

# APPENDIX

## I

# NEW JERSEY PUBLIC EMPLOYEES OCCUPATIONAL SAFETY AND HEALTH ACT

## NEW JERSEY COMMUNITY AFFAIRS DIVISION OF FIRE

### **N.J.S.A. 34:6A-25. Short title**

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

### **N.J.S.A. 34:6A-26. Legislative findings**

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

### **N.J.S.A. 34:6A-27. Definition**

As used in this act:

**a.** “Advisory board” means the Public Employees' Occupational Safety and Health Advisory Board created by section 4 of this act;

**b.** “Commissioner” means the Commissioner of Labor or his designee;

**c.** “Employer” means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of: (1) the State, or any department, division, bureau, board, council, agency or authority of the State, except any bi-state agency; or (2) any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purpose district created pursuant to law;

**d.** “Employee” means any public employee, any person holding a position by appointment or employment in the service of an “employer” as that term is used in this act and shall include any individual whose work has ceased as a consequence of, or in connection with, any administrative or judicial action instituted under this act; provided, however, that elected officials, members of boards and commissions, and managerial executives as defined in the “New Jersey Employer-Employee Relations Act,” P.L.1941, c. 100 (C. 34:13A-1 et seq.) shall be excluded from the

coverage of this act;

e. “Employee representative” means a “representative” as that term is defined in the “New Jersey Employer-Employee Relations Act,” P.L.1941, c. 100 (C. 34:13A-1 et seq.);

f. “Review commission” means the Occupational Safety and Health Review Commission created by section 18 of this act;

g. “Secretary” means the Secretary of the United States Department of Labor;

h. “Workplace” means a place where public employees are assigned to work.

**N.J.S.A. 34:6A-28. Public employees occupational safety and health advisory board**

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

**N.J.S.A. 34:6A-29. Plan for development and enforcement of standards; department of labor to be responsible for administration and enforcement**

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

a. Provide for the development and enforcement of safety and health standards;

b. Provide for the right of entry and inspection in all workplaces by the commissioner;

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

**N.J.S.A. 34:6A-30. Adoption of standards in compliance with applicable federal laws, more stringent than federal standards or state standards**

- a. The commissioner shall provide for the adoption of all applicable occupational health and safety standards, amendments or changes adopted or recognized by the secretary under the authority of the "Occupational Safety and Health Act of 1970." Whenever the United States Secretary of Labor adopts a standard pursuant to the provisions of the "Occupational Safety and Health Act of 1970" (29 U.S.C. § 651 et seq.), the commissioner shall publish that federal standard in the New Jersey Register in accordance with the provisions of section 5 of P.L.1968, c. 410 (C. 52:14B-5) and, notwithstanding the provisions of section 4 of P.L.1968, c. 410 (C. 52:14B-4), that federal standard shall be deemed to be duly adopted as a State regulation upon its publication by the commissioner.
- b. The commissioner shall not adopt any standard within the scope of the State uniform construction code adopted pursuant to P.L.1975, c. 217 (C. 52:27D-119 et seq.) or the uniform fire safety code adopted pursuant to P.L.1983, c. 383 (C. 52:27D-192 et al.), unless the standard is a standard adopted pursuant to subsection a. of this section. If the Commissioner of Community Affairs determines that a standard for building or structural safety adopted by the commissioner pursuant to subsection a. of this section is more stringent than the applicable standards adopted into code pursuant to the State uniform construction code or the uniform fire safety code, he shall adopt a rule incorporating the more stringent standard into the relevant code. If the Commissioner of Community Affairs determines that there is a difference between a provision of any new or existing standard adopted pursuant to subsection a. of this section and a provision of the uniform construction code or the uniform fire safety code, and he determines that the provision of the code

is as effective as the provision of the standard, he shall prepare and submit to the commissioner an application for submission to the Secretary of Labor seeking (1) the approval of that provision of the uniform construction code or the uniform fire safety code as being as effective as the provision of the standard and (2) the approval of the incorporation of the code provision into the State plan.

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

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

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

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

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

**N.J.S.A. 34:6A-31. Commissioner to provide methods to encourage reduction of safety and health hazards and to educate employers and employees**

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

a. Provide for a method of encouraging employers and employees in their efforts to reduce the number of safety and health hazards arising from undesirable, inappropriate, or unnecessarily hazardous or unhealthful working conditions at the workplace and of stimulating employers and employees to institute new, and to perfect existing, programs for providing safe and healthful working conditions;

b. Provide for the publication and dissemination to employers, employees, and labor organizations, and the posting, where appropriate, by employers of informational, educational and training materials calculated to aid and assist in achieving the objectives of this act;

c. Provide for the establishment of new, and for the perfection and expansion of existing, programs for occupational safety and health education for employers and employees and institute methods and procedures for the establishment of a program for voluntary compliance by employers and employees with the standards established pursuant to this act.

**N.J.S.A. 34:6A-32. Regulations for enforcement and administration of act; grant of variance;**

### **application of rules and regulations to leases**

The commissioner shall, in consultation with the Commissioner of Health and Senior Services and the Commissioner of Community Affairs and with the advice of the advisory board, promulgate all regulations which he deems necessary for the proper administration and enforcement of this act. A variance may be granted if the commissioner determines that the applicant is in compliance with the requirements for a permanent variance as set forth in subsection c. of section 15 of this act. [FN1] The variance shall not be deemed to be a variation approved pursuant to the "State Uniform Construction Code Act," P.L.1975, c. 217 (C.52:27D-119 et seq.) or the "Uniform Fire Safety Act," P.L.1983, c. 383 (C.52:27D-192 et al.) or any other building or fire safety standard or code.

