

CHAPTER 1G

**WORKER AND COMMUNITY RIGHT
TO KNOW REGULATIONS**

Authority

N.J.S.A. 13:1B-3, 13:1D-9, 13:1D-125 et seq., 26:2C-1 et seq., 34:5A-1 et seq. and 52:27D-222-228.

Source and Effective Date

R.2005 d.27, effective December 13, 2004.
See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).

Chapter Expiration Date

Chapter 1G, Worker and Community Right to Know Regulations, expires on December 13, 2009.

Chapter Historical Note

Chapter 1G formerly contained the interim rules of the Pinelands Commission, subchapter 1 of which was filed and became effective on August 20, 1979 as R.1979 d.333. See: 11 N.J.R. 320(b), 11 N.J.R. 502(b). Subchapter 2 of the interim rules was filed and became effective on August 20, 1979 as R.1979 d.332. See: 11 N.J.R. 504(a). A comprehensive Management Plan for the Preservation Area was filed on August 15, 1980 to become effective on September 23, 1980 as R.1980 d.370. See: 12 N.J.R. 309(a), 12 N.J.R. 575(c). Regulations which superseded the interim rules contained in N.J.A.C. 7:1G and the Plan for the Preservation Area were filed and became effective on January 14, 1981 as R.1981 d.13. See: 12 N.J.R. 309(a), 12 N.J.R. 513(b), 13 N.J.R. 91(e). These superseding rules are codified as N.J.A.C. 7:50.

This chapter subsequently contained the drought crises emergency rules which were filed on an emergency basis and became effective on March 10, 1981 as R.1981 d.93 see: 13 N.J.R. 195(c). Subsequent amendments to the drought rules concerning car washing became effective on March 16, 1981 and were filed on March 18, 1981 as R.1981 d.105 see: 13 N.J.R. 204(c). Subsequent amendments concerning the watering of non-commercial crops, home vegetable gardens, the washing of refuse/garbage vehicles and street sweeping were filed and became effective on May 1, 1981 as R.1981 d.147 see: 13 N.J.R. 334(c). Amendments concerning the use of fresh water for horticultural purposes became effective on May 6, 1981 and were filed on May 7, 1981 as R.1981 d.159 see: 13 N.J.R. 335(a). Subsequent amendments to various sections of the drought rules were filed and became effective on May 20, 1981 as R.1981 d.203 see: 13 N.J.R. 397(d). Amendments concerning nonessential use of fresh water were filed and became effective on June 8, 1981 as R.1981 d.222 see: 13 N.J.R. 399(a). Amendments concerning the use of fresh water for watering lawns, plants, shrubs and gardens were filed and became effective on June 19, 1981 as R.1981 d.266 see: 13 N.J.R. 400(a). Amendments concerning excess use charges for landlords/tenants were filed and became effective on June 3, 1981 as R.1981 d.217 see: 13 N.J.R. 400(b). The drought crisis rules were repealed by Executive Order No. 5, sec. 6, on April 27, 1982.

On October 3, 1983 Water Supply Bond Loan Regulations for the Interconnection of Water Supply Systems were adopted at N.J.A.C. 7:1G pursuant to the Water Supply Bond Act, P.L. 1981, c.261, section 4, and became effective as R.1983 d.425. See: 14 N.J.R. 1012(a), 15 N.J.R. 1650(b). On June 18, 1984, R.1984 d.232 repealed the text of these rules except N.J.A.C. 7:1G-2.3, "Eligibility and criteria", and N.J.A.C. 7:1G-2.12, "Priority determination", which were recodified under Chapter 1A as N.J.A.C. 7:1A-4.1 and 4.2, respectively. Pursuant to amendments to the Water Supply Bond Act of 1981 (P.L. 1983, c.499), all Water Supply Bond Loan Programs were consolidated in Chapter 1A. See: 16 N.J.R. 631(a), 16 N.J.R. 1479(b).

Chapter 1G, Worker and Community Right to Know Regulations, Subchapters 1 through 5, was adopted as R.1984 d.278, effective July 2, 1984. See: 16 N.J.R. 646(a), 16 N.J.R. 1732(a). Subchapter 6, Trade Secrets, was adopted as R.1984 d.437, effective October 1, 1984. See: 16 N.J.R. 1854(a), 16 N.J.R. 1924(a), 16 N.J.R. 2530(b). Subchapter 7, Assessment of Civil Administrative Penalties, was adopted as R.1988 d.90, effective February 16, 1988. See: 19 N.J.R. 703(a), 20 N.J.R. 388(a). Pursuant to Executive Order No. 66(1978), Chapter 1G was readopted as R.1989 d.544, effective September 29, 1989. See: 21 N.J.R. 1944(a), 21 N.J.R. 3478(a).

