

# **Chapter 1**

## **Making Sense Out of Regulations**

### Understanding Regulations

In any sporting event, you have to know the leagues, the teams, the players, the terminology, the rules and how the rules are enforced before you can fully appreciate the game. In dealing with regulations, you have to know the government levels, the enforcement agencies, who or what they protect, the vocabulary and what they regulate, before you can understand the individual regulations themselves.

In the case of regulations, the leagues include federal, state, county and municipal government. States, counties and municipalities must comply with all federal regulations. Counties and municipalities must comply with all state regulations and so on. In most cases, states, counties and municipalities may add to existing higher level regulations or may issue new regulations in areas where there are no higher level regulations. You have the possibility, therefore, of differing regulations as you move from one area to another.

The teams are federal, State, county and municipal agencies or governing bodies within each league which have the power to issue and enforce regulations. These teams include the federal Occupational Safety and Health Administration (OSHA), the New Jersey Department of Labor and Workforce Development, a county board of health, a municipal board of health or town council. It is beyond the scope of the Safe Schools Manual to address county or municipal regulations.

Each team is created by and receives direction from a statute or an act. Statutes or acts are laws that establish goals and appropriate funds to carry out the goals. They are developed and adopted by the U.S. Congress (federal) and the New Jersey State Legislature. The teams issue rules (regulations) and implement programs that accomplish the law's requirements. Statutes or acts can be implemented by more than one department or agency. The regulations are usually more detailed.

Federal statutes or acts can be cited as a public law (PL) indicating the number of the law (in order of printing) and the Congress that was responsible for passing the law. For example, OSHA was created by the U.S. Congress by passage of the Occupational Safety and Health Act of 1970, P.L. 91-596. It was the 596th Public Law printed in the 91st Congress (1969- 70). The statute is also incorporated into the U.S. Code, a compilation of all federal statutes found in most large public libraries. Therefore, the Occupational Safety and Health

Act can also be cited as 29 U.S.C. 651 et seq. (Title 29 United States Code Section 651 and following).

Statutes passed by the New Jersey State Legislature can be cited by the reference in New Jersey Statutes Annotated (N.J.S.A.). N.J.S.A. 18A:6-6 et seq. refers to New Jersey Statutes Annotated, Title 18A, Chapter 6, Section 6 and following.

The rules in our analogy are the regulations issued and enforced by a designated agency charged with that responsibility. Federal regulations are first issued in the Federal Register and New Jersey State regulations are first issued in the New Jersey Register. After a public comment period, final Federal regulations are compiled in the Code of Federal Regulations (CFR) and can be cited by title, part and section. Thus, 29 CFR 1910.120 refers to Title 29, Part 1910, section 120. After a public comment period, final New Jersey State regulations are compiled in the New Jersey Administrative Code (N.J.A.C) and can be cited by title, chapter, subchapter and section. Thus, N.J.A.C. 6A:19-10.2 refers to title 6A chapter 19, subchapter 10, section 2.

The players in our analogy are the groups the laws are designed to protect. These include private sector employees; public employees (federal, state, county, and municipal employees including public school teachers); private and public school students; the general public; and the environment. Each agency (team) has jurisdictional responsibilities for promulgating and enforcing regulations to protect the various players. In addition, each agency has defined areas of hazards that it regulates.

This arrangement can cause confusion as to what to do and who to call about complying with the multitude of regulations. Table 1 on the next page outlines the main leagues, teams, players and what hazards the teams regulate in vocational-technical educational programs in public schools. Each team is then discussed in more detail to provide a better understanding of who does what.

### Occupational Safety and Health Administration (OSHA)

OSHA is a federal agency that promulgates and enforces regulations in safety and health as they apply to private and federal employees in the workplace. The legislative mandate for OSHA comes from the Occupational Safety and Health Act of 1970. In New Jersey, it does not have jurisdiction in public schools. An OSHA Compliance Officer will not inspect nor enforce regulations in public schools. If you call the local OSHA office, however, they will be happy to provide hazard recognition assistance, training and technical support. OSHA, however, does have jurisdiction when students go into the private workplace, such as in co-operative educational programs.