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

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

### **N.J.S.A. 34:6A-33. Duties of employer**

Every employer shall:

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

### **N.J.S.A. 34:6A-34. Duty of compliance by public employees**

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

### **N.J.S.A. 34:6A-35. Inspections by commissioners; right of entry; records; availability to public; issuance of orders to comply; notice of violations**

- a. The commissioner and the Commissioner of Health shall be charged with making inspections in their jurisdictional areas as specified in section 6 of P.L.1983, c. 516 (C. 34:6A-30). The commissioner may call on the professional staff of other departments whenever he deems their assistance necessary.
- b. Each commissioner shall have the right of immediate entry at reasonable hours and without advance notice into any workplace to conduct such investigations as he may deem necessary. Each commissioner shall maintain records of the results of any investigation under his jurisdiction, which, after a final agency or judicial action is taken regarding any order to comply which results from the inspection, shall be made

available to the public upon request, except that any information which identifies an individual employee shall be confidential. The authority of each commissioner to inspect any premises for purposes of investigating an alleged violation under his jurisdiction shall not be limited to the alleged violation but shall extend to any other area of the premises in which he has reason to believe that a violation of any provision of this act under his jurisdiction exists. The Commissioner of Health shall make his inspection records available to the commissioner for purposes of enforcement.

c. If either commissioner concludes that conditions or practices in violation of any provision of this act under his jurisdiction exist in any workplace, he shall inform the affected employees and employers of the danger.

d. Each order to comply issued under this section, or a copy or copies thereof, shall be prominently posted at or near each place where a violation referred to in the order to comply occurred and the commissioner shall make the order available to employee representatives, affected employees and, upon request, to the public.

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

f. Where there is no authorized employee representative, each commissioner or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

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

**N.J.S.A. 34:6A-36. Inspection by commissioner by notice of violation or existence of imminent danger and request; procedure**

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

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

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

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

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

**N.J.S.A. 34:6A-38. Grounds for inspection by commissioner of health at request of employees; form and content of notice and request; procedure**

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

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

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

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

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

**N.J.S.A. 34:6A-39. Temporary and permanent variances**

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

(1) he is unable to comply with the standard by its effective date because of the unavailability of professional or technical personnel or of materials and equipment needed to comply with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) he is taking all available steps to safeguard employees against the hazards covered by the standard; and

(3) he has an effective program for complying with the standard as quickly as practicable.

Any temporary order issued under this section shall prescribe the practices, means, methods, operations and processes which the employer shall adopt and use while the order is in effect and the order shall state in detail

what the employer's program shall be for complying with the standard.

A temporary order may be granted only if notice to the employees is given; provided, however, that the commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. An employee representative or, where one does not exist, the affected employees, may appear at the hearing, with or without counsel, and submit testimony concerning the employer's application for the variance. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed no more than twice so long as the requirements of this section are met and if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect longer than 180 days.

**b.** An application for temporary variance shall contain:

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

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



order may be modified or revoked upon application by an employer, any employee, group of employees or employee representative, or by the commissioner on his own motion, in the manner prescribed for its issuance under this section at any time after six months from its issuance.

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

**N.J.S.A. 34:6A-40. Employers' records; availability to commissioner and commissioner of health; public inspection; notice to employees of exposure to toxic materials in excess of standards allowed; reports**

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

a. Records regarding the employer's activities relating to this act as the commissioner deems necessary or appropriate for the enforcement of this act or for developing information regarding the causes and prevention of occupational accidents and illness.

b. Records regarding work-related deaths, injuries and illnesses other than minor injuries which require only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or of motion, or transfer to another job .

c. Records regarding employee exposure to potentially toxic materials or other harmful physical agents which the regulations require to be monitored or measured. The regulations shall provide employees or their representatives with an opportunity to observe the monitoring or measurement and access to the records of the monitoring or measurement. Each employee or former employee shall be informed of and have access to all records which will indicate his own exposure to toxic materials or harmful physical agents and the properties, characteristics and effects thereof. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by any safety and health standard promulgated under this act, and shall inform any employee who is being exposed of the corrective action being taken and the time limit for compliance pursuant to subsection a. of section 17 of this act. [FN1]

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

**N.J.S.A. 34:6A-41. Violations; determinations; written order of compliance; posting; notice of intent to contest; failure to comply; penalties; enforcement; compromise and settlement**

a. If the commissioner determines that an employer has violated a provision of this act, or a safety standard or regulation promulgated under this act, if the commissioner receives a certification from the Commissioner of Health that an employer violation has been determined to exist within the Commissioner of Health's

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

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

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

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

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

**N.J.S.A. 34:6A-42. Occupational safety and health review commission; appeal; hearings; determination**

**a.** There is established an Occupational Safety and Health Review Commission within the Department of Labor to hear appeals regarding orders to comply and penalties issued under this act. The commission shall

consist of three members appointed by the Governor from among persons who by reason of training, education or experience are qualified to carry out the functions of the commission. The Governor shall designate one of the members of the commission to serve as chairman.

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

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

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

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

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

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

#### **N.J.S.A. 34:6A-43. Appeals from decision of review commission**

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

#### **N.J.S.A. 34:6A-44. Restraining orders**

The Attorney General, at the request of and on behalf of the commissioner, may bring an action in the Superior Court to restrain any conditions or practices in any workplace which the commissioner determines, in accordance with section 17 of this act, [FN1] are such that a danger exists which could reasonably be expected to cause death or serious physical harm. Any order issued under this act may require such steps to be taken as may be necessary to avoid, correct or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists.

