

CHAPTER 120
ASBESTOS LICENSES AND PERMITS

Authority

N.J.S.A. 34:5A-39.

Source and Effective Date

R.1995 d. 193, effective March 13, 1995.
See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

Executive Order No. 66(1978) Expiration Date

Chapter 120, Asbestos Licenses and Permits, expires on March 13, 2000.

Chapter Historical Note

Chapter 120, originally Asbestos Licensing and Permits, became effective with Subchapters 2 and 6, jointly adopted with the Department of Health as Emergency R.1985 d. 144, effective March 4, 1985 (to expire May 3, 1985). See: 17 N.J.R. 741(a). The provisions of R.1985 d. 144 were readopted as R.1985 d. 262, effective May 3, 1985. See: 17 N.J.R. 1417(b). Subchapters 1, 3, 4, 5 and 7 were jointly adopted with the Department of Health as Emergency R.1985 d. 361, effective June 18, 1985 (to expire August 18, 1985). See: 17 N.J.R. 1676(a). The provisions of R.1985 d. 361 were readopted as R.1985 d. 468, effective August 16, 1985. See: 17 N.J.R. 2275(a). Pursuant to Executive Order No. 66(1978), Chapter 120, Asbestos Licenses and Permits, was readopted as R.1990 d. 278, effective May 3, 1990. As a part of R.1990 d. 278, a new Subchapter 7, Asbestos Work Notification Requirements, was adopted and existing Subchapter 7 was recodified as Subchapter 8, effective June 4, 1990. See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Pursuant to Executive Order No. 66(1978), Chapter 120 was readopted as R.1995 d. 193. See: Source and Effective Date. As a part of R.1995 d. 193, a new Subchapter 8, Appeals and Complaints, was adopted and existing Subchapter 8 was recodified as Subchapter 9, effective April 3, 1995. See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a). See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

12:120-1.1 Title and citation

(a) This chapter, as a Department of Labor rule, shall be known and may be cited as N.J.A.C. 12:120, Asbestos Licenses and Permits.

(b) This chapter, as a Department of Health rule, shall be known and may be cited as N.J.A.C. 8:60, Asbestos Licenses and Permits.

(c) These rules are a joint adoption of the Department of Labor and the Department of Health.

Amended by R.1986 d.149, effective May 5, 1986.

See: 18 N.J.R. 156(a), 18 N.J.R. 986(a).

Old text deleted and new text substituted.

12:120-1.2 Authority

These rules are promulgated pursuant to the authority of the Asbestos Control and Licensing Act, N.J.S.A. 34:5A-32 et seq.

12:120-1.3 Purpose

(a) The purpose of this chapter is to provide reasonable standards for:

1. Licensing of employers;
2. Permitting of workers;
3. Permitting of supervisors; and
4. Certifying of training agencies and courses for the above job classifications.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

In (a): revised 3 and added new (a)4.

12:120-1.4 Scope

(a) This chapter shall apply to:

1. Licensing of employers;
2. Training, examination and issuance of permits to workers;
3. Training, examination and issuance of permits to supervisors;
4. Certifying of training agencies and courses for the above job classifications;
5. Employers having a contractual relationship for asbestos work with the owner of a building or structure or equipment for the application, enclosure, encapsulation, repair, or removal of asbestos-containing material; and
6. Any public or private building, structure or equipment on which asbestos work is performed, except as provided in (b) below.

(b) This chapter shall not apply to:

1. The limited repair of asbestos-containing material on any pipe, duct, boiler, tank, structural member or similar equipment by the application of duct tape, rewettable glass cloth, canvas, cement or other sealable material to seal exposed areas from which asbestos fibers may be released;

2. The stripping, limited repair, or removal of three feet or less of asbestos-containing material from piping;

3. The stripping, limited repair or removal of three square feet or less of asbestos-containing material from any duct, boiler, tank, structural member, or similar equipment;

4. The sale or storage of asbestos;

5. The application, enclosure, encapsulation, repair, or removal of asbestos-containing roofing and exterior siding materials in all but demolition projects;

6. The licensure of private employers subject to the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., using their own employees to apply, enclose, encapsulate, repair or remove asbestos-containing material in their own facility; or

7. The permitting of employees subject to the Federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq., who apply, enclose, encapsulate, repair or remove asbestos-containing materials in their employer's own facility.

Amended by R.1989 d.247, effective May 15, 1989.

See: 20 N.J.R. 1049(a), 21 N.J.R. 1333(b).

Roofing and exterior materials exempted.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

In (a): revised 3 and added new (a)4, recodifying old (a)4 as (a)5. Deleted old (a)5 regarding employers using their own employees for asbestos application or removal procedures.

In (b): Revised (b)5 and added new 6.

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-1.5 Documents referred to by reference

The availability of standards and publications referred to in this chapter is set forth at N.J.A.C. 12:120-9 and 8:60-9.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Citation revisions.

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-1.6 Validity

If any section, paragraph, sentence or word of this chapter is determined to be invalid by any court of competent jurisdiction, such determination shall not affect or impair the validity of the remainder of this chapter.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Elaborated validity definition, adding language referring to “any court of competent jurisdiction” and other stylistic revisions.

SUBCHAPTER 2. DEFINITIONS

12:120-2.1 Definitions

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

“Accepted engineering practices” means those practices which conform to accepted principles, tests, or standards of nationally recognized technical or scientific authorities.

“Act” means the Asbestos Control and Licensing Act, N.J.S.A. 34:5A-32 et seq.

“Applicant” means any person seeking to obtain either an asbestos abatement worker permit, an asbestos abatement supervisor permit or an employer license, or an agency seeking certification to conduct asbestos abatement training.

“Approved” means acceptable to the Commissioner of Labor or the Commissioner of Health, as the case may be.

“Asbestos” means the asbestiform varieties of chrysotile; crocidolite; amosite; anthophyllite; tremolite; or actinolite and includes any asbestos-containing material.

“Asbestos-containing material” (ACM) means any material containing more than one percent asbestos which has been applied on any ceiling, wall, duct, boiler, tank, pipe, structural member, or on any other part of a building or equipment.

“Asbestos work” means the application, enclosure, encapsulation, repair, or removal of asbestos-containing material.

“Certificant” means any training agency certified by the Department of Health pursuant to N.J.A.C. 8:60-6 and 12:120-6.

“C.F.R.” means the Code of Federal Regulations.

“Commissioner” means the Commissioner of Labor or his or her authorized designee.

“Commissioner of Health” means the Commissioner of Health or his or her authorized designee.

“Contractor” means an employer who hires workers and supervisors to perform asbestos work or who performs the asbestos work directly.

“Control” means to exercise restraint or direction over any activity concerning asbestos for the purpose of reducing the number of airborne asbestos fibers.

“Department of Health” means the Environmental Health Services of the New Jersey Department of Health, CN 360, Trenton, N.J. 08625-0360.

“Division of Workplace Standards” means the Division of Workplace Standards of the New Jersey Department of Labor, CN 054, Trenton, N.J. 08625-0054.

“Employee” means:

1. Any person, including supervisory personnel, suffered or permitted to work by an employer; or
2. A member of either a board, corporation, partnership, proprietorship, joint venture, fund, authority or similar entity directly performing asbestos work.

“Employer” means a body, board, person, corporation, partnership, proprietorship, joint venture, fund, authority or similar entity employing, permitting or suffering another to work or directly performing the asbestos work. In the case of a corporation, the officers of the corporation and any agents having the management of the corporation shall be deemed to be employers of the employees of the corporation for the purposes of this Act. This term shall apply to private employers and to the State, its political subdivisions and any boards, commissions, schools, institutions or authorities created or recognized thereby. This term also includes contractors and subcontractors.

“Facility” means any building or structure.

“f/cc” means fibers per cubic centimeter.

“Friable” means asbestos-containing material that when dry may be crumbled, pulverized or reduced to powder by hand pressure, and includes previously non-friable asbestos-containing material after that material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

“Instructor” means any person(s) hired by a training agency and approved by the Department of Health for the purpose of instructing a Department of Health approved asbestos training course.

“Interactive/participatory teaching method” means instruction which consists of active participation of the trainees, such as brainstorming, hands-on training, demonstration and practice, small group problem solving, discussions, problem posing, group work assignments, question and answer periods and role-playing sessions. Lecture is not considered an interactive participatory teaching method.

“License” means a certificate documenting acceptance by the Commissioner of an employer as competent to perform the application, enclosure, encapsulation, repair, or removal of asbestos-containing material and to bid for or to contract to perform such work.

“Limited repair” means the utilization of accepted engineering practices to minimize fiber release to return three linear feet or less or to return three square feet or less of damaged asbestos-containing material on any pipe, duct, boiler, tank, structural member or similar equipment to an undamaged condition or to an intact state by the application of duct tape, rewettable glass cloth, canvas, cement or other sealable material to seal exposed areas from which asbestos fibers may be released.

“May” indicates a discretionary action.

“N.J.A.C.” means the New Jersey Administrative Code.

“N.J.S.A.” means the New Jersey Statutes Annotated.

“PCM” or “phase contrast microscopy” means the scientific method of air sampling analysis for the purpose of determining airborne asbestos fiber concentrations in fibers per cubic centimeter of air (f/cc). This analytical method is to be consistent with the National Institute of Occupational Safety and Health (NIOSH) method 7400 as referenced in the 4th Edition, August 15, 1994 with addenda of the NIOSH Manual of Analytical Methods.

“Permit” means a certificate documenting acceptance by the Commissioner of a worker or a supervisor as competent to perform the application, enclosure, encapsulation, repair, or removal of asbestos-containing material. Workers shall work under the direction of a supervisor who holds a valid New Jersey asbestos supervisor permit.

“Public or private building” means any building, including commercial buildings as defined in 40 C.F.R. Part 763, Appendix C to Subpart E. or as defined in N.J.A.C. 5:23-8.

