. The commissioner shall make such order available to employee representatives and affected employees, and shall make the order available to the public upon request.

c. If no notice of intent to contest any provision of the order is filed with the commissioner by an employer, employee or employee representative within fifteen working days of the issuance of an order to comply, the order shall be deemed final and not subject to review by any court or agency. If, within fifteen working days of the issuance of an order to comply, any employer, employee or employee representative files a notice with the commissioner of intent to contest any provision of the order, the commissioner shall immediately advise the Occupational Safety and Health Review Commission of the notification, and the commission shall afford an opportunity for a hearing. The review commission shall thereafter issue an order, based on a finding of fact, affirming, modifying, or vacating the commissioner's order to comply or the proposed penalty, or directing other appropriate relief, and the order shall become final 45 days after its issuance. The rules of procedure prescribed by the review commission shall provide affected employers, employees, or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

d. If the time for compliance with an order of the commissioner issued pursuant to this section elapses, and the employer has not made a good faith effort to comply, the commissioner shall impose a civil administrative penalty of up to \$7,000 per day for each violation of a provision of P.L.1983, c.516 (C.34:6A-25 et seq.), or of a standard or regulation promulgated under that act, or of an order to comply. Any employer who willfully or repeatedly violates the requirements of this section or any standard, rule, order or regulation promulgated under that act shall be assessed a civil administrative penalty of up to \$70,000 for each violation. Penalties imposed under this section may be recovered with costs in a civil action commenced by the commissioner by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.) in the Superior Court or a municipal court, either of which shall have jurisdiction to enforce "the penalty enforcement law" in connection with this act. If the violation is of a continuing nature, each day during which it continues after the date given for compliance in accordance with the order of the commissioner shall constitute an additional separate and distinct offense.

e. The commissioner is authorized to compromise and settle any claim for a penalty under this section in such amount as, in the discretion of the commissioner, may appear appropriate and equitable under all of the circumstances. In any claim involving investigations conducted by the Department of Health, the commissioner shall make the determination as to the compromise or settlement of the claim in consultation with the Commissioner of Health.

[Back to top](#)

34:6A-42. Occupational Safety and Health Review Commission

a. There is established an Occupational Safety and Health Review Commission within the Department of Labor to hear appeals regarding orders to comply and penalties issued under this act. The commission shall consist of three members appointed by the Governor from among persons who by reason of training, education or experience are qualified to carry out the functions of the commission. The Governor shall designate one of the members of the commission to serve as chairman.

b. Members of the review commission shall serve terms of four years and until their successors are appointed. The salaries, compensation and wages of the members of the commission shall be established by the commissioner. The Department of Labor shall provide the review commission with the support staff necessary for the review commission to perform its duties. The members and the support staff shall be reimbursed for necessary expenses incurred in the performance of their duties.

c. The review commission shall meet as often as is necessary to hear and rule on appeals regarding orders to comply and penalties issued under this act. The review commission shall adopt rules with respect to the procedural aspects of its hearings.

d. An employee or employee representative may participate as a party to any proceeding regarding the employees' employer before the review commission.

e. The review commission shall hear and make a determination upon any proceeding instituted before it, and shall make a report of the determination which shall constitute its final disposition of the proceedings. The report shall become the final order of the commission 45 days after the issuance of the report.

f. In the conduct of hearings the review commission may subpoena and examine witnesses, require the production of evidence, administer oaths and take testimony and depositions.

g. After hearing an appeal the review commission may sustain, modify or dismiss a citation or penalty.

[Back to top](#)

34:6A-43. Appeals from decision of review commission

Any appeal from a decision of the review commission shall be to the Appellate Division of the Superior Court.

[Back to top](#)

34:6A-44. Restraining orders

The Attorney General, at the request of and on behalf of the commissioner, may bring an action in the Superior Court to restrain any conditions or practices in any workplace which the commissioner determines, in accordance with section 17 of this act, are such that a danger exists which could reasonably be expected to cause death or serious physical harm. Any order issued under this act may require such steps to be taken as may be necessary to avoid, correct or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists.

[Back to top](#)

34:6A-45. Retaliatory discrimination prohibited

a. No person shall discharge, or otherwise discipline, or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this section or has testified or is about to testify in any such proceeding, or because of the exercise by such employee on

behalf of himself or others of any right afforded by this section.

b. Any employee who believes that he has been discharged, disciplined or otherwise discriminated against by any person in violation of this section may, within 180 days after the employee first has knowledge such violation did occur, file a complaint with the commissioner alleging that discrimination. Upon receipt of the complaint, the commissioner shall cause an investigation to be made as he deems appropriate. If, upon that investigation, the commissioner or his designee determines that the provisions of this section have been violated, he shall, not more than 90 days after the receipt of the complaint, notify the employer and the employee of his determination, which shall include an order for all appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay and reasonable legal costs. The notice shall become the commissioner's final determination, unless, within 15 days of receipt of the notice, the employer or employee requests a hearing before the commissioner or his designee, in which case the commissioner shall issue his final determination not more than 45 days after the hearing report is issued.

c. Nothing in this section shall be deemed to diminish the rights of any employee under any law, rule or regulation or under any collective negotiation agreement.

d. Any waiver by an employee or applicant for employment of the benefits or requirements of this act shall be against public policy and be void and any employer's request or requirement that an employee waive any rights under this act as a condition of employment or continued employment shall constitute an act of discrimination.

[Back to top](#)

34:6A-46. Repealed

[Back to top](#)

34:6A-47. Advisors to commission of capital budgeting and planning on workplace safety and health

The Commissioner of Labor, the Commissioner of Community Affairs and the Commissioner of Health shall serve in an advisory capacity to the New Jersey Commission of Capital Budgeting and Planning on matters of workplace safety and health, to ensure that new construction meets the standards established by this act.

[Back to top](#)

34:6A-48. Act inapplicable to right to strike

Nothing in this act shall be deemed to give public employees the right to strike over occupational safety and health issues.

[Back to top](#)

34:6A-49. Uniform codes not superseded, permits required

Except as provided in section 6 of P.L.1983, c.516 (C.34:6A-30), nothing in this act shall be deemed to conflict with or supersede any provision of the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) or the code promulgated thereunder or to affect or limit the powers, duties, authorities and responsibilities of the Commissioner of Community Affairs or any enforcing agency thereunder. Except as provided in section 6 of P.L.1983, c.516 (C.34:6A-30), nothing in this act shall be deemed to conflict with or supersede any provision of the "Uniform Fire Safety Act," P.L.1983, c.383 (C.52:27D-192 et al.), or the code promulgated thereunder, nor affect or limit the powers, duties, authorities and responsibilities of the Commissioner of Community Affairs or any enforcing agency thereunder.

Whenever an action taken to comply with the provisions of this act makes it necessary for a property owner or employer to obtain a permit pursuant to the State uniform construction code, the owner or employer shall obtain the permit from the enforcing agency having jurisdiction. The commissioner shall inform any owner or employer who is required to take an action to be in compliance that it is the responsibility of the owner or employer to contact the agency having jurisdiction to determine whether a permit is required and to obtain any required permit.

[Back to top](#)

34:6A-50. Annual report

a. Not later than December 31 of the first full calendar year following the effective date of this 1995 amendatory and supplementary act and not later than December 31 of each subsequent year, the commissioner shall, in consultation with the Commissioners of Health and Community Affairs, issue to the Governor and the Legislature an annual report on the effects of this 1995 amendatory and supplementary act on the protections provided, State plan approval, and costs and benefits to public employees and employers.

b. The report issued pursuant to subsection a. of this section on the fifth full calendar year following the effective date of this 1995 amendatory and supplementary act shall include any recommendations the commissioner deems appropriate for amendments to, or the repeal of, this 1995 amendatory and supplementary act, provided that the recommendations shall include an implementation plan which includes measures to offset any loss of federal funding caused by any recommended amendments or repeal.

[Back to top](#)

CHAPTER 100. SAFETY AND HEALTH STANDARDS FOR PUBLIC EMPLOYEES

Chapter Expiration Date: In accordance with N.J.S.A. 52:14B-5.1c, Chapter 100, Safety and Health Standards for Public Employees, expires on June 6, 2010.

SUBCHAPTER 7. STANDARD FOR HAZARD COMMUNICATION

12:100-7.1 Purpose

(a) The purpose of this subchapter is to ensure that the hazards of all chemicals produced or imported are evaluated, and that information concerning their hazards is transmitted to employers and employees. This transmittal of information is to be accomplished by means of comprehensive hazard communication programs, which are to include container labeling and other forms of warning, material safety data sheets and employee

training.

1. This occupational safety and health standard is intended to address comprehensively the issue of evaluating the potential hazards of chemicals, and communicating information concerning hazards and appropriate protective measures to employees, and to preempt any legal requirements of a state, or political subdivision of this State, pertaining to this subject. Evaluating the potential hazards of chemicals, and communicating information concerning hazards and appropriate protective measures to employees, may include, for example, but is not limited to, provisions for: developing and maintaining a written hazard communication program for the workplace, including lists of hazardous chemicals present; labeling of containers of chemicals in the workplace, as well as of containers of chemicals being shipped to other workplaces; preparation and distribution of material safety data sheets to employees and downstream employers, and development and implementation of employee training programs regarding hazards of chemicals and protective measures.

[Back to top](#)

12:100-7.2 Scope and application

(a) This subchapter requires chemical manufacturers or importers to assess the hazards of chemicals which they produce or import, and all employers to provide information to their employees about the hazardous chemicals to which they are exposed, by means of a hazard communication program, labels and other forms of warning, material safety data sheets, and information and training. In addition, this subchapter requires distributors to transmit the required information to employers. Employers who do not produce or import chemicals need only focus on those parts of this rule that deal with establishing a workplace program and communicating information to their workers. Appendix E of this subchapter, incorporated herein by reference, is a general guide for such employers to help them determine their compliance obligations under these rules.

(b) This subchapter applies to any chemical which is known to be present in the workplace in such a manner that employees may be exposed under normal conditions of use or in a foreseeable emergency.

(c) This subchapter applies to laboratories only as follows:

1. Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced;
2. Employers shall maintain any material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that they are readily accessible during each work shift to laboratory employees when they are in their work areas;
3. Employees shall ensure that laboratory employees are provided information and training in accordance with N.J.A.C. 12:100-7.8, except for the location and availability of the written hazard communication program under N.J.A.C. 12:100-7.8(b)3; and
4. Laboratory employers that ship hazardous chemicals are considered to be either a chemical manufacturer or a distributor under this rule. Thus, they must ensure that any containers of hazardous chemicals leaving the laboratory are labeled in accordance with N.J.A.C. 12:100-7.6(a), and that a material safety data sheet is provided to distributors and other employers in accordance with N.J.A.C. 12:100-7.7(f) and (g).

(d) In work operations where employees only handle chemicals in sealed containers, which are not opened under normal conditions of use (such as are found in marine cargo handling, warehousing, or retail sales), this subchapter applies to these operations only as follows:

1. Employers shall ensure that labels on incoming containers of hazardous chemicals are not removed or defaced;
2. Employers shall maintain copies of any material safety data sheets that are received with incoming shipments of the sealed containers of hazardous chemicals or shall obtain a material safety data sheet as soon as possible for sealed containers of hazardous chemicals received without a material safety data sheet if an employee requests the material data sheet and shall ensure that the material safety data sheets are readily accessible during each work shift to employees when they are in their work area(s); and
3. Employers shall ensure that employees are provided with information and training in accordance with N.J.A.C. 12:100-7.8 (except for the location and availability of the written hazard communication program under N.J.A.C. 12:100-7.8(b)3), to the extent necessary to protect them in the event of a spill or leak of a hazardous chemical from a sealed container.

(e) This subchapter does not require labeling of the following chemicals:

1. Any pesticides as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq., when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency;
2. Any chemical substance or mixture as such terms are defined in the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Environmental Protection Agency;
3. Any food, food additive, color additive, drug, cosmetic, or medical or veterinary device or product, including materials intended for use as ingredients in such products (for example, flavors and fragrances), as such terms are defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq., or the Virus-Serum-Toxin Act of 1913, 21 U.S.C. §§ 151 et seq., and regulations issued under those Acts, when they are subject to the labeling requirements under those Acts by either the Food and Drug Administration or the Department of Agriculture;
4. Any distilled spirits (beverage alcohols), wine, or malt beverage intended for nonindustrial use, as such terms are defined in the Federal Alcohol Administration Act, 27 U.S.C. §§ 201 et seq., and regulations issued under that Act, when subject to the labeling requirements of that Act and labeling regulations issued under that Act by the Bureau of Alcohol, Tobacco, and Firearms;
5. Any consumer product or hazardous substance as those terms are defined in the Consumer Product Safety Act, 15 U.S.C. §§ 2051 et seq., and Federal Hazardous Substances Act, 15 U.S.C. §§ 1261 et seq., respectively, when subject to a consumer product safety standard or labeling requirement of those Acts, or regulations issued under those Acts by the Consumer Product Safety Commission; and
6. Agricultural or vegetable seed treated with pesticides and labeled in accordance with the Federal Seed Act, 7 U.S.C. §§ 1551 et seq., and the labeling regulations issued under that Act by the Department of Agriculture.

(f) This subchapter does not apply to:

1. Any hazardous waste as such term is defined by the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6901 et seq., when subject to regulations issued under that Act by the Environmental Protection Agency;
2. Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq., when the hazardous substance is the focus of remedial or removal actions being conducted under CERCLA in accordance with the Environmental Protection Agency regulations;
3. Tobacco or tobacco products;
4. Wood or wood products, including lumber which will not be processed, where the chemical manufacturer or importer can establish that the only hazard they pose to employees is the potential for flammability or combustibility. Wood or wood products, which have been treated with a hazardous chemical covered by this standard, and wood which may be subsequently sawed or cut, generating dust, are not exempted;
5. Articles, as the term is defined in N.J.A.C. 12:100-7.3;
6. Food or alcoholic beverages which are sold, used, or prepared in a retail establishment such as a grocery store, restaurant, or drinking place, and foods intended for personal consumption by employees while in the workplace;
7. Any drug, as that term is defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq., when it

is in solid, final form for direct administration to the patient (for example, tablets or pills); drugs which are packaged by the chemical manufacturer for sale to consumers in a retail establishment (for example, over-the-counter drugs); and drugs intended for personal consumption by employees while in the workplace (for example, first aid supplies);

8. Cosmetics, which are packaged for sale to consumers in a retail establishment, and cosmetics intended for personal consumption by employees while in the workplace;

9. Any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act, 15 U.S.C. §§ 2051 et seq., and Federal Hazardous Substances Act, 15 U.S.C. §§ 1261 et seq., respectively, where the employer can show that it is used in the workplace for the purpose intended by the chemical manufacturer or importer of the product, and the use results in a duration and frequency of exposure which is not greater than the range of exposures that could reasonably be experienced by consumers when used for the purpose intended;

10. Nuisance particulates where the chemical manufacturer or importer can establish that they do not pose any physical or health hazard covered under this section;

11. Ionizing and non-ionizing radiation; and

12. Biological hazards.

[Back to top](#)

12:100-7.3 Definitions

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

"Article" means a manufactured item other than a fluid or particle:

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 under normal conditions of use does not release more than very small quantities, for example, minute or trace amounts of a hazardous chemical (as determined under N.J.A.C. 12:100-7.4), and does not pose a physical hazard or health risk to employees.

"Chemical" means any element, chemical compound or mixture of elements and/or compounds.

"Chemical manufacturer" means an employer with a workplace where chemical(s) are produced for use or distribution.

"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 (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature, or a name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

"Combustible liquid" means any liquid having a flashpoint at or above 100 degrees Fahrenheit (37.8 degrees Celsius), but below 200 degrees Fahrenheit (93.3 degrees Celsius), except any mixture having components with flashpoints of 200 degrees Fahrenheit (93.3 degrees Celsius), or higher, the total volume of which make up 99 percent or more of the total volume of the mixture.

"Commercial account" means an arrangement whereby a retail distributor sells hazardous chemicals to an employer, generally in large quantities over time and/or at costs that are below the regular retail price.

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

"Compressed gas" means:

1. A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70 degrees Fahrenheit (21.1 degrees Celsius);
2. A gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130 degrees Fahrenheit (54.4 degrees Celsius) regardless of the pressure at 70 degrees Fahrenheit (21.1 degrees Celsius); or
3. A liquid having a vapor pressure exceeding 40 psi at 100 degrees Fahrenheit (37.8 degrees Celsius) as determined by ASTM D-323-72.

"Container" means any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous chemical. For purposes of this section, pipes or piping systems, and engines, fuel tanks, or other operating systems in a vehicle, are not considered to be containers.

"Designated representative" means any individual or organization to which an employee gives written authorization to exercise such employee's rights under this section. A recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

"Director" means the Director, National Institute for Occupational Safety and Health, United States Department of Health and Human Services, or designee.

"Distributor" means a business, other than a chemical manufacturer or importer, which supplies hazardous chemicals to other distributors or to employers.

"Employee" means a worker who may be exposed to hazardous chemicals under normal operating conditions or in foreseeable emergencies. Workers such as office workers or bank tellers who encounter hazardous chemicals only in nonroutine, isolated instances are not covered.

"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.

"Exposure" or "exposed" means that an employee is subjected in the course of employment to a chemical that is a physical or health hazard, and includes potential (for example, accidental or possible) exposure. "Subjected" in terms of health hazards includes any route of entry (for example, inhalation, ingestion, skin contact or absorption).

"Flammable" means a chemical that falls into one of the following categories:

1. "Aerosol, flammable" means an aerosol that, when tested by the method described in 16 CFR 1500.45, yields a flame projection exceeding 18 inches at full valve opening, or a flashback (a flame extending back to the valve) at any degree of valve opening;
2. "Gas, flammable" means a gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of 13 percent by volume or less; or a gas that, at ambient temperature and pressure, forms a range of flammable mixtures with air wider than 12 percent by volume, regardless of the lower limit;
3. "Liquid, flammable" means any liquid having a flashpoint below 100 degrees Fahrenheit (37.8 degrees Celsius), except any mixture having components with flashpoints of 100 degrees Fahrenheit (37.8 degrees Celsius) or higher, the total of which make up 99 percent or more of the total volume of the mixture;
4. "Solid, flammable" means a solid, other than a blasting agent or explosive as defined in 29 CFR 1910.109(a), that

is liable to cause fire through friction, absorption of moisture, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily and, when ignited, burns so vigorously and persistently as to create a serious hazard. A chemical shall be considered to be a flammable solid if, when tested by the method described in 16 CFR 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

"Flashpoint" means the minimum temperature at which a liquid gives off a vapor in sufficient concentration to ignite when tested as follows:

1. Tagliabue Closed Tester (see American National Standard Method of Test for Flash Point by Tag Closed Tester, Z11.24-1979 (ASTM D 56-79)) for liquids with a viscosity of less than 45 Saybolt Universal Seconds (SUS) at 100 degrees Fahrenheit (37.8 degrees Celsius), that do not contain suspended solids and do not have a tendency to form a surface film under test;
2. Pensky-Martens Closed Tester (see American National Standard Method of Test for Flash Point by Pensky-Martens Closed Tester, Z11.7-1979 (ASTM D 93-79)) for liquids with a viscosity equal to or greater than 45 SUS at 100 degrees Fahrenheit (37.8 degrees Celsius), or that contain suspended solids, or that have a tendency to form a surface film under test; or
3. Setafash Closed Tester (see American National Standard Method of Test for Flash Point by Setafash Closed Tester (ASTM D 3278-78)).

Organic peroxides, which undergo auto-accelerating thermal decomposition, are excluded from any of the flashpoint determination methods specified above.

"Foreseeable emergency" means any potential occurrence such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment, which could result in an uncontrolled release of a hazardous chemical into the workplace.

"Hazardous chemical" means any chemical which is a physical hazard or a health hazard.

"Hazardous Substance Fact Sheet" means a written document prepared by the New Jersey Department of Health and Senior Services for each hazardous substance on the Right to Know Hazardous Substance List except for generic categories, and transmitted by the Department to public employers, county health departments, county clerks, designated county lead agencies and the public pursuant to the provisions of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq.

"Hazard warning" means any words, pictures, symbols, or combination thereof, appearing on a label or other appropriate form of warning which convey the specific physical and health hazard(s), including target organ effects, of the chemical(s) in the container(s). (See the definitions for "physical hazard" and "health hazard" to determine the hazards which must be covered.)

"Health hazard" means a chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals, which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents that act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. Appendix A of this subchapter, incorporated herein by reference, provides further definitions and explanations of the scope of health hazards covered by this subchapter, and Appendix B of this subchapter, incorporated herein by reference, describes the criteria to be used to determine whether or not a chemical is to be considered hazardous for purposes of this standard.

"Identity" means any chemical or common name, which is indicated on the material safety data sheet (MSDS) for the chemical. The identity used shall permit cross-references to be made among the required list of hazardous chemicals, the label and the MSDS.

"Immediate use" means that the hazardous chemical will be under the control of and used only by the person who transfers it from a labeled container and only within the work shift in which it is transferred.

"Importer" means the first business with employees within the Customs Territory of the United States, which receives hazardous chemicals produced in other countries for the purpose of supplying them to distributors or employers within the United States.

"Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

"Material safety data sheet (MSDS)" means written or printed material concerning a hazardous chemical, which is prepared in accordance with N.J.A.C. 12:100-7.7.

"Mixture" means any combination of two or more chemicals if the combination is not, in whole or in part, the result of a chemical reaction.

"Organic peroxide" means an organic compound that contains the bivalent-O-O-structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

"Oxidizer" means a chemical other than a blasting agent or explosive as defined in 29 CFR 1910.109(a), that initiates or promotes combustion in other materials, thereby causing fire either of itself or through the release of oxygen or other gases.

"Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.

"Produce" means to manufacture, process, formulate, blend, extract, generate, emit, or repackage.

"Pyrophoric" means a chemical that will ignite spontaneously in air at a temperature of 130 degrees Fahrenheit (54.4 degrees Celsius) or below.

"Responsible party" means someone who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary.

"Right to Know Hazardous Substance List" includes the workplace hazardous substance list and the environmental hazardous substance list.