#### **N.J.S.A. 34:6A-45. Discriminatory acts against employees; prohibition; restraining orders; waiver of benefits or requirements of act; invalidity**

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

**b.** Any employee who believes that he has been discharged, disciplined or otherwise discriminated against by

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

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

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

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

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

**N.J.S.A. 34:6A-48. Act inapplicable to right to strike**

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

**N.J.S.A. 34:6A-49. Inapplicability of act to State Uniform Construction Code Act or Uniform Fire Safety Act**

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

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

# APPENDIX

## II

# NJ PUBLIC EMPLOYEES OCCUPATIONAL HEALTH AND SAFETY ACT REGULATIONS

## STANDARDS FOR FIREFIGHTERS

### N.J.A.C. 12:100-10.1 Scope; standards information

- (a) This subchapter shall apply to all public employment as provided below:
1. This subchapter contains requirements for the organization, training, and personal protective equipment of fire service organizations whenever an employer establishes them.
  2. The requirements of this subchapter shall apply to all fire service members in the public sector performing structural fire fighting.
- (b) This subchapter shall not be applicable to:
1. Construction, agriculture and maritime employment;
  2. Airport crash rescue; or
  3. Forest firefighting operations.
- (c) The CGA and NFPA standards incorporated in this subchapter by reference may be obtained by contracting the issuing entities at the addresses listed in N.J.A.C. 12:100-17.3.

### N.J.A.C. 12:100-10.2 Definitions

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

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

"**CGA**" means Compressed Gas Association.

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

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

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

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

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

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

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

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

"**Firefighter**" means a member of the fire service who engages in the physical activity of rescue, fire

suppression or both, in buildings, enclosed structures, vehicles, vessels or like properties that are involved in a fire or emergency situation.

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

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

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

"**NFPA**" means the National Fire Protection Association.

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

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

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

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

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

"**SCBA**" means self-contained breathing apparatus.

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

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

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

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

#### **N.J.A.C. 12:100-10.3 Organization, training and education**

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

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

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

(c) Training and education requirements are as follows:

1. The employer shall provide training and education for all fire service members commensurate with those duties and functions that fire service members are expected to perform. Such training and education shall be provided to fire service members before they perform fire service emergency activities. Fire service leaders and training instructors shall be provided with training and education, which is more comprehensive than that provided to the general membership of the fire service.
2. The employer shall assure that training and education is conducted frequently enough to assure that each member of the fire service is able to perform the member's assigned duties and functions satisfactorily and in a safe manner so as not to endanger fire service members or others. All fire service members shall be provided with training at least annually. In addition, fire service members who are expected to perform interior structural fire fighting shall be provided with an education session or training at least quarterly.

3. The quality of the training and education program for fire service members shall be similar to those conducted by such fire training schools as the Maryland Fire and Rescue Institute; Iowa Fire Service Extension; West Virginia Fire Service Extension; Georgia Fire Academy; New York State Department, Fire Prevention and Control; Louisiana State University Firemen Training Program, or Washington State's Fire Service Training Commission for Vocational Education. (For example, for the oil refinery industry with its unique hazards, the training and education program for those fire service members shall be similar to those conducted by Texas A & M University, Reno Fire School, or the Delaware State Fire School.)

4. The employer shall inform fire service members about special hazards such as storage and use of flammable liquids and gases, toxic chemicals, radioactive sources and water reactive substances to which they may be exposed during fire and other emergencies. The fire service members shall also be advised of any changes that occur in relation to the special hazards. The employer shall develop and make available for inspection by fire service members written procedures that describe the actions to be taken in situations involving the special hazards and shall include these in the training and education program.

5. The employer shall provide each member of the fire service training in HAZMAT Operations Level I, Bloodborne Pathogens, Incident Management System Training Orientation (I-100), and where applicable, Confined Space Entry Rescue Operations, Trench Rescue Operations and High Angle and Technical Rescue Techniques. All training shall be consistent with the applicable PEOSH Standard.

6. The employer shall comply with the Hazard Communications Standard, N.J.A.C. 12:100-7, and relevant parts of the New Jersey Worker and Community Right to Know Act.

#### **N.J.A.C. 12:100-10.4 Personnel; limitations on ability to perform**

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

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

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

#### **N.J.A.C. 12:100-10.5 Protective clothing**

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

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

(c) The employer shall assure that:

1. Protective clothing protects the head, body and extremities, and consists of at least the following components: body protection, eye, face and head protection;

2. Protective clothing ordered or purchased after the effective date of this subchapter shall comply with this subchapter; and

3. Firefighters wear foot, leg and body protective clothing complying with this subchapter.

#### **N.J.A.C. 12:100-10.6 Protective clothing; foot and leg protection**

- (a) Foot and leg protection shall comply with this section for all firefighters.
  - 1. Protective footwear shall comply with NFPA 1974-1987, Protective Footwear for Structural Firefighting.

**N.J.A.C. 12:100-10.7 Protective clothing; body protection**

- (a) Body protection shall comply with this section for all firefighters.
- (b) Body protection shall be achieved by the wearing of a fire resistive coat and bunker pants, both of which shall be at least equivalent to NFPA 1971-1986, Protective Clothing for Structural Firefighting, incorporated herein by reference. For career firefighters, body protection must be worn in combination with a station/work uniform or apparel complying with (c) below. If the employer issues or requires the wearing of uniforms for volunteer firefighters, the uniform must comply with (c) below.
- (c) Station/work apparel shall be provided to the career firefighter as follows:
  - 1. The performance, construction and testing of station/work uniforms shall be at least equivalent to NFPA 1975-1985, Station/Work Uniforms for Firefighters, incorporated herein by reference; or
  - 2. Apparel issued to the firefighter must be of a non-meltable material, such as cotton.

**N.J.A.C. 12:100-10.8 Protective clothing; hand protection**

- (a) Hand protection shall consist of protective gloves or a glove system which will provide protection against cuts, punctures and heat penetration.
- (b) The performance, construction, and testing of gloves for structural firefighters shall be at least equivalent to NFPA 1973-1988, Gloves for Structural Fire Fighting incorporated herein by reference.