“Removal” means the taking out or the stripping of asbestos-containing surfacing, thermal, or miscellaneous material from a building or structure. Specifically excluded from this definition are roofing and exterior siding materials in all but demolition projects.

“Repair” means the utilization of recommended work practices to minimize fiber release to return more than three linear feet or more than three square feet of damaged asbestos-containing material on any pipe, duct, boiler, tank, structural member or similar equipment to an undamaged condition or to an intact state by the application of duct tape, rewettable glass cloth, canvas, cement or other sealable material to seal exposed areas from which asbestos fibers may be released.

“Shall” indicates a mandatory requirement.

“Subcontractor” means an employer who hires workers and supervisors to perform asbestos work or who performs asbestos work directly.

“Supervisor” means any person who has completed an asbestos supervisor training course approved by the Department of Health and who has successfully passed a written asbestos supervisor examination devised and administered under the approval of the Department of Health for the position of supervisor and who possesses a valid asbestos supervisor permit issued by the Department of Labor. Individuals who qualify under the experienced worker provision of this chapter shall also be recognized as supervisors.

“TEM” or “transmission electron microscopy” means the scientific method of air sampling analysis for the purpose of definitively determining airborne asbestos fiber concentrations structures per cubic centimeter (s/cc) of air as well as the type of asbestos identified. This analytical method is to be consistent with the National Institute of Occupational Safety and Health (NIOSH) method 7402 as referenced in the 4th Edition, August 15, 1994 with addenda of the NIOSH Manual of Analytical Methods.

“Trainee” means any person who is enrolled in an asbestos worker or asbestos supervisor training course approved by the Department of Health.

“Training agency” means a training provider approved or certified by the Department of Health to conduct asbestos training courses.

“Training course” means any asbestos training course approved by the Department of Health in accordance with the requirements of N.J.A.C. 12:120 and 8:60.

“U.S.C.” means the United States Code.

“U.S.E.P.A.” means the United States Environmental Protection Agency.

“Worker” means a person who has completed an asbestos worker training course approved by the Department of Health and who has successfully passed a written asbestos worker examination devised and administered under the approval of the Department of Health for the position of worker and who possesses a valid asbestos worker permit issued by the Department of Labor.

Amended by R.1989 d.247, effective May 15, 1989.

See: 20 N.J.R. 1049(a), 21 N.J.R. 1333(b).

Definition of “removal” added.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Added several definitions and expanded definition of “experienced asbestos worker.”

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

Administrative correction.

See: 27 N.J.R. 1806(a).

SUBCHAPTER 3. ADMINISTRATION

12:120-3.1 Scope of subchapter

This subchapter shall apply to the administration of the licensing, permitting and certification standards mandated by this chapter.

12:120-3.2 Compliance

(a) Every employer falling within the scope of this chapter, who performs any of the functions of application, enclosure, repair, removal or encapsulation of asbestos in any structure, or who enters into any contract with the owner or owner's representative for the employer to perform such work or services, shall comply with the provisions of this chapter and shall be issued a nontransferable license by the Commissioner of Labor.

(b) Every employee falling within the scope of this chapter who performs the functions of application, enclosure, repair, removal or encapsulation of asbestos shall procure a performance permit issued by the Commissioner of Labor pursuant to this chapter.

(c) Every employer and employee shall take all prudent measures to comply with written recommendations made by the Commissioner of Labor or the Commissioner of Health, as the case may be.

Amended by R.1990 d.278, effective June 4, 1990.
See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Revised (a) and (b) and deleted subsection (d) regarding the commissioner's authority to waive compliance.
Amended by R.1995 d.193, effective April 3, 1995.
See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-3.3 Interface of State agencies

(a) The Department of Labor, under the provisions of this chapter, shall:

1. Issue licenses to qualified employers;
2. Issue permits to qualified workers;
3. Issue permits to qualified supervisors;
4. Collect the fees for licenses and permits;
5. Determine that employers have a valid license; and
6. Determine that workers and supervisors have valid permits.

(b) The Department of Health, under the provisions of this chapter, shall:

1. Certify training agencies which use Department of Health-approved courses to train workers and supervisors and to determine compliance by such training agencies with this chapter;
2. Certify the course of training for workers and supervisors;

3. Have the authority to develop, approve and administer examinations for workers and supervisors;

4. Collect fees for the certification of training courses and the administration of examinations;

5. Have the authority to determine that an employer has a valid license; and

6. Have the authority to determine that workers and supervisors have valid permits.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

In (a): added new (a)3 and renumbered (a)3-5 as (a)4-6.

In (b): added new (b)1 and renumbered (b)1-3 as (b)2-4.

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-3.4 Enforcement

(a) In accordance with N.J.S.A. 34:5A-41, any person who violates a provision of this chapter shall, upon conviction, be guilty of a crime of the third degree and, notwithstanding the provisions of N.J.S.A. 2C:43-3, shall be subject to a fine of not more than \$25,000 in addition to any other appropriate disposition authorized by subsection b of N.J.S.A. 2C:43-2.

(b) The Commissioner of Labor or the Commissioner of Health, as the case may be, as an alternative to or in addition to the fines and imprisonment authorized in (a) above, may employ the following powers and remedies in enforcing their respective responsibilities under the Act:

1. Whenever either the Commissioner of Labor or Health find that a person has violated any provision of the Act for which that Commissioner has the responsibility to enforce, that Commissioner may issue an administrative order to abate the violation. The administrative order must:

- i. Specify the provisions of the Act which the person has violated;
- ii. Give notice of the person's right to an informal conference or hearing pursuant to N.J.A.C. 12:120-8 and 8:60-8, on the matters contained in the order. Upon a request for an informal conference or formal hearing, the Commissioner of Labor or Health may grant a stay of the administrative order following review of a written request which includes a factual basis and clearly supports the appropriateness of the stay.

2. Either the Commissioner of Labor or Health may institute an action or proceeding in the Superior Court for injunctive or other relief for any violation of this Act for which that Commissioner has the responsibility to enforce and the court may proceed in the action in a summary manner.

(c) Either the Commissioner of Labor or the Commissioner of Health may assess a civil administrative penalty in accordance with N.J.A.C. 12:120-3.5 and 8:60-3.5, not to

exceed \$25,000 for each violation of this Act for which that Commissioner has the responsibility to enforce.

1. Each day during which the violation continues shall constitute an additional, separate and distinct offense.

2. The assessment of a civil administrative penalty shall not be levied until after the alleged violator has been notified by certified mail or personal service. The notice of assessment shall include:

- i. A reference to the section of the statute violated;
- ii. A concise statement of the facts alleged to constitute a violation;
- iii. A statement of the amount of civil administrative penalties to be imposed; and
- iv. A statement of the alleged violator's right to an informal conference or formal hearing pursuant to N.J.A.C. 12:120-8 et seq. and 8:60-8 et seq.

3. Either Department may negotiate the amount of a civil administrative penalty as it deems appropriate.

4. Payment of the assessment of a civil administrative penalty is due upon issuance of a final order by the Commissioner of Labor or the Commissioner of Health.

5. The Commissioner of Labor or the Commissioner of Health may file a civil action to recover a civil administrative penalty with costs pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

(d) A person who violates an administrative order issued pursuant to subsection (b)1 above, or who violates a court order issued pursuant to subsection (b)2 above, or who fails to pay in full an administrative assessment pursuant to subsection (c) above, shall be subject, upon court order, to a civil penalty not to exceed \$50,000 per day for such violation.

(e) The pursuit of any of the remedies specified in this section shall not preclude either Commissioner from seeking any other remedy.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Stylistic revisions

Amended by R.1995 d. 193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-3.5 Civil administrative penalties

(a) Employers, training agencies and instructors may be assessed civil administrative penalties not to exceed \$25,000 for each violation of the Act or this chapter, including, but not limited to:

1. Performing as an employer without a license;
2. Allowing an employee to work without a permit;
3. Submitting false information on the application for a license;

4. Submitting false information on the application for a course certification or instructor approval;

5. Performing as a training agency without certification;

6. Failure to meet license performance standards when performing asbestos abatement work;

7. Failure to perform quality asbestos training;

8. Submitting false information on training records;

9. Failure to fulfill notification requirements pursuant to N.J.A.C. 12:120-7 and 8:60-7;

10. Other violations of the Act or this chapter.

(b) Workers, supervisors, and trainees may be assessed civil administrative penalties not to exceed \$25,000 for each violation of the Act or this chapter, including, but not limited to:

1. Working as an employee without a permit;

2. Submitting false information on the application for a permit;

3. Submitting false information on the application for an examination;

4. Submitting false information to gain entrance into an examination;

5. Using fraudulent means during the taking of an examination;

6. Using fraudulent means to pass an examination;

7. Tampering with, altering, or defacing a permit;

8. Submitting false information on training records;

9. Other violations of the Act or this chapter;

(c) In assessing a civil administrative penalty pursuant to this chapter, the Commissioner of Labor or the Commissioner of Health, as the case may be, may consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations:

1. Degree of hazard posed to human health and the environment;

2. Degree of harm posed to the proper administration of the licensing/permitting program;

3. Category of culpability evidenced by the violator's action, including knowing action, reckless action, or negligent action;

- i. In determining culpability, ignorance of any legal requirement of the Act or this chapter shall constitute a negligent action unless the legal requirement is one of which the violator has constructive notice, in which case the violator's action shall be classified as reckless;

ii. Actual notice of the legal requirement of the Act or this chapter shall constitute a finding of knowing action;

4. Past history of compliance on the part of the violator;

5. Economic benefit which the violator accrues as a result of the violation; and

6. Cooperation of the violator in correcting the violation.

(d) In addition to other sanctions in the Act or this chapter, the Commissioner of Labor or the Commissioner of Health, as the case may be, shall have the authority to require:

1. The immediate correction of any violation;
2. The removal of the employer from the job site within the meaning and purposes of the Act;
3. The removal of any worker from the job site within the meaning and purposes of the Act;
4. The removal of any supervisor from the job site within the meaning and purposes of the Act; and
5. The removal of any instructor from the training course within the meaning and purposes of the Act.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

In (a): added "training agencies" to text; added new (a)4-5 and (a)7, and renumbered (a)4 as (a)6 and (a)5 as new (a)8 in Table.