"Right to Know Survey" includes the workplace survey and environmental survey.

"Specific chemical identity" means the chemical name, Chemical Abstracts Service (CAS) Registry Number, or any other information that reveals the precise chemical designation of the substance.

"Technically qualified person" means:

1. For training purposes, a person who is a registered nurse, a certified safety professional, or a certified industrial hygienist, or has a bachelor's degree or higher in industrial hygiene, environmental science, health education, chemistry, or a related field, and understands the health risks associated with exposure to hazardous substances;
2. For training purposes, a person who has completed at least 30 hours of hazardous materials training offered by the New Jersey State Safety Council, the New Jersey Department of Health and Senior Services, an accredited public or private educational institution, labor union, trade association, private organization or government agency, and understands the health risks associated with exposure to hazardous substances, and has at least one year of experience handling hazardous substances or working with hazardous substances. The 30-hour requirement may be met by the combination of one or more hazardous materials training courses; or
3. For purposes of teaching the recruit firefighting training course established by the New Jersey Department of Community Affairs, a person who has fulfilled the requirements of Firefighter Instructor Level I as certified by the Department of Community Affairs.

"Trade secret" means any confidential formula, pattern, process, device, information or compilation of information that is used in an employer's business, and that gives the employer an opportunity to obtain an advantage over competitors who do not know or use it. Appendix D of this subchapter, incorporated herein by reference, sets out the criteria to be used in evaluating trade secrets.

"Unstable (reactive)" means a chemical, which in the pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shocks, pressure or temperature.

"Use" means to package, handle, react, emit, extract, generate as a byproduct, or transfer.

"Water-reactive" means a chemical that reacts with water to release a gas that is either flammable or presents a health hazard.

"Work area" means a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

"Workplace" means an establishment, job site, or project, at one geographical location containing one or more work areas.

"Workplace Hazardous Substance List" means the list of hazardous substances developed by the New Jersey Department of Health and Senior Services 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 the New Jersey Department of Health and Senior Services and completed by a public employer pursuant to the Worker and Community Right to Know Act, on which the employer shall report each hazardous substance on the Right to Know Hazardous Substance List present at its facility. The workplace survey is incorporated into the Right to Know Survey.

[Back to top](#)

12:100-7.4 Hazard determination

(a) Chemical manufacturers and importers shall evaluate chemicals produced in their workplaces or imported by them to determine if they are hazardous. Employers are not required to evaluate chemicals unless they choose not to rely on the evaluation performed by the chemical manufacturer or importer for the chemical to satisfy this requirement.

(b) Chemical manufacturers, importers or employers evaluating chemicals shall identify and consider the available scientific evidence concerning such hazards. For health hazards, evidence which is statistically significant and which is based on at least one positive study conducted in accordance with established scientific principles is considered to be sufficient to establish a hazardous effect if the results of the study meet the definitions of health hazards in this section. Appendix A shall be consulted for the scope of health hazards covered, and Appendix B shall be consulted for the criteria to be followed with respect to the completeness of the evaluation, and the data to be reported.

(c) The chemical manufacturer, importer or employer evaluating chemicals shall treat the following sources as establishing that the chemicals listed in them are hazardous:

1. 29 CFR § 1910, subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration (OSHA); or
2. "Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment," American Conference of Governmental Industrial Hygienists (ACGIH) (2003 Edition). The chemical manufacturer, importer, or employer is still responsible for evaluating the hazards associated with the chemicals in these source lists in accordance with the requirements of this standard.
- (d) Chemical manufacturers, importers and employers evaluating chemicals shall treat the following sources as establishing that a chemical is a carcinogen or potential carcinogen for hazard communication purposes: National Toxicology Program (NTP), "Annual Report on Carcinogens" (10th Edition); International Agency for Research on Cancer (IARC) "Monographs"; or 29 CFR § 1910, subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration.

1. The "Registry of Toxic Effects of Chemical Substances" published by the National Institute for Occupational Safety and Health indicates whether a chemical has been found by NTP or IARC to be a potential carcinogen.

(e) The chemical manufacturer, importer or employer shall determine the hazards of mixtures of chemicals as follows:

1. If a mixture has been tested as a whole to determine its hazards, the results of such testing shall be used to determine whether the mixture is hazardous;
2. If a mixture has not been tested as a whole to determine whether the mixture is a health hazard, the mixture shall be assumed to present the same health hazards as do the components which comprise one percent (by weight or volume) or greater of the mixture, except that the mixture shall be assumed to present a carcinogenic hazard if it contains a component in concentrations of 0.1 percent or greater which is considered to be a carcinogen under N.J.A.C. 12:100-7.4(d);
3. If a mixture has not been tested as a whole to determine whether the mixture is a physical hazard, the chemical manufacturer, importer, or employer may use whatever scientifically valid data is available to evaluate the physical hazard potential of the mixture; and
4. If the chemical manufacturer, importer, or employer has evidence to indicate that a component present in the mixture in concentrations of less than one percent (or in the case of carcinogens, less than 0.1 percent) could be released in concentrations which would exceed an established OSHA permissible exposure limit or ACGIH

Threshold Limit Value, or could present a health risk to employees in those concentrations, the mixture shall be assumed to present the same hazard.

(f) Chemical manufacturers, importers, or employers evaluating chemicals shall describe in writing the procedures they use to determine the hazards of the chemical they evaluate. The written procedures are to be made available, upon request, to employees, their designated representatives, the Commissioner of Labor and Workforce Development and/or Commissioner of Health and Senior Services and the Director. The written description may be incorporated into the written hazard communication program required under N.J.A.C. 12:100-7.5.

[Back to top](#)

12:100-7.5 Written hazard communication program

(a) Employers shall develop, implement, and maintain at each workplace, a written hazard communication program which at least describes how the criteria specified in N.J.A.C. 12:100-7.6, 7.7 and 7.8 for labels and other forms of warning, material safety data sheets, and employee information and training will be met, and which also includes the following:

1. A list of the hazardous chemicals known to be present using an identity that is referenced on the appropriate material safety data sheet (the list may be compiled for the workplace as a whole or for individual work areas); and
2. The methods the employer will use to inform employees of the hazards of non-routine tasks (for example, the cleaning of reactor vessels), and the hazards associated with chemicals contained in unlabeled pipes in their work areas.

(b) Employers who produce, use, or store hazardous chemicals at a workplace in such a way that the employees of other employer(s) may be exposed (for example, employees of a construction contractor working on-site) shall additionally insure that the hazard communication programs developed and implemented under N.J.A.C. 12:100-7.5 include the following:

1. The methods the employer will use to provide the other employer(s) on-site access to material safety data sheets for each hazardous chemical the other employer(s)' employees may be exposed to while working;
2. The methods the employer will use to inform the other employer(s) of any precautionary measures that need to be taken to protect employees during the workplace's normal operating conditions and in foreseeable emergencies; and
3. The methods the employer will use to conform the other employer(s) of the labeling system used in the workplace.

(c) The employer may rely on an existing hazard communication program to comply with these requirements, provided that it meets the criteria established in this section.

(d) The employer shall make the written hazard communication program available, upon request, to employees, their designated representatives, the Commission of Labor and/or the Commissioner of Health and Senior Services and the Director, in accordance with the requirements of 29 CFR § 1910.1020(e).

(e) Where employees must travel between workplaces during a work shift, that is, their work is carried out at more than one geographical location, the written hazard communication program may be kept at the primary workplace facility.

[Back to top](#)

12:100-7.6 Labels and other forms of warning

(a) The chemical manufacturer, importer, or distributor shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged or marked with the following information:

1. The identity of the hazardous chemical(s);
2. Appropriate hazard warnings; and
3. The name and address of the chemical manufacturer, importer, or other responsible party.

(b) For solid metal (such as a steel beam or a metal casting), solid wood, or plastic items that are not exempted as articles due to their downstream use, or shipments of whole grain, the required label may be transmitted to the customer at the time of the initial shipment, and need not be included with subsequent shipments to the same employer unless the information on the label changes.

1. The label may be transmitted with the initial shipment itself, or with the material safety data sheet that is to be provided prior to, or at the time of, the first shipment.

2. This exception to requiring labels on every container of hazardous chemicals is only for the solid material itself, and does not apply to hazardous chemicals used in conjunction with, or known to be present with, the material and to which employees handling the items in transit may be exposed (for example, cutting fluids or pesticides in grains).

(c) Chemical manufacturers, importers, or distributors shall ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged, or marked in accordance with this section in a manner which does not conflict with the requirements of the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., and regulations issued under that Act by the Department of Transportation.

(d) If the hazardous chemical is regulated by U.S. Occupational Safety and Health Administration in a substance-specific health standard, the chemical manufacturer, importer, distributor or employer shall ensure that the labels or other forms of warning used are in accordance with the requirements of that standard.

(e) Except as provided in N.J.A.C. 12:100-7.6(f) and 7.8(g), the employer shall ensure that each container of hazardous chemicals in the workplace is labeled, tagged or marked with the following information:

1. The identity of the hazardous chemical(s) contained therein; and
2. Appropriate hazard warnings, or alternatively, words, pictures, symbols, or combination thereof, which provide at least general information regarding the hazards of the chemicals, and which, in conjunction with the other information immediately available to employees under the hazard communication program, will provide employees with the specific information regarding the physical and health hazards of the hazardous chemical.

(f) The employer may use signs, placards, process sheets, batch tickets, operating procedures, or other such written materials in lieu of affixing labels to individual stationary process containers, as long as the alternative method identifies the containers to which it is applicable and conveys the information required by N.J.A.C. 12:100-7.6(e) to be on a label. The written materials shall be readily accessible to the employees in their work area throughout each work shift.

(g) The employer is not required to label portable containers into which hazardous chemicals are transferred from labeled containers, and which are intended only for the immediate use of the employee who performs the transfer. For purposes of this section, drugs which are dispensed by a pharmacy to a health care provider for direct administration to a patient are exempted from labeling.

(h) The employer shall not remove or deface existing labels on incoming containers of hazardous chemicals, unless the container is immediately marked with the required information.

(i) The employer shall ensure that labels or other forms of warning are legible, in English, and prominently displayed

on the container, or readily available in the work area throughout each work shift. Employers having employees who speak other languages may add the information in their language to the material presented, as long as the information is presented in English as well.

(j) The chemical manufacturer, importer, distributor or employer need not affix new labels to comply with this section if existing labels already convey the required information.

(k) Chemical manufacturers, importers, distributors, or employers who become newly aware of any significant information regarding the hazards of a chemical shall revise the labels for the chemical within three months of becoming aware of the new information. Labels on containers of hazardous chemicals shipped after that time shall contain the new information. If the chemical is not currently produced or imported, the chemical manufacturer, importers, distributor, or employer shall add the information to the label before the chemical is shipped or introduced into the workplace again.

[Back to top](#)

12:100-7.7 Material safety data sheets

(a) Chemical manufacturers and importers shall obtain or develop a material safety data sheet for each hazardous chemical they produce or import. Employers shall have a material safety data sheet in the workplace for each hazardous chemical, which they use.

(b) Each material safety data sheet shall be in English (although the employer may maintain copies in other languages as well), and shall contain at least the following information:

1. The identity used on the label, and, except as provided for in N.J.A.C. 12:100-7.9 concerning trade secrets:

- i. If the hazardous chemical is a single substance, its chemical and common name(s);
- ii. If the hazardous chemical is a mixture which has been tested as a whole to determine its hazards, the chemical and common name(s) of the ingredients which contribute to these known hazards, and the common name(s) of the mixture itself; or
- iii. If the hazardous chemical is a mixture which has not been tested as a whole:

(1) The chemical and common name(s) of all ingredients, which have been determined to be health hazards, and which comprise one percent or greater of the composition, except that chemicals identified as carcinogens under N.J.A.C. 12:100-7.4 shall be listed if the concentrations are 0.1 percent or greater;

(2) The chemical and common name(s) of all ingredients which have been determined to be health hazards, and which comprise less than one percent (0.1 percent for carcinogens) of the mixture, if there is evidence that the ingredient(s) could be released from the mixture in concentrations which would exceed an established OSHA permissible exposure limit or ACGIH Threshold Limit Value, or could present a health risk to employees; and

(3) The chemical and common name(s) of all ingredients which have been determined to present a physical hazard when present in the mixture;

2. The physical and chemical characteristics of the hazardous chemical (such as vapor pressure, flash point);

3. The physical hazards of the hazardous chemical, including the potential for fire, explosion, and reactivity;

4. The health hazards of the hazardous chemical, including signs and symptoms of exposure, and any medical conditions which are generally recognized as being aggravated by exposure to the chemical;

5. The primary route(s) of entry;

6. The OSHA permissible exposure limit, ACGIH Threshold Limit Value, and any other exposure limit used or recommended by the chemical manufacturer, importer, or employer preparing the material safety data sheet, where available;

7. Whether the hazardous chemical is listed in the National Toxicology Program (NTP) Annual Report on Carcinogens (latest edition) or has been found to be a potential carcinogen in the International Agency for Research on Cancer (IARC) Monographs (latest editions) or by OSHA;

8. Any generally applicable precautions for safe handling and use, which are known to the chemical manufacturer, importer or employer preparing the material safety data sheet, including appropriate hygienic practices, protective measures during repair and maintenance of contaminated equipment, and procedures for clean-up of spills and leaks;

9. Any generally applicable control measures, which are known to the chemical manufacturer, importer or employer preparing the material safety data sheet, such as appropriate engineering controls, work practices, or personal protective equipment;

10. Emergency and first aid procedures;

11. The date of preparation of the material safety data sheet or the last change to it; and

12. The name, address and telephone number of the chemical manufacturer, importer, employer or other responsible party preparing or distributing the material safety data sheet, who can provide additional information on the hazardous chemical and appropriate emergency procedures, if necessary.

(c) If no relevant information is found for any given category on the material safety data sheet, the chemical manufacturer, importer or employer preparing the material safety data sheet shall mark it to indicate that no applicable information was found.

(d) Where complex mixtures have similar hazards and contents (that is, the chemical ingredients are essentially the same, but the specific composition varies from mixture to mixture), the chemical manufacturer, importer or employer may prepare one material safety data sheet to apply to all of these similar mixtures.

(e) The chemical manufacturer, importer or employer preparing the material safety data sheet shall ensure that the information recorded accurately reflects the scientific evidence used in making the hazard determination. If the chemical manufacturer, importer or employer preparing the material safety data sheet becomes newly aware of any significant information regarding the hazards of a chemical, or ways to protect against the hazards, this new information shall be added to the material safety data sheet within three months. If the chemical is not currently being produced or imported the chemical manufacturer or importer shall add the information to the material safety data sheet before the chemical is introduced into the workplace again.

(f) Chemical manufacturers or importers shall ensure that distributors and employers are provided an appropriate material safety data sheet with their initial shipment, and with the first shipment after a material safety data sheet is

updated.

1. The chemical manufacturer or importer shall either provide material safety data sheets with the shipped containers or send them to the distributor or employer prior to or at the time of the shipment.
2. If the material safety data sheet is not provided with a shipment that has been labeled as a hazardous chemical, the distributor or employer shall obtain one from the chemical manufacturer or importer as soon as possible.
3. The chemical manufacturer or importer shall also provide distributors or employers with a material safety data sheet upon request.

(g) Distributors shall ensure that material safety data sheets, and updated information, are provided to other distributors and employers with their initial shipment and with the first shipment after a material safety data sheet is updated.

1. The distributor shall either provide material safety data sheets with the shipped containers, or send them to the other distributor or employer prior to or at the time of the shipment.
2. Retail distributors selling hazardous chemicals to employers having a commercial account shall provide a material safety data sheet to such employers upon request, and shall post a sign or otherwise inform them that a material safety data sheet is available.
3. Wholesale distributors selling hazardous chemicals to employers over the counter may also provide material safety data sheets upon the request of the employer at the time of the over-the-counter purchase, and shall post a sign or otherwise inform such employers that a material safety data sheet is available.
4. If an employer without a commercial account purchases a hazardous chemical from a retail distributor not required to have material safety data sheets on file (that is, the retail distributor does not have commercial accounts and does not use the materials), the retail distributor shall provide the employer, upon request, with the name, address, and telephone number of the chemical manufacturer, importer, or distributor from which a material safety data sheet can be obtained.
5. Wholesale distributors shall also provide material safety data sheets to employers or other distributors upon request.

6. Chemical manufacturers, importers, and distributors need not provide material safety data sheets to retail distributors that have informed them that the retail distributor does not sell the product to commercial accounts or open the sealed container to use it in their own workplaces.

(h) The employer shall maintain in the workplace copies of the required material safety data sheets for each hazardous chemical, and shall ensure that they are readily accessible during each work shift to employees when they are in their work area(s). (Electronic access, microfiche, and other alternatives to maintaining paper copies of the material safety data sheets are permitted as long as no barriers to immediate employee access in each workplace are created by such options.)

(i) Where employees must travel between workplaces during a work shift, that is, their work is carried out at more than one geographical location, the material safety data sheets may be kept at the primary workplace facility. In this situation, the employer shall ensure that employees can immediately obtain the required information in an emergency.

(j) Material safety data sheets may be kept in any form, including operating procedures, and may be designed to cover groups of hazardous chemicals in a work area where it may be more appropriate to address the hazards of a process rather than individual hazard chemicals. However, the employer shall ensure that in all cases the required information is provided for each hazardous chemical, and is readily accessible during each work shift to employees when they are in their work area(s).

(k) Material safety data sheets shall also be made readily available, upon request, to designated representatives and to the Director, in accordance with the requirements of 29 CFR § 1910.1020(e). The Director shall also be given access to material safety data sheets in the same manner.

[Back to top](#)

12:100-7.8 Employee information and training

(a) Employers shall provide employees with effective information and training on hazardous chemicals in their work area at the time of their initial assignment, and whenever a new physical or health hazard the employees have not previously been trained about is introduced into their work area. Refresher training, which shall be an abbreviated version of initial training, shall be conducted every two years. Employers shall ensure that all employees participate in a training program that must be provided at no cost to the employee and during working hours. Information and training may be designed to cover categories of hazards (for example, flammability, carcinogenicity) or specific chemicals. Chemical-specific information must always be available through labels, hazardous substance fact sheets, and material safety data sheets.

(b) Employees shall be informed of:

1. The requirements of this section;
2. Any operations in their work area where hazardous chemicals are present;
3. The location and availability of the written hazard communication program, including the list(s) of hazardous chemicals required by the hazard communication program, hazardous substance fact sheets, the Right to Know Survey, the Right to Know Hazardous Substance List, and material safety data sheets required by this section; and
4. The applicable provisions of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq.

(c) Employee training shall include at least:

1. Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);
2. The physical and health hazards of the chemicals in the work area;
3. The measures employees can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used;
4. The details of the hazard communication program developed by the employer, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information;
5. Information about the applicable provisions of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., which shall include an explanation of the Right to Know Survey, labeling, hazardous substance fact sheets, the Right to Know Hazardous Substance List, and the Right to Know poster, and how employees can obtain these documents and use appropriate hazard information from these sources; and
6. A copy of the Right to Know brochure. When refresher training is given, the Right to Know brochure shall be distributed to all employees.

(d) An employer shall use a technically qualified person to conduct its training session.

(e) Training records shall include the following information:

1. The dates of the training sessions;
2. The contents or a summary of the training sessions;

3. The names and qualifications of persons conducting the training; and
 4. The names and job titles of all persons attending the training sessions.
- (f) Training records shall be maintained for the duration of the employee's employment.

(g) Training records shall be available as follows:

1. The employer shall ensure that all training records required to be maintained by this standard shall be made available upon request to the Commissioner of Labor and Workforce Development or the Commissioner of Health and Senior Services for examination and copying.
 2. Employee training records required by this standard shall be provided upon request for examination and copying to employees, to employee representatives, to the Commissioner of Labor and Workforce Development, and to the Commissioner of Health and Senior Services.
- (h) Material appropriate in content and vocabulary to educational level, literacy, and language of employees shall be used.

[Back to top](#)

12:100-7.9 Trade secrets

(a) The chemical manufacturer, importer, or employer may withhold the specific chemical identity, including the chemical name and other specific identification of a hazardous chemical, from the material safety data sheet, provided that:

1. The claim that the information withheld is a trade secret can be supported;
2. Information contained in the material safety data sheet concerning the properties and effects of the hazardous chemical is disclosed;
3. The material safety data sheet indicates that the specific chemical identity is being withheld as a trade secret; and
4. The specific chemical identity is made available to health professionals, employees, and designated representatives in accordance with the applicable provisions of this section.

(b) Where a treating physician or nurse determines that a medical emergency exists and the specific chemical identity of a hazardous chemical is necessary for emergency or first-aid treatment, the chemical manufacturer, importer, or employer shall immediately disclose the specific chemical identity of a trade secret chemical to that treating physician or nurse, regardless of the existence of a written statement of need or a confidentiality agreement. The chemical manufacturer, importer, or employer may require a written statement of need and confidentiality agreement, in accordance with the provisions of (c) and (d) below, as soon as circumstances permit.

(c) In non-emergency situations, a chemical manufacturer, importer, or employer shall, upon request, disclose a specific chemical identity, otherwise permitted to be withheld under (a) above, to a health professional (that is, physician, industrial hygienist, toxicologist, epidemiologist, or occupational health nurse) providing medical or other occupational health services to exposed employee(s), and to employees or designated representatives, if:

1. The request is in writing;
2. The request describes with reasonable detail one or more of the following occupational health needs for the information:
 - i. To assess the hazards of the chemicals to which employees will be exposed;
 - ii. To conduct or assess sampling of the workplace atmosphere to determine employee exposure levels;
 - iii. To conduct pre-assignment or periodic medical surveillance of exposed employees;
 - iv. To provide medical treatment to exposed employees;
 - v. To select or assess appropriate personal protective equipment for exposed employees;
 - vi. To design or assess engineering controls or other protective measures for exposed employees; and
 - vii. To conduct studies to determine the health effects of exposure.
3. The request explains in detail why the disclosure of the specific chemical identity is essential and that, in lieu thereof, the disclosure of the following information to the health professional, employee, or designated representative, would not satisfy the purposes described in (c)2 above:
 - i. The properties and effects of the chemical;
 - ii. Measures for controlling workers' exposure to the chemical;
 - iii. Methods of monitoring and analyzing worker exposure to the chemical; and
 - iv. Methods of diagnosing and treating harmful exposures to the chemical;
4. The request includes a description of the procedures to be used to maintain the confidentiality of the disclosed information; and
5. The health professional, and the employer or contractor of the services of the health professional (that is, downstream employer, labor organization, or individual employee), employee, or designated representative, agree in a written confidentiality agreement that the health professional, employee, or designated representative, will not use the trade secret information for any purpose other than the health need(s) asserted and agree not to release the information under any circumstances other than to the U.S. Occupational Safety and Health Administration, as provided in (f) below, except as authorized by the terms of the agreement or by the chemical manufacturer, importer, or employer.