Pursuant to Executive Order No. 66(1978), Chapter 1G was readopted as R.1994 d.349. See: 26 N.J.R. 123(a), 26 N.J.R. 2930(a).

Petition for Rulemaking. See: 30 N.J.R. 1638(a), 1863(a).

The Executive Order No. 66(1978) expiration date of Chapter 1G, Worker and Community Right to Know Regulations, was extended by gubernatorial directive from June 16, 1999 to June 16, 2000. See: 31 N.J.R. 1803(a).

The expiration date of Chapter 1G, Worker and Community Right to Know Regulations, was extended by gubernatorial directive from June 16, 2000 to June 16, 2001. See: 32 N.J.R. 2591(a).

The expiration date of Chapter 1G, Worker and Community Right to Know Regulations, was extended by gubernatorial directive from June 16, 2001 to June 16, 2002. See: 33 N.J.R. 2341(a).

Chapter 1G, Worker and Community Right to Know Regulations, was readopted as R.2005 d.27, effective December 13, 2004. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentary

Products Liability With No Sales or Products? Lee Henig-Elona. 154 N.J.L.J. 668 (1998).

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SUBCHAPTER 1. GENERAL PROVISIONS

7:1G-1.1 Scope

Unless otherwise provided by rule or statute, this chapter shall constitute the rules of the Department implementing the Worker and Community Right to Know Act, P.L. 1983 c.315, N.J.S.A. 34:5A-1 et seq.

7:1G-1.2 Definitions

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

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

“Administrative order” means any and all orders issued or entered into by the Department including, but not limited, to administrative consent orders.

“Chemical Abstracts Service Registry Number” or “C.A.S. number” means the unique identification number assigned by the Chemical Abstracts Service to chemicals.

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

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

“Community Right to Know Survey” means the reporting form which combines the chemical inventory reporting requirements of the Environmental Survey, formerly Part I, and the Superfund Amendments and Reauthorization Act, Section 312.

“Compound” means a substance composed of two or more elements chemically united in a fixed proportion.

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

“Department” means the New Jersey Department of Environmental Protection, however, for the purpose of N.J.A.C. 7:1G-6, it shall mean both the New Jersey Department of Environmental Protection and the New Jersey Department of Health and Senior Services, unless otherwise indicated.

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

“Employee” means a person who works at a facility owned or operated by an employer as defined in this section on a paid or unpaid basis and who may or may not be directly paid by the employer who owns or operates the facility. It is not intended that this term encompass independent contractors.

“Employer” means any person or corporation, regardless of whether he pays employees, in the State, engaged in business operations having the following United States North American Industry Classification System (NAICS) codes, dated and published in 2002 by the Executive Office of the President, Office of Management and Budget, ISBN 0-934213-87-9 (NTIS PB2002-502024), subject to the specified exceptions and limitations:

<u>Subsector Code or Industry Code</u>	<u>Description</u>	<u>Exceptions and/or Limitations</u>	<u>Subsector Code or Industry Code</u>	<u>Description</u>	<u>Exceptions and/or Limitations</u>
516110	Internet Publishing and Broadcasting	working on their own account Except facilities engaged in internet broadcasting, special interest web sites, entertainment sites and interactive game sites	5617	Services to Buildings and Dwellings	Except facilities engaged in ornamental shrub and tree services; Power washing building exteriors, not associated with construction; Disinfecting and pest control services (exterminating and pest control); Building cleaning and maintenance services (janitorial services, and services to building and dwellings, except janitorial services); Swimming pool cleaning and maintenance; and Furnace, duct, gutter, and drain cleaning services
517110	Wired Telecommunication Carriers	No exceptions or limitations			
517211	Paging	No exceptions and/or limitations			
517212	Cellular and Other Wireless Telecommunications	Except facilities engaged as ship to shore broadcasting carriers			
517310	Telecommunication Resellers	No exceptions or limitations			
53	Real Estate and Rental and Leasing				
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	Limited to facilities engaged in rental of railroad cars			
54	Professional, Scientific and Technical Services		56221	Hazardous Waste Treatment and Disposal	No exceptions or limitations
541380	Testing Laboratories	No exceptions or limitations	562910	Remediation Services	Except facilities engaged in asbestos abatement and lead paint removal contractors
541614	Process, Physical Distribution, and Logistics Consulting Services	Except facilities engaged in management consulting services (manufacturing management, physical distribution, and site location consulting)	562920	Materials Recovery Facilities	No exceptions or limitations
			562998	All Other Miscellaneous Waste Management Services	Except facilities engaged in sewer cleaning and rodding
541710	Research and Development in the Physical, Engineering and Life Sciences	Except facilities engaged in commercial physical and biological research; and Noncommercial research organizations (physical engineering and life sciences)	61	Educational Services	
			611110	Elementary and Secondary Schools	No exceptions or limitations
			611210	Junior Colleges	No exceptions or limitations
			611310	Colleges, Universities and Professional Schools	No exceptions or limitations
541890	Other Services Related to Advertising	Except facilities engaged in sign painting and lettering, showcard painting, mannequin decorating service and other advertising related business services	611512	Flight Training	Except schools and educational services (flying instruction)
			611513	Apprenticeship Training	No exceptions or limitations
541940	Veterinary Services	Limited to facilities engaged as veterinary testing laboratories	611519	Other Technical and Trade Schools	Limited to facilities engaged as vocational schools (except aviation and flight training and apprenticeship training)
56	Administrative and Support and Waste Management and Remediation Services				