In (b): deleted "employees" and added "workers, supervisors and trainees." Added new (b)3-5 and renumbered (b)3 as new (b)6 in Table.

Added new subsection (c) and renumbered old (c) as new (d), adding new (d)4.

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-3.6 (Reserved)

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Stylistic revisions throughout.

In (c): added text setting out 10-day time limit for submission of request for a formal hearing.

Added new (d).

Repealed by R.1995 d. 193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

Formerly "Hearings".

SUBCHAPTER 4. LICENSING OF EMPLOYERS

12:120-4.1 Scope of subchapter

This subchapter shall apply to the procedures required to obtain or to renew a license as an employer.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Added "or to renew" describing license procedures.

12:120-4.2 Exempted activities

(a) The Commissioner of Health may exempt from the license requirements those designated asbestos-related activities based on sufficient data which indicates that no significant exposure exists to perform such activity. Such data shall be submitted to the Commissioner of Health for review at least 10 calendar days prior to the beginning of such work.

(b) These exempted activities involve non-friable asbestos containing material that is not rendered friable by the activity.

New Rule, R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-4.3 Application for license

(a) The application for an employer license shall be made on forms provided by the Division of Workplace Standards.

(b) The application for an employer license shall be typewritten or neatly and legibly printed in ink.

(c) All applications shall be carefully completed.

(d) Where applicable, applicants shall furnish evidence of applicable full time asbestos work experience as an employer. This experience shall have been completed within five years of the filing of the application. This experience shall be listed by job name, location, time involved, and cost of the contract.

(e) No license shall be granted to an employer:

1. If the employer is less than 21 years of age;
2. If the employer has been found to be in non-compliance with N.J.A.C. 12:120-3.2 and 8:60-3.2; or
3. If the employer is unable or unwilling to comply with N.J.A.C. 12:120-4.4 and 8:60-4.4 within one year of the date of receipt of the application by the Division of Workplace Standards.

(f) All correspondence relative to applications for licenses shall be addressed to the Division of Workplace Standards.

(g) The Division of Workplace Standards shall be notified by the employer of any change of business and/or home residence. When writing, the license number shall be specified.

(h) The application fee for an annual license shall be \$1,000. The fee for the issuance of a duplicate license shall be \$100.00. The Commissioner may, by amendment to this section, reduce these fees based on a decrease in program costs.

(i) The application fee for an annual license shall accompany the application and is nonrefundable.

(j) The application fee for a license shall be paid by certified check or money order made payable to the Commissioner of Labor.

(k) No liability shall be assumed by the Division of Workplace Standards for loss in the transmission of the application fee.

(l) Applicants denied licenses shall not be permitted to resubmit an application for one year from the date of the denial of the application.

(m) Upon written request from the applicant, the Commissioner of Labor may, at his or her discretion, waive the fees for licensing identified in (h) above.

1. The written request for waiver must identify that the applicant will suffer significant economic or financial hardship if the waiver is not granted.

i. The economic or financial hardship which will be suffered may not be the result of losses incurred by the applicant as a result of Federal, State or other governmental administrative disciplinary or regulatory action.

2. The granting of a waiver from the fees for licensing shall have no bearing on the applicant's eligibility for a license.

Amended by R.1986 d.149, effective May 5, 1986.

See: 18 N.J.R. 156(a), 18 N.J.R. 986(a).

Fee raised from \$100.00 to \$200.00.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Added new (a) and relettered (a)-(c) as (b)-(d). Deleted (d)-(f) and relettered (g)-(m) as new (f)-(k). Added new (l).

In new (d): added phrase "asbestos work" before experience.

In new (e): raised age from 18 to 21 years.

In new (h), (i) and (j): added biennial and nonrefundable for application fee in (i).

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-4.4 Eligibility for employer license

(a) The applicant, to be eligible for a license as an employer, shall:

1. Provide evidence of having successfully completed the training course and pass the written examination for asbestos abatement supervisors devised and administered under the approval of the Department of Health as set forth at N.J.A.C. 12:120-6.2 and 8:60-6.2;

2. Have employed with the firm a job supervisor who holds a valid New Jersey asbestos supervisor permit; and

3. Disclose in and attach to the application form all information including, but not limited to, (a)4i through x below and such other information as shall demonstrate the applicant's reliability, responsibility, capability, competence, and knowledge to perform asbestos work safely and to minimize unnecessary health hazards to citizens:

i. A copy of the employer's certificate of insurance specifying the name of the insurance carrier, policy number, policy period under which the entire New Jersey Workers' Compensation obligation is insured, and which specifies both the New Jersey Department of Labor, Office of Asbestos Control and Licensing, and the New Jersey Department of Health, Environmental Health Services, as certificate holders of the insured;

ii. A listing of respiratory protective equipment including serial numbers and proof of purchase;

iii. A list of all other equipment and its location specific to asbestos abatement including serial numbers and proof of purchase;

iv. Any and all citations of violations issued by the Occupational Safety and Health Administration;

v. Any and all citations of violations issued by the Environmental Protection Agency;

vi. Any previous and pending civil litigation;

vii. Any previous and pending criminal litigation;

viii. Any previous and pending litigation pertaining to other State, Federal, local laws or regulations or both;

ix. A list of all public and private asbestos abatement projects performed within the past five years; and

x. A copy of the employer's standard operating procedures which demonstrate capability, competence and knowledge. Such policies and procedures should include, but are not limited to, respiratory protection and usage; personal protective equipment, engineering methods and controls, waste handling and disposal, decontamination, safety considerations and emergency procedures, and detailed abatement procedures for specific asbestos-containing materials.

Amended by R.1986 d.149, effective May 5, 1986.

See: 18 N.J.R. 156(a), 18 N.J.R. 986(a).

Deleted "or availability".

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Added "employer" license to section title.

In (a)2: added phrase "holds ... permit ..." to requirements. Stylistic revisions throughout.

In (a)5: added text regarding close corporation.

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-4.5 Granting of employer license

(a) A license shall be granted in accordance with (b) below, when an employer can comply with N.J.A.C. 12:120-4.4 and 8:60-4.4.

(b) The license for an employer shall:

1. Be in writing;

2. Contain the date of issuance;

3. Contain the date of expiration;
4. Contain the name and address of the employer to whom it is issued;
5. Be valid for one year from the date of issuance;
6. Be signed by the Commissioner of Labor or his or her designee; and
7. Be nontransferable.

i. A transfer includes, but is not limited to, the sale of stock in the form of a statutory merger or consolidation, the sale of the controlling shares of the assets, the conveyance of real property, the dissolution of corporate identity, and the financial reorganization and initiation of bankruptcy proceedings.

ii. The Commissioner shall reasonably have the right to examine and review all pertinent employer records relating to ownership to facilitate determinations on transfers.

(c) The license shall be issued by the Commissioner as:

1. An "A" license granting approval to the employer to perform any type of asbestos work.
2. A "B" license granting approval to the employer to remove asbestos-containing material from mechanical systems, such as pipes, boilers, ducts, flues, or breeching.

(d) The Commissioner may issue employer licenses with such conditions as the Commissioner deems necessary, and as adopted by regulation, specifying the scope of work authorized by such licenses.

(e) The Commissioner shall not grant a license unless the employer has certified that the employer's supervisor has completed a training course and examination certified and approved by the Department of Health.

Amended by R.1986 d.149, effective May 5, 1986.
See: 18 N.J.R. 156(a), 18 N.J.R. 986(a).

License valid for two years not one year.
Amended by R.1990 d.278, effective June 4, 1990.
See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Added "employer" license to section title.
In (b)5: changed one year to two years.
Added new (b)7, "be nontransferable."
Amended by R.1995 d.193, effective April 3, 1995.
See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-4.6 Identification of licensee

(a) The license shall be available at the worksite for examination by the Commissioner of Labor, Commissioner of Health, the contracting agency, and the owner or the owner's representative.

(b) A sign meeting the requirements of this subsection shall be posted and displayed outdoors at the worksite.

1. The sign shall be readily visible; and

2. The sign shall contain the following information in letters not less than four inches in height: "LICENSED BY THE STATE OF NEW JERSEY FOR ASBESTOS WORK—LICENSE NUMBER _____".

(c) All vehicles in use commercially by an employer performing the functions of application, enclosure, encapsulation, repair, or removal of asbestos-containing material shall be visibly marked with the employer's New Jersey Department of Labor-issued license number.

(d) The employer shall have a New Jersey Department of Labor-issued duplicate of the original license available at each job site.

(e) All business correspondence shall display the employer's license number.

Amended by R.1986 d.149, effective May 5, 1986.

See: 18 N.J.R. 156(a), 18 N.J.R. 986(a).

License cost raised from \$5.00 to \$10.00.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Stylistic revisions throughout.

Revised (b), adding new 1 and 2.

In (d): changed "more than one" job site to "each job site" and increased cost of duplicate license to \$20.00 from \$10.00.

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-4.7 License performance standards

(a) Every licensee shall ensure that all asbestos work performed conforms to those license performance standards as identified at N.J.A.C. 12:120-4.4(a)3 and 8:60-4.4(a)3, including, but not limited to, the following:

1. Accepted engineering practices which protect human health and the environment;
2. Compliance with 40 C.F.R. Part 61, National Emission Standards for Hazardous Air Pollutants, Subparts A and M;
3. Compliance with N.J.A.C. 7:26, Non-Hazardous Waste Regulations; and
4. Compliance with N.J.A.C. 5:23-8, Asbestos Hazard Abatement Subcode of the Uniform Construction Code in educational facilities and public buildings as defined at N.J.A.C. 5:23-8.2.