(d) The confidentiality agreement authorized by (c)4 above:

1. May restrict the use of the information to the health purposes indicated in the written statement of need;
 2. May provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and
 3. May not include requirements for the posting of a penalty bond.
- (e) Nothing in this subchapter is meant to preclude the parties from pursuing non-contractual remedies to the extent permitted by law.

(f) If the health professional, employee, or designated representative receiving the trade secret information decides that there is a need to disclose it to OSHA, the chemical manufacturer, importer, or employer who provided the information shall be informed by the health professional, employee, or designated representative prior to, or at the same time as, such disclosure.

(g) If the chemical manufacturer, importer, or employer denies a written request for disclosure of a specific chemical identity, the denial must:

1. Be provided to the health professional, employee, or designated representative, within 30 days of the request;
2. Be in writing;
3. Include evidence to support the claim that the specific chemical identity is a trade secret;
4. State the specific reasons why the request is being denied; and
5. Explain in detail how alternative information may satisfy the specific medical or occupational health need without revealing the specific chemical identity.

(h) The health professional, employee, or designated representative whose request for information is denied under (c) above may refer the request and the written denial of the request to the Commissioner of Labor and Workforce Development and/or Commissioner of Health and Senior Services for consideration.

(i) When a health professional, employee, or designated representative refers the denial to the Commissioner of Labor and Workforce Development and/or the Commissioner of Health and Senior Services under (h) above, New

Jersey Public Employees Occupational Safety and Health shall consider the evidence to determine if:

1. The chemical manufacturer, importer, or employer has supported the claim that the specific chemical identity is a trade secret;
2. The health professional, employee, or designated representative has supported the claim that there is a medical or occupational health need for the information; and
3. The health professional, employee or designated representative has demonstrated adequate means to protect the confidentiality.

(j) If the Commissioner of Labor and Workforce Development and/or the Commissioner of Health and Senior Services determines that the specific chemical identity requested under (c) above is not a "bona fide" trade secret, or that it is a trade secret, but the requesting health professional, employee, or designated representative has a legitimate medical or occupational health need for the information, has executed a written confidentiality agreement, and has shown adequate means to protect the confidentiality of the information, the chemical manufacturer, importer, or employer will be subject to citation by the Commissioner of Labor and Workforce Development.

(k) If a chemical manufacturer, importer, or employer demonstrates to the Commissioner of Labor and/or the Commissioner of Health and Senior Services that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of a trade secret specific chemical identity, the Commissioner of Labor and/or the Commissioner of Health and Senior Services may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the occupational health services are provided without an undue risk of harm to the chemical manufacturer, importer, or employer.

(l) If a citation for a failure to release specific chemical identity information is contested by the chemical manufacturer, importer, or employer, the matter will be adjudicated before the Occupational Safety and Health Review Commission in accordance with the Act's enforcement scheme and the applicable Commission rules of the procedure. In accordance with the Commission rules, when a chemical manufacturer, importer, or employer continues to withhold the information during the contest, the Administrative Law Judge may review the citation and supporting documentation "in camera" or issue appropriate orders to protect the confidentiality of such matters.

(m) Notwithstanding the existence of a trade secret claim, a chemical manufacturer, importer, or employer shall, upon request, disclose to the Commissioner of Labor and Workforce Development and/or the Commissioner of Health and Senior Services any information which this subchapter requires the chemical manufacturer, importer, or employer to make available. Where there is a trade secret claim, such claim shall be made no later than at the time the information is provided to the Commissioner of Labor and Workforce Development and/or the Commissioner of Health and Senior Services so that suitable determinations of trade secret status can be made and the necessary protections can be implemented.

(n) Nothing in this section shall be construed as requiring the disclosure under any circumstances of process or percentage of mixture information, which is a trade secret.

[Back to top](#)

APPENDIX A Health Hazard Definitions (Mandatory)

Although safety hazards related to the physical characteristics of a chemical can be objectively defined in terms of testing requirements (for example, flammability), health hazard definitions are less precise and more subjective. Health hazards may cause measurable changes in the body--such as decreased pulmonary function. These changes are generally indicated by the occurrence of signs and symptoms in the exposed employees such as shortness of breath, a nonmeasurable, subjective feeling. Employees exposed to such hazards must be apprised of both the change in body function and the signs and symptoms that may occur to signal that change.

The determination of occupational health hazards is complicated by the fact that many of the effects or signs and symptoms occur commonly in non-occupationally-exposed populations, so that effects of exposure are difficult to separate from normally occurring illnesses. Occasionally, a substance causes an effect that is rarely seen in the population at large, such as angiosarcomas caused by vinyl chloride exposure, thus making it easier to ascertain that the occupational exposure was the primary causative factor. More often, however, the effects are common, such as lung cancer. The situation is further complicated by the fact that most chemicals have not been adequately tested to determine their health hazard potential, and data do not exist to substantiate these effects.

There have been many attempts to categorize effects and to define them in various ways. Generally, the terms "acute" and "chronic" are used to delineate between effects on the basis of severity or duration. "Acute" effects usually occur rapidly as a result of short-term exposure, and are of short duration. "Chronic" effects generally occur as a result of long-term exposure, and are of long duration.

The acute effects referred to most frequently are those defined by the American National Standards Institute (ANSI) standard for Precautionary Labeling of Hazardous Industrial Chemicals (Z129.1-1988)--irritation, corrosivity, sensitization and lethal dose. Although these are important health effects, they do not adequately cover the considerable range of acute effects, which may occur as a result of occupational exposure, such as, for example, narcosis.

Similarly, the term chronic effect is often used to cover only carcinogenicity, teratogenicity, and mutagenicity. These effects are obviously a concern in the workplace, but again, do not adequately cover the area of chronic effects, excluding, for example, blood dyscrasias (such as anemia), chronic bronchitis and liver atrophy.

The goal of defining precisely, in measurable terms, every possible health effect that may occur in the workplace as a result of chemical exposures cannot realistically be accomplished. This does not negate the need for employees to be informed of such effects and protected from them. Appendix B, which is also mandatory, outlines the principles and procedures of hazard assessment.

For purposes of this section, any chemicals, which meet any of the following definitions, as determined by the criteria set forth in Appendix B are health hazards. However, this is not intended to be an exclusive categorization scheme. If there are available scientific data that involve other animal species or test methods, they must also be evaluated to determine the applicability of the Hazard Communication Standard.

1. Carcinogen: A chemical is considered to be a carcinogen if:

(a) It has been evaluated by the International Agency for Research on Cancer (IARC), and found to be a carcinogen or potential carcinogen; or

(b) It is listed as a carcinogen or potential carcinogen in the Annual Report on Carcinogens published by the National Toxicology Program (NTP); or

(c) It is regulated by OSHA as a carcinogen.

2. Corrosive: A chemical that causes visible destruction of, or irreversible alterations in, living tissue by chemical action at the site of contact. For example, a chemical is considered to be corrosive if, when tested on the intact skin of albino rabbits by the method described by the United States Department of Transportation in Appendix A to 49 CFR 173, it destroys or changes irreversibly the structure of the tissue at the site of contact following an exposure period of four hours. This term shall not refer to action on inanimate surfaces.

3. Highly toxic: A chemical falling within any of the following categories:

(a) A chemical that has a median lethal dose (LD(50)) of 50 milligrams or less per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each.

(b) A chemical that has a median lethal dose (LD(50)) of 200 milligrams or less per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each.

(c) A chemical that has a median lethal concentration (LC(50)) in air of 200 parts per million by volume or less of gas or vapor, or two milligrams per liter or less of mist, fume, or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each.

4. Irritant: A chemical, which is not corrosive, but which causes a reversible inflammatory effect on living tissue by chemical action at the site of contact. A chemical is a skin irritant if, when tested on the intact skin of albino rabbits by the methods of 16 CFR 1500.41 for four hours exposure or by other appropriate techniques, it results in an empirical score of five or more. A chemical is an eye irritant if so determined under the procedure listed in 16 CFR 1500.42 or other appropriate techniques.

5. Sensitizer: A chemical that causes a substantial proportion of exposed people or animals to develop an allergic reaction in normal tissue after repeated exposure to the chemical.

6. Toxic: A chemical falling within any of the following categories:

(a) A chemical that has a median lethal dose (LD(50)) of more than 50 milligrams per kilogram but not more than 500 milligrams per kilogram of body weight when administered orally to albino rats weighing between 200 and 300 grams each.

(b) A chemical that has a median lethal dose (LD(50)) of more than 200 milligrams per kilogram but not more than 1,000 milligrams per kilogram of body weight when administered by continuous contact for 24 hours (or less if death occurs within 24 hours) with the bare skin of albino rabbits weighing between two and three kilograms each.

(c) A chemical that has a median lethal concentration (LC(50)) in air of more than 200 parts per million but not more than 2,000 parts per million by volume of gas or vapor, or more than two milligrams per liter but not more than 20 milligrams per liter of mist, fume, or dust, when administered by continuous inhalation for one hour (or less if death occurs within one hour) to albino rats weighing between 200 and 300 grams each.

7. Target Organ Effects: The following is a target organ categorization of effects, which may occur, including examples of signs and symptoms and chemicals, which have been found to cause such effects. These examples are presented to illustrate the range and diversity of effects and hazards found in the workplace, and the broad scope employers must consider in this area, but are not intended to be all-inclusive.

(a) Hepatotoxins: Chemicals which produce liver damage.

Signs and Symptoms: Jaundice; liver enlargement.

Chemicals: Carbon tetrachloride; nitrosamines.

(b) Nephrotoxins: Chemicals which produce kidney damage.

Signs and Symptoms: Edema; proteinuria.

Chemicals: Halogenated hydrocarbons; uranium.

(c) Neurotoxins: Chemicals, which produce their primary toxic effects on the nervous system.

Signs and Symptoms: Narcosis; behavioral changes; decrease in motor functions.

Chemicals: Mercury; carbon disulfide.

(d) Agents, which act on the blood or hemato-poietic system: Decrease hemoglobin function; deprive the body tissues of oxygen.

Signs and Symptoms: Cyanosis; loss of consciousness.

Chemicals: Carbon monoxide; cyanides.

(e) Agents which damage the lung: Chemicals which irritate or damage pulmonary tissue.

Signs and Symptoms: Cough; tightness in chest; shortness of breath.

Chemicals: Silica; asbestos.

(f) Reproductive toxins: Chemicals which affect the reproductive capabilities including chromosomal damage (mutations) and effects on fetuses (teratogenesis).

Signs and Symptoms: Birth defects; sterility.

Chemicals: Lead; DBCP.

(g) Cutaneous hazards: Chemicals which affect the dermal layer of the body.

Signs and Symptoms: Defatting of the skin; rashes; irritation.

Chemicals: Ketones; chlorinated compounds.

(h) Eye hazards: Chemicals which affect the eye or visual capacity.

Signs and Symptoms: Conjunctivitis; corneal damage.

Chemicals: Organic solvents; acids.

[Back to top](#)

APPENDIX B Hazard Determination (Mandatory)

The quality of a hazard communication program is largely dependent upon the adequacy and accuracy of the hazard determination. The hazard determination requirement of this standard is performance-oriented. Chemical manufacturers, importers, and employers evaluating chemicals are not required to follow any specific methods for determining hazards, but they must be able to demonstrate that they have adequately ascertained the hazards of the chemicals produced or imported in accordance with the criteria set forth in this Appendix.

Hazard evaluation is a process, which relies heavily on the professional judgment of the evaluator, particularly in the

area of chronic hazards. The performance-orientation of the hazard determination does not diminish the duty of the chemical manufacturer, importer or employer to conduct a thorough evaluation, examining all relevant data and producing a scientifically defensible evaluation. For purposes of this standard, the following criteria shall be used in making hazard determinations that meet the requirements of this standard.

1. Carcinogenicity: As described in N.J.A.C. 12:100-7.4(d) and subchapter Appendix A, a determination by the National Toxicology Program, the International Agency for Research on Cancer, or OSHA that a chemical is a carcinogen or potential carcinogen will be considered conclusive evidence for purposes of this section. In addition, however, all available scientific data on carcinogenicity must be evaluated in accordance with the provisions of this Appendix and the requirements of this subchapter.
2. Human data: Where available, epidemiological studies and case reports of adverse health effects shall be considered in the evaluation.
3. Animal data: Human evidence of health effects in exposed populations is generally not available for the majority of chemicals produced or used in the workplace. Therefore, the available results of toxicological testing in animal populations shall be used to predict the health effects that may be experienced by exposed workers. In particular, the definitions of certain acute hazards refer to specific animal testing results (see Appendix A).
4. Adequacy and reporting of data: The results of any studies which are designed and conducted according to established scientific principles, and which report statistically significant conclusions regarding the health effects of a chemical, shall be a sufficient basis for a hazard determination and reported on any material safety data sheet. In vitro studies alone generally do not form the basis for a definitive finding of hazard under the Hazard Communication Standard since they have a positive or negative result rather than a statistically significant finding. The chemical manufacturer, importer, or employer may also report the results of other scientifically valid studies, which tend to refute the findings of hazard.

[Back to top](#)

APPENDIX C (RESERVED)

[Back to top](#)

APPENDIX D Definition of Trade Secret (Mandatory)

The following is a reprint of the "Restatement of Torts," Section 757, comment b (1939):

Definition of trade secret. A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives the individual an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business (see § 759 of the Restatement of Torts which is not included in this Appendix) in that it is not simply information as to single or ephemeral events in the conduct of the business, as, for example, the amount or other terms of a secret bid for a contract or the salary of certain employees, or the security investments made or contemplated, or the date fixed for the announcement of a new policy or for bringing out a new model or the like. A trade secret is a process or device for continuous use in the operations of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article. It may, however, relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or a catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

Secrecy. The subject matter of a trade secret must be secret. Matters of public knowledge or of general knowledge in an industry cannot be appropriated by one as one's own secret. Neither can matters which are completely disclosed by the goods which one markets be imputed as one's own secret. Substantially, a trade secret is known only in the particular business in which it is used. It is not requisite that only the proprietor of the business knows it. The individual may, without losing his protection, communicate it to employees involved in its use. The individual may likewise communicate it to others pledged to secrecy. Others may also know of it independently, as, for example, when they have discovered the process or formula by independent invention and are keeping it secret. Nevertheless, a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information. An exact definition of a trade secret is not possible. Some factors to be considered in determining whether given information is one's trade secret are: (1) The extent to which the information is known outside of the individual's business; (2) the extent to which it is known by employees and others involved in the individual's business; (3) the extent of measures taken by the individual to guard the secrecy of the information; (4) the value of the information to the individual and the individual's competitors; (5) the amount of effort or money expended by the individual in developing the information; and (6) the ease of difficulty with which the information could be properly acquired or duplicated by others.

Novelty and prior art. A trade secret may be a device or process, which is patentable; but it need not be that. It may be a device or process, which is clearly anticipated in the prior art or one, which is merely a mechanical improvement that a good mechanic can make. Novelty and invention are not requisite for a trade secret as they are for patent-ability. These requirements are essential to patentability because a patent protects against licensed use of the patented device or process even by one who discovers it properly through independent research. The patent monopoly is a reward to the inventor. But such is not the case with a trade secret. Its protection is not based on a policy of rewarding or otherwise encouraging the development of secret processes or devices. The protection is merely against breach of faith and reprehensible means of learning another's secret. For this limited protection it is not appropriate to require also the kind of novelty and invention, which is a requisite of patentability. The nature of the secret is, however, an important factor in determining the kind of relief that is appropriate against one who is subject to liability under the rule stated in this section. Thus, if the secret consists of a device or process which is a novel invention, one who acquires the secret wrongfully is ordinarily enjoined from further use of it and is required to account for the profits derived from the individual's past use. If, on the other hand, the secret consists of mechanical improvements that a good mechanic can make without resorting to the secret, the wrongdoer's liability may be limited to damages, and an injunction against future use of the improvements made with the aid of the secret may be inappropriate.

[Back to top](#)

APPENDIX E Guidelines for Employer Compliance (Advisory)

The Hazard Communication Standard (HCS) is based on a simple concept--that employees have both a need and a right to know the hazards and identities of the chemicals they are exposed to when working. They also need to know what protective measures are available to prevent adverse effects from occurring. The HCS is designed to provide employees with the information they need.

Knowledge acquired under the HCS will help employers provide safer workplaces for their employees. When employers have information about the chemicals being used, they can take steps to reduce exposures, substitute

less hazardous materials, and establish proper work practices. These efforts will help prevent the occurrence of work-related illnesses and injuries caused by chemicals.

The HCS addresses the issues of evaluating and communicating hazards to workers. Evaluation of chemical hazards involves a number of technical concepts, and is a process that requires the professional judgment of experienced experts. That is why the HCS is designed so that employers who simply use chemicals, rather than produce or import them, are not required to evaluate the hazards of those chemicals. Hazard determination is the responsibility of the producers and importers of the materials. Producers and importers of chemicals are then required to provide the hazard information to employers that purchase their products.

Employers that do not produce or import chemicals need only focus on those parts of the subchapter that deal with establishing a workplace program and communicating information to their workers. This Appendix is a general guide for such employers to help them determine what is required under the subchapter. It does not supplant or substitute for the regulatory provisions, but rather provides a simplified outline of the steps an average employer would follow to meet those requirements.

1. Becoming Familiar With The Subchapter.

The HCS requires information to be prepared and transmitted regarding all hazardous chemicals. The HCS covers both physical hazards (such as flammability), and health hazards (such as irritation, lung damage, and cancer). Most chemicals used in the workplace have some hazard potential, and thus will be covered by the subchapter.

One difference between this subchapter and many others adopted by OSHA is that this one is performance-oriented. That means that you have the flexibility to adapt the subchapter to the needs of your workplace, rather than having to follow specific, rigid requirements. It also means that you have to exercise more judgment to implement an appropriate and effective program.

The standard's design is simple. Chemical manufacturers and importers must evaluate the hazards of the chemicals they produce or import. Using that information, they must then prepare labels for containers, and more detailed technical bulletins called Material Safety Data Sheets (MSDS).

Chemical manufacturers, importers, and distributors of hazardous chemicals are all required to provide the appropriate labels and material safety data sheets to the employers to which they ship the chemicals. The information is to be provided automatically. Every container of hazardous chemicals you receive must be labeled, tagged, or marked with the required information. Your suppliers must also send you a properly completed material safety data sheet (MSDS) at the time of the first shipment of the chemical, and with the next shipment after the MSDS is updated with new and significant information about the hazards.

You can rely on the information received from your suppliers. You have no independent duty to analyze the chemical or evaluate the hazards of it.

Employers that "use" hazardous chemicals must have a program to ensure the information is provided to exposed employees. "Use" means to package, handle, react, or transfer. This is an intentionally broad scope, and includes any situation where a chemical is present in such a way that employees may be exposed under normal conditions of use or in a foreseeable emergency.

The requirements of the subchapter that deal specifically with the hazard communication program are found in N.J.A.C. 12:100-7.5, Written hazard communication program; 7.6, Labels and other forms of warning; 7.7, Material safety data sheets; and 7.8, Employee information and training. The requirements of these sections should be the focus of your attention. Concentrate on becoming familiar with them, using N.J.A.C. 12:100-7.2, Scope and application, and 7.3, Definitions, as references when needed to help explain the provisions.

There are two types of work operations where the coverage of the rule is limited. These are laboratories and operations where chemicals are only handled in sealed containers (for example, a warehouse). The limited provisions for these workplaces can be found in N.J.A.C. 12:100-7.2, Scope and application. Basically, employers having these types of work operations need only keep labels on containers as they are received; maintain material safety data sheets that are received, and give employees access to them; and provide information and training for employees. Employers do not have to have a written hazard communication program and lists of chemicals for these types of operations.

The limited coverage of laboratories and sealed container operations addresses the obligation of an employer to the workers in the operations involved, and does not affect the employer's duties as a distributor of chemicals. For example, a distributor may have warehouse operations where employees would be protected under the limited sealed container provisions. In this situation, requirements for obtaining and maintaining MSDSs are limited to providing access to those received with containers while the substance is in the workplace, and requesting MSDSs when employees request access for those not received with the containers. However, as a distributor of hazardous chemicals, that employer will still have responsibilities for providing MSDSs to downstream customers at the time of the first shipment and when the MSDS is updated. Therefore, although they may not be required for the employees in the work operation, the distributor may, nevertheless, have to have MSDSs to satisfy other requirements of the rule.

2. Identify Responsible Staff.

Hazard communication is going to be a continuing program in your facility. Compliance with the HCS is not a "one shot deal." In order to have a successful program, it will be necessary to assign responsibility for both the initial and ongoing activities that have to be undertaken to comply with the rule. In some cases, these activities may already be part of current job assignments. For example, site supervisors are frequently responsible for on-the-job training sessions. Early identification of the responsible employees, and involvement of them in the development of your plan of action, will result in a more effective program design. Evaluation of the effectiveness of your program will also be enhanced by involvement of affected employees.

For any safety and health program, success depends on commitment at every level of the organization. This is particularly true for hazard communication, where success requires a change in behavior. This will only occur if employers understand the program, and are committed to its success, and if employees are motivated by the people presenting the information to them.

3. Identify Hazardous Chemicals in the Workplace.

The standard requires a list of hazardous chemicals in the workplace as part of the written hazard communication program. The list will eventually serve as an inventory of everything for which an MSDS must be maintained. At this point, however, preparing the list will help you complete the rest of the program since it will give you some idea of the scope of the program required for compliance in your facility.

