

(d) Smokeless powder not exceeding 400 pounds intended for resale shall be stored in non-portable storage cabinets as follows:

1. Not more than two cabinets in a building and not more than 200 pounds of smokeless powder in a single cabinet.
2. Cabinets located against walls of the warehouse or storage room with a minimum separation of 10 feet between cabinets.
3. Cabinets separated from flammable liquids, flammable solids and oxidizing materials by a wall having a fire resistance rating of not less than one hour or by a distance of 25 feet.

(e) Smokeless powder exceeding 400 pounds shall be stored in accordance with N.J.A.C. 12:190-5.

12:190-10.3 Black powder

(a) Black powder not exceeding 50 pounds may be stored in a residence. Black powder not exceeding five pounds stored in a residence shall be in approved USDOT shipping containers. Black powder exceeding five pounds but not exceeding 50 pounds in a residence shall be in a type 4 magazine.

(b) Black powder not exceeding 50 pounds intended for resale may be stored in any building and shall be in a type 4 indoor magazine.

(c) Black powder exceeding 50 pounds shall be stored in a type 4 outdoor magazine, outside of buildings.

12:190-10.4 Smokeless powder and black powder

If smokeless powder is stored in the same magazine with black powder, the total quantity of explosives so stored shall not exceed that permitted for black powder.

12:190-10.5 Conditions for sale

No person shall sell, give or deliver any smokeless powder or black powder to any person for any use unless such person has a valid permit for such use, except that smokeless powder in amounts not to exceed 36 pounds and black powder not to exceed five pounds may be sold to private persons for use in reloading small arms ammunitions for personal use and not resale.

12:190-10.6 Recordkeeping

Recordkeeping for smokeless powder and black powder shall be in accordance with N.J.A.C. 12:190-3.

New Rule, R.1998 d.110, effective March 2, 1998.
See: 29 N.J.R. 4624(a), 30 N.J.R. 847(a).

SUBCHAPTER 11. SALE OF EXPLOSIVES

12:190-11.1 Scope of subchapter

(a) This subchapter shall apply to the sale of commercial explosives, except as provided in (b) below.

(b) This subchapter shall not apply to the sale of explosives under contract to the U.S. Government nor to the sale of explosives from one manufacturer to another manufacturer.

12:190-11.2 Prohibitions

(a) No person shall sell, display or expose for sale any commercial explosives on any highway, street, sidewalk, public way or public place.

(b) Before a product line of explosives is offered for sale, the seller shall file a complete description of the explosives in such line and their packaging with the appropriate officials of the Division of Public Safety and Occupational Safety and Health. A sales publication with a complete description of the explosives and packaging may be used to comply with this provision.

(c) No person shall sell, give or deliver explosives to any person not in possession of a valid permit to sell, store or use explosives. This provision shall not apply to an authorized representative of a valid permit holder who is on a certified list by the permit holder.

(d) No person shall sell, deliver or transfer explosives to a person whose possession of such explosives would constitute a violation of this chapter.

(e) No person shall load explosives onto a buyer's vehicle which readily can be observed to be not in compliance with N.J.A.C. 12:190-6.

Amended by R.1988 d.16, effective January 4, 1988.

See: 19 N.J.R. 1883(a), 20 N.J.R. 99(b).

Administrative correction.

See: 29 N.J.R. 566(a).

Amended by R.2008 d.303, effective October 6, 2008.

See: 40 N.J.R. 2200(a), 40 N.J.R. 5818(a).

In (b), substituted "Public Safety and Occupational Safety and Health" for "Workplace Standards".

SUBCHAPTER 12. ADMINISTRATIVE PENALTIES AND HEARINGS

12:190-12.1 Penalties

(a) Any person violating any of the provisions of the Act shall be liable for a penalty of not less than \$100.00 nor more than \$5,000 for the first offense, not less than \$300.00 nor more than \$5,000 for the second offense and not less than \$500.00 nor more than \$10,000 for the third and each succeeding offense.

(b) Any violation of the Act by an officer, agent or employee shall also be deemed to be a violation by the employer if the employer had knowledge of or actual control over the cause of such violation.

(c) Where the violation consist of a refusal to obey an order of the Commissioner, each day during which it continues shall constitute an additional, separate and distinct offense.

(d) The Commissioner, at his or her discretion, may compromise and settle any claim for a penalty imposed under the Act in such amount as he or she deems to be appropriate and equitable under all of the circumstances, including, but not limited to:

1. The past record of compliance with the provision of the Act by the alleged violator;
2. The degree of cooperation afforded to the Commissioner's representatives by the alleged violator in securing compliance with the provisions of the Act;
3. Whether the cited violation was willful in nature; and
4. Whether the cited violation resulted in injury or bodily harm.

12:190-12.2 Hearings

(a) No penalty shall be levied pursuant to N.J.A.C. 12:190-12.1 unless the alleged violator is first provided with:

1. Notification of the violation;
2. The amount of the penalty to be imposed; and
3. An opportunity to request a formal hearing.

(b) A request for a formal hearing shall be made in writing and received with 21 calendar days following receipt of the notice of violation.

(c) All hearings shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(d) If a hearing is not requested, the notice of violation shall become the final order upon expiration of the 21 day period following the receipt thereof.