(b) Every licensee who performs asbestos work shall ensure that a permitted supervisor is on-site throughout the course of the project.

1. The permitted supervisor and licensee shall be responsible for ensuring that the asbestos work is performed in accordance with the provisions of this section through periodic visual inspections and immediate correction of problems.

1. This final inspection shall include a thorough visual inspection of the work site and clearance air monitoring.

A sufficient number of air samples shall be taken to be representative of the work area.

i. For abatement actions less than or equal to 160 square feet, or less than or equal to 260 linear feet, clearance air samples may be analyzed by PCM. The clearance air samples shall be considered acceptable when each of the samples analyzed indicates a fiber concentration of less than or equal to 0.01 f/cc of air.

ii. For abatement actions greater than or equal to 160 square feet, or greater than or equal to 260 linear feet, clearance air sampling shall be conducted by TEM in accordance with 40 C.F.R. 763.90(i)(3) and (4).

(d) Every licensee shall be responsible for immediately having corrected at no additional charge to the customer, any violation of the standards of (a) above discovered in the work performed by the licensee.

Amended by R.1986 d.149, effective May 5, 1986.
See: 18 N.J.R. 156(a), 18 N.J.R. 986(a).

(a) substantially amended.

Amended by R.1990 d.278, effective June 4, 1990.
See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Stylistic revisions throughout and revised references.

Revised (b), adding new 1, and added new (c), relettering old (c) as new subsection (d).

Section title was "Quality of work".

Amended by R.1995 d.193, effective April 3, 1995.
See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-4.8 Suspension or revocation of employer license

(a) Any employer may have his license suspended or revoked for:

1. Incompetence;
2. Negligence;
3. Failure to comply with contract specifications; or
4. Any violation of the Asbestos Control and Licensing Act, N.J.S.A. 34:5A-32 et seq. or this chapter.

(b) Any employer shall have his or her license suspended or revoked for:

1. Loaning, abandoning, or allowing the license to pass from his personal control;
2. Debarment under the Act or any other State law;
3. Any valid reason establishing that the licensee is unfit to hold a license;
4. Any good cause within the meaning and purposes of the Act;
5. Any violation of N.J.A.C. 12:120 and 8:60 found to be of an extreme nature, taking into account the considerations, where appropriate, specified at N.J.A.C. 8:60-3.5(c) and 12:120-3.5(c); or

6. Any violation of an administrative order lawfully issued by the Commissioner of Labor or the Commissioner of Health as the case may be.

(c) Any employer who has his license suspended or revoked pursuant to this section shall not perform asbestos work, including any work which is in progress, any work for which bids are in, or any work which has been contracted for until such license is restored by the Department.

(d) The Commissioner shall suspend a license for violations of this section of this subchapter provided that:

1. Written or oral notice of the violations is provided to the employer; and
2. The employer has the opportunity to respond to the charges.

(e) All employer licenses shall expire one year from the date of issuance.

(f) A license shall be automatically cancelled on the date of its expiration. Any person performing the duties of a licensee and holding an expired license shall be subject to the penalty provisions of the Act.

(g) Any person using fraudulent means to obtain a license shall be subject to prosecution under the Act. Any license acquired through such means shall be invalid.

(h) In all cases where the Commissioner of Labor proposes to revoke or suspend a license, or denies an application for a license, the employer shall have the right to an informal conference or formal hearing, or both, pursuant to N.J.A.C. 12:120-8.

Amended by R.1986 d.149, effective May 5, 1986.
See: 18 N.J.R. 156(a), 18 N.J.R. 986(a).

"Original" amended to "one year or biennial."

Amended by R.1990 d.278, effective June 4, 1990.
See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Added "employer" license to section title.

Added (a)4 and (b)5-6.

Deleted old (c) regarding temporary suspension of a license.

Added new (d) and relettered old (d)-(f) as (e)-(g).

In new (e), specified expiration date for licenses to two years.
Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-4.9 Renewal of employer license

(a) The application for renewal of a license shall be submitted at least 30 days prior to the date of expiration. When the application for renewal of a license is submitted within the required time period, the license may continue in effect until the Commissioner renders a determination regarding the application.

(b) The license shall be renewed annually.

(c) The application fee for renewal of a license shall be the same as the application fee charged for an initial license under N.J.A.C. 12:120-4.3(h) and 8:60-4.3(h).

(d) The application fee for renewal of a license shall accompany the application and is non-refundable.

(e) The application fee for renewal of a license shall be paid by certified check or money order made payable to the Commissioner of Labor.

(f) No liability shall be assumed by the Division of Workplace Standards for loss in transmission of the application fee for renewal of a license.

(g) An application for renewal of a license shall not be approved until all outstanding penalties lawfully imposed on the applicant under the Act or this chapter have been paid.

(h) An application for renewal of a license that has expired shall be treated as an original application.

(i) The replacement cost of a license which has been altered, defaced, mutilated, or lost shall be the same as the fee charged for the issuance of a duplicate license under N.J.A.C. 12:120-4.3(h) and 8:60-4.3(h). Replacement shall be made only after review by the Commissioner.

(j) Photostats, photographs, or reproductions of a license shall have no status and shall not be recognized.

(k) In all cases where the Commissioner refuses to renew a license, the employer shall have the right to an informal conference or formal hearing, or both, pursuant to N.J.A.C. 12:120-8.

Amended by R.1990 d.278, effective June 4, 1990.
See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Added "employer" license to section title.
Rewrote subsection (a), increasing renewal fee to \$200.00 from \$100.00.

Added new (b)-(f), relettering (b)-(c) as (g)-(h).
Deleted old (e) regarding replacement, increasing cost to \$20.00 from \$5.00.

Added new subsections (i)-(k).
Amended by R.1995 d.193, effective April 3, 1995.
See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

Prior text at 12:120-4.9, "Hearings for employers", repealed.

SUBCHAPTER 5. REQUIREMENTS AND PROCEDURES FOR OBTAINING AN ASBESTOS WORKER OR AN ASBESTOS SUPERVISOR PERMIT

12:120-5.1 Scope of subchapter

This subchapter shall apply to each person applying for or renewing either an asbestos worker permit or an asbestos supervisor permit.

Amended by R.1990 d.278, effective June 4, 1990.
See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).
Stylistic revision.

12:120-5.2 Exempted activities

(a) The Commissioner of Health may exempt from the permit requirements those designated asbestos-activities based on sufficient data which indicates that no significant exposure exists to perform such activity. Such data shall be submitted to the Commissioner of Health for review at least 10 calendar days prior to the beginning of such work.

(b) These exempted activities shall involve non-friable asbestos containing material that is not rendered friable by the activity.

New Rule, R.1995 d.193, effective April 3, 1995.
See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-5.3 Requirements for obtaining an asbestos worker or an asbestos supervisor permit

(a) The Commissioner shall issue a permit to each applicant who satisfies the requirements listed below. The applicant shall:

1. Be at least 18 years of age;
2. Successfully complete either the asbestos abatement worker or asbestos abatement supervisor training course approved by the Department of Health and pass a written examination devised and administered under the approval of the Department of Health for each respective position; and

i. Proof of passing the written examination shall be submitted with the permit application.

3. Complete the permit application, a copy of which may be obtained from the Department of Labor.

Correction: Deleted "and eligibility to work in the United States" from (b)2.

See: 20 N.J.R. 1562(a).
Amended by R.1990 d.278, effective June 4, 1990.
See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Repealed old "Definitions" section.
Recodified from N.J.A.C. 12:120-5.3.
Added "asbestos worker or an asbestos supervisor" to section title.
Added "asbestos abatement" to define worker and/or supervisor.
Deleted (a)2 and renumbered (a)3-4 to (a)2-3. Deleted (b)2 and renumbered (b)3-5 to (b)2-4.

Deleted "Procedures for verifying identity" section.
Amended by R.1995 d.193, effective April 3, 1995.
See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-5.4 Procedures for completing training course and examination

(a) Each applicant required by this subchapter to complete asbestos training shall register at a training agency which has been certified by the New Jersey Department of Health to offer such training. A list of certified training agencies is available from the Department of Health.

1. The topics for worker training are set forth at N.J.A.C. 12:120-6.2 and 6.6 and N.J.A.C. 8:60-6.2 and 6.6;

2. The topics for supervisor training are set forth at N.J.A.C. 12:120-6.2 and 6.7 and N.J.A.C. 8:60-6.2 and 6.7; and

3. Upon successful completion of the training course, all applicants shall complete an "Asbestos Trainee Evaluation" form (ASB-24).

(b) Upon successful completion of the training course, each applicant shall register to take a written examination administered under the approval of the Department of Health.

1. Each applicant shall bring the following to the examination:

i. The trainee's copy of the "Asbestos Trainee Evaluation" form (ASB-24);

ii. A recent passport-size color photograph of the applicant taken against a white background or backdrop with the applicant's face not being less than three-quarters of an inch in width. The applicant shall not wear a hat, glasses, or any other item which may alter or disguise the overall features of the face in the photograph. This photograph shall be surrendered at the examination site; and

iii. Any document with the trainee's signature which establishes the applicant's identity.

(c) Each applicant who receives a score of at least 70 percent on the worker examination shall pass the examination for the worker permit.

1. If an applicant fails to pass the worker examination within one year of completion of training and still desires to obtain a worker permit, such applicant shall retake the entire worker training course.

(d) Each applicant for a supervisor permit who achieves a score of at least 70 percent on the supervisor examination shall pass the examination for the supervisor permit.

1. If an applicant fails to pass the supervisor examination within one year of completion of training and still desires to obtain a supervisor permit, such applicant shall retake the entire supervisor training course.

(e) Applicants who receive a permit as a supervisor may perform the duties of a worker without possessing a separate work permit.

(f) Any applicant who copies or retains any questions or answers used in the asbestos worker or asbestos supervisor examination shall be subject to prosecution under the Act and this chapter. Any permit acquired through such means shall be invalid.