The best way to prepare a comprehensive list is to survey the workplace. Purchasing records may also help, and certainly employers should establish procedures to ensure that in the future purchasing procedures result in MSDSs being received before a material is used in the workplace.

The broadest possible perspective should be taken when doing the survey. Sometimes people think of "chemicals" as being only liquids in containers. The HCS covers chemicals in all physical forms--liquids, solids, gases, vapors, fumes, and mists--whether they are "contained" or not. The hazardous nature of the chemical and the potential for exposure are the factors, which determine whether a chemical is covered. If it is not hazardous, it is not covered. If there is no potential for exposure (for example, the chemical is inextricably bound and cannot be released), the rule does not cover the chemical.

Look around. Identify chemicals in containers, including pipes, but also think about chemicals generated in the work operations. For example, welding fumes, dusts, and exhaust fumes are all sources of chemical exposures. Read labels provided by suppliers for hazard information. Make a list of all chemicals in the workplace that are potentially hazardous. For your own information and planning, you may also want to note on the list the location(s) of the products within the workplace, and an indication of the hazards as found on the label. This will help you as you prepare the rest of your program.

N.J.A.C. 12:100-7.2, Scope and application, includes exemptions for various chemicals or workplace situations. After compiling the complete list of chemicals, you should review N.J.A.C. 12:100-7.2 to determine if any of the items can be eliminated from the list because they are exempted materials. For example, food, drugs, and cosmetics brought into the workplace for employee consumption are exempt. So rubbing alcohol in the first aid kit would not be covered.

Once you have compiled as complete a list as possible of the potentially hazardous chemicals in the workplace, the next step is to determine if you have received material safety data sheets for all of them. Check your files against the inventory you have just compiled. If any are missing, contact your supplier and request one. It is a good idea to document these requests, either by copy of a letter or a note regarding telephone conversations. If you have MSDSs for chemicals that are not on your list, figure out why. Maybe you do not use the chemical anymore. Or maybe you missed it in your survey. Some suppliers do provide MSDSs for products that are not hazardous. These do not have to be maintained by you.

You should not allow employees to use any chemicals for which you have not received an MSDS. The MSDS provides information you need to ensure proper protective measures are implemented prior to exposure.

4. Preparing and Implementing a Hazard Communication Program.

All workplaces where employees are exposed to hazardous chemicals must have a written plan, which describes how the standard will be implemented in that facility. Preparation of a plan is not just a paper exercise--all of the elements must be implemented in the workplace in order to be in compliance with the subchapter. See N.J.A.C. 12:100-7.5 for the specific requirements regarding a written hazard communication program. The only work operations which do not have to comply with the written plan requirements are laboratories and work operations where employees only handle chemicals in sealed containers. See N.J.A.C. 12:100-7.2, Scope and application, for the specific requirements for these two types of workplaces.

The plan does not have to be lengthy or complicated. It is intended to be a blueprint for implementation of your program--an assurance that all aspects of the requirements have been addressed.

Many trade associations and other professional groups have provided sample programs and other assistance materials to affected employers. These have been very helpful to many employers since they tend to be tailored to the particular industry involved. You may wish to investigate whether your industry trade groups have developed such materials.

Although such general guidance may be helpful, you must remember that the written program has to reflect what you are doing in your workplace. Therefore, if you use a generic program, it must be adapted to address the facility it covers. For example, the written plan must list the chemicals present at the site, indicate who is to be responsible for the various aspects of the program in your facility, and indicate where written materials will be made available to employees.

If the Department of Labor and Workforce Development and/or the Department of Health and Senior Services inspects your workplace for compliance with the HCS, the compliance officer will ask to see your written plan at the outset of the inspection. In general, the following items will be considered in evaluating your program.

The written program must describe how the requirements for labels and other forms of warning, material safety data sheets, and employee information and training, are going to be met in your facility. The following discussion provides the type of information compliance officers will be looking for to decide whether these elements of the hazard communication program have been properly addressed:

A. Labels and Other Forms of Warning.

In-plant containers of hazardous chemicals must be labeled, tagged, or marked with the identity of the material and appropriate hazard warnings. Chemical manufacturers, importers, and distributors are required to ensure that every container of hazardous chemicals they ship is appropriately labeled with such information and with the name and address of the producer or other responsible party. Employers purchasing chemicals can rely on the labels provided by their suppliers. If the material is subsequently transferred by the employer from a labeled container to another container, the employer will have to label that container unless it is subject to the portable container exemption. See N.J.A.C. 12:100-7.6 for specific labeling requirements.

The primary information to be obtained from an OSHA-required label is an identity for the material, and appropriate hazard warnings. The identity is any term, which appears on the label, the MSDS, and the list of chemicals, and thus links these three sources of information. The identity used by the supplier may be a common or trade name ("Black Magic Formula"), or a chemical name (1,1,1,-trichloroethane). The hazard warning is a brief statement of the hazardous effects of the chemical ("flammable, causes lung damage"). Labels frequently contain other information, such as precautionary measures ("do not use near open flame"), but this information is provided voluntarily and is not required by the subchapter. Labels must be legible, and prominently displayed. There are no specific requirements for size or color, or any specified text.

With these requirements in mind, the compliance officer will be looking for the following types of

information to ensure that labeling will be properly implemented in your facility:

1. Designation of person(s) responsible for ensuring labeling of in-plant containers;
2. Designation of person(s) responsible for ensuring labeling of any shipped containers;
3. Description of labeling system(s) used;
4. Description of written alternatives to labeling of in-plant containers (if used); and
5. Procedures to review and update label information when necessary.

Employers that are purchasing and using hazardous chemicals--rather than producing or distributing them--will primarily be concerned with ensuring that every purchased container is labeled. If materials are transferred into other containers, the employer must ensure that these are labeled as well, unless they fall under the portable container exemption (N.J.A.C. 12:100-7.6). In terms of labeling systems, you can simply choose to use the labels provided by your suppliers on the containers. These will generally be verbal text labels, and do not usually include numerical rating systems or symbols that require special training. The most important thing to remember is that this is a continuing duty--all in-plant containers of hazardous chemicals must always be labeled. Therefore, it is important to designate someone to be responsible for ensuring that the labels are maintained as required on the containers in your facility, and that newly purchased materials are checked for labels prior to use.

B. Material Safety Data Sheets.

Chemical manufacturers and importers are required to obtain or develop a material safety data sheet (MSDS) for each hazardous chemical they produce or import. Distributors are responsible for ensuring that their customers are provided a copy of these MSDSs. Employers must have an MSDS for each hazardous chemical, which they use. Employers may rely on the information received from their suppliers. The specific requirements for material safety data sheets are in N.J.A.C. 12:100-7.7. There is no specified format for the MSDS under the rule, although there are specific information requirements. OSHA has developed a nonmandatory format, OSHA Form 174, which may be used by chemical manufacturers and importers to comply with the rule. The MSDS must be in English. You are entitled to receive from your supplier a data sheet that includes all of the information required under the rule. If you do not receive one automatically, you should request one. If you receive one that is obviously inadequate, with, for example, blank spaces that are not completed, you should request an appropriately completed one. If your request for a data sheet or for a corrected data sheet does not produce the information needed, you should contact the Department of Labor and Workforce Development and/or the Department of Health and Senior Services for assistance in obtaining the MSDS.

The role of MSDSs under the subchapter is to provide detailed information on each hazardous chemical, including its potential hazardous effects, its physical and chemical characteristics, and recommendations for appropriate protective measures. This information should be useful to you as the employer responsible for designing protective programs, as well as to the workers. If you are not familiar with material safety data sheets and with chemical terminology, you may need to learn to use them yourself. A glossary of MSDS terms may be helpful in this regard. Generally speaking, most employers using hazardous chemicals will primarily be concerned with MSDS information regarding hazardous effects and recommended protective measures. Focus on the sections of the MSDS that are applicable to your situation.

MSDSs must be readily accessible to employees when they are in their work areas during their work shifts. This may be accomplished in many different ways. You must decide what is appropriate for your particular workplace. Some employers keep the MSDSs in a binder in a central location (for example, in the pick-up truck on a construction site). Others, particularly in workplaces with large numbers of chemicals, computerize the information and provide access through terminals. As long as employees can get the information when they need it, any approach may be used. The employees must have access to the MSDSs themselves--simply having a system where the information can be read to them over the phone is only permitted under the mobile worksite provision, N.J.A.C. 12:100-7.7(i), when employees must travel between workplaces during the shift. In this situation, they have access to the MSDSs prior to leaving the primary worksite, and when they return, so the telephone system is simply an emergency arrangement.

In order to ensure that you have a current MSDS for each chemical in the plant as required, and that employee access is provided, the compliance officers will be looking for the following types of information in your written program:

1. Designation of person(s) responsible for obtaining and maintaining the MSDSs;
2. How such sheets are to be maintained in the workplace (for example, in notebooks in the work area (s) or in a computer with terminal access), and how employees can obtain access to them when they are in their work area during the work shift;
3. Procedures to follow when the MSDS is not received at the time of the first shipment;
4. For producers, procedures to update the MSDS when new and significant health information is found; and
5. Description of alternatives to actual data sheets in the workplace, if used.

For employers using hazardous chemicals, the most important aspect of the written program in terms of MSDSs is to ensure that someone is responsible for obtaining and maintaining the MSDSs for every hazardous chemical in the workplace. The list of hazardous chemicals required to be maintained as part of the written program will serve as an inventory. As new chemicals are purchased, the list should be updated. Many companies have found it convenient to include on their purchase orders the name and address of the person designated in their company to receive MSDSs.

C. Employee Information and Training.

Each employee who may be "exposed" to hazardous chemicals when working must be provided information and trained prior to initial assignment to work with a hazardous chemical, and whenever the hazard changes. See N.J.A.C. 12:100-7.8 for specific requirements. Information and training may be done either by individual chemical, or by categories of hazards (such as flammability or carcinogenicity). If there are only a few chemicals in the workplace, then you may want to discuss each one individually. Where there are large numbers of chemicals, or the chemicals change frequently, you will probably want to train generally based on the hazard categories (for example, flammable liquids, corrosive materials, carcinogens). Employees will have access to the substance-specific information on the labels and MSDSs.

Information and training is a critical part of the hazard communication program. Information regarding hazards and protective measures are provided to workers through written labels and material safety data sheets. However, through effective information and training, workers will learn to read and understand such information, determine how it can be obtained and used in their own workplaces, and understand the risks of exposure to the chemicals in their workplaces as well as the ways to protect themselves. A properly conducted training program will ensure comprehensive and understanding. It is not sufficient to either just read material to the workers, or simply hand them material to read. You want to create a climate where workers feel free to ask questions. This will help you to ensure that the information is understood. You must always remember that the underlying purpose of the HCS is to reduce the incidence of chemical source illnesses and injuries. This will be accomplished by modifying behavior through the provision of hazard information and information about protective measures. If your program works, you and your workers will better understand the chemical hazards within the workplace. The procedures you establish regarding, for example, purchasing, storage, and handling of these chemicals will improve, and thereby reduce the risks posed to employees exposed to the chemical hazards involved. Furthermore, your workers' comprehension will also be increased, and proper work practices will be followed in your workplace.

If you are going to do the training yourself, you will have to understand the material and be prepared to motivate the workers to learn. This is not always an easy task, but the benefits are worth the effort. More information regarding appropriate training can be found in OSHA Publication No. 2254 which contains voluntary training guidelines prepared by OSHA's Training Institute. A copy of this document is available from OSHA's Publications Office at (202) 219-4667. In reviewing your written program with regard to information and training, the following items need to be considered:

1. Designation of person(s) responsible for conducting training;
2. Format of the program to be used (audiovisuals, classroom instruction, etc.);
3. Elements of the training program (should be consistent with the elements in N.J.A.C. 12:100-7.8); and
4. Procedure to train new employees at the time of their initial assignment to work with a hazardous chemical, and to train employees when a new hazard is introduced into the workplace.

The written program should provide enough details about the employer's plans in this area to assess whether or not a good faith effort is being made to train employees. The Department of Labor and Workforce Development and/or the Department of Health and Senior Services does not expect that every worker will be able to recite all of the information about each chemical in the workplace. In general, the most important aspects of training under the HCS are to ensure that employees are aware that they are exposed to hazardous chemicals, that they know how to read and use labels and material safety data sheets, and that, as a consequence of learning this information, they are following the appropriate protective measures established by the employer. PEOSH compliance officers will be talking to employees to determine if they have received training, if they know they were exposed to hazardous chemicals, and if they know where to obtain substance-specific information on labels and MSDSs.

If you already have a training program, you may simply have to supplement it with whatever additional information is required under the HCS. For example, construction employers that are already in compliance with the construction training standard (29 CFR § 1926.21) will have little extra training to do.

An employer can provide employees information and training through whatever means are found appropriate and protective. Although there would always have to be some training on-site (such as informing employees of the location and availability of the written program and MSDSs), employee training may be satisfied in part by general training about the requirements of the HCS and about chemical hazards on the job which is provided by, for example, trade associations, unions, colleges, and professional schools. In addition, previous training, education and experience of a worker may relieve the employer of some of the burdens of informing and training that worker. Regardless of the method relied upon, however, the employer is always ultimately responsible for ensuring that employees are adequately trained. If the compliance officer finds that the training is deficient, the employer will be cited for the deficiency regardless of who actually provided the training on behalf of the employer.

D. Other Requirements

In addition to these items, compliance officers will also be asking the following questions in assessing the adequacy of the program:

Does a list of the hazardous chemicals exist in each work area or at a central location?

Are methods the employer will use to inform employees of the hazards of nonroutine tasks outlined?

Are employees informed of the hazards associated with chemicals contained in unlabeled pipes in their work areas?

On multi-employer work sites, has the employer provided other employers with information about labeling systems and precautionary measures where the other employers have employees exposed to the initial employer's chemicals?

Is the written program made available to employees and their designated representatives?

If your program adequately addresses the means of communicating information to employees in your workplace, and provides answers to the basic questions outlined above, it will be found to be in compliance with the rule.

5. Checklist for Compliance.

The following checklist will help to ensure you are in compliance with the rule:

Read and understood the requirements.

Assigned responsibility for tasks.

- Prepared an inventory of chemicals.
- Ensured containers are labeled.
- Obtained MSDSs for each chemical.
- Prepared written program.
- Made MSDSs available to workers.
- Conducted training of workers.
- Established procedures to maintain current program.
- Established procedures to evaluate effectiveness.

6. Further Assistance.

If you have a question regarding compliance with the Hazard Communication Standard, you should contact:

New Jersey Department of Health and Senior Services
 Public Employees Occupational Safety and Health Program
 PO Box 360
 Trenton, New Jersey 08625-0360
 (609) 984-1863
 Fax: (609) 984-2779
 (www.state.nj.us/health/eoh/peoshweb)
 e-mail: peosh@doh.state.nj.us

Or

New Jersey Department of Labor and Workforce Development
 Division of Public Safety and Occupational Safety and Health
 PO Box 386
 Trenton, New Jersey 08625-0386
 (609) 292-7036
 (www.state.nj.us/labor/lsspeosh.html)

Free consultation services are also available to assist employers, and information regarding these services can be obtained by contacting the programs listed above.
[Back to top](#)

SUBCHAPTER 8. STANDARDS FOR INDOOR FIRING RANGES FOR PUBLIC EMPLOYEES

12:100-8.1 Scope

- (a) This subchapter shall apply to the following:
1. The design considerations, work practices, and ammunition used at existing and new indoor firing ranges operated by public employers;
 2. Public employees assigned to work at an indoor firing range; and
 3. Public employers who operate indoor firing ranges and who are responsible for complying with the provisions of this standard.

[Back to top](#)

12:100-8.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Bounce back" means the occasion when hard zinc bullets bounce off the surface of the bullet trap.

"Bullet trap" means the area of the firing range furthest from the shooting area which is equipped with plates to capture the expended bullets after firing.

"HEPA" means a high efficiency particulate absolute filter which is 99.97 percent efficient for 0.3 microns.

"Indoor firing range" means the room inside a building which contains the shooting booths and is used for the shooting of firearms.

[Back to top](#)

12:100-8.3 Lead standard

The Lead Standard, Section 1910.1025 of 29 CFR Part 1910, adopted by reference at N.J.A.C. 12:100-4.2(a) 20, shall be applicable at indoor firing ranges.

[Back to top](#)

12:100-8.4 Ammunition

(a) The ammunition used in indoor firing ranges during practice sessions shall be zinc bullets or nylon jacketed or copper jacketed bullets. Service ammunition routinely used by the public employer may be used for qualification sessions.

(b) When selecting the type of ammunition to be used to comply with (a) above, consideration shall be given to a potential problem of "bounce back" of the much harder zinc bullet from the bullet trap in some ranges. Consideration shall be given to the potential eye hazard to shooters which may make the use of the zinc bullets unsafe unless changes are made in the bullet trap.

[Back to top](#)

12:100-8.5 Ventilation system

- (a) The minimum air velocity shall be 50 feet per minute at the firing line. An optimum air velocity should be 75 feet per minute at the firing line.
- (b) Filtered and conditioned air shall be introduced behind the firing line to guarantee an evenly distributed flow of air through the shooting positions. Supplied air inlets should be placed approximately 15 feet behind the shooter's position.
- (c) The entire range facility shall be maintained at a slightly negative pressure with respect to adjacent areas to prevent the escape of contaminants. Exhaust air shall exceed supplied air by at least 10 percent. For maximum efficiency, exhaust ducts should be located behind and at the apex of the bullet trap. An alternative location is to place the exhaust ducts on the side walls slightly in front of the apex of the bullet trap.
- (d) A minimum down range conveying velocity of 35 feet per minute shall be maintained. When the 75 feet per minute rate is used, a minimum of 25 percent of the air should be exhausted 15 to 20 feet down range of shooting position and the remaining 75 percent at the bullet trap. When the 50 feet per minute rate is used, 100 percent of the air should be exhausted down range at the bullet trap.
- (e) Each range shall have its own ventilation system to prevent the circulation of contaminated air to other areas of the building.
- (f) The supply and exhaust systems shall be electrically interlocked, thereby eliminating an error in turning one system on and not the other. The system shall operate on one fan speed only.

[Back to top](#)

12:100-8.6 Noise exposure

- (a) The Occupational Noise Exposure Standard, Section 1910.95 of 29 CFR Part 1910, adopted by reference at N.J.A.C. 12:100-4.2(a)6, shall be applicable at indoor firing ranges.
- (b) To minimize the effect of peak sound pressure levels on individuals in the indoor range, all reflecting walls should be covered with high efficiency sound absorbing material. The coverings should be designed to permit easy cleaning and access to the acoustical material for periodic replacement.
- (c) The floors directly behind the shooting booths should be covered with acoustical flooring.
- (d) Firing range control rooms should be acoustically treated to reduce noise levels.
- (e) The bullet trap should not be anchored or attached to any structural support for the building.

[Back to top](#)

12:100-8.7 Water drains

Each firing range should be equipped with a floor drain and trap to facilitate cleaning by a wet method. The drain location should be approximately 20 feet down range of the firing line. The floor should slope two to three inches toward the drain.

[Back to top](#)

12:100-8.8 Work practices

- (a) The ventilation system shall be in operation at all times while the range is in use and during clean-up.
- (b) The range shall be cleaned by vacuum or a wet method. The use of a hand broom shall be prohibited. Vacuum cleaners shall be equipped with high efficiency particulate filters (HEPA) or the equivalent.
- (c) At all times while cleaning, repairing, or reclaiming lead in the bullet trap, a National Institute of Occupational Safety and Health approved half-mask, air purifying respirator equipped with N-100 filters and disposable coveralls shall be the minimum personal protective equipment worn by all employees performing one or more of these tasks.
- (d) Proper ear protection shall be provided for and worn by all individuals inside the firing range. The ear protectors shall be selected on the basis of offering a noise reduction rating of at least 20 decibels. In cases where the noise decibel level is at or above 100 decibels, both plugs and muffs shall be worn simultaneously.
- (e) Ear plugs, when worn, shall be properly fitted.
- (f) A hearing conservation program shall be instituted and yearly audiometric examinations shall be provided to the firing range officers and instructors.
- (g) Eating, drinking, or smoking in the range shall be prohibited.
- (h) A specific schedule shall be established to perform maintenance and repair work to keep the range facilities operational and free of hazardous conditions.

[Back to top](#)

SUBCHAPTER 10. STANDARDS FOR FIREFIGHTERS

12:100-10.1 Scope; standards information

- (a) This subchapter shall apply to all public employment as provided below:
 1. This subchapter contains requirements for the organization, training, and personal protective equipment of fire service organizations whenever an employer establishes them.
 2. The requirements of this subchapter shall apply to all fire service members in the public sector performing

structural fire fighting.

(b) This subchapter shall not be applicable to:

1. Construction, agriculture and maritime employment;
2. Airport crash rescue; or
3. Forest firefighting operations.

(c) The CGA and NFPA standards incorporated in this subchapter by reference may be obtained by contracting the issuing entities at the addresses listed in N.J.A.C. 12:100-17.3.

[Back to top](#)

12:100-10.2 Definitions

(a) The following words and terms, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise.

"Approved" means the term as defined at N.J.A.C. 12:100-2.1.

"CGA" means Compressed Gas Association.

"Confined space" means the term as defined at 29 CFR 1910.146(b).

"Damaged equipment" means equipment which has been affected by external forces such as, but not limited to, mechanical, thermal, chemical or hydraulic, to an extent whereby the equipment no longer performs its original function to the extent required for the users' safety.

"Education" means the process of imparting knowledge or skill through systematic instruction.

"Employee" means the term as defined at N.J.A.C. 12:100-2.1.

"Employer" means the term as defined at N.J.A.C. 12:100-2.1.

"Enclosed structure" means a structure with a roof or ceiling and at least two walls which may present hazards to employees, such as accumulations of smoke, toxic gases and heat, similar to those found in buildings.

"Fire brigade" means an organized group of firefighters who are public employees who have an obligation to fight fires but who may be assigned to other duties.

"Fire department" means an organized group of employees organized by a public employer who are knowledgeable, trained and skilled in basic firefighting operations.