(e) The alleged violator may request the initiation of a settlement conference at the time that the request for a formal hearing is made. If a settlement conference is requested, or the Department determines that a settlement conference would be useful, the settlement conference shall be scheduled and conducted by the Department within 30 days of the receipt of the request for a formal hearing.

(f) If a settlement is not agreed upon or no settlement conference is scheduled, a request for formal hearing shall be transmitted to the Office of Administrative Law (OAL).

(g) Payment of the penalty shall be due when a final agency determination is issued or when a notification becomes a final decision because no appeal has been filed.

(h) All payments shall be made payable to the Department of Labor and Workforce Development in the form of a certified check or money order, or such other form as the Department deems suitable.

(i) Upon entry of the final order, the penalty imposed may be recovered with costs in a summary proceeding commenced by the Commissioner pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

Amended by R.2008 d.303, effective October 6, 2008.

See: 40 N.J.R. 2200(a), 40 N.J.R. 5818(a).

In (h), inserted "and Workforce Development".

SUBCHAPTER 13. STANDARDS AND PUBLICATIONS REFERRED TO IN THIS CHAPTER

12:190-13.1 Documents referred to by reference

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

1. 27 CFR Part 55, Commerce in Explosives;
2. 49 CFR Parts 171 through 178, Hazardous Materials Regulations;
3. 49 CFR Parts 390 through 397, Federal Motor Carrier Safety Regulations;
4. IME Safety Library Publications No. 20-1978, Radio Frequency Radiation Hazards;
5. NFPA No. 70-1990, National Electric Code;
6. N.J.A.C. 12:194, Model Rocketry;
7. N.J.S.A. 21:1A-128 et seq., Explosives Act;
8. N.J.S.A. 21:2-1 et seq., Manufacture, Storage and Transportation of Fireworks;
9. N.J.S.A. 21:3-1 et seq., Sale and Public Display of Fireworks;
10. 29 USC 651 et seq., Occupational Safety and Health Act; and
11. USPC-1980-20th Edition, United States Pharmacopeia.

Amended by R.1988 d.16, effective January 4, 1988.

See: 19 N.J.R. 1883(a), 20 N.J.R. 99(b).

Administrative correction.

See: 29 N.J.R. 566(a).

Amended by R.1998 d.110, effective March 2, 1998.

See: 29 N.J.R. 4624(a), 30 N.J.R. 847(a).

In (a)5, changed NFPA No. 70-1987 to NFPA No. 70-1990; deleted former (a)10; and recodified former (a)11 and (12) as (a)10 and (a)11.

12:190-13.2 Availability of documents for inspection

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

New Jersey Department of Labor and Workforce
Development
Division of Public Safety and Occupational Safety
and Health
PO Box 386
Trenton, New Jersey 08625-0386

Amended by R.1988 d.16, effective January 4, 1988.

See: 19 N.J.R. 1883(a), 20 N.J.R. 99(b).

Amended by R.1998 d.110, effective March 2, 1998.

See: 29 N.J.R. 4624(a), 30 N.J.R. 847(a).

Changed the address.

Amended by R.2008 d.303, effective October 6, 2008.

See: 40 N.J.R. 2200(a), 40 N.J.R. 5818(a).

In the introductory paragraph and second line of the address, substituted "Public Safety and Occupational Safety and Health" for "Workplace Standards"; and in the first line of the address, inserted "and Workforce Development".

12:190-13.3 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. 12:190-12.1.

CFR—Code of Federal Regulations

Copies available from:
Superintendent of Documents
Government Printing Office
Washington, D.C. 20402

IME—Institute of Makers of Explosives

1575 Eye Street, N.W.
Suite 550
Washington, D.C. 20005

NFPA—National Fire Protection Association

Batterymarch Park
Quincy, MA 02269

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

Copies available from:

Office of Safety Compliance
New Jersey Department of Labor and Workforce
Development
PO Box 386
Trenton, New Jersey 08625-0386

18 USC—United States Code

Copies available from:

Bureau of Alcohol, Tobacco and Firearms
U.S. Department of Treasury
2 Penn Center Plaza, Room 360
Philadelphia, PA 19102

29 USC—United States Code

Copies available from:

Occupational Health & Safety Administration
Department of Labor
1515 Broadway
New York, New York 10036

USPC—United States Pharmacopoeial Convention, Inc.

12601 Twinbrook Parkway
Rockville, MD 20852

Amended by R.1988 d.16, effective January 4, 1988.

See: 19 N.J.R. 1883(a), 20 N.J.R. 99(b).

Administrative correction.

See: 29 N.J.R. 566(a).

Amended by R.1998 d.110, effective March 2, 1998.

See: 29 N.J.R. 4624(a), 30 N.J.R. 847(a).

Changed the address.

Amended by R.2008 d.303, effective October 6, 2008.

See: 40 N.J.R. 2200(a), 40 N.J.R. 5818(a).

Substituted entry "N.J.S.A.—New Jersey Statutes Annotated" for entry "NJSA—New Jersey Statutes Annotated"; and in the address for "N.J.S.A.—New Jersey Statutes Annotated", inserted "and Workforce Development".