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## **Safe Schools: A Health and Safety Check**

New Jersey Safe Schools Program/New Jersey Department of Education

Table 1  
Regulatory Overview

Leagues	Teams	What Teams Regulate	The Players
Level	Agency	Hazards	Jurisdiction
Federal	U.S. Department of Labor - Occupational Safety and Health Administration (OSHA)	Safety and health Hazards in the workplace.	Private and federal employees.
Federal	U.S. Department of Labor - Employment Standards Administration Wage and Hour Division	Child Labor	Minors in the workplace.
Federal	U.S. Environmental Protection Agency (EPA)	Environmental, safety and health hazards.	General public and the environment.
State	New Jersey Department of Labor and Workforce Development (NJLWD) - PEOSH	Safety hazards in the workplace	State, county and municipal employees.
State	New Jersey Department of Labor and Workforce Development (NJLWD) - Division of Wage and Hour Compliance	Child Labor	Minors in the workplace.
State	New Jersey Department of Health (formerly Department of Health and Senior Services (NJDHSS))	Health hazards in the workplace (PEOSH) and selected health related services to the general public.	State, county and municipal employees and the general public.
State	New Jersey Department of Environmental Protection (NJDEP)	Environmental, safety and health hazards.	The general public and the environment.
State	New Jersey Department of Education (NJDOE)	Environmental, safety and health hazards.	Students and teachers in private and public schools.
State	New Jersey Department of Community Affairs (NJCA)	Fire and building construction safety.	The general public.
Municipal	Municipal boards, departments, etc.	Depends on the code or ordinance.	Residents and workers in the municipality.

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**Safe Schools: A Health and Safety Check**

New Jersey Safe Schools Program/New Jersey Department of Education

OSHA issues regulations in the Federal Register which are compiled in the Code of Federal Regulations under:

- 29 CFR 1910 for General Industry Standards,
- 29 CFR 1915 for Shipyard Employment,
- 29 CFR 1917 for Marine Terminals,
- 29 CFR 1918 for Longshore Safety,
- 29 CFR 1926 for Construction Standards, and
- 29 CFR 1928 for Agricultural Standards.

Most of the OSHA General Industry Standards, Construction Standards and Agricultural Standards have been "adopted by reference" in New Jersey and apply to State, county and municipal employees under the Public Employees Occupational Safety and Health Act (PEOSHA). "Adoption by reference" means that a regulatory agency requires compliance with regulations already issued by another agency. For example, the PEOSH Program adopted by reference the OSHA regulations in 29 CFR 1910.

U.S. Department of Labor  
Employment Standards Administration Wage and Hour Division

Federal Child Labor Laws are enforced by the U.S. Department of Labor, Employment Standards Administration Wage and Hour Division. They apply to minors under the age of 18 who are working either on their own or through a school-sponsored structured learning experience. Authorization for these regulations comes from the Fair Labor Standards Act (FLSA) of 1938. They cover hours of work, the types of jobs that are permitted and have specific restrictions on hazardous work activities called Hazardous Orders (HO). Regulations for Child Labor can be found in 29 CFR Part 570.

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**Safe Schools: A Health and Safety Check**

New Jersey Safe Schools Program/New Jersey Department of Education

## Environmental Protection Agency (EPA)

The EPA is a federal agency that promulgates and enforces regulations dealing with protection of the environment and the general public. It covers areas such as collection and disposal of hazardous waste (including regulated medical waste), air pollution, water pollution, drinking water quality, pesticides, solid waste, hazardous waste sites, hazardous material releases that threaten the environment, asbestos in public schools, noise pollution and many other areas. EPA receives legislative direction from numerous acts or statutes. The most notable of these include:

- Toxic Substance Control Act (TSCA)
- Resource Conservation and Recovery Act (RCRA)
- Clean Air Act Amendments of 1990 (CAAA)
- Clean Water Act (CWA)
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund)
- Federal Insecticide, Fungicide and Rodenticide Act (FIFRA)
- Emergency Planning and Community Right To Know Act as part of the Superfund Amendments and Reauthorization Act (SARA)
- Safe Drinking Water Act (SDWA)

Regulations issued by EPA are compiled in Title 40 of the CFR. EPA does not routinely inspect and enforce these regulations in schools in the State of New Jersey. The New Jersey Department of Environmental Protection (NJDEP) is authorized by EPA to enforce EPA regulations. Typically, NJDEP issues its own regulations incorporating the federal regulations. The only laws potentially involving direct EPA enforcement in schools are the Asbestos Hazardous Emergency Response Act (AHERA) and Title VI of the Clean Air Act dealing with stratospheric ozone protection.

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### **Safe Schools: A Health and Safety Check**

New Jersey Safe Schools Program/New Jersey Department of Education

## New Jersey Department of Labor and Workforce Development (NJLWD) - PEOSH

The NJLWD is a state agency which promulgates and enforces safety and health regulations through the Public Employees Occupational Safety and Health (PEOSH) Program as they apply to State, county and municipal employees in the workplace. Students are not covered except as paid employees. The State legislative mandate for these regulations comes from the PEOSH Act (N.J.S.A. 34:6A-25 et seq.). This act is administered by the New Jersey Department of Labor and Workforce Development with guidance and support provided by the New Jersey Department of Health (NJDOH, formerly Department of Health and Senior Services or NJDHSS). Safety regulations are handled by the NJLWD and health regulations are handled by the NJDOH. NJLWD and/or NJDOH inspectors will visit schools in response to complaints from employees or as a result of regularly scheduled inspections. They are prohibited by law from announcing initial inspections in advance. An initial inspection is the first inspection at a site resulting from a general scheduled inspection or in response to a complaint.

The PEOSH regulations are found in the New Jersey Administrative Code, Title 12, Chapters 100 and 110. The text of Chapter 100 that is relevant to public schools is included in "Appendix E: Text of Selected Regulations." The most important subchapters for public secondary vocational-technical education programs are the ones which have adopted the OSHA standards for General Industry, Construction and Agriculture. State enforcing agencies refer to violations of these subchapters by the federal regulation number, found in the Code of Federal Regulations (CFR). Hence, PEOSH violations of the OSHA General Industry, Construction and Agricultural Standards are referred to by the numbers 29 CFR 1910, 29 CFR 1926, and 29 CFR 1928, respectively. Other important PEOSH regulations for vocational-technical education programs include Indoor Air Quality Standard (N.J.A.C. 12:100-13), Inspection Procedures (N.J.A.C. 12:110-4) and Recordkeeping of Injuries and Illnesses (N.J.A.C. 12:110-5).

The PEOSH Act, like the federal Occupational Safety and Health Act, has included a general "all-purpose" requirement that "employees" (teachers and administrators in the case of public schools) be provided "with employment and a place of employment which are free from recognized hazards that may cause serious injury or death to employees." This is sometimes referred to as the "General Duty Clause." It is an all-purpose requirement used to cover 1) hazards for which there is no particular regulation and/or 2) hazards recognized still to exist despite compliance with a specific regulation. Other non-regulatory standard setting organizations are sometimes used to support violations of the "General Duty" requirement. These might include the American National Standards Institute (ANSI) or the National Fire Protection Association (NFPA).

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### **Safe Schools: A Health and Safety Check**

New Jersey Safe Schools Program/New Jersey Department of Education

ANSI is a privately funded, voluntary organization which has developed by consensus thousands of national standards in various areas, including safety and health. The NFPA is a professional association of individual and organizational members whose primary interest is fire safety and development of fire safety standards.