"Firefighter" means a member of the fire service who engages in the physical activity of rescue, fire suppression or both, in buildings, enclosed structures, vehicles, vessels or like properties that are involved in a fire or emergency situation.

"Fire service" means a fire department or fire brigade.

"Helmet" means a head protective device consisting essentially of a shell, an energy absorbing system, a retention system, fluorescent retro-reflective markings, ear covers and faceshield.

"Interior structural firefighting" means the physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage.

"NFPA" means the National Fire Protection Association.

"Overhaul" means the final control of a fire with suppression of the main body of the fire and other pockets of fire, searching for victims and performing salvage operations.

"Positive-pressure apparatus" means an open or closed-circuit apparatus in which the pressure inside the face piece in relation to the immediate environment is positive during both inhalation and exhalation.

"Quick disconnect valve" means a hand-operated device which provides a means for connecting and disconnecting the air cylinder to the self-contained breathing apparatus.

"Remanufactured" means the complete dismantling and reassembly of the fire apparatus body with or without removal from the chassis during the process.

"Respiratory protective device" means a breathing device designed to protect the wearer from an oxygen-deficient or hazardous atmosphere.

"SCBA" means self-contained breathing apparatus.

"Self-contained breathing apparatus" means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

"Service life" means the period of time that a respirator has been rated to provide protection to the wearer.

"Unserviceable" means past useful life of garment or protective gear, or those that have been declared unsafe.

"Vapor-barrier" means that material used to substantially prevent or inhibit the transfer of water, corrosive liquid, steam or other hot vapors from the outside of a garment to the wearer's body.

[Back to top](#)

12:100-10.3 Organization, training and education

(a) The employer shall prepare and maintain a statement or written policy which contains the following:

1. The basic organizational structure of the fire service;
2. The expected number of members in the fire service; and
3. The functions that the fire service is to perform.

(b) The organizational statement shall be available for inspection by the Commissioner of Labor and Workforce Development and by the employees or their designated representative.

(c) Training and education requirements are as follows:

1. The employer shall provide training and education for all fire service members commensurate with those duties and functions that fire service members are expected to perform. Such training and education shall be provided to fire service members before they perform fire service emergency activities. Fire service leaders and training instructors shall be provided with training and education, which is more comprehensive than that provided to the general membership of the fire service.
2. The employer shall assure that training and education is conducted frequently enough to assure that each member of the fire service is able to perform the member's assigned duties and functions satisfactorily and in a safe manner so as not to endanger fire service members or others. All fire service members shall be provided with training at least annually. In addition, fire service members who are expected to perform interior structural fire fighting shall be provided with an education session or training at least quarterly.
3. The quality of the training and education program for fire service members shall be similar to those conducted by such fire training schools as the Maryland Fire and Rescue Institute; Iowa Fire Service Extension; West Virginia Fire Service Extension; Georgia Fire Academy; New York State Department, Fire Prevention and Control; Louisiana State University Firemen Training Program, or Washington State's Fire Service Training Commission for Vocational Education. (For example, for the oil refinery industry with its unique hazards, the training and education program for those fire service members shall be similar to those conducted by Texas A & M University, Reno Fire School, or the Delaware State Fire School.)
4. The employer shall inform fire service members about special hazards such as storage and use of flammable liquids and gases, toxic chemicals, radioactive sources and water reactive substances to which they may be exposed during fire and other emergencies. The fire service members shall also be advised of any changes that occur in relation to the special hazards. The employer shall develop and make available for inspection by fire service members written procedures that describe the actions to be taken in situations involving the special hazards and shall include these in the training and education program.
5. The employer shall provide each member of the fire service training in HAZMAT Operations Level I, Bloodborne Pathogens, Incident Management System Training Orientation (I-100), and where applicable, Confined Space Entry Rescue Operations, Trench Rescue Operations and High Angle and Technical Rescue Techniques. All training shall be consistent with the applicable PEOSH Standard.
6. The employer shall comply with the Hazard Communications Standard, N.J.A.C. 12:100-7, and relevant parts of the New Jersey Worker and Community Right to Know Act.

[Back to top](#)

12:100-10.4 Personnel; limitations on ability to perform

(a) The employer shall assure that employees who are expected to do interior structural firefighting are physically capable of performing duties, which may be assigned to them during emergencies.

1. Prior to appointment as a structural firefighter, all individuals shall have successfully passed a medical evaluation, which meets the Medical Evaluation Protocol required under the Respiratory Protection Program Standard, 29 CFR 1910.134. Failure to pass said examination shall exclude the individual from serving as a structural firefighter.

(b) The employer shall assure that compliance with (a) above shall be accomplished in conformity with the provisions of the Americans with Disabilities Act of 1990.

[Back to top](#)

12:100-10.5 Protective clothing

(a) The employer shall provide, at no cost to the employee, and assure the use of, protective clothing which complies with this subchapter.

(b) Firefighters performing interior structural firefighting and overhaul shall be provided with, and required to wear, the equipment covered in this subchapter.

(c) The employer shall assure that:

1. Protective clothing protects the head, body and extremities, and consists of at least the following components: body protection, eye, face and head protection;
2. Protective clothing ordered or purchased after the effective date of this subchapter shall comply with this subchapter; and
3. Firefighters wear foot, leg and body protective clothing complying with this subchapter.

[Back to top](#)

12:100-10.6 Protective clothing; foot and leg protection

(a) Foot and leg protection shall comply with this section for all firefighters.

1. Protective footwear shall comply with NFPA 1974-1987, Protective Footwear for Structural Firefighting.

[Back to top](#)

12:100-10.7 Protective clothing; body protection

(a) Body protection shall comply with this section for all firefighters.

(b) Body protection shall be achieved by the wearing of a fire resistive coat and bunker pants, both of which shall be at least equivalent to NFPA 1971-1986, Protective Clothing for Structural Firefighting, incorporated herein by reference. For career firefighters, body protection must be worn in combination with a station/work uniform or apparel complying with (c) below. If the employer issues or requires the wearing of uniforms for volunteer firefighters, the uniform must comply with (c) below.

(c) Station/work apparel shall be provided to the career firefighter as follows:

1. The performance, construction and testing of station/work uniforms shall be at least equivalent to NFPA 1975-1985, Station/Work Uniforms for Firefighters, incorporated herein by reference; or
2. Apparel issued to the firefighter must be of a non-meltable material, such as cotton.

[Back to top](#)

12:100-10.8 Protective clothing; hand protection

(a) Hand protection shall consist of protective gloves or a glove system which will provide protection against cuts, punctures and heat penetration.

(b) The performance, construction, and testing of gloves for structural firefighters shall be at least equivalent to NFPA 1973-1988, Gloves for Structural Fire Fighting incorporated herein by reference.

[Back to top](#)

12:100-10.9 Protective clothing; head, eye and face protection

(a) Head protection shall consist of a protective head device with ear flaps and chin strap which meet the performance, construction and testing requirements of 29 CFR Part 1910.156(e)(5) or NFPA 1972-1987, Helmets for Structural Fire Fighting.

(b) Full facepieces, helmets, goggles or hoods of breathing apparatus which comply with 29 CFR 1910.134 and N.J.A.C. 12:100-10.10 shall be deemed to comply with (a) above.

(c) A full protective hood shall be provided for the firefighter that meets the performance, construction, and testing requirements of NFPA 1971-1991, Protective Clothing for Structural Fire Fighting.

1. Firefighters shall be provided with a full protective hood provided that if the wearing of the hood interferes with the proper fit of the helmet, a full protective hood need not be provided until the helmet becomes unserviceable and is replaced.

[Back to top](#)

12:100-10.10 Respiratory protection devices

(a) The employer shall ensure that respirators are provided to, and used by firefighters, and that the respirators meet the requirements of 29 CFR 1910.134 and this section.

(b) Approved self-contained breathing apparatus with a full-facepiece, or with approved helmet or hood configuration, shall be provided to, and worn by, firefighters as follows:

1. While engaged in interior structural firefighting;
2. While working in confined spaces where toxic products of combustion or an oxygen deficiency may be present;
3. During emergency situations involving toxic substances; and
4. During all phases of firefighting and overhaul.

(c) The employer shall assure that:

1. Respirators ordered or purchased after January 4, 1993 shall be at least equivalent to NFPA 1981-1987, Open-Circuit Self-Contained Breathing Apparatus for Fire Fighters, incorporated herein by reference; and
2. All firefighters shall wear respirators complying with this subchapter except that existing respirators meeting the previous OSHA standards that are superseded by this subchapter may continue to be worn until such time as the respirator becomes unserviceable.

(d) The employer shall establish and maintain a respiratory protection program, which includes the requirements of 29 CFR 1910.134, Respiratory Protection, with amendments published in the Federal Registry through April 23, 1998 and any subsequent amendments thereto, are incorporated and adopted herein by reference as standards applicable to firefighters for respiratory protection.

(e) Existing respirators meeting the previous OSHA standards that are superseded by this subchapter:

1. May be used with approved cylinders from other approved self-contained breathing apparatus provided that such cylinders are of the same capacity and pressure rating. All compressed air cylinders used with self-contained breathing apparatus shall meet the United States Department of Transportation (49 CFR Parts 100 through 199) and National Institute for Occupational Safety and Health (42 CFR Part 84) criteria.
2. Can be switched from a demand to a positive pressure mode. However, such apparatus shall be in the positive pressure mode when firefighters are performing interior structural firefighting operations or overhaul.

[Back to top](#)

12:100-10.11 Life-safety rope, harnesses and hardware

(a) This section is intended to apply to fire departments that train and perform rope rescue services. All employees that are required by the fire department to participate in such rescue services shall be provided with the proper equipment meeting the requirements of this section.

(b) The employer shall provide, at no cost to the employee, and assure the use of, life-safety rope, harnesses, and hardware which comply with this section.

(c) The employer shall assure that the life-safety rope, harnesses and hardware complying with this section are used to support fire service personnel during rescue, firefighting, and other emergency operations, or during training exercises.

(d) The performance, construction and testing of ropes, harnesses, and hardware for firefighters shall be at least equivalent to NFPA 1983-1985, Fire Service Life-Safety Rope, Harnesses and Hardware, incorporated herein by reference.

(e) Life-safety rope, harnesses and hardware need only be provided in those departments that perform rope rescue services and to employees who perform such services.

[Back to top](#)

12:100-10.12 Personal alert safety system

(a) The employer shall provide, at no cost to the employee, and assure the use of, a personal alert safety system which complies with this section.

(b) The employer shall assure that all firefighters wear personal alert safety systems that comply with this section by January 4, 1994, except that personal alert safety systems complying with NFPA 1982-1983, Personal Alert Safety Systems (PASS) for Fire Fighters, may continue to be used until they become unserviceable.

(c) The performance, construction and testing of a personal alert safety system for a firefighter shall be at least equivalent to NFPA 1982-1988, Personal Alert Safety Systems (PASS) for Fire Fighters, incorporated herein by reference.

(d) Approved personal alert safety systems shall be provided and worn by the firefighter as follows:

1. While engaged in interior structural firefighting;
2. While working in confined spaces;
3. During all phases of overhaul; and
4. The PASS device shall be attached to the exterior of the firefighter's turnout gear.

[Back to top](#)

12:100-10.13 Hearing protection

(a) This section is intended to provide hearing protection to the firefighter in non-emergency situations. An example of a non-emergency situation requiring hearing protection to the employee would be during the testing of equipment creating a noise level exceeding 90 decibels (dBa). The hearing conservation program described should be in writing and may be incorporated into standard operating procedures (SOP).

(b) The fire department shall provide hearing protection for all members when they are exposed to noise in excess of 90 dBa from power tools or equipment, except for situations where the use of hearing protection devices would create an additional hazard to the user.

(c) The fire department shall engage in a hearing conservation program to identify and reduce or eliminate potentially harmful sources of noise in the work environment.

(d) The provisions of 29 CFR 1910.95, Occupational Noise Exposure, incorporated at N.J.A.C. 12:100-4 are applicable to this subchapter.

[Back to top](#)

12:100-10.14 Filling air cylinders

(a) Air cylinders for respiratory equipment shall be filled only by trained personnel.

(b) The charging station shall be equipped with proper facilities to ensure the safety of the charging station operator and nearby personnel.

[Back to top](#)

12:100-10.15 Fire apparatus operations

(a) Whenever a fire apparatus leaves the fire station in response to a fire alarm, all firefighters, except the driver of the fire apparatus, shall have donned their protective clothing before the apparatus is in motion. The term "fire apparatus" does not include an automobile.

(b) The employer shall provide restraining devices for all firefighters aboard a fire apparatus. Restraining devices may include protective seating, seatbelts, or vehicle harnesses for all firefighters aboard.

(c) All fire apparatus purchased and/or remanufactured after January 4, 1993 shall provide enclosed seating with seatbelts for all personnel riding on the apparatus, complying with the following standards, incorporated herein by reference:

1. NFPA 1901-1991 Pumper Fire Apparatus;
2. NFPA 1902-1991 Initial Attack Fire Apparatus;
3. NFPA 1903-1991 Mobile Water Supply Fire Apparatus; and
4. NFPA 1904-1991 Aerial Ladder and Elevating Platform Fire Apparatus.

[Back to top](#)

12:100-10.16 Maintenance of firefighter equipment

(a) Firefighting equipment required under this subchapter shall be maintained and inspected by the employer at least annually to ensure the safe operational condition of the equipment. Damaged equipment or equipment found to be in unserviceable condition shall be removed from service and replaced.

(b) All fire department aerial apparatus is to be subject to visual inspection, operational tests and load tests at least annually in accordance with NFPA 1914-1991, Testing Fire Department Aerial Devices. Complete inspections and tests including, the non-destructive testing defined in NFPA 1914-1991, Testing Fire Department Aerial Devices, shall be conducted whenever visual inspection or load testing indicates a potential problem or at least every five years. Any device that fails a test shall be immediately removed from service and shall not be returned to service until properly repaired and retested. In addition, pumper fire apparatus shall be inspected at least annually in accordance with criteria of NFPA 1911-1997; initial attack fire apparatus shall be inspected at least annually in accordance with criteria of NFPA 1911-1997; and mobile water supply fire apparatus shall be inspected at least annually in accordance with criteria of NFPA 1911-1997. Each inspection shall include road-worthiness and safety equipment.

[Back to top](#)

CHAPTER 110. OCCUPATIONAL SAFETY AND HEALTH PROCEDURAL STANDARDS FOR PUBLIC EMPLOYEES

Chapter Expiration Date: Chapter 110, Occupational Safety and Health Procedural Standards for Public Employees, expires on September 12, 2013.

SUBCHAPTER 1. GENERAL PROVISIONS**12:110-1.1 Purpose**

The purpose of this chapter is to ensure that all public employees are provided with a safe and healthful work environment free from recognized hazards.

12:110-1.2 Scope

This chapter shall apply to employers, employees, and agencies as described in the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

12:110-1.3 Documents referred to by reference

The availability of standards and publications referred to in this chapter is explained in N.J.A.C. 12:110-9.

12:110-1.4 Construction

(a) These rules shall be construed to ensure that recognized workplace hazards are remedied as expeditiously as

possible.

(b) Words importing the singular number may extend and be applied to the plural and vice versa.

(c) All references to employees in these rules designate both sexes; whenever the male gender is used it should be construed to include male and female employees.

12:110-1.5 (Reserved)

12:110-1.6 (Reserved)

12:110-1.7 (Reserved)

SUBCHAPTER 2. DEFINITIONS

12:110-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

"Commissioner" means the Commissioner of the New Jersey Department of Labor and Workforce Development or his or her designee.

"Commissioner of Community Affairs" means the Commissioner of the New Jersey Department of Community Affairs or his or her designee.

"Commissioner of Health and Senior Services" means the Commissioner of the New Jersey Department of Health and Senior Services or his or her designee.

"Compliance Officer" means the person authorized by:

1. The Commissioner of Labor and Workforce Development to conduct safety inspections; or
2. The Commissioner of Health and Senior Services to conduct health inspections.

"Days" means calendar days unless otherwise specified.

"Discrimination" means any act of restraint, interference, or coercion against an employee for exercising his or her rights under the Act and this chapter or for participating in the agency's safety and health program.

"Employee" means any public employee, any person holding a position by appointment or employment in the service of an "employer" as that term is used in the Act and shall include any individual whose work has ceased as a consequence of, or in connection with, any administrative or judicial action instituted under this Act; provided, however, that elected officials, members of boards and commissions and managerial executives as defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. shall be excluded from the coverage of the Act.

"Employee representative" means a "representative" as that term is defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

"Employer" means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of:

1. The State, or any department, division, bureau, board, council, agency or authority of the State, except any bistate agency; or
2. Any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purpose district created pursuant to law.

"Establishment" means a single physical location where business is conducted or where services or operations are performed by public employees, such as a regional office, area office, installation or facility.

"Field site" means a single physical location where an employer performs services or operations but does not maintain an office or facility.

"First aid" means any one-time treatment and any follow-up visit for the purpose of observation of minor wounds, scratches, cuts, burns, or splinters, which do not ordinarily require medical care. Such one-time treatment and follow-up visit for the purpose of observation is considered first aid even though provided by a physician or registered professional personnel.

"Imminent danger" means any condition or practice in any workplace which is such that a danger exists which could reasonably be expected to cause death or serious physical harm.

"Inspection" means any on-site visit of an employer's workplace, establishment or field site either to ensure that employers are in compliance with the Act or to investigate reported safety or health incidents where work is performed by an employee.

"Lost workdays" means the number of days (consecutive or not) after, but not including, the day of injury or illness during which the employee would have worked but could not do so; that is, could not perform all or any part of his or her normal assignment during all or any part of the workday or shift, because of the occupational injury or illness.

"Medical treatment" includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional person.

"Other than serious" means a hazard, violation or condition which cannot reasonably be predicted to cause death or serious physical harm to exposed employees but does have a direct and immediate impact on an employee's safety or health.

"Recordable occupational injuries or illnesses" are any occupational injuries or illnesses which result in:

1. Fatalities, regardless of the time between the injury and death or the length of the illness; or

2. Lost workday cases, other than fatalities, that result in lost workdays; or
3. Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid) or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.
- "Regulatory" means a violation of procedural rules or regulations, such as recordkeeping or posting, that would not affect the health or safety of an employee.

"Review Commission" means the Occupational Safety and Health Review Commission created by N.J.S.A. 34:6A-42. See also N.J.A.C. 12:112.

"Serious" means a hazard, violation or condition evidencing a substantial probability that death or serious physical harm could result.

"Serious injury" means any occupational injury or illness which requires treatment beyond first aid.

"Willful violation" means any situation in which an employer had knowledge of a hazard, condition or practice in an establishment or field site which could reasonably be expected to cause death or serious physical harm and knowingly and intentionally elects not to abate the hazard, condition or practice in accordance with standards encompassed by the Act.

SUBCHAPTER 3. ADMINISTRATION

12:110-3.1 Scope of subchapter

This subchapter sets forth the responsibilities and rights for the procedures developed for the safety and health programs under the Act.

12:110-3.2 Program direction

The Commissioner, in consultation with the Commissioner of Health and Senior Services and/or the Commissioner of Community Affairs, as required, shall be the administrator of the New Jersey Public Employees' Occupational Safety and Health Act.

12:110-3.3 Duties of employer

- (a) Every employer shall provide each of his employees with employment and a place of employment which are free from recognized hazards which may cause serious injury, physical harm or death to his employees.
- (b) Every employer shall comply with the occupational safety and health standards promulgated under the Act.

12:110-3.4 Employee responsibilities and rights

- (a) Every public employee shall comply with the occupational safety and health standards and all regulations promulgated under the Act which are applicable to his or her own actions and conduct.
- (b) Each employee shall comply with all orders issued by the employer in accordance with the Act and with this chapter which are applicable to his or her own actions and conduct.
- (c) Employees shall use safety equipment, personal protective equipment and other devices and procedures which have been deemed necessary by the employer for their protection.
- (d) Employees or employee representatives shall have the right to report unsafe and unhealthful working conditions to the employer.

12:110-3.5 Dissemination of program information

- (a) Copies of the Act, these rules, N.J.A.C. 12:100, Safety and Health Standards for Public Employees, and applicable standards adopted by reference therein and details of the employer's occupational safety and health program shall be made available by the employer upon request to employees or employee representatives for review.
- (b) A copy of the employer's written occupational safety and health program applicable to the establishment shall be made available to each supervisor and to employee representatives.
- (c) Each employer shall post conspicuously in each establishment, and keep posted, the Department of Labor and Workforce Development's poster informing employees of the provisions of the Act. Such poster shall be posted in each establishment in places accessible to all employees. Each employer shall take steps to insure that any such poster is not altered, defaced, or covered by other material.
- (d) Employers should promote employee awareness of occupational safety and health policies through information channels, such as newsletters, bulletins, handbooks and employee orientations and training or education programs.
- (e) Copies of the Act and all rules shall be available at the Division of Public Safety and Occupational Safety and Health, New Jersey Department of Labor and Workforce Development. The employer shall obtain copies of these materials and make them available upon request to any employee or his or her authorized representative for review in the establishment where the employee is employed within 10 working days of the day the request is made.

SUBCHAPTER 4. INSPECTIONS, ORDERS TO COMPLY, AND PENALTIES

12:110-4.1 Scope of subchapter

This subchapter establishes procedural rules on inspections, orders to comply, and penalties.

12:110-4.2 Authority for inspection

- (a) The Compliance Officer shall enter without delay and at reasonable times any establishment or field site of any employer where work is performed by an employee where there is reason to believe that a violation of a safety or health standard exists and to conduct such investigations as he or she may deem necessary.
- (b) The Compliance Officer shall inspect and investigate during regular working hours and at other reasonable times

any establishment or field site and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein.

(c) Employers shall permit the Compliance Officer to question privately any employee or managerial executive and review all records required by the Act and this subchapter including, but not limited to, records regarding:

1. Any claimed safety or health violation;
2. Work-related deaths, injuries and illnesses other than minor injuries which require only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or of motion, or transfer to another job;
3. Any potential safety or health hazard at any establishment or field site;
4. Any claimed employer act of discrimination related to the Act;
5. Employee exposure to potentially toxic materials or other harmful physical agents which the regulations require to be monitored or measured; or
6. Any other employer activities relating to the Act.