(g) Any applicant using fraudulent means during the taking of an asbestos worker or asbestos supervisor examination shall be subject to prosecution under the Act and this chapter. Any permit acquired through such means shall be invalid.

(h) Applicants who do not take or pass the examination within one year of completion of their training shall retake the complete training prior to being examined.

(i) Applicants who have met the requirements as set forth in this section, but have failed to submit an application or obtain a permit within one year of completion of initial training, shall provide evidence of having successfully completed an annual refresher training course pursuant to N.J.A.C. 12:120-6.8 and 8:60-6.8 in order to qualify for an asbestos permit.

(j) Each applicant who holds a valid New Jersey worker permit and wishes to upgrade to a supervisor permit must complete all training as set forth at N.J.A.C. 12:120-6.2(b) and 6.7 and N.J.A.C. 8:60-6.2(b) and 6.7 and the requirements of this section.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Recodified from N.J.A.C. 12:120-5.5.

Stylistic revisions throughout.

Revised text of (b)1ii.

In (c)1: changed "five-day" to "four-day" worker training course.

In (e): added "inclusive" to scoring.

In (e)1: added "without retraining" at end of text.

Deleted old (f)-(g) and added new (f)-(i), setting out procedures for completing training course and examination.

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-5.5 Procedures for completing permit application

(a) Each applicant for a permit shall complete an application which can be obtained from the Division of Workplace Standards.

(b) Each applicant shall provide the following to the Division of Workplace Standards:

1. Name, address, date of birth, age, sex, height, weight, eye color, driver's license number, and telephone number;

2. The name and location of the course where the applicant has successfully completed asbestos training, the date of completion, and number of hours of training.

i. The applicant shall submit to the Division of Workplace Standards documentation that indicates successful completion of the asbestos training course with the application for permit.

ii. The applicant shall submit proof of passing the written examination.

3. Two recent, identical passport-size color photographs taken against a white background or backdrop with the applicant's face being not less than three quarters of an inch in width. The applicant shall not wear a hat, glasses or any other item which may alter or disguise the overall features of the face in the photographs; and

i. The applicant shall legibly print his or her name on the back of both photographs submitted.

ii. The applicant shall attach one passport size color photograph in the space provided on the application.

4. The name and address of the applicant's present employer, the applicant's position with the employer and the date employment commenced.

(c) Each applicant is requested to voluntarily provide his or her social security number in his or her permit application to assist the Commissioner in the enforcement of the provisions of N.J.S.A. 34:5A-32 et seq.

1. Each social security number collected may be used as an identifier in the Commissioner's computerized recordkeeping system to aid in the processing of permit applications.

2. Each social security number collected shall remain confidential to the Department of Labor.

(d) The applicant shall sign and date a statement certifying that the information contained in the application is accurate, true, and complete to the best of his or her knowledge.

(e) The applicant for a worker permit shall submit a \$50.00 non-refundable fee (certified check or money order made payable to the Commissioner of Labor) with the permit application. The Commissioner may, by amendment to this section, reduce this fee based on a decrease in program costs.

(f) The applicant for a supervisor permit shall submit a \$75.00 non-refundable fee (certified check or money order made payable to the Commissioner of Labor) with the permit application. The Commissioner may, by amendment to this section, reduce this fee based on a decrease in program costs.

(g) Upon written request from the applicant, the Commissioner of Labor may, at his or her discretion, waive the fees for permit identified in subsections (e) and (f) above.

1. The written request for waiver must identify that the applicant will suffer significant economic or financial hardship if the waiver is not granted.

i. The economic or financial hardship which will be suffered may not be the result of losses incurred by the applicant as a result of Federal, State or other governmental administrative disciplinary or regulatory action.

2. The granting of a waiver from the fees for permit shall have no bearing on the applicant's eligibility for a permit, waive the fees for permits identified in subsections (e) and (f) above.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Recodified from N.J.A.C. 12:120-5.6.

Revised (b)2ii and (b)3.

In (d): raised fee from \$20.00 to \$50.00.

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-5.6 Length of permit

(a) Each permit issued by the Commissioner shall be valid for one year from the date of issuance.

(b) A permit shall be automatically cancelled on the date of its expiration.

(c) Any person performing asbestos work requiring a permit under the Act or this chapter who performs such work while holding an expired permit shall be subject to the penalty provisions of the Act.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Recodified from N.J.A.C. 12:120-5.7.

Added (a), with word "conditionally" and extended valid period from one year to two years.

Added (a)1.

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-5.7 Contents of permit

(a) Each permit for an asbestos worker or asbestos supervisor shall be issued in writing, be signed by the Commissioner of Labor, and shall contain:

1. The date of issuance;

2. The expiration date;

3. The name and address of the worker or supervisor to whom it is issued; and

4. The worker's or supervisor's unique identification number supplied by the Department of Labor.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Recodified from N.J.A.C. 12:120-5.8.

In (a): added "asbestos supervisor" and "signed by the Commissioner."

Deleted (a)5, which indicated that permit shall contain the signature of the Commissioner.

In (b): added N.J.A.C. reference.

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-5.8 Identification of permit holder

(a) Each worker or supervisor performing asbestos work shall have their permits available at the job site and readily available for inspection by representatives of the Commis-

sioners of the Departments of Labor and Health and of the contracting agency.

(b) Tampered with, altered, or defaced permits shall be void.

(c) Any photostats, photographs, or reproductions of a permit shall be invalid.

(d) Any worker or supervisor who loses his or her permit or has it stolen shall immediately notify the Division of Workplace Standards in writing.

(e) An altered, defaced, mutilated, lost, or stolen permit may be replaced upon written request and a review of the circumstances by the Commissioner.

(f) A request for a replacement or duplicate permit shall be notarized and include:

1. The name, address and date of birth of the permit holder;
2. The worker's or supervisor's unique identification number;
3. The circumstances surrounding the loss of the permit, including when, where and how the permit was altered, defaced or mutilated, lost or stolen; and
4. The altered, defaced, or mutilated permit, if applicable.

(g) The cost for a replacement or duplicate permit shall be \$5.00 for a worker permit and \$7.50 for a supervisor permit.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Recodified from N.J.A.C. 10:120-5.9.

Revised (a) and (b) and added new subsections (c)-(e).

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-5.9 Suspension and revocation of permit

(a) The Commissioner may suspend or revoke any permit for the following reasons:

1. The worker or supervisor is incompetent to perform asbestos work;
2. The worker or supervisor is negligent in performing asbestos work; and/or
3. The worker or supervisor loans the permit, abandons the permit, or allows it to pass from his or her possession.

(b) The Commissioner may order the immediate suspension or revocation of an asbestos abatement worker or an asbestos abatement supervisor permit if there is an imminent danger to the health and safety of the public or the employees.

1. Any asbestos abatement worker or asbestos abatement supervisor who has his or her permit suspended or revoked pursuant to this section shall not perform asbestos work until such permit is restored by the Department of Labor.

(c) Prior to suspending or revoking a permit, the Commissioner shall provide the worker or supervisor with written notice of the violations. This subsection shall not apply to situations set forth at (b) above.

1. Each worker or supervisor shall have an opportunity to respond to the charges.

(d) Any individual performing the duties of an asbestos abatement worker or an asbestos abatement supervisor and possessing an expired permit shall be subject to the penalties under the Act and this chapter.

(e) Any applicant using fraudulent means to obtain an asbestos worker or an asbestos supervisor permit shall be subject to prosecution under the Act and this chapter. Any permit acquired through such means shall be invalid.

1. The use of fraudulent means to obtain an asbestos supervisor permit shall invalidate any other New Jersey asbestos permit which the applicant may possess.

(f) In all cases where the Commissioner proposes to revoke or suspend a permit, or denies an application for a permit, the worker or supervisor shall have the right to an informal conference or formal hearing, or both, pursuant to N.J.A.C. 12:120-8 and 8:60-8.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Recodified from N.J.A.C. 12:120-5.10.

Added (b)1 and (e)1.

Added description "asbestos abatement" worker.

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-5.10 Renewal of permit

(a) An application for renewal of a permit shall be submitted at least 30 days prior to its expiration date. When the application for renewal is submitted within the required time period, the permit may continue in effect until the Commissioner renders a determination regarding the application. The applicant shall be notified in writing by the Department whether a valid extension has been granted. This validation together with the expired permit shall be carried upon the worker's person and be readily available for inspection by representatives of the Commissioners of the Departments of Labor and Health and the contracting agency.

(b) The Commissioner shall renew a worker or supervisor permit if the renewal applicant has:

1. Completed an application as set forth at N.J.A.C. 12:120-5.5 and 8:60-5.5 within one year of the expiration date of the expired permit;

2. Provided evidence of refresher training pursuant to N.J.A.C. 12:120-6.8 and 8:60-6.8; and

i. Permit holders whose permits expire on or after October 1, 1990 shall submit proof of refresher training.

3. Paid all penalties lawfully imposed on the renewal applicant under the Act and this chapter.

(c) The Commissioner shall treat an application for renewal of a permit which has expired more than one year as an original application.

(d) In all cases where the Commissioner refuses to renew a permit, the worker or supervisor shall have the right to an informal conference or formal hearing, or both, pursuant to N.J.A.C. 12:120-8 and 8:60-8.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Recodified from N.J.A.C. 12:120-5.11. Revised subsection (a).

In (b)3: deleted "continuing education" and added "refresher training" with N.J.A.C. citations.

Added (b)3i.

Deleted subsection (d) regarding defacement, loss or altering of a permit.

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

Prior text at 12:120-5.10, Appeal procedures, repealed.

(b) The asbestos abatement contractor/supervisor training course shall be presented over five days and shall include a minimum of 35 hours of training, of which a minimum of 14 hours shall be dedicated to the conduct of hands-on-training. The topics which shall be presented are set forth at N.J.A.C. 12:120-6.7 and 8:60-6.7.