New Jersey Department of Labor and Workforce Development (NJLWD)  
Division of Wage and Hour Compliance

The NJLWD Division of Wage and Hour Compliance enforces Child Labor Laws in New Jersey that apply to minors under the age of 18 who are working either on their own or through a school-sponsored structured learning experience. They cover working papers, hours of work, and the types of jobs that are permitted and have specific restrictions on hazardous work activities. Statutes for Child Labor include N.J.S.A. 34:2-21.1 et seq. for mercantile establishments and N.J.S.A. 34:2-21.57 et seq. for theater. Regulations for Child Labor are found under N.J.A.C. 12:58. These laws and regulations are separate from the federal child labor laws and regulations. Where federal and state child labor laws differ, the more stringent requirements apply.

New Jersey Department of Health

The NJDOH is a state agency which promulgates and enforces health regulations. There are numerous State legislative statutes controlling the scope of the department's activities. Under the PEOSH Act, the NJDOH assists the NJLWD by conducting inspections, investigations and related activities in the following areas as they relate to State, county and municipal employees in the workplace:

- Occupational health and environmental control;
- Medical and first aid;
- Toxic and hazardous substances;
- Respiratory protective equipment; and
- Sanitation.

Under the New Jersey Worker and Community Right-to-Know (RTK) Act (N.J.S.A. 34:5A-1 et seq.), the NJDOH promulgates and enforces regulations dealing with labeling of containers containing hazardous substances; maintenance of a RTK central file which includes material safety data sheets (MSDS), hazardous substance fact sheets (HSFS), the RTK survey, and the hazardous substance list; and the completion and return of the RTK survey of chemicals in the workplace.

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**Safe Schools: A Health and Safety Check**

New Jersey Safe Schools Program/New Jersey Department of Education

These regulations apply to State, county and municipal workplaces (public employers). The labeling regulations also apply to private workplaces. This program is administered through the Right to Know Program, a separate office from the PEOSH program. Regulations dealing with the New Jersey Right to Know (NJRTK) Program can be found in the N.J.A.C. under Title 8, Chapter 59.

The NJDOH also issues regulations dealing with retail food establishments. These regulations can be found in the N.J.A.C. under Title 8, Chapter 24 and Chapter 52. Inspectors enforcing retail food laws are typically Certified Sanitarians employed by county or municipal health departments. Information about food regulations should be directed to the county or municipal health department serving your school area.

#### New Jersey Department of Community Affairs (NJDCA)

The NJDCA is a state agency which promulgates and enforces building and fire safety regulations. There are a number of State legislative statutes controlling the scope of its activities. Under the Uniform Construction Code Act (N.J.S.A. 52:27D - 119 et seq.) and the Uniform Fire Safety Act (N.J.S.A. 52:27D-192 et seq.), the NJDCA promulgates and enforces building and fire safety regulations as they apply to all buildings in the State of New Jersey. Inspectors enforcing these regulations are typically Certified Fire and Building Code Officials from county or municipal offices. The Public School Buildings Unit within the Bureau of Construction Project Review, Division of Codes and Standards reviews school construction and renovations for compliance with the Uniform Construction and Fire Codes.

Regulations for construction (Uniform Construction Code) are included in the N.J.A.C. under Title 5, Chapter 23. The regulations cover construction of buildings and their use to ensure the safety, health and welfare of the buildings' occupants. They cover primarily building design, materials, ventilation, plumbing and electrical wiring.

Construction codes typically change every three years to include new safer construction materials, techniques and the latest scientific advances. New codes normally apply to new structures and not to existing structures. Any changes to existing structures, however, may require prior approval from building code officials and compliance with new building codes.

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### **Safe Schools: A Health and Safety Check**

New Jersey Safe Schools Program/New Jersey Department of Education

The Uniform Fire Code (UFC) regulations can be found in the N.J.A.C., Title 5, Chapter 70. Applicable regulations are often based on the "Use Group" and "Life Hazard" classification of the building and/or area. Schools are considered a use group "E" with a life hazard use of "Ae." Other life hazard uses may also be applicable depending on the activities being conducted in a particular area. Because of the life hazard use classification, schools are required to get an annual permit and are subject to at least one inspection a year by the local fire code official. There may be county and/or municipal codes that apply in addition to the State UFC.