(d) When an employer requires security clearances for entry into a particular area, the employer shall provide appropriate clearances.

12:110-4.3 Advance notice of inspection

(a) Advance notice of inspections shall not be given except in the following situations:

1. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;
2. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection; and
3. In other circumstances where the Commissioner, the Commissioner of Health and Senior Services or their designees determine that the giving of advance notice would enhance the probability of an effective and thorough inspection.

(b) When advance notice is given and where the identity of the employee representative is known, the Compliance Officer shall immediately inform the employee representative of the inspection.

(c) Any person who gives advance notice of any inspection to be conducted under this Act, without authority from the Commissioner, the Commissioner of Health and Senior Services or their designees shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both.

12:110-4.4 Conduct of inspections

(a) Subject to the provisions of N.J.A.C. 12:110-4.3, inspections shall take place at such times and in such places of employment as the Commissioner, Commissioner of Health and Senior Services or their designees may direct.

(b) At the beginning of an inspection there shall be an opening conference where the Compliance Officer shall present his or her credentials to the employer, supervisor or employee in charge at the establishment or field site; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in N.J.A.C. 12:110-4.2(c) which he or she wishes to review.

(c) The employer shall furnish the Compliance Officer with the identity of the employee representative and with such other information as is necessary to enable the Compliance Officer promptly to inform such representative of the inspection. Where there is no authorized employee representative, the Compliance Officer shall advise a reasonable number of employees of the inspection.

(d) Employers, employees or employee representatives may request that a person(s) with specialized expertise accompany the compliance officer during an inspection. Such request shall not be unreasonably denied.

(e) A Compliance Officer shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection. The Compliance Officer shall employ other reasonable investigative techniques, such as personal dosimetry devices, and question privately any employer, owner, operator, agent or employee of an establishment.

(f) The inspection shall be conducted in such a manner as to preclude unreasonable disruption of the operations of the employer's establishment or field site.

(g) At the conclusion of an inspection, there shall be a closing conference. During the closing conference, the Compliance Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Compliance Officer any pertinent information regarding conditions in the workplace. The Compliance Officer shall advise the employee and employer of their respective rights related to the inspection.

(h) A complaining party and his or her employee representative shall have the opportunity to be present at and participate in all phases of the inspection from the opening conference through the closing conference. If the employer, the complaining party or the employee representative requests separate opening or closing conferences, or both, written summaries of these conferences shall be provided by the Compliance Officer to all parties affected.

(i) Whoever knowingly makes any false statements, representation or certification, verbally or in writing, in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter shall be liable for an administrative penalty pursuant to N.J.A.C. 12:110-4.11.

12:110-4.5 Representation at inspections

(a) A Compliance Officer shall be in charge of inspections and questioning of persons. A representative of the employer, complaining party, and an employee representative shall be given an opportunity to accompany the Compliance Officer during the physical inspection of any workplace for the purpose of aiding such inspection. Any employee who accompanies a Compliance Officer on an inspection shall receive payment of normal wages for the time spent during the inspection.

1. A Compliance Officer may permit additional employer representatives and additional employee representatives to accompany him or her when he or she determines that additional representatives will further aid in the inspection.

(b) For the purpose of this section, a Compliance Officer shall have authority to resolve all disputes as to which representatives are authorized by the employer and employees to assist in the inspection.

1. If there is no authorized representative of employees, or if the Compliance Officer is unable to determine with

reasonable certainty who is such representative, he or she shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

(c) A Compliance Officer may deny the right of accompaniment under this section to any person whose conduct interferes with a fair and orderly inspection.

(d) Only persons authorized to have access into an area for which the employer requires security clearance may accompany a Compliance Officer into such areas.

12:110-4.6 Consultation with employees

(a) Employers shall make appropriate arrangements enabling a Compliance Officer to consult with employees during regular working hours concerning matters of occupational safety or health to the extent necessary for the conduct of an effective and thorough inspection.

(b) During the course of an inspection, any employee or employee representative shall be afforded the opportunity to bring to the attention of the Compliance Officer any apparent violation of the Act or the rules under the Act which he has reason to believe exists in the workplace.

(c) Employee or employee representative interviews shall be conducted in private. Where such inquiry cannot be conveniently conducted at the workplace, the Compliance Officer shall arrange for private interviews at a site other than the workplace.

12:110-4.7 Complaints by employees

(a) Any employee or employee representative who believes that a violation of the Act exists in the establishment or field site where such employee is employed may request an inspection by giving notice of the alleged violation to the Commissioner, the Commissioner of Health and Senior Services or their designees.

1. Any such notice shall be in writing and set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or an employee representative. However, notice of imminent danger or serious hazard circumstances made by telephone shall be acted upon when warranted.

2. A copy of the notice shall be provided to the employer or his or her agent by the Commissioner, Commissioner of Health and Senior Services or their designees no later than at the time of inspection, except that, upon the request of the person giving such notice, his or her name and the names of individual employees referred to therein, shall not appear in such copy or on any record published, released, or made available by the New Jersey Department of Labor and Workforce Development or the Department of Health and Senior Services.

(b) The name of the person giving the notice as described in (a) above shall not appear in the record published, released, or made available by the New Jersey Department of Labor and Workforce Development or the Department of Health and Senior Services, unless specifically requested by such person in writing.

(c) If upon receipt of the notice in (a) above the Commissioner, the Commissioner of Health and Senior Services or their designees determines that the complaint meets the requirements set forth in (a) above, and that there are reasonable grounds to believe that the alleged violation exists, an inspection shall be made as soon as practicable, to determine if such alleged violations exist.

1. Inspections under this section shall not be limited to matters referred to in the complaint.

2. Such on-site inspection, shall be initiated within 24 hours for fatality or imminent danger situations, within three working days for potentially serious hazards, and within 10 working days for other than serious or regulatory situations.

12:110-4.8 Inspection not warranted and informal review

(a) If the Commissioner, Commissioner of Health and Senior Services or their designees determine that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under N.J.A.C. 12:110-4.7, the complaining party shall be notified in writing of such determination.

1. The complaining party may obtain review of such determination by submitting a written statement of position to the Commissioner of Labor and Workforce Development and, unless the complaining party elects anonymity, providing the employer with a copy of such statement by certified mail.

2. When notified of the request by the complaining party or the Department of Labor and Workforce Development, the employer may submit an opposing written statement of position to the Commissioner and, at the same time, unless the complaining party has elected anonymity, provide the complaining party with a copy of such statement by certified mail.

3. The complaining party or the employer may request an informal conference to attempt to resolve the dispute. If a party requests an informal conference or the Department of Labor and Workforce Development determines that an informal conference would be useful and not violative of a request for anonymity, an informal conference shall be scheduled and conducted by the Department of Labor and Workforce Development within 30 days of receipt of the request or appeal. The Department of Health and Senior Services shall be consulted when the matter under review involves a determination from the Department of Health and Senior Services.

4. After considering all views presented, the Commissioner shall affirm, modify, or reverse the determination and furnish the complaining party and the employer written notification of his or her decision and the reasons therefor. The decision of the Commissioner shall be final and not subjected to further review.

(b) If the Commissioner or the Commissioner of Health and Senior Services determines that an inspection is not warranted because the requirements of N.J.A.C. 12:110-4.7(a) have not been met, he or she shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of N.J.A.C. 12:110-4.7(a).

(c) All procedures described in this section involving health issues shall be conducted in consultation with the Commissioner of Health and Senior Services.

12:110-4.9 Imminent danger

(a) As soon as a Compliance Officer concludes, on the basis of an inspection, that conditions or practices exist in any establishment or field site which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, he or she shall inform the affected employees and employers of the danger. The Compliance Officer shall also inform the affected employees and employers that he or she is recommending a civil action to abate such conditions or practices and for other appropriate relief in accordance with the Act.

(b) Any order issued with respect to an imminent danger may require such steps to be taken as may be necessary to avoid, correct or remove such imminent danger and prohibit the employment or presence of any individual in

locations or under conditions where such imminent danger exists.

12:110-4.10 Order to comply

(a) If the Commissioner determines that an employer has violated a provision of the Act or a safety or health standard or any rules promulgated under the Act, he or she shall within 30 days of the completion of inspection processes conducted by the Department of Labor and Workforce Development or receipt of a certification of a violation from the Department of Health and Senior Services, issue to the employer a written Order to Comply, which shall describe:

1. The nature of each violation, including a reference to the provision of the section, standard, regulation or order alleged to have been violated; and
2. An abatement date for each violation.

(b) If the Commissioner of Health and Senior Services determines that an employer has violated a provision of the Act or a health standard, he or she shall, within 30 days of the completion of inspection processes conducted by the Department of Health and Senior Services, certify to the Commissioner that a violation exists within his or her jurisdiction and the nature of the violation, the provision of the section, standard, regulation or order alleged to have been violated and an abatement time frame in order for the Commissioner to issue an Order to Comply.

(c) When the Commissioner issues to an employer an Order to Comply, the employer shall post such Order to Comply or a copy thereof at or near each location of the violation cited in the Order to Comply, or, if it is not practicable because of the nature of the employer's operations, where it will be clearly visible to affected employees. The Order to Comply shall remain posted until each violation cited is abated or for 15 working days, whichever is longer. The Commissioner shall make such Order to Comply available to employee representatives and affected employees and shall make the Order to Comply available to the public upon written request.

12:110-4.11 Penalties

(a) If the time for compliance with an Order to Comply issued pursuant to this section elapses, and the employer has not made a good faith effort to comply, the Commissioner shall issue a second Order to Comply imposing a civil administrative penalty of up to \$ 7,000 per day for each violation not abated. Penalties imposed under this section may be recovered with costs in a civil action commenced by the Commissioner by a summary proceeding under The Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. in the Superior Court, county district court, or a municipal court, all of which shall have jurisdiction to enforce the Penalty Enforcement Law in connection with the Act.

1. If the violations are of a continuing nature, each day during which the violation continues after the date given for compliance in the Order to Comply shall constitute an additional separate and distinct offense.
- (b) Each Order to Comply citing a failure to correct a violation and a proposed penalty shall state that it shall be deemed to be the final order of the Commissioner and not subject to review by any court or agency unless, within 15 working days from the date of issuance of the order, the employer notifies the Commissioner or his or her designee in writing that he intends to contest the proposed penalty before the Review Commission.

(c) The Commissioner may compromise and settle any claim for a penalty under this section in such amount as, in the discretion of the Commissioner, may appear appropriate and equitable under all of the circumstances, where the employer satisfies the Commissioner that such violation had been eliminated or removed or that such order had been met or satisfied, as the case may be.

1. In any claim involving investigations conducted by the Department of Health and Senior Services, the Commissioner shall make the determination as to the compromise or settlement of the claim in consultation with the Commissioner of Health and Senior Services.

(d) Penalties shall be based upon factors such as the gravity of each violation, the probability that an injury or illness would result from the continuance of the violation, the good faith efforts of the employer to comply, the presence of meaningful safety and health programs and the history of previous violations. The penalty structure adopted by the United States Secretary of Labor pursuant to the "Occupational Safety and Health Act of 1970" shall be a factor utilized in penalty assessments.

(e) In determining whether the employer is making a good faith effort to comply, the Commissioner of Labor and Workforce Development shall consider, among other factors:

1. Whether the employer has implemented appropriate measures to protect employees from an identified hazard, such as modifying work practices or procedures, providing temporary guards or barriers, placarding a hazardous condition or some combination of these methods, pending permanent abatement of the hazard;
2. Prior safety and health compliance record;
3. The presence of meaningful safety and health programs;
4. Contracts, work orders, or similar documents demonstrating that the employer has a plan of action, including specific deadlines, to permanently abate the hazard; and
5. The advice of the Commissioner of Health and Senior Services or his or her designee when the Order addresses health issues.

(f) When an employer submits a written request to delay the issuance of an Order to Comply establishing penalties, the Commissioner or his or her designee shall give notice of the request to employee representatives or affected employees, as appropriate, and provide them with a 10 day comment period.

1. If written comments are not received, the Commissioner or his or her designee shall determine whether a delay is warranted based upon the employer's good faith compliance efforts. If the delay is warranted the Commissioner or his or her designee shall issue a written final determination setting forth a date certain by which the employer shall come into compliance.
2. When the Order to Comply addresses health issues, the Commissioner of Health and Senior Services or his or her designee shall review the request and give notice to employee representatives or affected employees. Within 10 days of the close of the comment period, the Commissioner of Health and Senior Services or his or her designee shall transmit a recommendation, with any comments received, to the Commissioner or his or her designee for a final determination.
3. If written comments in opposition are received, the Commissioner or his or her designee shall review the matter and, within 20 days, give notice to all parties of his or her determination. Any party may appeal this determination within 15 working days of receipt by notifying the Commissioner or his or her designee in writing that he intends to contest this decision before the Review Commission. Such appeals will be processed in accordance with procedures established for Review Commission contests in N.J.A.C. 12:110-4.12.
4. If the Commissioner or his or her designee determines that the employer is not making a good faith effort to come into compliance, an Order to Comply establishing penalties shall be issued within 20 days of such determination.

12:110-4.12 Contests before the Review Commission

(a) Any employer to whom an Order to Comply citing a violation or a penalty has been issued or any employee or

employee representative may notify the Commissioner or his or her designee in writing that he intends to contest such order before the Review Commission.

(b) Such notice of intent to contest in (a) above shall be postmarked within 15 working days of the issuance of the Order to Comply.

(c) Every notice of intent to contest shall specify the Order to Comply from which the appeal is taken.

(d) The Commissioner or his or her designee shall immediately transmit such notice to the Review Commission in accordance with the rules of procedure prescribed by the Review Commission.

(e) The review of a notice to contest a determination to delay issuance of an Order to Comply establishing penalties shall be limited to the issue of good faith efforts. The review of a notice of intent to contest a penalty shall be limited to issues of good faith efforts to comply and assessment levels.

12:110-4.13 Informal conferences

(a) An affected employer, employee or employee representative may request the initiation of a settlement conference for the purpose of discussing issues raised by an Order to Comply or a notice of intent to contest. If a party requests a settlement conference or the Commissioner or his or her designee determines that an informal settlement conference would be useful, a settlement conference shall be scheduled and conducted by the Commissioner or his or her designee within 30 days of the receipt of the request or an appeal.

(b) If the conference is requested by the employer, affected employees and/or an employee representative shall be afforded an opportunity to participate.

(c) If the conference is requested by an employee or employee representative, the employer shall be afforded an opportunity to participate.

(d) Any party may be represented by a relevant third party at such conference.

(e) No such conference or request for such conference shall operate as a stay of any 15-working-day period for filing a notice of intent to contest as prescribed in N.J.A.C. 12:110-4.11 or 4.12.

12:110-4.14 (Reserved)

SUBCHAPTER 5. RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

12:110-5.1 Scope of subchapter

(a) This subchapter establishes procedural rules for recording and reporting occupational injuries and illnesses of public employees involving work-related deaths, injuries and illnesses, other than minor injuries which require only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or of motion, or transfer to another job.

(b) New Jersey adopted 29 CFR 1904 by reference at N.J.A.C. 12:100-4.2, in the New Jersey Register on September 4, 2001 (33 N.J.R. 2994(a)). All requirements for the recording and reporting of work-related deaths, injuries and illnesses are contained in 29 CFR 1904 with the following exceptions:

1. All references to the Secretary of Labor shall be deemed to mean the Commissioner of Labor and Workforce Development of the New Jersey Department of Labor and Workforce Development;
2. All references to OSHA shall be deemed to mean the New Jersey Department of Labor and Workforce Development, Division of Public Safety and Occupational Safety and Health, Office of Public Employees Occupational Safety and Health (PEOSH);
3. All references to OSHA forms 300, 300A and 301 shall be deemed to mean New Jersey Occupational Safety and Health (NJOSH) forms 300, 300A and 301;
4. 29 C.F.R. § 1904 Subpart B--Scope: New Jersey requires all public employers to record and report work-related deaths, injuries or illnesses as contained in this chapter;
5. 29 C.F.R. § 1904.1, Partial exemption for employers with 10 or fewer employees does not apply to any New Jersey Public Employer as defined in N.J.S.A. 34:6A-7(c);
6. 29 C.F.R. § 1904.2, Partial exemption for establishments in certain industries, does not apply to any New Jersey Public Employer as defined in N.J.A.C. 12:110-2; and
7. 29 C.F.R. § 1904.39: Reporting fatalities and multiple hospitalization incidents must be reported to the Office of Public Employees Occupational Safety and Health (OPEOSH) via the 24-hour hotline number (800) 624-1644, the 24-hour fax line (609) 292-3749, or in person to the OPEOSH at 225 East State Street, 8th Floor West, Trenton, NJ 08625 within eight hours of the occurrence.

12:110-5.2 to 12:110-5.12. (Reserved)

SUBCHAPTER 6. VARIANCES

12:110-6.1 Scope of subchapter

This subchapter establishes rules of practice for administrative proceedings to grant variances under N.J.S.A. 34:6A-39.

12:110-6.2 Effect of variances

All variances from a standard which are granted pursuant to N.J.S.A. 34:6A-39 shall have only future effect. In his discretion, the Commissioner may decline to entertain an application for a variance on a subject or issue when an order has been issued to the employer involved and a proceeding on the order or a related issue concerning a proposed penalty is pending before the Review Commission.

12:110-6.3 Notice of a granted variance

Every final action granting a variance shall specify the alternative to the standard involved which the particular variance permits. Every such final action shall be posted for at least 30 days at the place or places where notices to employees are normally posted. The employer shall provide a copy of the final action to employee representatives.

12:110-6.4 Form of documents for variance

(a) No particular form is prescribed for applications and other papers which may be filed in proceedings for a

variance. Any applications and other papers shall be clearly legible.

(b) An original and two copies of any application or other papers shall be filed. The original shall be typewritten. Clear carbon copies or photocopies are acceptable copies.

(c) Each application or other paper which is filed in proceedings for a variance shall be signed by the person filing the same or by his attorney or other authorized representative.

12:110-6.5 Temporary variance

(a) Pursuant to N.J.S.A. 34:6A-39, any employer or group of employers, may request a temporary variance from a standard, or provision thereof, by filing a written application containing the information specified in (b) below with the:

Commissioner of Labor and Workforce Development
 New Jersey Department of Labor and Workforce Development
 PO Box 110
 Trenton, New Jersey 08625-0110

(b) An application filed pursuant to (a) above shall include:

1. The name and address of the applicant;
2. The address of the place or places of employment involved;
3. A specification of the standard or portion thereof from which the applicant seeks a temporary variance;
4. A representation by the applicant, supported by representations from qualified persons having first-hand knowledge of the facts represented, that the applicant is unable to comply with the standard or portion thereof by its effective date and a detailed statement of the reasons therefor;
5. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the standard;
6. A statement of when the applicant expects to comply with the standard and the steps taken and to be taken, with specific dates where appropriate, to come into compliance with the standards;
7. A statement of the facts and supporting documents, to establish that:

i. The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

ii. The applicant is taking all available steps to safeguard his employees against the hazards covered by the standard; and

iii. The applicant has an effective program for coming into compliance with the standard as quickly as practicable;

8. A certification that the applicant has informed his affected employees of the application by giving a copy thereof to their employee representative, posting the statement, giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means; and

9. A description of how affected employees have been informed of the application and of their right to appear and be heard at a hearing on the variance application.

(c) The Commissioner may issue one interim order granting relief pending a hearing.

(d) No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter.

(e) A temporary order may be renewed no more than twice provided that an application meeting all of the requirements for the initial application is filed at least 90 days prior to the expiration date of the order. Any renewal shall be for a maximum of 180 days.

(f) In applications relating to health standards the Commissioner shall consult with the Commissioner of Health and Senior Services before rendering a decision.

(g) A copy of the order shall be served upon the applicant for the order and other parties and the terms of the order shall be published on the New Jersey Department of Labor and Workforce Development website at <http://lwd.state.nj.us/labor/index.shtml> and in a newspaper situated in the geographical area where the variance was requested. It shall be a condition of the order that the affected employers shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

12:110-6.6 Permanent variance

(a) Pursuant to N.J.S.A. 34:6A-39, any employer or group of employers, may request a permanent variance and may file a written application containing the information specified in (b) below with the:

Commissioner of Labor and Workforce Development
 New Jersey Department of Labor and Workforce Development
 PO Box 110
 Trenton, New Jersey 08625-0110

(b) An application filed requesting a permanent variance pursuant to (a) above shall include:

1. The name and address of the applicant;
2. The address of the place or places of employment involved;
3. A specification of the standard or portion thereof from which the employer seeks a variance.
4. A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;
5. A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide workplaces which are as safe and healthful as those which would prevail if the standard, from which the variance is being sought, were to be complied with;
6. A certification that the applicant has informed his employees of the application by:

- i. Giving a copy of the explanation to their employee representative where one exists;
- ii. Posting a statement at the place where notices to employees are normally posted, giving a summary of the application and specifying where a copy may be examined. This notice shall also inform employees of their right to appear and be heard at a hearing on the variance application.

(c) In applications relating to health standards the Commissioner shall consult with the Commissioner of Health and Senior Services before rendering a decision.

(d) A copy of the order shall be served upon the applicant for the order and other parties, and the terms of the order shall be published on the New Jersey Department of Labor and Workforce Development website at <http://lwd.state.nj.us/labor/index.shtml> and in a newspaper situated in the geographical area where the variance was requested. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

12:110-6.7 Modification or revocation of orders

(a) An affected employer or an affected employee, group of employees, or employee representative, may apply in writing to the Commissioner for a modification or revocation of an order for a permanent variance any time after six months from its issuance. The application shall contain:

- 1. The name and address of the applicant;
- 2. Identification of the order from which relief is sought;
- 3. A description of the relief which is sought;
- 4. A statement setting forth with particularity the grounds for relief;
- 5. If the applicant is an employer, a certification that the applicant has informed his affected employees of the application by:

- i. Giving a copy thereof to their employee representative where one exists;
- ii. Posting at the place where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself).