(c) Annual refresher training for asbestos workers shall be at least seven hours. Annual refresher training for asbestos supervisors shall be at least eight hours. The items required to be presented during refresher training are set forth at N.J.A.C. 12:120-6.8 and 8:60-6.8.

(d) The hour requirements listed in (a) through (c) above shall be exclusive of lunch and break times.

(e) Demonstrations not involving individual participation shall not be considered hands-on training.

(f) Initial and refresher training courses for both disciplines shall be specific to a single discipline and shall not be combined with training for other disciplines.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Revised completely subsections (a) and (b); added new subsections (a)-(c).

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

SUBCHAPTER 6. CERTIFICATION OF TRAINING COURSES

12:120-6.1 Scope of subchapter

This subchapter shall apply to the procedures and qualifications required to obtain and maintain or renew certification from the Commissioner of Health to conduct training courses on asbestos abatement as provided for in the Act. At a minimum, training courses shall meet the following requirements as set forth in this subchapter or 40 CFR 763, "Asbestos Model Accreditation Plan; Interim Final Rule," whichever is more stringent.

Amended by R.1986 d.149, effective May 5, 1986.

See: 18 N.J.R. 156(a), 18 N.J.R. 986(a).

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Added "and maintain" certification, and "agencies and training" courses . . .

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-6.2 Types of courses

(a) The asbestos abatement worker training course shall be presented over four days and shall include a minimum of 28 hours of training, of which a minimum of 14 hours shall be dedicated to the conduct of hands-on-training. The topics which shall be presented are set forth at N.J.A.C. 12:120-6.6 and 8:60-6.6.

12:120-6.3 Application for certification of training courses

(a) An applicant for certification of an asbestos abatement training course shall submit an application and a proposal on forms provided by the Department of Health, specifying the following:

1. The name and address of the agency, institution or private firm which plans to conduct the training course, the name of the responsible individual and his or her telephone number, a list of any other states in which asbestos training certification is presently or has been held, and a statement of ownership;

2. A description of the course location, including dimensions and location of hands-on training, and course fees;

3. A description of the public outreach and publicity efforts which will be made to inform the appropriate potential trainees of the course availability;

4. Detailed outlines of the course curricula, as set forth at N.J.A.C. 12:120-6.6 through 6.8 and 8:60-6.6 through 6.8 the amount of time allotted for each topic, and a list of the instructors for each topic;

5. A description of the interactive/participatory teaching methods to be used to present each topic, including, where appropriate, discussions, demonstrations, hands-on training, and audio-visual materials. Lecture is not considered an interactive/participatory teaching method. When applicable, the name, producer, and date of pro-

duction of audio-visual materials to be used shall be included;

6. Copies of written materials to be distributed as part of the training course;

7. Evidence demonstrating that the applicant has employed or contracted to employ a minimum of three instructors, either on a full time or temporary basis, to satisfy the education, experience and qualifications criteria as set forth at N.J.A.C. 12:120-6.5 and 8:60-6.5. Resumes describing special training and education and/or prior experience shall be submitted as documentation of compliance with the instructor criteria;

8. A list of the types, brand names and quantities of respirators to be used to demonstrate fit test or flow test;

9. A description of the type and quantity of protective clothing to be used during practice exercises and demonstrations;

10. A description and the quantities of the materials to be used for hands-on practice exercises and demonstrations including, but not limited to, hand tools, ladders, scaffolding, plastic sheeting, and other barrier construction supplies, air filtration units, water spray devices, decontamination facilities, simulated asbestos material and Material Safety Data Sheets (where applicable);

11. Any restrictions on attendance such as literacy requirements, English language only or other language to be used;

12. For any non-English language training course, all course materials, examinations and related course literature shall be translated into that language, with a written certification that the translation is accurate and valid;

13. Instructor-to-student ratio for the hands-on practice exercises and demonstrations shall be a maximum of 10 students per one instructor;

14. Evidence that a no-smoking policy will be established, maintained and enforced during all aspects of training;

15. A copy of the applicant's valid training agency certification previously issued by the Department of Health pursuant to this subchapter where applicable; and

16. A copy of the written examinations to be administered to the trainees by the training agency.

(b) All materials submitted in connection with the application shall be typewritten or machine printed.

(c) The applicant shall be required to successfully pass a pre-commencement inspection of the training facility conducted by the Department of Health.

(d) The applicant shall immediately notify the Department of Health in writing of any change(s) in the application information occurring either prior to or after certification.

(e) A non-refundable application fee for annual certification in the amount of \$500.00 per discipline shall be forwarded with the application. The application fee shall be paid by certified check or money order and made payable to the New Jersey Department of Health. No liability shall be assumed by the Department for the loss in the transmission of the application.

(f) Certification of refresher training courses is expressly conditioned upon maintaining a certification in good standing for that discipline which the applicant is applying.

(g) Upon written request from the applicant, the Commissioner of Health may, at his or her discretion, waive the fees for certification of training agencies identified in (e) above.

1. The written request for waiver must identify that the applicant will suffer significant economic or financial hardship if the waiver is not granted.

i. The economic or financial hardship which will be suffered may not be the result of losses incurred by the applicant as a result of Federal, State or other governmental administrative disciplinary or regulatory action.

2. The granting of a waiver from the fees for certification of training agencies shall have no bearing on the applicant's eligibility for certification.

Amended by R.1986 d.149, effective May 5, 1986.

See: 18 N.J.R. 156(a), 18 N.J.R. 986(a).

Deleted "respirators".

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Stylistic revisions throughout.

In (a): added reference to ASB-23 application.

In (a)5: added "hands-on training."

In (a)7: added "to employ a minimum of two" instructors ...

Added new (a)14 and 15, and new subsection (d).

Revised old subsection (c) by adding new text.

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-6.4 Training agency operating requirements

(a) Certified training agencies shall have the burden of demonstrating compliance, or the ability to comply, with the requirements of this subchapter.

(b) Certified training agencies shall have access to sufficient classrooms, off-site demonstration facilities, equipment, materials and instructors to ensure that adequate training courses meeting the requirements of this subchapter can be conducted.

(c) Certified training agencies shall use any training materials, examinations, forms, questionnaires, surveys, informational or audiovisual aids which may be required by the Department of Health.

(d) Certified training agencies shall ensure that at least one course instructor represents them at any meeting sponsored by the Department of Health for the purpose of maintaining uniform and high quality training courses among certificants.

(e) Certified training agencies shall limit class size to 25 students for initial training courses.

(f) Certified training agencies shall limit class size to 30 students for refresher training courses.

(g) All certified training agencies shall notify the Department of Health at least two weeks in advance of the beginning of any training course. All notifications shall be in writing and shall be submitted on forms provided by the Department of Health. If any course information changes, the training agency shall notify the Department of Health as soon as that agency becomes aware of such changes.

(h) Certified training agencies shall ensure that all refresher trainees have met the requirements for obtaining a New Jersey permit as outlined at N.J.A.C. 12:120-5.3 and 8:60-5.3. Certificates of completion shall be issued only to those individuals who have met these requirements and have successfully completed the refresher course.

(i) Certified training agencies shall submit instructor documentation meeting the requirements of N.J.A.C. 12:120-6.5 and 8:60-6.5 to the Department of Health for approval prior to allowing that instructor to conduct any training course.

(j) Certified training agencies shall issue a certificate of completion to trainees upon their successful completion of an initial or a refresher training course. The certificate shall specify the following:

1. A unique certificate number;
2. The full name of the trainee;
3. Discipline;
4. The expiration date of the certificate;
5. The course completion date;
6. The name, address and telephone number of training agency;
7. The language in which the training course was given; and
8. Shall bear the signature of the course instructor.

(k) Certified training agencies shall permit entry to all training courses by representatives of the Department of

Health for the purposes of course evaluation and determination of compliance with this subchapter.

(l) Certified training agencies shall limit individual classes to one language.

(m) Certified training agencies shall maintain the following records:

1. All documents specified in N.J.A.C. 12:120-6.5 and 8:60-6.5 that demonstrate the qualifications of the course instructors;
2. Student training records;
3. Daily class attendance records bearing the signature of the course instructor;
4. Copies of examinations administered by the training agency; and
5. Copies of instructor performance review records.

(n) Certified training agencies shall permit representatives of the Department to inspect and evaluate these records. Upon request by the Department of Health, training agencies shall provide copies of all training records for the purpose of inspection, evaluation and compliance.

(o) Certified training agencies shall maintain training records for a minimum of five years. The Department of Health shall be notified and be given the opportunity to take possession of all training records should an agency cease to conduct training.

(p) Certified training agencies shall notify the Department of Health, in writing, in advance of any changes in information submitted on its agency and course applications. Any course modifications made subsequently to certification shall require 10 days prior notification and shall be subject to Department of Health approval.

(q) Notwithstanding (g) above, certified training agencies shall notify the Department of Health in writing at least four weeks advance of any changes in their hands-on training site. Any changes in location and/or renovations to the site shall require a reinspection of the facility before training can be conducted at that site.

(r) Certified training agencies shall maintain a quality control plan which shall include, at a minimum, the following:

1. Procedures for periodic revision of training materials to reflect innovations in the field;
2. Procedures for annual review of instructor competency;
3. Procedures for administering the course examination to ensure the validity and integrity of the examination; and

4. Procedures for ensuring the adequacy of facilities and equipment.

(s) Certified training agencies shall cooperate fully with the Department of Health in all matters relating to the conduct of certified training courses, the administration of examinations, and the permitting of individuals pursuant to this chapter.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Revised subsections (a)-(c) to set forth specifically eligibility requirements for certification for training courses.

Deleted subsections (d)-(h).

Repeal and New Rule, R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

Formerly "Eligibility for certification of training courses".

12:120-6.5 Criteria for training course instructors

(a) To be eligible for certification of any training course, three or more course instructors shall be employed. A sufficient number of instructors shall be hired to ensure that all of the education and experience criteria for instructors set forth below are met:

1. At least one instructor shall have experience in both the design, field performance and evaluation of air monitoring programs, and in the design and implementation of respiratory protection programs.