Subsector Code or Industry Code	Description	Exceptions and/or Limitations	
62	Health Care and Social Assistance Hospitals		<p>“Environmental Hazardous Substance Number” means the unique number assigned by the Department to each EHS.</p> <p>“Environmental Survey” means a written form, comprised of the Community Right to Know Survey, and the Release and Pollution Prevention Report, prepared by the Department of Environmental Protection and transmitted to an employer, on which the employer shall provide certain information concerning each of the environmental hazardous substances at the facility, including, but not limited to, the following:</p> <ol style="list-style-type: none"> 1. The chemical name and the Chemical Abstracts Service number of the environmental hazardous substance; 2. A description of the use of the environmental hazardous substance at the facility; 3. The quantity of the environmental hazardous substance produced at the facility; 4. The quantity of the environmental hazardous substance brought into the facility; 5. The quantity of the environmental hazardous substance consumed at the facility; 6. The quantity of the environmental hazardous substance shipped out of the facility, as or in, products; 7. The maximum inventory of the environmental hazardous substance stored at the facility, the methods of storage, and the frequency and methods of transfer; 8. The total stack or point-source emissions of the environmental hazardous substance; 9. The total estimated fugitive or non point-source emissions of the environmental hazardous substance; 10. The total discharge of the environmental hazardous substance into the surface or groundwater, the treatment methods, and the raw wastewater volume and loadings; 11. The total discharge of the environmental hazardous substance into publicly owned treatment works; 12. The quantity and methods of disposal, of any wastes containing an environmental hazardous substance, the methods of on-site storage of these wastes, the location or locations of the final disposal site for these wastes, and the identity of the hauler of the waste; 13. The total quantity of environmental hazardous substances (EHSs) generated at the facility, including hazardous substances generated as nonproduct output; 14. The quantity of environmental hazardous substances (EHSs) recycled on-site and off-site; and 15. Information pertaining to pollution prevention activities at the facility. <p>“Extremely hazardous substances” means chemicals on the list developed by the United States Environmental Protection Agency (USEPA) pursuant to Section 302 of Title III of the</p>
622		No exceptions or limitations	
72	Accommodation and Food Services		
722310	Food Service Contractors	Limited to facilities engaged in dining car operations on a fee or contract basis	
81	Other Services (Except Public Administration)		
81111	Automotive, Mechanical and Electrical Repair and Maintenance	No exceptions or limitations	
811121	Automotive Body, Paint and Interior Repair and Maintenance and Glass Repair	No exceptions or limitations	
811122	Automotive Glass Replacement Shops	Except facilities engaged in automotive window tinting	
811198	All Other Automotive Repair and Maintenance	Except automotive services	
8113	Commercial and Industrial Machinery and Equipment (Except Automotive and Electronic) Repair and Maintenance	Limited to facilities engaged in welding repair	
811420	Reupholstery and Furniture Repair	Limited to facilities engaged in aircraft upholstery repair	
811490	Other Personal and Household Goods Repair and Maintenance	Limited to facilities engaged in pleasure boat repair	
812320	Drycleaning and Laundry Services (Except Coin-operated)	Limited to facilities engaged as dry-cleaning plants, except rug cleaning	
812332	Industrial Launderers	No exceptions or limitations	

Except for the purpose of N.J.S.A. 34:5A-26, “employer” also means the State and local governments, or any agency, authority, department, bureau, or instrumentality thereof, or any non-profit, non-public school, college or university.