If a school building was built in full compliance with the UFCs at the time of construction and has been properly maintained, newer structural requirements in subchapter 3 (Fire Prevention Code) of the UFC may not be applicable. Fire code officials, however, have wide latitude in making decisions about code enforcement and may still require compliance with some sections of the newer code. When there is no specific standard or requirement specified in the code, other applicable laws or nationally recognized standards such as those issued by the National Fire Protection Association (NFPA) may also be enforced.

The NJDCA is responsible for enforcing building and fire regulations promulgated under the Uniform Fire Code and Uniform Construction Code. The NJLWD is responsible for enforcing building and fire regulations promulgated under the PEOSH Act. When NJDCA and NJLWD regulations are in conflict, the NJDCA and the NJLWD must address any conflicts by modifying the regulations or demonstrating that the regulations provide an equivalent level of safety.

#### New Jersey Department of Environmental Protection (NJDEP)

Like the EPA, the NJDEP is a state agency which promulgates and enforces regulations dealing with the protection of the environment and the general public. It covers areas such as collection and disposal of hazardous waste (including regulated medical waste), air pollution, water pollution, drinking water quality, pesticides, solid waste, hazardous waste sites, hazardous material releases that threaten the environment, noise pollution, radiation and many other areas. It is authorized by the EPA to enforce almost all EPA regulations. Typically, the NJDEP issues its own regulations incorporating the federal regulations.

The NJDEP receives legislative direction from numerous State acts or statutes. The most notable of these include:

- New Jersey Water Pollution Control Act

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### **Safe Schools: A Health and Safety Check**

New Jersey Safe Schools Program/New Jersey Department of Education

- Environmental Cleanup Responsibility Act (ECRA)
- Safe Drinking Water Act
- New Jersey Air Pollution Control Act
- Underground Storage of Hazardous Substances Act
- Toxic Catastrophe Prevention Act (TCPA)
- New Jersey Spill Compensation and Control Act
- Pesticide Control Act
- Solid Waste Management Act
- Pollution Prevention Act

Regulations issued by the NJDEP are compiled in Title 7 of the N.J.A.C. The main regulations relevant to public schools are the hazardous waste regulations (Chapter 26), the air pollution control regulations (Chapter 27), the underground storage tank regulations (Chapter 14B) and the pesticide control code regulations (Chapter 30). Separate offices enforce each area covered by these regulations. Inspectors will be either NJDEP employees or employees of county, regional or local health departments. Inspectors will typically visit schools in response to complaints and may issue violations and fines. The amount of the fine is often controlled by the underlying statute or act.

#### New Jersey Department of Education (NJDOE)

The NJDOE issues regulations covering all private and public elementary and secondary schools. There is no one State legislative statute for the NJDOE in the area of the environment, safety and health. Eye protection requirements for all students have been issued under N.J.A.C. 6A:26-12.5 (Eye Protection in Public Schools). In addition, there are other general requirements under N.J.A.C. 6A:16 and 26.

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### **Safe Schools: A Health and Safety Check**

Since January 1997, the Bureau of Facility Planning Services in the NJDOE was dissolved and two new units formed to deal with building regulations related to educational adequacy of facilities, the Uniform Construction Code and the Uniform Fire Code. The Office of Facilities within the NJDOE now enforces educational adequacy issues related to substandard buildings, new construction and renovations. The NJDCA through the Bureau of Construction Project Review enforces the Uniform Construction and the Uniform Fire Codes related to new construction and renovations. Both the NJDOE and NJDOE must be contacted about any new construction or renovations. Questions regarding educational adequacy and changes in use must be referred to the Educational Facility Planning Services Unit with the NJDOE. Regulations over and above the Uniform Construction Code requirements have been adopted under N.J.A.C. 5:23-3.11A.