2. All applicants applying for instructor approval after April 3, 1995 must take the New Jersey asbestos supervisor course and successfully complete the examination approved by the Department of Health.

3. To teach the sections of the course concerning the health effects of asbestos, the instructor shall be a qualified health professional.

4. To qualify to teach the hands-on training sessions, an instructor shall have at least one year of experience as a New Jersey asbestos abatement contractor or as a supervisor of asbestos abatement workers. This person shall have had direct experience in all phases of asbestos abatement work.

5. At least one instructor shall have experience in designing, implementing, and evaluating either employee educational programs in occupational health and safety or vocational education programs.

6. To qualify to teach the smoking cessation topics, instructors shall have successfully completed a course in smoking cessation approved by the Department of Health.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Added "training course" to section title.

Added new subsections (a)5 and (a)6.

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-6.6 Criteria for topics in asbestos abatement worker training course

(a) Training courses shall be designed and conducted to include, at a minimum, the following topics:

1. Background information on asbestos:

- i. History of asbestos use; and
- ii. Physical characteristics of asbestos.

2. Relevant Federal, State, and local regulatory requirements, procedures and standards;

3. Health effects related to asbestos exposure:

- i. Effects of smoking; and
- ii. Effects of smoking cessation, various smoking cessation methodologies and resources available to aid in smoking cessation;

4. Purposes and methods of asbestos monitoring and testing;

5. Case studies;

6. Personal protection of the worker (hands-on training required);

7. Preparation of the work area (hands-on training required);

8. Asbestos abatement and hazard reduction methods (hands-on training required);

9. Proper clean-up and disposal (hands-on training required);

10. Personal hygiene;

11. Decontamination (hands-on training required);

12. Additional safety hazards; and

13. Course review and course examination.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Revised subsection (a), added (d)7 and new subsection (e), recodifying old (e)-(q) as (f)-(r).

In new (h)7, added sentence: "Fit testing . . . Protocol."

Retitled new (q) from "work practice demonstration."

In new (r), deleted "optional" from (r)2, practice tests.

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-6.7 Criteria for topics in the asbestos abatement contractors/supervisor training course

(a) Training courses shall be designed and conducted to include, at a minimum, the following topics:

1. All of the topics pursuant to N.J.A.C. 12:120-6.6 and 8:60-6.6;

2. Respiratory protection programs and medical monitoring programs (hands-on training required);

3. Insurance and liability issues;

4. Recordkeeping for asbestos abatement projects;
5. Supervisory techniques for asbestos abatement activities;
6. Contract specifications; and
7. Course review and course examination.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

In (a)2: added "to include contractor issues" to Insurance and bonding, and added (a)2i-iii.

Revised (a)4 and added new (a)5, renumbering (a)5-6 to (a)6-7.

Added new (a)8-11.

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-6.8 Criteria for topics in refresher training courses

(a) Refresher training for asbestos worker and contractor/supervisor courses shall consist of the topics designed to increase or enhance an individual's skills and knowledge necessary to perform the job tasks and job functions associated with the respective certification.

(b) Refresher training shall include, but not be limited to:

1. An overview of key health and safety practices;
2. An update on any relevant Federal, State or local regulatory changes;
3. Any new developments in applicable state-of-the-art technologies and abatement procedures;
4. Respiratory protection programs and medical surveillance; and
5. Course review.

(c) The Department of Health reserves the right to require additional refresher training course topics within one month of a certified training agency's receipt of written notice.

New Rule, R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Section was titled "Additional criteria for asbestos workers' training course."

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-6.9 Granting of certification

(a) No training agency shall be eligible for course certification unless the applicant has first received certification as an approved training agency pursuant to either this section or N.J.A.C. 8:60-6.4 and 12:120-6.4.

(b) An annual certification shall be granted to a training agency which has demonstrated the ability to meet the requirements of this subchapter including course content, teaching methods, and instructor qualification based upon the application submission required by N.J.A.C. 12:120-6.3 and 8:60-6.3, and such investigation as the Commissioner of the Department of Health should deem necessary.

(c) All applicants shall be of good moral character. If the applicant is a corporation, this requirement shall apply both to the corporation and to those individuals who are responsible for the day-to-day operation of the corporation.

(d) An annual letter of certification shall:

1. Specify the date of issuance;
2. Specify an expiration date;
3. Specify the name and address of the training agency which is certified;
4. Specify what training courses the certificant is authorized to teach;
5. Be signed by the Commissioner of the Department of Health or his or her designee; and
6. Be nontransferable.
 - i. Where a training agency certification is issued to a close corporation, the transfer in ownership of 10 percent or more of the shares in the agency shall constitute a certification transfer.

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Revised completely old subsections (a)-(c) by adding new (a)-(d) to specify granting of certification.

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-6.10 Renewal of training agency certification

(a) In order to approve a training agency certification renewal application, the Commissioner of Health shall determine, based upon the application, that:

1. The certificant has certified that all information contained on the original application is still correct, or where applicable, has updated such information;
2. All outstanding penalties lawfully imposed on the certificant have been paid;
3. The certificant has exhibited competence, integrity, and responsibility; and
4. The training agency can operate in compliance with this subchapter.

(b) A complete application for renewal of a certification shall be submitted at least 30 days prior to the date of its expiration. When a complete application is submitted within the required time period, the certification shall continue in effect until the Commissioner of Health renders a final decision on the application.

(c) The annual application fee for renewal shall be \$500.00 per discipline. The application fee shall be submitted with the application and shall be non-refundable. The application fee shall be paid by certified check or money order and made payable to the New Jersey Department of Health. No liability shall be assumed by the Department of

Health for the loss or delay in the transmission of the application fee.

(d) Upon written request from the applicant, the Commissioner of Health may, at his or her discretion, waive the fees for renewal of certification of training agencies identified to (c) above.

1. The written request for waiver must identify that the applicant will suffer significant economic or financial hardship if the waiver is not granted.

i. The economic or financial hardship which will be suffered may not be the result of losses incurred by the applicant as a result of Federal, State or other governmental administrative disciplinary or regulatory action.

2. The granting of a waiver from the fees for certification of training agencies shall have no bearing on the applicant's eligibility for renewal of certification.

(e) Any application not complying with (b) above shall be treated as a new application pursuant to N.J.A.C. 8:60-6.3 and 12:120-6.3.

(f) Any application from a certified training agency whose certification has lapsed shall be treated as a new application pursuant to N.J.A.C. 8:60-6.3 and 12:120-6.3.

New Rule, R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

Prior text at 12:120-6.10, Training agency operating requirements, repealed.

12:120-6.11 Suspension or revocation of training agency certification or instructor approval

(a) Any certified training agency may have its application denied, certification suspended or revoked and/or shall be required to pay the administrative penalties set forth at N.J.A.C. 12:120-3.5 and 8:60-3.5 for each violation listed below:

1. Incompetence;
2. Failure to adequately present either the topics set forth in this subchapter or any other materials required by the Department of Health;
3. Any violation of N.J.A.C. 8:60-6.10 and 12:120-6.10;
4. Submitting false information on an initial or renewal application, trainee evaluation form, or course notification form;
5. Failure to submit information or notification within the required time periods specified in this subchapter;
6. Falsification of training records, instructor qualifications, or other certification information;
7. Failure to maintain required records;

8. Any violation of this subchapter; or

9. Any good cause within the meaning and purpose of the law.

(b) Any instructor may have his or her application denied, approval suspended or revoked and/or shall be required to pay the administrative penalties set forth at N.J.A.C. 12:120-3.5 and 8:60-3.5 for each violation listed below:

1. Submitting false information on an application for approval as an asbestos training instructor;
2. Falsification of training records;
3. Failure to perform quality training;
4. Any violation of this subchapter; or
5. Any good cause within the meaning and purpose of the law.

(c) In all cases where the Commissioner of Health proposes to revoke or suspend certification or instructor approval, or denies an application for certification or instructor approval, the applicant shall have the right to an informal conference or formal hearing, or both, pursuant to N.J.A.C. 12:120-8 and 8:60-8.

New Rule, R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Amended by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-6.12 (Reserved)

Recodified as 12:120-6.11 by R.1995 d.193, effective April 3, 1995.
See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-6.13 (Reserved)

Amended by R.1990 d. 278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Recodified from N.J.A.C. 12:120-6.11.

Added new (a)-(c) as (b)-(d). Revised new (a) and added sections (e)-(f).

Repealed by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

Formerly "Hearings for applicants and certificants when certification has been denied, revoked or suspended".

12:120-6.14 (Reserved)

Amended by R.1990 d.278, effective June 4, 1990.

See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).

Recodified from N.J.A.C. 12:120-6.12.

Added new subsection (a)1, deleting old subsection (b).

Repealed by R.1995 d.193, effective April 3, 1995.

See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

Formerly "Examination of applicants".

SUBCHAPTER 7. ASBESTOS WORK NOTIFICATION REQUIREMENTS

12:120-7.1 Purpose and scope of subchapter

(a) The purpose of this subchapter is to establish the requirements for notifying the Departments of Labor and Health as to when and where asbestos work will be undertaken.

(b) This subchapter shall be applicable to all employers who are required to possess an asbestos license pursuant to N.J.A.C. 12:120-4 and 8:60-4 and who enter into a contract to perform asbestos work in New Jersey.

Amended by R.1995 d.193, effective April 3, 1995.
See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-7.2 Notification requirements

(a) Every employer under the scope of this subchapter who plans to perform asbestos work in New Jersey shall submit a written notification of intent to perform asbestos work at least 10 calendar days prior to beginning such work on forms specified by the Department of Health except where such work is exempted at N.J.A.C. 12:120-1.4(b) (8:60-1.4(b)).

1. The date of submission of the notice is determined to be the date as postmarked by the United States Postal Service on the transmittal envelope.