**N.J.A.C. 12:100-10.9 Protective clothing; head, eye and face protection**

- (a) Head protection shall consist of a protective head device with ear flaps and chin strap which meet the performance, construction and testing requirements of 29 CFR Part 1910.156(e)(5) or NFPA 1972-1987, Helmets for Structural Fire Fighting.
- (b) Full facepieces, helmets, goggles or hoods of breathing apparatus which comply with 29 CFR 1910.134 and N.J.A.C. 12:100-10.10 shall be deemed to comply with (a) above.
- (c) A full protective hood shall be provided for the firefighter that meets the performance, construction, and testing requirements of NFPA 1971-1991, Protective Clothing for Structural Fire Fighting.
  - 1. Firefighters shall be provided with a full protective hood provided that if the wearing of the hood interferes with the proper fit of the helmet, a full protective hood need not be provided until the helmet becomes unserviceable and is replaced.

**N.J.A.C. 12:100-10.10 Respiratory protection devices**

- (a) The employer shall ensure that respirators are provided to, and used by firefighters, and that the respirators meet the requirements of 29 CFR 1910.134 and this section.
- (b) Approved self-contained breathing apparatus with a full-facepiece, or with approved helmet or hood configuration, shall be provided to, and worn by, firefighters as follows:
  - 1. While engaged in interior structural firefighting;
  - 2. While working in confined spaces where toxic products of combustion or an oxygen deficiency may be present;
  - 3. During emergency situations involving toxic substances; and



4. During all phases of firefighting and overhaul.

(c) The employer shall assure that:

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

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

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

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

#### **N.J.A.C. 12:100-10.11 Life-safety rope, harnesses and hardware**

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

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

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

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

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

#### **N.J.A.C. 12:100-10.12 Personal alert safety system**

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

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

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

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

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

#### **N.J.A.C. 12:100-10.13 Hearing protection**

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

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

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

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

#### **N.J.A.C. 12:100-10.14 Filling air cylinders**

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

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

#### **N.J.A.C. 12:100-10.15 Fire apparatus operations**

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

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

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

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

#### **N.J.A.C. 12:100-10.16 Maintenance of firefighter equipment**

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

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

# APPENDIX III THE NEW JERSEY WORKER AND COMMUNITY RIGHT TO KNOW ACT

## MAJOR PROVISIONS OF RIGHT TO KNOW LABELING FOR PUBLIC EMPLOYERS

The labeling requirements were amended on August 2, 1993 and January 3, 1994 to provide additional options and exclusions from labeling. The new provisions are in bold print in this informational bulletin.

### GENERAL PROVISIONS (N.J.A.C. 8:59-5.1 AND 5.2)

The New Jersey Right to Know labeling requirements provide for exact identification of chemicals in the workplace by using the chemical names and Chemical Abstracts Service (CAS) numbers\* of the chemicals. Container\*\* labels must list the chemical name and CAS number of the five most predominant chemical ingredients in the container whether they are hazardous or non-hazardous. This is commonly referred to as "universal labeling." Any hazardous ingredients which are not in the top five ingredients must also be listed on the label (except if it is below 1% or below 0.1%, for carcinogens, mutagens, and teratogens). The Right to Know Hazardous Substance List provides a list of synonyms of chemical names which may also be used on the label. For chemicals not listed on the Right to Know Hazardous Substance List, any chemical name recognized by the Chemical Abstracts Service may be used.

Example:

NAME	CAS#
Hydroquinone	123-31-9
Paraformaldehyde	30525-89-4
Sodium Methanal Bisulfite	870-72-4
Triethylene Glycol	112-27-6
Water	7732-18-5
Sodium Sulfite	7757-83-7

If the content of the container is not known or if only some of the contents are known, the container must bear a label stating either "Contents Unknown" or "Contents Partially Unknown" and a good faith effort must be made to find out the ingredients. In the latter case, whatever chemicals are known must be listed on the label.

Examples:

<b>CONTENTS UNKNOWN</b>
-------------------------

<b>NAME</b>	<b>CAS#</b>
Hydroquinone	123-31-9
Paraformaldehyde	30525-89-4

**Contents Partially Known**

A good faith effort must involve at least two contacts by letter and/or documented phone calls to the product's manufacturer or supplier. If an employer finds out any additional ingredients of a product, the employer has up to 5 working days to add these ingredients to the existing label on the container.

You may find that one or more of the ingredients is considered a trade secret. In this case, the manufacturer may provide you with a New Jersey Trade Secret Registry Number (TSRN) to be used in place of the specific chemical substance name and CAS number on the label. A trade secret substance may be hazardous or non-hazardous but should never be a substance that is a carcinogen, mutagen or teratogen. An acceptable label would appear as follows:

<b>NAME</b>	<b>CAS#</b>
Hydroquinone	123-31-9
Paraformaldehyde	30525-89-4
Water	7732-18-5
Sodium Sulfite	7757-83-7
TSRN 43891000-5002p	
NJ TSRN 42-003-19642	

#### **WHAT THE LABEL SHOULD LOOK LIKE**

The label must be a sign, emblem, sticker or marker of a durable nature affixed to or stenciled onto a container. The printing on these labels must be easy to read, not obscured, and prominently displayed on the container. (N.J.A.C. 8:59-5.8)

#### **WHEN MUST CONTAINERS BE LABELED?**

Labels must be affixed to new direct use containers before containers are opened or within five working days of the container's arrival at the facility, whichever is sooner. A "direct use" container is the container that directly holds the product, such as a can of paint or a 55 gallon drum.

Containers that are packed in shipping containers (e.g. boxes) do not need to be labeled until they are removed from the shipping container. The shipping container boxes do not need to be labeled since they are already labeled pursuant to USDOT requirements. Be sure to check new containers to see if the manufacturer or vendor has already labeled the containers. Shelf labeling is not allowed!

#### **SPECIAL CIRCUMSTANCES**

- Containers which are present in offices that are used for office work do not need to be labeled. (Storage rooms, print shops, and other areas not used for office work in an office building are not included in this exemption.)

- Containers which are two ounces or smaller may be labeled by means of a code or number system if the code or number system will allow the employee or emergency responder ready access to the names and CAS numbers or the trade secret registry numbers of the ingredients. If **direct use containers** are on a skid *and* it is not possible to get to all of the containers without breaking down the skid, only those containers on the outside face of the skid and within reach of the employee need to be labeled.