To cover vocational-technical education students in the area of safety and health, the NJDOE Office of Vocational-Technical, Career and Innovative Programs has adopted safety and health regulations and other regulations by reference under Title 6A, Chapter 19. Regulations adopted by reference include: PEOSH regulations N.J.A.C. 12:100, RTK regulations N.J.A.C. 8:59, and the National Fire Protection Association (NFPA) Flammable and Combustible Liquids Code (NFPA 30). The text of all NJDOE regulations mentioned above has been included in "Appendix E: Text of Selected Regulations." These regulations could be enforced by NJDOE monitors or by staff from county superintendents' offices.

### Putting Regulations into Practice

Regulations are written to prevent certain hazards in specific situations or to establish procedures to ensure safe and healthful conditions. There are not regulations, however, for every hazard or situation. The inspector enforcing regulations is primarily interested in preventing the hazard and uses regulations as a tool to achieve this goal. His or her goal is not to punish, exert power or collect fines. His or her job is to ensure that everyone is made aware of any potential problems and that these problems are corrected. The inspector should look at the seriousness of the hazard (its potential to cause harm) before citing violations and/or issuing fines.

Continuing our sports analogy, you as the inspected can act as a referee (e.g. Is the ball fair or foul?) to ensure fair and justified violations. In order to do this, you must have some understanding of the inspector's purpose and method of operation.

For more information, please go to "Appendix C: Tips for Making an Inspection a Cooperative Rather Than an Adversarial Experience."

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## **Safe Schools: A Health and Safety Check**

New Jersey Safe Schools Program/New Jersey Department of Education

To establish that a violation exists, an inspector must be able to cite a particular regulation or statute. The regulation must be applicable to the situation encountered during the inspection. The inspector can only enforce regulations from an agency he or she officially represents. Observed violations of regulations from other agencies may be referred to the appropriate enforcement official or the inspector may simply make a recommendation that the violation be corrected.

In some cases, the inspector may observe a hazard needing correction for which there is more than one applicable regulation. An experienced inspector will cite the regulation which most closely indicates the violation and the hazard.

In some cases, the inspector may observe a hazard needing correction for which there is no regulation. The inspector may cite a very general regulation, if it exists, or may use a specific statutory provision for this situation such as the "General Duty Clause" from the Public Employees Occupational Safety and Health Act. All violations of general regulations and statutes should be supported by additional detailed information about the nature of the violation. Often standards issued by ANSI, NFPA, the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) and other organizations are cited in support of general violations.

In some cases, regulations may be quite specific and clear. In other cases, they may be very broad in scope. Sometimes an inspector must use his or her professional judgment in making a decision as to what the regulation means and whether or not a particular situation is a violation of that regulation. In some cases, the enforcing agency has taken an official position about what a particular regulation says. A cited party, if it disagrees with an agency enforcement action, may take the enforcement agency to court. If this happens, the courts interpret the regulation.

It should be noted that schools and students may be subject to other restrictions besides regulations. School districts and the NJDOE may have policies or guidelines that control environmental, safety and health programs. Although they do not have the force of law, they have the same effect. It is important to understand what is required by law and what is required by policy. By knowing the source of the requirement, it is easier to find the party best able to answer any questions about the requirements.

After an inspector has established a violation, the violation must be corrected (or abated) in a defined time period. The abatement time period is usually agreed to by both the enforcing agency and the affected party. There may or may not be an associated fine depending on the regulations of the enforcing agency and the seriousness of the hazard. There are defined procedures for contesting the violation and/or the fine if you disagree with the enforcement agency. Fines and procedures for contesting the violation are often controlled by the underlying statute or act and the enforcement agency.

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## **Safe Schools: A Health and Safety Check**

Because there are so many regulations and the regulations are frequently changing, it is very difficult to keep up. The bottom line, however, should be the intent of the law rather than the letter of the law. If a good effort is made to carry out the intent or purpose of the law, the occasional letter of the law violation may not be significant.

Addresses and telephone numbers are provided in “Appendix A: Resources” for each agency (team) with environmental, safety and health regulations applicable to vocational-technical educational programs. Contact the appropriate agency for copies of regulations, training materials and assistance in interpreting the regulations. In some case, they may also conduct training at your school.

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