6. If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer.

(b) The Commissioner may, on his or her own motion, proceed to modify or revoke an order for a permanent variance at any time after six months from its issuance. In such event, the Commissioner shall cause to be published a notice of his or her intention, affording interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing, and shall take such other action as may be appropriate to give actual notice to affected employees. The request for a hearing shall include a short statement of:

- 1. How the proposed modification or revocation would affect the requesting party; and
- 2. What the requesting party would seek to show on the subjects or issues involved.

(c) Any final order issued under N.J.S.A. 34:6A-39 may be renewed or extended as permitted by the applicable section and in the manner prescribed for its issuance.

12:110-6.8 Action on application

(a) If an application filed pursuant to N.J.A.C. 12:110-6.5, 6.6 or 6.7 does not conform to the provisions required in the applicable section, the Commissioner may deny the application.

(b) Prompt notice of the denial of an application shall be given to the applicant.

- 1. A notice of denial shall include, or be accompanied by, a brief statement of the grounds for the denial.
- 2. A denial of an application pursuant to this section shall be without prejudice to the filing of another application.
- (c) If an application has not been denied pursuant to (a) above, the Commissioner shall cause to be published a notice of the filing of the application.

(d) A notice of the filing of an application shall include:

- 1. The terms or an accurate summary of the application;
- 2. A reference to the Act under which the application has been filed;
- 3. An invitation to interested persons to submit, within a stated period of time, written data, views, or arguments regarding the application; and
- 4. Information to affected employers and employees that the matter will be transmitted to the Office of Administrative Law for a hearing.

12:110-6.9 Hearing processes

(a) Any application for a temporary variance, renewal of a temporary variance, permanent variance or revocation or modification of a permanent variance shall be transmitted by the Commissioner to the Office of Administrative Law for hearing before an administrative law judge upon his or her determination that:

- 1. An application conforms to the applicable provisions of N.J.A.C. 12:110-6.5, 6.6 or 6.7; and
- 2. Any period for the submission of written argument or comment has closed.
- (b) Hearings on any application shall be pursuant to N.J.S.A. 52:14B-1 et seq., 52:14F-1 et seq. and N.J.A.C. 1:1.

(c) The Commissioner, on his or her own motion or that of any party, may consolidate or simultaneously consider two or more proceedings which involve the same or closely related issues.

(d) The Commissioner may adopt, reject or modify the recommended report and decision of the administrative law judge and shall issue his or her final order not more than 45 days after the hearing report is issued.

12:110-6.10 (Reserved)

12:110-6.11 (Reserved)

SUBCHAPTER 7. DISCRIMINATION AGAINST EMPLOYEES

12:110-7.1 Scope of subchapter

This subchapter establishes the procedural rules governing a public employee's allegations of discrimination by a public employer or person.

12:110-7.2 Employer responsibility and employee rights

(a) No employer or person shall discharge or in any manner discriminate against any employee because the employee has directly or indirectly:

1. Filed any complaint under or related to the Act with the employer, the Commissioner of Labor and Workforce Development or the Commissioner of Health and Senior Services or any other State or local agency. Such complaints shall relate to conditions at the workplace as distinguished from complaints touching upon general public safety and health issues;
 2. Requested an inspection;
 3. Instituted or caused to be instituted any proceeding under or related to the Act including, but not limited to, petitioning for promulgation of an occupational safety or health standard, applying for modification or revocation of a variance, appealing to the Commissioner of Labor and Workforce Development from an element of an Order to Comply or filing a judicial challenge to any standard or Order.
 4. Testified or is about to testify in any proceeding under or related to the Act;
 5. Made or provided any statement related to safety or health conditions at the workplace in the course of judicial or quasi-judicial, legislative, rulemaking or adjudicative proceedings or during an inspection or investigation of workplace safety or health issues by any public or private body;
 6. Participated as a party in enforcement proceeding under the Act;
 7. Requested information or advice from the Department of Labor and Workforce Development or the Department of Health and Senior Services;
 8. Exercised on his or her own behalf or on behalf of others any right afforded by the Act.
- (b) Any employee who believes that he or she has been discharged, disciplined or otherwise discriminated against by any person in violation of this section may, within 180 days after the employee first had knowledge or should reasonably have known that such violation did occur, file a complaint with the Commissioner alleging that discrimination.

12:110-7.3 Unprotected activities

(a) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of the Act apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or other adverse action for legitimate reasons, or from adverse action dictated by non-prohibited considerations.

(b) To establish a violation of the Act, the employee's engagement in protected activity need not be the sole consideration behind the discharge or other adverse action. If protected activity was the substantial reason for the action, or if the discharge or other adverse action would not have taken place but for engagement in protected activity, the Act has been violated. Ultimately, the issue as to whether a discharge or other adverse action was because of protected activity shall be determined on the basis of the facts in the particular case.

12:110-7.4 Filing of complaints

(a) All complaints to the Commissioner shall be in writing, signed by the person complaining (complainant) or his or her representative and shall include the reason for the complaint and the specific relief requested.

(b) The complaint shall be filed with the Commissioner within 180 days after the employee first had knowledge or should reasonably have known of the alleged discriminatory action.

(c) Upon receipt of the complaint, a designee of the Commissioner shall cause an investigation to be made which initially will consist of a review of the written record.

(d) A party in a complaint may be represented by an attorney or an authorized employee representative.

12:110-7.5 Burden of proof

(a) The burden of proof in any proceeding under this section shall rest with the employee.

(b) In the absence of any direct evidence of retaliation by the employer for the employee's exercise of protected rights under this Act, a prima facie case must be established by the employee showing that he or she engaged in protected activity, that the employer knew of this activity, that the employer was hostile to the protected conduct and that the employer took the alleged action in retaliation for the exercise of the protected rights.

(c) When dual motives, both retaliation for the exercise of a protected activity and legitimate business motives are asserted for the employer's action, the employee shall first establish that the protected activity was a substantial factor in the employer's disputed action. If this is accomplished, the burden shifts to the employer to establish by a preponderance of evidence that the action occurred for legitimate business reasons and not in retaliation for the protected activity.

12:110-7.6 Remedies

(a) Warnings, reprimands, or derogatory references resulting from the protected activity which may have been placed in the complainant's personnel file shall be expunged.

(b) Reinstatement of the employee, back pay, benefits, seniority and reasonable legal costs may be awarded in any successful appeal.

(c) Back pay shall include unpaid salary, including regular wages, increments and across the board adjustments. Benefits shall include vacation and sick leave credits and additional amounts expended by the employee to maintain his or her health insurance coverage during the period of improper suspension or removal.

1. The award of back pay shall be reduced by the amount of taxes, social security payments, dues, pension payments and any other sums normally withheld.

2. The award of back pay shall be reduced by the amount of money actually earned during the separation. If an employee also held other employment at the time of the adverse action, the earnings from such other employment shall not be deducted from the back pay. However, if the employee increased his or her work hours at the other

employment during the back pay period, earnings from such additional hours shall be subtracted from the back pay award.

3. Funds that must be repaid by the employee shall not be considered when calculating back pay.

4. Back pay shall include items such as overtime pay and holiday premium pay.

(d) When back pay and benefits are awarded, determination of the actual amounts shall be settled by the parties whenever possible.

(e) If settlement on an amount cannot be reached, either party may request, in writing, Commissioner review.

1. The parties shall submit all information and/or documentation requested by the Commissioner or his or her designee.

2. The Commissioner or his or her designee shall decide the matter in any manner or format which he deems appropriate.

(f) The Commissioner or his or her designee shall order an employer to post an Order to Comply or such other notice deemed appropriate at any or all of the employer's establishments for at least 15 days upon a determination that the employer committed a discriminatory act or some other violation of the Act.

12:110-7.7 Processing of complaint

(a) Within 10 days of receipt of the complaint, the Commissioner, or his or her designee, shall make an initial determination based on the information contained therein and upon any personal contact with the complainant, if such had been deemed necessary, to determine whether an adverse action had taken place while the complainant was engaged in a protected activity. Upon the Commissioner's, or his or her designee's, determination that the adverse action appears to have occurred because the complainant engaged in a protected activity, he or she shall provide the complainant and his or her employer with a 20-day period within which to submit written arguments and documentation in support of their position.

(b) Failure by the complainant to provide additional information requested may result in dismissal of the appeal.

(c) Upon closure of the 20 day period, the Commissioner or his or her designee may provide one additional five working day extension of the comment period upon request, with substantial justification, by any one of the parties.

(d) Upon receipt of the written argument and documentation, the Commissioner or his or her designee may, at his discretion, seek additional information or clarification through:

1. A written list of questions to any or all of the parties. The questions and responses will be made available to all parties; and/or

2. On-site interviews, separately or jointly, with any or all of the parties and/or witnesses. Interviews with employees shall be conducted during their regular work hours and they shall receive payment of normal wages for the time spent during the interviews.

(e) At any time during the processing of the complaint, an affected employer, employee or employee representative may request that the Commissioner or his or her designee hold an informal conference for the purpose of discussing any or all issues raised by the complaint.

1. If a party requests a settlement conference, or the Commissioner or his or her designee determines that an informal settlement conference would be useful, a conference shall be scheduled and conducted by the designee within 30 days of receipt of the request.

2. If the conference is requested by the employer, the employee and/or his or her employee representative shall be afforded an opportunity to participate.

3. If the conference is requested by the employee or his or her employee representative, the employer shall be afforded an opportunity to participate.

4. No conference or request for such conference shall operate as a stay of any time period established for the filing or processing of the complaint.

(f) If the parties reach a settlement through the informal conference process in (f) above, or some other mechanism, the settlement shall be incorporated into the Commissioner's final determination.

(g) Not more than 90 days after the receipt of the complaint, the Commissioner or his or her designee shall notify the employee and the employer of his or her determination. The notice shall become the Commissioner's final determination unless, within 15 days of receipt of the notice, the employer or the employee requests a hearing.

12:110-7.8 Hearing processes

(a) If the Commissioner determines that the request for a hearing was timely filed, he or she shall transmit the matter to the Office of Administrative Law for hearing before an administrative law judge. See N.J.A.C. 1:1 for Office of Administrative Law hearing procedures.

(b) At the request of the employer, employee or employee representative, or on his own motion, the Commissioner may hold an informal conference for the purpose of attempting to effectuate a settlement of any or all of the issues. All parties shall be afforded an opportunity to participate in any such conference.

(c) The Commissioner may adopt, reject or modify the recommended report and decision of the administrative law judge and shall issue his or her final determination not more than 45 days after the hearing report is issued.

12:110-7.9 Refusal to work

(a) The Act does not afford employees the right to walk off the job because of potential unsafe conditions at the workplace.

(b) If hazardous conditions which may be violative of the Act are not corrected by the employer once brought to his attention or if there is dispute about the existence of a hazard, the employee shall have the opportunity to request inspection of the workplace, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. The employer shall permit the employee to contact the Department of Labor, the Department of Health and Senior Services or other appropriate public agency during regular work hours with no loss in wages to report such conditions.

(c) An employer would not ordinarily be in violation of the Act by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety and health hazards. However, occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself or herself to an imminent danger of serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself or herself to the imminent danger, and he or she believes that a subsequent discharge, discipline or other employer discrimination activity results from this

refusal, he or she may file a discrimination complaint with the Commissioner of Labor and Workforce Development in the manner prescribed in this section.

1. The condition causing the employee's apprehension of death or injury shall be of such a nature that a reasonable person under the circumstances then confronting the employee, would conclude that there was an imminent danger of death or serious injury and that there was insufficient time, due to the imminency of the situation, to eliminate the danger through resort to regular statutory enforcement channels.
2. The employee, where possible, shall also have sought from his or her employer, and been unable to obtain a correction of the imminent danger. If the employee requests time and the use of an employer communication system to contact the Department of Labor and Workforce Development or the Department of Health and Senior Services to report the perceived imminent danger prior to performing the assignment, the employer shall not deny the request.

12:110-7.10 Employee refusal to comply with rules

(a) Employees who refuse to comply with occupational safety and health standards or valid safety or health rules implemented by the employer in furtherance of the Act are not considered to be exercising any rights afforded by the Act.

(b) Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules, shall not be regarded as discriminatory actions prohibited by the Act. This situation shall be distinguished from refusals to work.

SUBCHAPTER 8. ON-SITE CONSULTATION

12:110-8.1 Scope of subchapter

(a) This subchapter sets forth the requirements for the establishment of a consultation program for public employers.

12:110-8.2 Goal and purpose

(a) The Commissioner and the Commissioner of Health and Senior Services may make available to public employers a method to assist employers and employees in reducing and eliminating occupational safety and health hazards through non-enforcement On-Site Consultation initiatives.

(b) The service shall be made available at no cost to public employers to assist them in establishing effective occupational safety and health programs for providing employment and places of employment that are safe and healthful. The overall goal is to prevent the occurrence of injuries and illnesses which may result from exposure to hazardous workplace conditions and from hazardous work practices.

12:110-8.3 Employer obligations

(a) During a consultation, the employer shall:

1. Take immediate steps to eliminate employee exposure to imminent danger conditions;
2. Abate all serious hazards identified on or before mutually agreed upon abatement dates;
3. Allow consultants to confer with individual employees and employee representatives during the course of the visit in order to identify and judge the nature and extent of particular hazards within the scope of the request; and
4. Agree to (a)1, 2 and 3 above before the visit proceeds.

(b) Participation in a consultation program shall not relieve the employer from statutory obligations to protect employees and correct hazards outside of the scope of or not detected during the consultation.

(c) The employer shall take immediate action to eliminate employee exposure to a hazard which, in the judgement of the consultant, presents an imminent danger to employees. If the employer fails to take the necessary action, the consultant shall immediately notify the affected employees and the PEOSH enforcement authority and terminate the consultation activity.

(d) If the employer fails to correct a serious hazard by a mutually agreed upon abatement date or any extension thereof, the consultant shall, within five days, notify the PEOSH enforcement authority and terminate the consultation.

(e) Upon receipt of notice from the employer that all serious hazards have been abated, the consultant shall conduct a followup visit to determine if closure of the case is appropriate.

12:110-8.4 Employee participation

Employees, employee representatives and members of any workplace safety and health committee shall be encouraged to participate in the on-site consultation, to the extent feasible, as determined by the employer. In the opening conference, the consultant shall encourage the employer to allow employee participation to the fullest extent practicable.

12:110-8.5 Request and scheduling

(a) The Commissioner of Labor and Workforce Development shall determine appropriate mechanisms to promote the availability of consultation programs.

(b) Consultation activity shall be provided only at the request of the employer.

(c) Employers requesting consultation shall be encouraged to include within the scope of the request all working conditions at the establishment or field site and the employer's entire safety and health program. Employers may specify a limited scope for the visit by indicating working conditions, hazards or situations on which consultation will be focused. When limited scope requests are received, the consultant shall limit review and provide assistance only with respect to those working conditions, hazards or situations specified; except that if the consultant observes, during the course of the visit, hazards which are outside the scope of the request, the consultant shall treat such hazards as though they were within the scope of the request.

(d) Priority shall be assigned to requests from the most hazardous operations.

12:110-8.6 Conduct of a visit

(a) Prior to the visit, the consultant may obtain from the employer safety and health related documents which he or she deems necessary regarding employer establishments or operations which are encompassed by the consultation request.

(b) An initial on-site visit shall consist of:

1. An opening conference in which the scope of consultation activities and an agreement to abate hazards by mutually agreed upon dates shall be established;
2. An examination of at least those aspects of the employer's safety and health program which relate to the scope of the visit;
3. An inspection and evaluation of the workplace; and
4. A closing conference during which findings shall be reviewed and specific abatement dates established.

(c) An initial visit may include training and education for employees and employers if a need is revealed by the inspection or the evaluation of the employer's safety and health program.

(d) The visit shall be followed by a written report to the employer confirming the hazards, abatement dates and suggested methods of hazard corrections.

(e) Additional visits may be conducted at the employer's request to provide:

1. Needed education and training;
2. Assistance with the employer's safety and health program; and
3. Technical assistance with the correction of hazards.

(f) If, during the course of the consultation visit, the employer reduces the scope of the visit or curtails the visit, the serious hazards already identified during the visit shall be corrected as established in a closing conference.

(g) Consultants shall identify and provide advice on correction of hazards included in the employer's request and any other safety and health hazards observed in the workplace during the visit.

(h) Consultants shall conduct sampling and testing, with subsequent analysis, as may be necessary to confirm the existence of safety and health hazards.

12:110-8.7 Relationship to enforcement

(a) Consultations shall be conducted independent of any PEOSH enforcement activity. The discovery of hazards shall not result in citations or penalties. Hazards shall only be reported to the PEOSH enforcement authority if they are not abated by the mutually agreed upon dates or extensions.

(b) An enforcement inspection shall not take place while an on-site consultation activity is in progress at an establishment or field site unless such inspection is required to investigate:

1. A fatality or serious injury;
2. A complaint requiring an enforcement inspection; or
3. A matter deemed critical by the Commissioner.

(c) When an enforcement inspection becomes necessary during on-site consultation activities at an establishment or field site, the ongoing consultation activities shall be suspended pending final closure of the enforcement file.

(d) An enforcement inspection of an establishment or field site shall not occur within one year of a full scope safety or health consultation unless such inspection is required to investigate:

1. A fatality or serious injury;
2. A complaint requiring an enforcement inspection; or
3. A matter deemed critical by the Commissioner.

(e) An on-site consultation visit may not take place while a PEOSH enforcement inspection is in progress at the establishment or field site. An enforcement inspection shall be deemed in progress from the time the compliance officer initially seeks entry to the workplace through final closure of the enforcement file.

12:110-8.8 Effect upon enforcement

(a) Unless offered by the employer, a consultant's written report shall not be considered by the enforcement officer in a subsequent enforcement inspection. If offered by the employer, such report shall not be binding on the enforcement officer.

SUBCHAPTER 9. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

12:110-9.1 Documents referred to by reference

(a) The full title and edition of each of the standards or publications referred to in this chapter are as follows:

1. N.J.S.A. 34:6A-25 et seq., New Jersey Public Employees Occupational Safety and Health Act.

12:110-9.2 Availability of documents for inspection

A copy of each of the standards and publications referred to in this chapter is on file and may be inspected at the following office of the Division of Public Safety and Occupational Safety and Health between the hours of 9:00 A.M. and 4:00 P.M. on regular working days:

New Jersey Department of Labor and Workforce Development
 Division of Public Safety and Occupational Safety and Health
 John Fitch Plaza
 Trenton, New Jersey 08625

12:110-9.3 Availability of documents from issuing organization

Copies of the standards and publications referred to in this chapter may be obtained from the organizations listed below. The abbreviations preceding these standards and publications have the following meaning and are the organizations issuing the standards and publications listed in N.J.A.C. 12:110-9.1.

N.J.S.A. New Jersey Statutes Annotated

Copies available from:

Division of Public Safety and Occupational Safety and Health
 New Jersey Department of Labor and Workforce Development
 PO Box 386

Trenton, New Jersey 08625-0386

CHAPTER 112. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION RULES OF PROCEDURE

Chapter Expiration Date: Chapter 112, Occupational Safety and Health Review Commission Rules of Procedures, expires on April 8, 2014.

SUBCHAPTER 1. GENERAL PROVISIONS

12:112-1.1 Purpose

The purpose of this chapter is to set forth the appeal procedures of the New Jersey Public Employees Occupational Safety and Health Review Commission.

12:112-1.2 Scope

This chapter shall govern all matters, including uncontested cases, before the Review Commission. Contested cases transmitted to the Office of Administrative Law shall be governed by N.J.A.C. 1:1.

12:112-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

"Chairperson" means the Review Commission member designated by the Governor to serve as chairperson.

"Commissioner" means the Commissioner of the New Jersey Department of Labor and Workforce Development or his or her designee.

"Complainant" means the employer, employee or employee representative who has filed a Notice of Contest.

"Day" means a calendar day.

"Employee" means any public employee, any person holding a positions by appointment or employment in the service of an "employer" as that term is used in the Act and shall include any individual whose work has ceased as a consequence of, or in connection with, any administrative or judicial action instituted under this Act; provided, however, that elected officials, members of boards and commissions and managerial executives as defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., shall be excluded from the coverage of the Act.

"Employee representative" means a "representative" as that term is defined in the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

"Employer" means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of:

1. The State, or any department, division, bureau, board, council, agency or authority of the State except any bi-state agency, or
 2. Any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purposes district created pursuant to law.
- "Non-party" means a person or entity who participates in the Review Commission proceeding as a witness or in amicus curiae capacity.

"Notice" means Notice of Contest.

"Order to comply" means a written directive issued by the Commissioner to an employer as set forth in N.J.S.A. 34:6A-41.

"Party" means either the complainant who is the employer, employee or employee representative who has filed a Notice of Contest with the Commissioner or the Commissioner who is the respondent.

"Proceeding" means any proceeding before the Review Commission.

"Review Commission" means the Occupational Safety and Health Review Commission created by N.J.S.A. 34:6A-42.

"Working day" means any Monday through Friday but shall not include Saturday, Sunday, any Federal holiday or any State holiday. In computing 15 working days, the day of receipt of any notice shall not be included.

"Workplace" means a place where public employees are assigned to work.

12:112-1.4 Computation of time

(a) In computing any period of time prescribed or allowed in the chapter, the day from which the designated period begins to run shall not be included.

(b) The last day of the period so computed shall be included unless it is a Saturday, Sunday, Federal holiday, or State holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal holiday, or State holiday.

(c) When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, Federal holidays and State holidays shall be excluded in the computation.

12:112-1.5 Extension of time

Requests for extensions of time for the filing of any document shall be in writing, addressed to the Chairperson of the Review Commission and received in advance of the date on which the document is due to be filed. Extensions of

time shall be honored for good cause.

12:112-1.6 Address of record

(a) The initial document filed by any party or non-party shall contain his or her name, address, and telephone number. Any change in such information shall be communicated promptly in writing to the Review Commission and to all other parties and non-parties.

(b) A party or non-party who fails to furnish such information shall be deemed to have waived his or her right to notice and service under this chapter.

12:112-1.7 Service and notice

(a) At the time of filing documents, a copy shall be served by the filing party on every other party or non-party.