If the skid is shrink-wrapped, labels must be placed on the shrink-wrap on all four sides of the skid. If unlabeled **direct use** containers are removed from the skid, they must be labeled immediately.

- For petroleum products, the Department of Health and Senior Services will allow the following names (without CAS #'s) on labels:
  1. For motor oil, the name "motor oil" can appear on the label.
  2. For automatic transmission fluid, the name "automatic transmission fluid" can appear on the label.
  3. For brake fluid, the name "brake fluid" can appear on the label.
  4. For heating oil, the name "fuel oil" should appear on the label.
  5. **For diesel fuel, the name "diesel fuel" can appear on the label.**
  6. For grease, gear oil, hydraulic oil, cutting oil, lubricating oil, and other petroleum oil based products, the name should be combined with Petroleum Oil such as "Petroleum Oil (Grease)".

If a product is not petroleum oil based, then the words "Petroleum Oil" should not be included on the label. A CAS number would only be required on the label if the product has an assigned CAS number. Also, if a petroleum product contains a hazardous substance listed on the New Jersey Right to Know Hazardous Substance List, as an additive, that hazardous substance must be included on the label (with its CAS number).

- In approved Research and Development (R & D) Laboratories, **public employers may:** (a) label containers by means of a code or number system if the code or number system allows an employee or emergency responder ready access to the names and CAS numbers or the trade secret registry numbers of the ingredients in the containers, **or (b) label containers in accordance with the Public Employees Occupational Safety and Health Act (PEOSHA) Laboratory Standard. (Contact the PEOSH Program at (609) 984-1863 for the requirements of this Standard.)** To become an approved R & D laboratory, an application must be filed with and approved by the Department of Health and Senior Services. To obtain an application for a Research and Development Laboratory exemption, contact the NJDHSS at (609) 292-2202. (N.J.A.C. 8:59-5.3)
- If a subcontractor stores hazardous or other substances at a public employer's facility, the public employer must insure that these containers are properly labeled. (N.J.A.C. 8:59-5.10)
- Valves, outlets, sample connections, drains and vents of pipeline systems must be labeled if these points allow the release of a substance into the environment: (1) at least once during a twenty-four hour period; or (2) once a month when making repairs or conducting maintenance activities. Also, any valve located at the point at which a substance enters a facility's pipeline system must bear a label. This situation usually is found in water filtration plants, wastewater treatment plants, power plants and motor vehicle maintenance garages. (N.J.A.C. 8:59-5.2)

## **CONTAINERS THAT DO NOT NEED TO BE LABELED**

The following substances and containers do not need to be labeled (and do not need to be reported on the Right To Know Survey) because "they are excluded from coverage under the law. These

include:

- Any solid article (a manufactured item formed to its final shape or design) which is not used in a manner which changes its physical form, and which does not pose any acute or chronic health hazard to employees or emergency responders who are exposed to it.

<b>Examples:</b>	
Ammunition	Pills and capsules
Bars of soap	
Chalk	Photocopier toners and Developers in self-contained cartridges
Dry cell batteries	
Glue sticks	
Grinding wheels	Polaroid film
Pastels	Sorbent sample tubes
Pens	Thermometers

- Consumer products if they are not used more frequently than a consumer would use them at home.
- Any fuel in a motor vehicle.
- Containers which are removed from a larger, properly labeled container, are only used by the employee who performs the removal, and are used up by that employee during his or her work shift.
- Process containers. These containers include:
  - a. containers whose contents are changed at least once per shift;
  - b. test tubes, beakers, flasks, or other containers which are regularly used and reused for different substances;
  - c. containers of ten gallons or less into which a worker has poured a substance from a labeled container and which is used by the employee who performed the transfer;
  - d. containers on which labels would be obscured by heat, spillage, or other factors.
- Typewriter correction fluid
- **Products which are the personal property and are for the personal use of an employee.**
- Containers of bottled water intended for drinking purposes, drinking fountains, sinks, toilets, showers, safety showers, eye washes, soap dispensing units in bathrooms, fire hydrants, fire hose racks, sprinkler heads, and fire extinguishers.
- Sand bags and buckets, MSA Air Pak Respirators, portable grease guns, electrodes, biological organisms, tobacco products, wood products, and food and food additives intended for human or animal consumption also are exempted from labeling.
- **Substances which are an integral part of a facility structure or furnishings.**
- **Materials kept in an evidence locker or room by a law enforcement agency.**

## **PRODUCTS AND SUBSTANCES THAT DO NOT REQUIRE ADDITIONAL LABELING**

Containers that are labeled according to certain Federal and State laws do not need a Right to Know label. (N.J.A.C. 8:59-5.5 and 5.6) (However, they still *have to be reported on* the Right to Know Survey if they are hazardous.) These include:

- **Products in containers that are two kilograms (4.4 pounds) or two liters (0.53 gallons) or smaller that are labeled according to the OSHA Hazard Communication Standard (29 CFR 1910.1200.)**

Note: However, if containers below this threshold contain ingredients which are carcinogens, mutagens or teratogens, these ingredients and their CAS numbers must be listed on the label. Also, if the product as a whole, meets the Special Health Hazard criteria for highly flammable (F3 or F4), reactivity/explosivity (R4, R3 or R2), or corrosivity, only those ingredients that contribute to the Special Health Hazard and their CAS numbers, must be listed on the label. (See N.J.A.C. 8:59-10.2 for Special Health hazard criteria.)