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

“Environmental Hazardous Substance list” means the list of Environmental Hazardous Substances in N.J.A.C. 7:1G-2.

Federal Superfund Amendments and Reauthorization Act (SARA).

“Facility” means the building, equipment and contiguous area at a single location used for the conduct of business. For the purpose of this chapter, “Facility” shall not include a research and development laboratory.

“Hazard Code” means a number assigned by the Department to represent each hazard category established by the US Environmental Protection Agency pursuant to the Superfund Amendments and Reauthorization Act (SARA), Title III.

“Hazardous substance” means any substance defined by the State Department of Health in N.J.A.C. 8:58-9.

“Hazardous waste” means any solid waste defined as hazardous waste by the Department pursuant to P.L. 1970, c.39 (N.J.S.A. 13:1E-1 et seq.)

“Input” means the total of starting inventory, quantity produced on site, quantity brought on site, and quantity recycled out of process and reused on site.

“Inventory range” means the upper and lower limits of the quantity of a hazardous substance used, stored or manufactured on site.

“Inventory range code” is a representation of an inventory range for reportable hazardous substances.

“Local Emergency Planning Committee” means a committee formed pursuant to Title III of the Federal Superfund Amendments and Reauthorization Act.

“Mixture” means a combination of two or more substances not involving a chemical reaction.

“Output” means the total of quantity consumed, quantity shipped off site as (or in) product, ending inventory, quantity recycled out of process and reused on site, quantity destroyed through on site treatment, quantity destroyed through on-site energy recovery, air emissions, water discharges, quantity disposed of on site, and other off site transfers.

“Person” includes an individual, corporation, company, partnership, firm, association, trust, estate, public or private institution, group, society, joint stock company, municipality, county, all political subdivisions of this State or any agency or instrumentality thereof, including health department, any agency or instrumentality of the State and any legal successor, representative agent or agency of the foregoing.

“Pilot plant” means pilot facility as that term is defined at N.J.S.A. 13:1D.

“Release and Pollution Prevention Report” means the reporting form which is used to fulfill the environmental release and pollution prevention reporting requirements of the

environmental survey, formerly known as Part II of the environmental survey.

“Research and development (R & D) laboratory” means a specially designated area, including pilot plants, used primarily for research, development, and testing activity, and not primarily involved in the production of goods for commercial sale, in which environmental hazardous substances are used by or under the direct supervision of a technically qualified person. For the purpose of reporting on the Community Right to Know Survey, “primarily” means greater than 50 percent.

“Right to Know Survey” means a survey prepared by the Department of Health and completed by a public sector employer pursuant to the Act, on which the employer shall report each hazardous substance present at his facility.

“Special health hazard substance” means any substance defined by the State Department of Health in N.J.A.C. 8:59-10.

“Special health hazard substance list” means the list of substances defined by the State Department of Health in N.J.A.C. 8:59-10.

“Superfund Amendments and Reauthorization Act” or “SARA” means the Federal Act (PL 99-499) establishing the “Emergency Planning and Community Right to Know Act of 1986” at Title III (42 USC 11001).

“Technically qualified person” in a research and development (R & D) laboratory means a person who has a bachelors degree in industrial hygiene, environmental science, health education, chemistry, or a related field and understands the health risks associated with exposure to the hazardous substances used in the R & D laboratory.

“Trade secret” means any formula, plan, pattern, process, production data, information, or compilation of information, which is not patented, which is known only to an employer and certain other individuals, and which is used in the fabrication and production of an article of trade or service, and which gives the employer possessing it a competitive advantage over businesses who do not possess it, or the secrecy of which is certified by an appropriate official of the federal government as necessary for national defense purposes. The chemical name and the Chemical Abstracts Service number of a substance shall be considered a trade secret only if the employer can establish that the substance is unknown to competitors.

“Trade secret claim” means a written request, made by an employer pursuant to N.J.S.A. 34:5A-15, to withhold the public disclosure of information on the grounds that the disclosure would reveal a trade secret.

“Trade secret docket number” means a code number temporarily or permanently assigned to the identity of information on the Community Right to Know Survey or

Release and Pollution Prevention Report by the Department of Environmental Protection.