2. If the postmark is not legible, or if metered mail is used, the date of submission of the notice is determined to be the date of receipt by either the Commissioner of Labor or Health.

3. If an earlier mailing date is established by proof of mailing with a recognized United States Postal Service receipt, the date of submission of the notice is determined to be the established date.

4. The pick-up date of a recognized overnight delivery or courier service shall be deemed equivalent to a United States Postal Service postmark.

5. Facsimile transmissions of written notifications of intent to perform asbestos work are only accepted as submissions where emergency circumstances are warranted pursuant to this subchapter.

(b) The written notification required by (a) above shall include:

1. The name, address, and telephone number of the licensee;

2. The license number and type of license held by the licensee;

3. The name and address of the owner of the facility;

4. The location and description of the facility;

5. A description of the asbestos work to be performed;

6. The starting and scheduled completion dates of the asbestos work;

7. The name and address of the waste disposal site where the asbestos-containing material will be disposed;

8. The name, address and New Jersey Waste Hauler identification number of the registered waste hauler; and

9. Any other relevant information which the Commissioner of Labor or the Commissioner of Health, as the case may be, determines to be necessary.

(c) Amended written notifications shall be submitted in accordance with and pursuant to N.J.A.C. 12:120-7.2(a) and (b) and 8:60-7.2(a) and (b). Amended notifications to the Commissioner of Labor and the Commissioner of Health are required when:

1. The starting date is delayed beyond the scheduled completion date as submitted on the initial notification;

2. The scheduled completion date will extend beyond the scheduled completion date as submitted on the initial notification:

3. The scope or description of the asbestos work to be performed for the facility changes; or

4. Any other items as required pursuant to N.J.A.C. 12:120-7.2(b) and 8:60-7.2(b) that may change.

(d) The Commissioner of Labor or the Commissioner of Health, as the case may be, may allow less than 10 calendar days prior notification where emergency circumstances warrant less than a 10 calendar day prior notification.

1. To enable the Commissioner of Labor or the Commissioner of Health to determine whether a waiver of the 10 calendar day prior notification may be granted, the notifying party shall:

i. Submit a written explanation from the facility owner or from the third party environmental engineer representing the facility owner to both the Commissioner of Labor and the Commissioner of Health which details:

(1) The unexpected situation or sudden occurrence of a serious and urgent nature that demands immediate action; and

(2) The impact upon the facility owner should a waiver of the 10 calendar day prior notification not be granted.

ii. By facsimile transmission or express delivery, submit a written notice for the emergency circumstance pursuant to N.J.A.C. 12:120-7.2(b) and 8:60-7.2(b).

2. A request for a waiver of the 10 calendar days prior notification may be reviewed for approval by the Commis-

sioner of Labor or Health when received by facsimile transmission or express delivery. Only after the Commissioner of Labor or Health has determined and has authorized that the emergency circumstance warrants a waiver, may the asbestos work proceed as notified.

(e) Written notifications required pursuant to this subchapter shall be submitted to:

New Jersey Department of Labor
Asbestos Control and Licensing Section
28 Yard Avenue, Station Plaza 4
CN 054
Trenton, NJ 08625-0054
and

New Jersey Department of Health
Environmental Health Services
CN 360
Trenton, NJ 08625-0360

Amended by R.1995 d.193, effective April 3, 1995.
See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-7.3 (Reserved)

Repealed by R.1995 d.193, effective April 3, 1995.
See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).
Formerly "Penalties".

SUBCHAPTER 8. APPEALS AND COMPLAINTS

12:120-8.1 Scope of subchapter

This subchapter shall apply to the procedures for appealing any action or inaction by the Commissioner of Labor or the Commissioner of Health, under the Act, including, the revocation, suspension or refusal to renew a license or permit, or denial of an application for a license or permit; the denial, revocation or suspension of a training agency certification or instructor approval; and the assessment of a civil administrative penalty. It shall also apply to the procedures for filing a citizen complaint alleging a violation of the Act.

12:120-8.2 Appeals

(a) Any individual who is aggrieved by any action or inaction of the Commissioner of Labor or the Commissioner of Health or his or her designee, under this chapter, shall have the right to an informal conference under (c) below or a formal hearing under (d) below or both upon receipt by the Commissioner of Labor or Health, as the case may be, of a written request within 10 calendar days of receipt of notice of the proposed agency action.

(b) In the interest of protecting employee or public health and safety, the Commissioner of Labor or the Commissioner of Health may suspend a license, permit, instructor approval or training agency certification prior to a hearing. When the license, permit, training agency certification or instructor approval has been suspended, the aggrieved person shall have the right to a hearing within 10 calendar days of the notice of suspension.

(c) Upon receipt of the written request, an informal conference shall be held before a designee of the Commissioner of Labor or Health, as the case may be, within 30 calendar days. The designee of the Commissioner of Labor or Health as the case may be, shall render a decision within 45 calendar days of the conference. Such decision shall state the findings and conclusions and shall be transmitted to the aggrieved person.

(d) Any party who disagrees with the decision of the Commissioner of Labor or Health's designee may submit a written request for a formal hearing in accordance with subsection (d) below.

(e) Upon receipt of the written request, a formal hearing shall be held 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.

(f) For purposes of this section, due notice shall mean written notice mailed to the aggrieved person's last filed address which specifies:

1. The intended agency action;
2. The legal basis for such action;
3. The facts supporting such legal basis; and
4. Notice of the right to an informal conference or formal hearing;
 - i. The 10 calendar day period to request such informal conference or formal hearing; and
 - ii. The address to which such requests shall be sent.

(g) When an aggrieved person fails to request an informal conference or formal hearing within the 10 calendar day period, his or her right to an informal conference or formal hearing pursuant to this section shall be deemed waived and the proposed agency action shall become final.

12:120-8.3 Citizen complaints

(a) Any person who believes a violation of the provisions of the Act has occurred may file a citizen complaint petitioning the Commissioner of Labor or Health to bring an enforcement action. The citizen complaint shall specify:

1. The alleged violation;
2. The facts constituting the alleged violation; and

3. The name and address of the citizen filing the complaint.

(b) Upon receipt of a citizen complaint, the Commissioner responsible for enforcement of the provision allegedly violated shall:

1. Give notice of the citizen complaint to the alleged violator within 10 calendar days;
2. Give notice to the complaining citizen and the alleged violator of the scheduling of an enforcement investigation inspection within 30 calendar days of the date of the complaint filing;
3. Afford the complaining citizen or his or her representative an opportunity to be present during the enforcement investigation inspection, provided the complaining citizen shall hold the State harmless from all legal liabilities arising out of the enforcement investigation including, but not limited to, litigation resulting from any potential exposure to asbestos;
4. Afford the complaining citizen access to all public records regarding the Commissioner's investigation; and
5. After investigation, the Commissioner shall render a final decision on the appropriate disposition of the complaint within 90 calendar days of the date of receipt of the citizen complaint.

(c) A public employee who files a citizen complaint pursuant to this section shall:

1. Have the right to accompany the Commissioner on an enforcement investigation inspection;
2. Receive payment of normal wages for the time spent during normal working hours on the inspection; and
3. Have all protections and rights as set forth under N.J.S.A. 34:6A-45.

4. N.J.A.C. 7:26, Non-Hazardous Waste Regulations;
5. N.J.S.A. 34:5A-32 et seq., Asbestos Control and Licensing Act;
6. N.J.S.A. 52:14B-1 et seq., Administrative Procedures Act;
7. 29 C.F.R. 1910.134—Respiratory Protection;
8. 29 C.F.R. 1926.1101(h)—Respiratory Protection; and
9. 40 C.F.R. Part 763—Asbestos Model Accreditation Plan; Interim Final Rule.

Amended by R.1986 d.149, effective May 5, 1986.
 See: 18 N.J.R. 156(a), 18 N.J.R. 986(a).
 (a)1.-2. repealed; old 3.-8. now 1.-6.
 Amended by R.1990 d.278, effective June 4, 1990.
 See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).
 Recodified from N.J.A.C. 12:120-7.1.
 Stylistic revisions.
 Added (a)7 and 8.
 Amended by R.1995 d.193, effective April 3, 1995.
 See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).

12:120-9.2 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 Workplace Standards between the hours of 9:00 A.M. and 4:00 P.M. on normal working days:

New Jersey Department of Labor
 Division of Workplace Standards
 28 Yard Avenue, Station Plaza 4
 3rd Floor
 CN 0054
 Trenton, New Jersey 08625-0054

Amended by R.1990 d.278, effective June 4, 1990.
 See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).
 Recodified from N.J.A.C. 12:120-7.2.
 Revised address.

12:120-9.3 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. 12:120-9.1 and 8:60-9.1.

CFR—Code of Federal Regulations
 Copies available from:
 Superintendent of Documents
 Government Printing Office
 Washington, D.C. 20402
 N.J.A.C.—New Jersey Administrative Code
 Copies available from:
 Division of Workplace Standards
 New Jersey Department of Labor
 CN 386
 Trenton, N.J. 08625-0386

SUBCHAPTER 9. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

12:120-9.1 Documents referred to by reference

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

1. 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants;
2. N.J.A.C. 1:1, Uniform Administrative Procedure Rules;
3. N.J.A.C. 5:23-8, Asbestos Hazard Abatement Sub-code of the Uniform Construction Code;

N.J.S.A.—New Jersey Statutes Annotated
Copies available from:
Division of Workplace Standards
New Jersey Department of Labor
CN 386
Trenton, N.J. 08625-0386

Amended by R.1990 d.278, effective June 4, 1990.
See: 22 N.J.R. 736(a), 22 N.J.R. 1773(a).
Recodified from N.J.A.C. 12:120-7.3.
Revised N.J.A.C. references in text.
Amended by R.1995 d.193, effective April 3, 1995.
See: 27 N.J.R. 71(a), 27 N.J.R. 1465(a).