**A Hazard Communication Standard label must contain the identity of the product and appropriate hazard warnings. The identity is any term used as a product identifier which serves as a link between the label and a Material Safety Data Sheet. The identity used may be a trade name ("Black Magic Formula"), or a chemical name (1,1,1-Trichloroethane). The hazard warning is any type of message, words, pictures, or symbols that conveys the hazards of the chemical(s) in the container. Employers purchasing chemicals can usually rely on the labels provided by their suppliers.**

### HAZARD COMMUNICATION LABEL REQUIREMENTS

Product Identifier	SUPER FLOOR STRIPPER
Manufacturer's Name & Address	123 MAIN STREET MOPPIN, NJ 00000
Hazard Warning	FLAMMABLE! KEEP AWAY FROM HEAT, SPARKS AND OPEN FLAME. MAY CAUSE EYE IRRITATION. NAUSEA, AND DIZZINESS FROM EXCESSIVE INHALATION.
Target Organs	T A R G E T O R G A N S - SKIN, EYES, CENTRAL NERVOUS SYSTEM.

- Containers displaying labels pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These products display the phrase "EPA Reg No. #". For example, disinfectants, pesticides, herbicides, and fungicides are all labeled according to FIFRA.

#### Example of a FIFRA Label

Active Ingredients	
0,0-diethyl O-(2 isopropyl-6 methyl -4 pyrimidinyl) Phosphorothioate . . .	.5.00% EPA Reg. No. 0011-00-1111
Inert Ingredients .....	95.00% EPA Est. No. 0011-0H-1
Total .....	100.00%

- All shipping cartons, which are not direct use containers, that are labeled according to USDOT requirements. It is the responsibility of your supplier to meet this requirement. If USDOT regulations do not require a label on the shipping container, then none shall be required. (N.J.A.0 8:59-5.1(q))

Examples:

CONSUMER COMMODITY
ORM-D

Liquid Cleaning Compound
NA 1993



**Direct use** single substance containers that are labeled with specific chemical substance shipping names and their four digit UN or NA identification numbers from the U.S. Department of Transportation's (DOT) Hazardous Materials Table, 49 CFR Part 172.101.

**Example:**

Toluene
UN 1294

Traffic Paint Reducer

- Containers containing hazardous waste material that are labeled pursuant to the Federal Resource Conservation and Recovery Act (RCRA) or the New Jersey Solid Waste Management Act.

**Examples:**

Waste Oil 1270
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Hazardous Waste
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- Containers that are labeled pursuant to the Federal Food, Drug, and Cosmetic Act (FDCA). For example, hand soaps are usually considered drugs or cosmetics, and rubbing alcohol is considered a drug.

**Drug Example:      Cosmetic Example:**

Isopropyl Alcohol 70% by Volume
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Hairspray, nail polish, etc.
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- Containers containing radioactive materials regulated by the Atomic Energy Act (AEA) and the Nuclear Regulatory Commission (NRC)
- For other exemptions, refer to N.J.A.C. 8:59-5.5

**SAMPLE PURCHASE ORDER AND SERVICE CONTRACT LANGUAGE**

New Jersey manufacturers are required to include New Jersey Right to Know labeling on all containers. However, to obtain containers with New Jersey RTK labeling for those products manufactured outside of New Jersey, you can include a clause requiring New Jersey RTK labeling as a term or condition of your purchasing contract. If this clause is used, it will be effective only if it is enforced by you, the purchaser.

Public employers must also ensure that all containers which are stored at their facilities by subcontractors display RTK labeling. Be sure to address this issue in your service contracts.

The following is a sample clause that could be used (for both in-state and out-of-state suppliers and manufacturers) in purchase orders and service contracts:

- All direct use containers shall bear a label indicating the chemical name(s) and Chemical Abstracts Service number(s) of all hazardous substances in the container, and all other substances which are among the five most predominant substances in the container, or their trade secret registry number(s). (N.J.A.C. 8:59-5)
- "Container" means a receptacle used to hold a liquid, solid or gaseous substance such as bottles, bags, barrels, cans, cylinders, drums and cartons. (N.J.A.C. 8:59-1.3)

You can refer vendors to the New Jersey Department of Health and Senior Services Right to Know Program for assistance in developing proper labels.

# APPENDIX IV REGULATIONS FOR THE NJ PERSONNEL ACCOUNTABILITY SYSTEM

## SUBCHAPTER 2 INCIDENT MANAGEMENT SYSTEM: PERSONNEL ACCOUNTABILITY

### 5:75-1.5 Definitions

The following terms shall have the meanings indicated except where the content clearly indicates otherwise:

"Branch" means an organizational level having functional or geographical responsibility for major aspects of incident operations.

"Commissioner" means the Commissioner of Community Affairs.

"Division" means the organization level having responsibility for operations within a defined geographic area.

"Emergency incident" means any situation to which the fire department responds to deliver emergency services including, but not limited to, rescue, fire suppression, emergency medical care, special operations, and other forms of hazard control and mitigation.

"Fire department" means a fire service organization providing rescue, fire suppression and related activities. The term "fire department" shall include any public, governmental fire service organization engaging in this activity.

"Group" means an organizational level having responsibility for operations within a defined functional area.

"Hazardous area" means any location(s) that may pose a safety and/or health risk to firefighters due to, but not limited to, the presence of products of combustion, the existence of hazardous or otherwise oxygen deficient or oxygen enriched atmosphere, the potential for any immediately dangerous to life and health atmosphere, the use of hazardous equipment or operations, or the potential for any of these situations to exist. Additionally, any area or location that predisposes a firefighter to become lost, disoriented, or trapped, including any structure, confined space and wild land areas, shall be considered a hazardous area.

"Incident action plan" means an oral or written plan containing general objectives reflecting the overall strategy for managing an incident.

"Incident commander" means the individual responsible for all incident activities, including the development of strategies and tactics and the ordering and release of resources.

"Incident management system" means a nationally recognized and organized system of rules, responsibilities and standard operating procedures used to manage emergency operations.

"Logistics section" means the section responsible for providing facilities, services, and material support for an incident.