“Transmit” means to send via first-class mail or otherwise distribute.

“Unstaffed site” means a remotely operated site, not contiguous to any other staffed sites and at which no full-time or part-time employees are assigned at any time except for maintenance or emergency repair. An unstaffed site includes, but is not limited to, a cellular telephone tower, telecommunications relay box, switching box, telephone pole, and well station.

“Unusually hazardous” means likely to explode due to a highly volatile nature, a propensity to produce toxic fumes, or a tendency to react with water or common firefighting chemicals and any other property which the Department of Environmental Protection determines will make a substance an uncommon danger to firefighters and the surrounding community in the event of its exposure to a fire.

Amended by R.1984 d.437, effective October 1, 1984.

See: 16 N.J.R. 1854(a), 16 N.J.R. 2530(a).

Substantially amended.

Amended by R.1993 d.386, effective August 2, 1993.

See: 25 N.J.R. 858(a), 25 N.J.R. 3537(a).

Amended by R.1994 d.3, effective January 3, 1994.

See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).

Administrative Correction.

See: 26 N.J.R. 1337(a).

Amended by R.1994 d.349, effective July 18, 1994.

See: 26 N.J.R. 123(a), 26 N.J.R. 2930(a).

Special amendment, R.2004 d.7, effective December 4, 2003 (to expire August 15, 2004).

See: 36 N.J.R. 212(a).

Rewrote “Employer”.

Administrative correction.

See: 36 N.J.R. 2762(b).

Adopted concurrent amendment, R.2004 d.328, effective July 29, 2004, changes effective September 7, 2004.

See: 36 N.J.R. 212(a), 36 N.J.R. 4121(a).

Rewrote “Employer”.

Amended by R.2005 d.27, effective January 18, 2005.

See: 36 N.J.R. 3376(a), 37 N.J.R. 275(a).

Added “Input”, “Output”, and “Unstaffed site”.

Amended by R.2006 d.167, effective May 1, 2006.

See: 37 N.J.R. 3896(a), 38 N.J.R. 1829(a).

In the table in the definition of “Employer”, inserted codes 488510, concerning freight transportation arrangement, 488991, concerning packing and crating, 488999, concerning all other support activities for transportation, and 517211, concerning paging.

7:1G-1.3 Burden of proof for exemptions

(a) A person claiming that they qualify for any exemption under this chapter or that they are not otherwise subject to the rules of this chapter shall demonstrate and appropriately document entitlement to such exemption.

(b) Employers claiming that a certain chemical, hazardous substance, or mixture is not an EHS, as designated or delineated in N.J.A.C. 7:1G-2, shall, at a minimum, submit in support of such claim, a Material Safety Data Sheet (MSDS) for the substance or mixture in question.

(c) Employers shall, upon request, make available information to the Department to verify any statement made on the Community Right to Know Survey, Release and Pollution Prevention Report or in a request for an exemption. This information may include, but is not limited to: purchase records, sales records, production records, inventory records, or other business records or documents utilized by the employer or person. The employer shall make this information available to the Department within 30 days of notification.

New Rule, R.1994 d.3, effective January 3, 1994.

See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).

7:1G-1.4 Certification

An employer shall submit a Community Right to Know Survey and/or Release and Pollution Prevention Report, or a Research and Development laboratory exemption to the Department which shall include an original certification signed by the employer or a duly authorized representative, which states the following:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete.”

New Rule, R.1994 d.3, effective January 3, 1994.

See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).

7:1G-1.5 Department right of entrance and inspection

Pursuant to N.J.S.A. 13:1D-9 and 34:5A-29b, the Department shall have the authority to enter any business premises or building during normal hours or other reasonable time to determine compliance with the rules and regulations of the Department hereunder. Failure to permit such inspection after presentation of official credentials is an offense punishable under N.J.S.A. 2C:29-1.

New Rule, R.1994 d.3, effective January 3, 1994.

See: 25 N.J.R. 1631(a), 26 N.J.R. 200(a).

7:1G-1.6 Severability

If any provision of these rules or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of these rules and to this end, the provisions of these rules are declared to be severable.

7:1G-1.7 Revisions to North American Industry Classification System Codes for purposes of definition of “employer”

In the event that the Executive Office of the President, Office of Management and Budget, publishes new or revised North American Industry Classification System (NAICS) codes modifying the 2002 list of NAICS codes on which the definition of “employer” at N.J.A.C. 7:1G-1.2 is based, the