(b) Service upon a party or non-party who has appeared through a representative shall be made only upon such representative.

(c) Unless otherwise ordered, service may be accomplished by first class mail, by personal delivery or by electronic communication. Service is deemed effected at the time of mailing, at the time of personal delivery or at the time of electronic transmittal.

(d) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the document.

(e) When the complainant is an employer, the employer shall immediately post a copy of the Notice of Contest, where the written order to comply is required to be posted or, a notice in the following form:

(Name of Employer)

This employer has been cited by the Commissioner of Labor and Workforce Development for violation of the Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq. The written order to comply has been contested and will be reviewed by the Occupational Safety and Health Review Commission.

(f) When the complainant is an employee or an employee representative, he or she shall serve a copy of the Notice of Contest on the employer at the time of transmittal to the Commissioner.

(g) When a Notice of Contest is scheduled for consideration by the Review Commission, a copy of the notice of the meeting of the Review Commission shall be posted by the employer at or near the place where the written order to comply is required to be posted.

(h) Where posting is required by the section, such posting shall be maintained until the commencement of the meeting or until earlier disposition.

12:112-1.8 Filing

(a) Prior to the assignment of a case to the Review Commission, all papers shall be filed with the Commissioner at PO Box 386, Trenton, New Jersey 08625-0386. Subsequent to the assignment of the case to the Review Commission, and before the issuance of its decision, all papers shall be filed with the Review Commission at the above address. Subsequent to the issuance of the decision of the Review Commission, all papers shall be filed with the Chairperson.

(b) Unless otherwise authorized, all filing shall be accomplished by first class mail.

(c) Filing is deemed effected at the time of mailing.

12:112-1.9 Consolidation

Cases may be consolidated upon the motion of the Chairperson or the Review Commission or upon the motion of any party, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as the administration of the Act require.

12:112-1.10 Severance

Upon the motion of the Chairperson or the Review Commission, or upon the motion of any party, the Chairperson or the Review Commission may, for good cause, order any proceeding severed with respect to some or all issues or parties.

12:112-1.11 Reserved

12:112-1.12 Reserved

12:112-1.13 Reserved

SUBCHAPTER 2. PARTICIPATION IN MATTERS BEFORE THE REVIEW COMMISSION

12:112-2.1 Non-party participation

(a) A petition for a non-party to participate as a witness or in an amicus curiae capacity shall be filed at least 10 days before the commencement of the meeting of the Review Commission.

(b) The petition shall set forth the interest of the non-party in the matter before the Review Commission and show that the participation of the non-party will assist in the determination of the issues in question and that the participation of the non-party will not unnecessarily cause delay.

(c) The Chairperson or the Review Commission may grant a petition for participation of a non-party to such an extent and upon such terms as the Chairperson or the Review Commission determines.

12:112-2.2 Party and non-party representatives

- (a) When a meeting is held, any party or non-party may appear in person or through a representative.
- (b) A representative of a party or non-party shall be deemed to control all matters respecting the interest of such party or non-party in the matter before the Review Commission.
- (c) Nothing contained herein shall be construed to require any representative to be an attorney at law.

12:112-2.3 Appearances of parties and non-parties

- (a) A representative of a party or non-party shall indicate such by signing the first document filed on behalf of the party or non-party in accordance with (b) below, or thereafter by filing a notice of representation in accordance with (c) below.
- (b) If the first document filed on behalf of a party or non-party is signed by a representative, the representative shall be recognized as representing that party or non-party. No separate notice of representation is necessary.
- (c) Where a representative has not previously appeared on behalf of a party or non-party, he or she shall file a notice of representation with the Chairperson. The notice of representation shall be signed by the representative.

12:112-2.4 Conduct of parties

- (a) All representatives appearing before the Review Commission shall comply with the letter and spirit of ethical conduct.
- (b) If an attorney or other representative practicing before the Review Commission engages in unethical or unprofessional conduct or fails to comply with any rule or order of the Review Commission, the Review Commission may, after reasonable notice and an opportunity to show cause to the contrary, take any appropriate disciplinary action, including suspension or disbarment from practice before the Review Commission.

12:112-2.5 Withdrawals of parties and non-parties

- (a) Any counsel or representative of record desiring to withdraw his or her representation shall file a motion with the Chairperson or the Review Commission requesting leave therefor, and showing that prior notice of the motion has been given by him or her to his or her client or counsel or representative, as the case may be.
- (b) The motion of counsel or representative to withdraw may, in the discretion of the Review Commission, be denied where it is necessary to avoid undue delay or prejudice to the rights of a party.

SUBCHAPTER 3. NOTICES AND MOTIONS

12:112-3.1 Title of cases

- (a) Cases initiated by a Notice of Contest shall be titled:

(Name of Contestant), Complainant versus Commissioner of Labor, Respondent

- (b) The titles listed in (a) above shall appear at the left upper portion of the initial page of any document filed.
- (c) The initial page of any document shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the Review Commission.

12:112-3.2 Signing of motions

- (a) Motions shall be signed by the filing party or non-party or their representative. The signature of a representative constitutes a representation by him or her that he or she is authorized to represent the party or non-party on whose behalf the action is filed.
- (b) The signature of a representative, party or non-party also constitutes a certification that he or she has read the motion, or other paper, that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is arranged by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

12:112-3.3 Notices of Contest

- (a) Immediately upon receipt of notification that the complainant contests the written order to comply issued under the Act, the Commissioner shall notify the Review Commission of the receipt in writing and shall promptly furnish to the Chairperson of the Review Commission copies of any documents or records filed by the complainant and copies of all other documents or records relevant to the contest.

- (b) The complainant at the time of the filing of the Notice shall provide detailed reasons for filing the Notice of Contest of an order to comply and the specific relief requested. Further, the Notice shall be accompanied by a copy of the order to comply at issue.

- (c) The complainant shall provide, within the time frame specified, additional information that is requested by the Chairperson or the Review Commission.

12:112-3.4 Failure to obey rules

- (a) When any party, non-party or representative has failed to proceed as provided by these rules or as required by the Chairperson or the Review Commission, he or she may be declared to be in default either:
 1. On the initiative of the Chairperson or the Review Commission, after having been afforded an opportunity to show cause why he or she should not be declared to be in default; or
 2. On the motion of a party, non-party or representative.
- (b) After a finding of default, the Review Commission, in its discretion, may enter a decision against the defaulting party or non-party or strike any document not filed in accordance with these rules.
- (c) For reasons deemed sufficient by the Review Commission and upon motion expeditiously made, the Review

Commission may set aside a sanction imposed under (b) above.

12:112-3.5 Reserved

12:112-3.6 Reserved

12:112-3.7 Reserved

12:112-3.8 Reserved

12:112-3.9 Reserved

12:112-3.10 Reserved

SUBCHAPTER 4. REVIEW OF NOTICE OF CONTEST

12:112-4.1 Method of review

Within 20 days of receipt of the Notice, the Chairperson of the Review Commission shall determine whether a Notice was timely filed. If so, the Review Commission shall determine whether a review and decision shall be rendered on a written record or whether resolution can only be obtained at a hearing. Normally, a hearing shall be required only where the Review Commission finds that a material and controlling dispute of fact exists.

12:112-4.2 Written record review

(a) When the Review Commission determines that a matter shall be decided on the written record, it shall provide the parties with a 20-day period to submit written arguments and documentation in support of their position.

(b) All arguments and documentation submitted by a party shall be simultaneously served on all other parties. Evidence of such service shall be provided by the party making the submission.

(c) Failure by the complainant to provide additional information requested may result in the Review Commission's dismissal of the appeal.

(d) Upon closure of the 20-day period, one additional five working day extension of the comment period may be provided at the request of any one of the parties. Substantial justification shall be required to obtain such extension.

(e) Any party or non-party may review the file at the Division of Public Safety and Occupational Safety and Health, Department of Labor and Workforce Development, during regular business hours.

(f) The Review Commission shall render and notify all parties of its final determination within a reasonable time period.

12:112-4.3 Burden of proof

The burden of proof in any proceeding before the Review Commission shall rest with the party filing the Notice of Contest.

12:112-4.4 Stay and interim relief requests

(a) Upon the filing of a Notice, a party, non-party, or representative may petition the Chairperson for a stay or other relief pending final decision of the matter.

(b) A request for stay or interim relief shall be in writing, signed by the petitioner or his or her representative and shall include detailed supporting information for the request.

(c) The following factors shall be considered in reviewing such requests:

1. Clear likelihood of success on the merits by the petitioners;
2. Danger of immediate or irreparable harm if the request is not granted;
3. Likelihood of substantial injury to employees or others if the request was not granted; and
4. The public interest.

(d) The filing of a petition for interim relief shall not stay administrative proceedings or processes.

(e) Each party shall serve copies of all materials submitted on all other parties.

(f) The Chairperson shall submit the request to the Review Commission for decision.

(g) Following a final administrative decision on a Notice by the Review Commission, and upon the filing of an appeal from the decision to the Appellate Division of the Superior Court, a party, non-party, or their representative may petition the Chairperson for a stay or other relief pending a decision by the Court in accordance with the procedures and standards in (b) and (c) above.

12:112-4.5 Reconsiderations

(a) A party, non-party, or representative may petition the Review Commission for reconsideration of any decision that it renders.

(b) A petition for reconsideration shall be in writing signed by the petitioner, or his or her representative, and shall show the following:

1. The new evidence or additional information not presented at the original proceeding which would change the outcome and the reasons that such evidence was not presented at the original proceeding; or
2. That a clear material error has occurred.

(c) The petitioner shall serve copies of all materials submitted on all other parties in accordance with N.J.A.C. 12:112-1.7.

12:112-4.6 Settlements

(a) At the request of any party, or on its own motion, the Review Commission may cause an informal conference to be held for the purpose of attempting to effectuate a settlement of any or all of the issues. All parties shall be afforded an opportunity to participate in any such conference.

(b) Settlement agreements shall be in writing and specify the terms of settlement for each contested issue and specify any issues that remain undecided. Unless the settlement agreement states otherwise, the withdrawal of a Notice of Contest or issue that remains to be decided shall be with prejudice.

(c) A settlement agreement submitted for approval shall be filed with the Chairperson. Proof of service, in the manner prescribed in N.J.A.C. 12:112-1.7, upon all parties shall be filed with the settlement agreement. The parties in a case shall file a final consent order for adoption by the Review Commission.

12:112-4.7 Adjournment

(a) Adjournments shall be granted only in exceptional situations which could not have been reasonably foreseen or prevented.

(b) All parties requesting an adjournment shall be responsible for giving prompt notice to their witnesses as to the adjournment.

12:112-4.8 Withdrawals

(a) A party may withdraw its Notice of Contest or order to comply at any stage of a proceeding.

(b) The notice of withdrawal shall be served and posted in accordance with N.J.A.C. 12:112-1.7 upon all parties.

(c) Proof of service shall accompany the notice of withdrawal.

SUBCHAPTER 5. HEARINGS

12:112-5.1 Hearings

(a) If the Review Commission determines that a review and decision can only be obtained by a hearing, the matter shall be transmitted to the Office of Administrative Law for a hearing before an Administrative Law Judge pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) The Review Commission shall render a final determination within 45 days of receipt of the Administrative Law Judge's initial decision. The Review Commission may adopt, modify, or reject the Administrative Law Judge's initial decision.

(c) The parties shall have 14 days from the receipt of the Administrative Law Judge's initial decision to file exceptions with the Review Commission.

1. The parties may request an additional seven calendar days to file cross-exceptions.

2. The exceptions and cross-exceptions shall be considered by the Review Commission together with an Administrative Law Judge's initial decision in rendering a final determination.

(d) Copies of all final determinations of the Review Commission shall be mailed to the parties and non-parties within 14 days of the rendering of the final determination.

12:112-5.2 Abstentions

A member of the Review Commission shall abstain from voting on a particular matter whenever he or she has a personal interest in the outcome of a particular case.

12:112-5.3 Appeals from Review Commission determinations

Any appeal from a final determination of the Review Commission shall be made to the Appellate Division of the Superior Court.

SUBCHAPTER 6. REVIEW COMMISSION MEETINGS

12:112-6.1 Meetings

(a) The Chairperson shall convene meetings of the Review Commission, as needed, to render decisions on pending cases.

(b) Such meetings shall be open to the public and held in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-1 et seq.

(c) The Chairperson shall cause notice to be given to parties whose cases may be reviewed at a particular meeting.

(d) Matters for consideration at such meetings shall include, but not be limited to:

1. Cases requiring Review Commission consideration as to whether a written record review of a hearing is appropriate for resolution;

2. Stay and interim relief requests;

3. Final determination on all cases, whether a review is made on the written record or through the hearing process;

4. Petition for reconsideration;

5. Settlements submitted for Review Commission approval;

6. Consolidation of cases;

7. Severance of cases;

8. Non-party participation; and

9. Withdrawal of parties

12:112-6.2 Quorum

(a) No official business of the Review Commission shall be conducted without a quorum which shall consist of at least two of the three members.

(b) A quorum may be obtained through conference call mechanisms.

12:112-6.3 Voting

(a) Members of the Review Commission shall be present in order to vote, except as provided in (b) below.

(b) A member who is absent with good cause may vote through a conference call mechanism provided he or she certified that he or she has read the Administrative Law Judge's initial decision and any exceptions or cross-exceptions submitted by the parties, in the case of a hearing, or is otherwise familiar with the issue over which the vote was cast.

(c) Official action of the Review Commission shall be taken only when at least two members vote in a similar manner. In the event that official action cannot be taken, the matter will be continued until at least two member vote in a similar manner.

SUBCHAPTER 7. RESERVED

CHAPTER 122. CUTTING AND GRINDING OF MASONRY

Chapter Expiration Date: Chapter 122, Cutting and Grinding of Masonry, expires on October 2, 2011.

SUBCHAPTER 1. GENERAL PROVISIONS

12:122-1.1 Purpose

The purpose of this chapter is to protect the health and safety of employees against the effects of silicosis and other respiratory diseases which may result from the dry cutting of masonry units by means of hand-held, gas-powered or electrical, portable chop saws or skill saws and the dry grinding of masonry materials.

[Back to top](#)

12:122-1.2 Scope

This chapter shall apply to employers and employees as those terms are defined within N.J.A.C. 12:122-1.3.

[Back to top](#)

12:122-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Commissioner" means the Commissioner of the New Jersey Department of Labor and Workforce Development or his or her designee.

"Complete respiratory program" means a "respiratory protection program" as that term is defined within 29 CFR § 1910.134, incorporated herein by reference, as amended and supplemented.

"Compliance Officer" means the person authorized by the Commissioner of the New Jersey Department of Labor and Workforce Development to conduct safety inspections under this chapter.

"Department" means the New Jersey Department of Labor and Workforce Development.

"Employee" or "worker" means any person suffered or permitted to work by an employer, having a specific regard to any activity related to the erection, construction, alteration, demolition, repair or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, pipelines or ducts and all other construction projects or facilities.

"Employer" means any corporation, partnership, individual proprietorship, joint venture, firm, company or other similar legal entity engaged in any activity related to the erection, construction, alteration, demolition, repair or maintenance of buildings, structures, bridges, highways, roadways, dams, tunnels, sewers, underground buildings or structures, pipelines or ducts and all other construction projects or facilities.

"Establishment" means a single physical location where business is conducted or where services or operations are performed, such as a regional office, area office, installation or facility.

"Field site" means a physical location where an employer performs services or operations, but does not maintain an office or facility.

"First aid" means any one-time treatment and any follow-up visit for the purpose of observation of minor wounds, scratches, cuts, burns or splinters, which do not ordinarily require medical treatment. Such a one-time treatment and follow-up visit for the purpose of observation is considered first aid even though provided by a physician or registered professional personnel.

"Full face respirator" means a negative pressure respirator or a powered air-purifying respirator (PAPR) with a tight fitting full facepiece.

"High efficiency particulate air filter" means a filter that is at least 99.97 percent efficient in removing monodisperse particles of 0.3 micrometers in diameter. The equivalent National Institute for Occupational Safety and Health (NIOSH) 42 CFR § 84 particulate filters are the N100, R100, and P100 filters.

"Inspection" means any on-site visit of an employer's establishment or field site to ensure that employers are in compliance with this chapter.

"Medical treatment" includes treatment administered by a physician or by registered professional personnel under

the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional person.

"Negative pressure respirator" means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

"Other than serious" means a hazard, violation or condition which cannot reasonably be predicted to cause death or serious physical harm to exposed employees but does have a direct and immediate impact on an employee's safety or health.

"Powered air-purifying respirator" (PAPR) means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

"Serious injury" or "serious physical harm" means any occupational injury or illness which requires treatment beyond first aid.

"Tight-fitting" means a respiratory inlet covering that forms a complete seal with the face.

[Back to top](#)

SUBCHAPTER 2. EMPLOYER RESPONSIBILITIES

12:122-2.1 Cutting and grinding of masonry

(a) Employers shall not engage in the dry cutting of masonry units by means of hand-held, gas-powered or electrical, portable chop saws or skill saws or the dry grinding of masonry materials, unless the employer has first determined in a manner consistent with 29 U.S.C. § 651 et seq. (the Federal Occupational Safety and Health Act of 1970), that the use of water in the cutting or grinding is not feasible.

(b) Where the employer has determined under (a) above that the use of water in the cutting or grinding is not feasible, the employer may engage in the dry cutting of masonry units by means of hand-held, gas-powered or electrical, portable chop saws or skill saws or the dry grinding of masonry materials, only where the employer meets all of the following requirements:

1. The employer shall use engineering and work practice controls to control the dust, such as a vacuum with a high efficiency particulate air filter, or other dust control systems;
2. Any dry cutting which occurs shall be done in a designated area away from craftworkers, if possible; and
3. The employer shall provide workers with full face respirators as part of a complete respiratory program, which shall include training, the proper selection of respiratory cartridges and fit-testing in order to ensure that the workers are able to wear the respirators.

[Back to top](#)

SUBCHAPTER 3. INSPECTIONS AND ORDERS TO CEASE

12:122-3.1 Right to enter and inspect

(a) The Compliance Officer shall enter without delay and at reasonable times any establishment or field site of any employer where work is performed by an employee if there is reason to believe that a violation of this chapter has occurred or is occurring and to conduct such investigations as the Compliance Officer shall deem to be necessary.

(b) Employers shall permit the Compliance Officer to inspect within the establishment or field site all pertinent conditions, structures, machines, apparatus, devices, equipment and materials.

(c) Employers shall permit the Compliance Officer to question privately any employee or managerial executive and review all records relating to the requirements in N.J.A.C. 12:122-2.1.

[Back to top](#)

12:122-3.2 Orders to cease

(a) If, upon inspection of an establishment or field site, the Commissioner discovers a condition which exists in violation of the provisions of this chapter, he or she shall be authorized to order such violation to cease.

(b) Order to cease shall:

1. State with specificity the nature of the cited violation(s) of the provisions of this chapter; and
2. Provide a reasonable, specified time within which the required remedial action shall be taken by the person responsible, if applicable.

(c) If the Commissioner's order is not obeyed, the Commissioner may apply for an injunction in the Superior Court of New Jersey to compel compliance.

(d) Nothing in this chapter shall prevent the Commissioner from prosecuting any violation of the chapter, notwithstanding that the violation is corrected in accordance with the Order.

SUBCHAPTER 4. PENALTIES AND HEARINGS

12:122-4.1 Penalties

(a) Any violations of any of the provisions of this chapter shall be punishable by a monetary penalty of up to \$ 500.00.

(b) If a violation is of a continuing nature, each day during which the violation continues shall constitute an additional and distinct offense.

(c) Penalties imposed under this section may be recovered with costs in a civil action commenced by the Commissioner by a summary proceeding under the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

(d) The Commissioner may compromise and settle any claim for penalties under this section in such amount as the Commissioner may deem appropriate and equitable under all of the circumstances, including, but not limited to:

1. The past record of compliance with the provisions of the chapter by the person cited;
2. The degree of cooperation afforded to the Commissioner's representatives by the person cited in securing compliance with the provisions of the chapter;
3. Whether the violation was willful in nature; and

4. Whether the violation resulted in injury or bodily harm.

[Back to top](#)

12:122-4.2 Hearings

(a) No penalty shall be levied pursuant to N.J.A.C. 12:122-4.1 unless the alleged violator is provided with:

1. Notification of the violation;
2. Notification of the amount of the penalty to be imposed; and
3. An opportunity to request a formal hearing.

(b) A request for a formal hearing shall be made in writing and received by the Commissioner within 21 calendar days following the employer's receipt of the notice of violation.

(c) All hearings shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) If a hearing is not requested within the 21-day time limit set forth in (b) above, the notice of violation shall become a final order of the Commissioner.

(e) The alleged violator may request the initiation of a settlement conference at the time that the request for a formal hearing is made. If a settlement conference is requested, or the Department determines that a settlement conference would be useful, the settlement conference shall be scheduled and conducted by the Department within 30 days of the date upon which the Department receives the request for a formal hearing.

(f) If a settlement is not agreed upon, or no settlement conference is scheduled, a request for a formal hearing shall be transmitted to the Office of Administrative Law.

(g) Payment of the penalty shall be due when a final agency determination is issued or when a notification of violation becomes a final decision as the result of no appeal having been filed by the violator.

(h) All payments shall be made payable to the Department of Labor and Workforce Development in the form of a certified check or money order, or such other form as the Department deems suitable.

[Back to top](#)



[Contact Us](#) | [Privacy Notice](#) | [Legal Statement & Disclaimers](#) | [Accessibility Statement](#)



Statewide: [NJ Home](#) | [Services A to Z](#) | [Departments/Agencies](#) | [FAQs](#)
Department: [home](#) | [disabled](#) | [employment](#) | [employer](#) | [legal](#) | [safety](#) | [statistics/analysis](#) | [press](#)

The New Jersey Department of Labor and Workforce Development is an equal employment opportunity employer and provides equal opportunity programs. Auxiliary aids and services are available upon request to assist individuals with disabilities.

Copyright © State of New Jersey
Department of Labor and Workforce Development: 1 John Fitch Plaza, P.O. Box 110 Trenton, NJ 08625-0110
Email: Constituent.Relations@dol.state.nj.us