"Member" means a person, at least 18 years of age, who is involved in performing the duties and responsibilities of a fire department, under the auspices of the organization. For the purpose of this chapter, a fire department member may be a full-time or part-time employee, a paid or unpaid volunteer, may occupy any position or rank within the department and may or may not engage in emergency operations.

"Personnel accountability officer" means the person designated by the Incident Commander to monitor entry into and exit out of hazardous areas for the purpose of ensuring accountability of all personnel in the hazardous area or structure.

"Personnel accountability report" means the results of an accounting of all personnel on the emergency incident scene to the Incident Commander.

"Personnel accountability roll call" means the process of accounting of all personnel on the emergency incident scene.

"Safety officer" means a member of an incident command staff responsible for monitoring and assessing safety hazards and unsafe conditions, and for developing measures for ensuring personnel safety.

#### **5:75-2.4 Personnel accountability**

(a) As an integral part of the incident management system used by the fire service, personnel accountability shall be maintained through the use of a personnel accountability system meeting the requirements of this section as a means to track and locate all fire department personnel operating at all emergency incidents.

(b) Every member of a fire department shall be issued a minimum of two personnel accountability tags.

1. Such tags shall be constructed of (but not limited to) metal, plastic, plastic laminated paper, plastic laminated cardboard, or similar durable material.
2. Each tag shall be equipped with a latch hook that will allow attachment of the tag to the firefighter's protective clothing. The clip or latch hook shall be designed to be attached and removed by a firefighter with a gloved hand.
3. At a minimum, the tag shall be engraved, imprinted, or otherwise marked or electronically coded with the firefighter's name and fire department affiliation.

(c) At each incident, the Incident Commander shall designate a personnel accountability officer. The personnel accountability officer shall be responsible for ensuring that all personnel are accounted for. The personnel accountability officer may serve other functions at an incident scene if he or she is able to safely perform the accountability function. At minor incidents, the Incident Commander may retain this function as he or she sees fit.

(d) To ensure personnel accountability, each firefighter shall take the following steps:

1. Upon arrival at an incident scene, each firefighter shall surrender the primary personnel accountability

tag at a central collection point as designated by the Incident Commander or departmental policy. Such point may be a command post or the apparatus to which the firefighter is assigned;

**2.** Upon leaving the incident scene, each firefighter shall immediately retrieve his or her personnel accountability tag from the designated collection point and reattach it to the designated area of his or her protective gear as determined by the fire department;

**3.** Firefighters assigned to a specific piece of apparatus for the duration of a tour of duty shall leave their primary personnel accountability tag on that apparatus for the duration of their tour.

**(e)** Upon entry in a hazardous area, each firefighter shall surrender the secondary personnel accountability tag to the personnel accountability officer who shall be in close proximity to the entry point into the hazardous area. Upon leaving the hazardous area, the member shall immediately retrieve his or her personnel accountability tag from the personnel accountability officer and re-attach it to the designated area of his or her protective clothing.

**(f)** If the need arises to evacuate a hazardous area and an evacuation is ordered, the personnel accountability officer shall:

**1.** Order an immediate personnel accountability roll call of all members operating at the incident to be conducted as soon as they exit the hazardous area;

**2.** Assure that every member who has surrendered his or her accountability tag retrieves it and reattaches it to their protective gear;

**3.** Report immediately to the Incident Commander when crews have not retrieved their personnel accountability tags after a reasonable time, members are unaccounted for, and the need for search and rescue exists or if conditions indicate that the area is immediately unsafe for crews and/or the personnel accountability officer to operate in safely; and

**4.** Report to the Incident Commander that all members are accounted for if the personnel accountability officer is not holding any personnel accountability tags after an evacuation is ordered.

**(g)** The Incident Commander shall call for a personnel accountability report:

**1.** If there is a report of a firefighter missing;

**2.** When an emergency evacuation is ordered;

**3.** When the incident is declared under control;

**4.** When changing attack modes (that is, offensive to defensive); or

**5.** Anytime the Incident Commander feels it necessary to conduct a personnel accountability report.

**(h)** When it is announced that a personnel accountability report is to be provided to the Incident Commander, all companies will:

**1.** Conduct a personnel accountability roll call of the members in that company to ensure all members are accounted for;

2. Cease all but emergency radio communications; and

3. Report all members accounted for or report members missing.

(i) Nothing in this section shall restrict the use of more sophisticated accountability systems utilizing bar coding, geographic positioning systems or similar methods providing the intent of this section is met.

# APPENDIX

## V

# REGULATIONS FOR THE NJ INCIDENT MANAGEMENT SYSTEM

## SUBCHAPTER 2: FIRE SERVICE INCIDENT MANAGEMENT

### **N.J.A.C. 5:75-2.1 Incident management system adopted**

(a) Pursuant to authority of P.L. 1995, c.266 (N.J.S.A. 52:27D-25) the Commissioner hereby adopts the model standard of the National Fire Protection Association, known as "NFPA 1561/Standard on Fire Department Incident Management System/1995." This standard is hereby adopted by reference as the New Jersey Incident Management System, subject to the modifications set forth in N.J.A.C. 5:75-2.2.

(b) Copies of this standard may be obtained from the sponsor at: National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

(c) When used alone, the terms "subchapter," "section," and so forth, refer to that portion of these rules. When used in N.J.A.C. 5:75-2.2, the terms "section," "subchapter" or "chapter," and so forth, refer to the NFPA Standard.

### **N.J.A.C. 5:75-2.2 Modifications**

(a) The following sections of NFPA 1561, 1995 ed., are modified as follows:

1. Section 1-1.1 is amended to replace the term "fire departments" with "the fire service."
2. Section 1-1.2 is amended to delete the terms "military and private" and "fire brigades."
3. Section 1-1.2.2 is amended to delete the second sentence in its entirety.
4. Section 1-3 "Definitions" is amended to delete the following terms:
  - i. "Emergency incident."
  - ii. "Fire department," and
  - iii. "Member."
5. Section 2-5.2 is amended as follows:
  - i. The term "fire department" is deleted and the term "Regulations for Fire Service Incident Management System" is substituted in lieu thereof.
  - ii. The term "and experience" is deleted.

6. Section 2-6 is deleted in its entirety.

7. Chapter 5 "Referenced Publications" is deleted in its entirety.

**N.J.A.C. 5:75-2.3 Geographical identification of the incident scene**

(a) To provide for uniform identification of locations and operational forces within an incident scene, the scene shall be divided geographically into smaller parts which shall be designated as divisions. Specific areas of the incident scene shall be designated as follows:

1. Sides of incident scenes designated as divisions shall be further identified by the addition of a letter of the alphabet beginning with the letter "A."

i. The side of the incident scene that bears the postal address of the location shall be designated as division "A" by the incident commander. Where the incident scene has no postal address, the incident commander shall select any side to designate division "A".

ii. Continuing in a clockwise rotation, the side adjacent to the division "A" side shall be designated as division "B."

iii. Continuing in a clockwise rotation, the side adjacent to the division "B" side shall be designated as division "C."

iv. Continuing in a clockwise rotation, the side adjacent to the division "C" side shall be designated as division "D."

2. When operating at an incident containing more than one level, each level shall be designated as a division and shall be further identified by the addition of an Arabic numeral beginning with the number "1."

i. The ground level of the incident scene shall be designated as division "1."

ii. The next level above the ground level shall be designated as division "2."

iii. Subsequent levels above division "2" shall be assigned division numbers in progressing order in this manner.

3. Additional areas of the incident scene shall be designated through the use of terms common to the fire department including, but not limited to, basement, roof, interior, etc.



## MODEL SOP FOR THE PERSONNEL ACCOUNTABILITY SYSTEM

### **PURPOSE:**

This procedure is designed to establish a means to track and locate all fire department members operating at any incident or activity in which this company becomes involved.

### **SCOPE:**

All department personnel.

### **RESPONSIBILITY:**

All department personnel and officers.

### **SAFETY:**

It is the intention of this department to provide the optimal level of firefighter safety. The application of this procedure will assist all members to meet this goal.

### **DEFINITIONS:**

**Hazardous Area** – means any location(s) that may pose a safety and/or health risk to firefighters due to, but not limited to, the presence of products of combustion, hazardous or otherwise oxygen deficient or oxygen enriched atmosphere or the potential for any IDLH atmosphere, hazardous equipment or operations or the potential for any of these situations to exist. Additionally, any area or location that predisposes a firefighter to become lost, disoriented or trapped, including any confined space and wild land areas shall be considered a hazardous area for the purpose of this section.

**IDLH** – means immediately dangerous to life and health

**PAS** – personnel accountability system

**PAT** – personnel accountability tag

**Personnel Accountability Officer** – means the person designated by the Incident Commander to monitor entry into and exit out of hazardous areas and/or structures for the purpose of ensuring accountability of all personnel in the hazardous area or structure.

**Personnel Accountability Report/Roll Call** – means the results of an accounting of all personnel on the emergency incident scene to the Incident Commander

### **PROCEDURE:**

This procedure applies to all members of this department when operating at the site of any/all emergency responses.

1. Every member of this department will be issued two (2) Personnel Accountability Tags (PAT). The tags will be affixed to the front of their turnout coat.
2. Each member, upon arrival at an incident scene, shall surrender the primary personnel accountability tag to a central collection point as designated by the Incident Commander (this may also be the apparatus the firefighter is assigned to or arrived on).
3. Each member, upon entry to a hazardous area or structure, shall surrender the secondary PAT to the

Personnel Accountability Officer as appointed by the Incident Commander. Upon leaving the hazardous area or structure, the member shall immediately retrieve his/her PAT from the Personnel Accountability Officer and re-attach it to the front of his/her turnout coat.

4. A key element of personnel accountability is crew integrity. It will be the responsibility of all members and officers to ensure that crew integrity is maintained. Simply stated, all crews must enter together, stay together and come out together.
5. All crews entering a hazardous area or structure should exit at the same point where entry was made. If hazardous conditions dictate that crews must exit the area or structure by a different route than where entry was made, the crew must immediately report to the Personnel Accountability Officer at the original entry point and retrieve their PATs.
6. When multiple points of entry are used at a hazardous area or a structure, a Personnel Accountability Officer shall be appointed for each entry point.
7. It will be the responsibility of the company officer or Personnel Accountability Officer to ensure that:  
At least two (2) members be assigned to each crew or task.  
The location and function of each crew be communicated to the Incident Commander or designee.
8. If the need arises to evacuate a hazardous area or structure and an evacuation is ordered, the personnel accountability officer shall order an immediate roll call of all members operating at the incident to be conducted as soon as they exit the hazardous area. The personnel accountability officer shall assure that every member who has surrendered his/her accountability tag retrieves it and re-attaches it to their protective gear.
9. If after a reasonable time crews have not retrieved their personnel accountability tags or conditions indicate that the area is immediately unsafe for crews and/or the personnel accountability officer to operate in safely, the personnel accountability officer shall immediately report to the Incident Commander and inform him/her that members are unaccounted for and that the need for search and rescue might exist. If the personnel accountability officer is not holding any personnel accountability tags after an evacuation is ordered, he/she shall report to the Incident Commander that all members are accounted for.
10. Immediately upon receiving a report of a member or members unaccounted for, the Incident Commander shall reassign all resources necessary to locate unaccounted for members.
11. On large or complex incidents, it becomes critical that all crews and companies operating be tracked. Any time a crew or company's assignment, location, or status changes, the change must be immediately communicated to the Incident Commander. It will be the responsibility of the company officer to report the status of their crew or company at all times.
12. The Incident Commander will call for a Personnel Accountability Report:
  - If there is a report of a firefighter down or missing.
  - When an emergency evacuation is ordered.
  - When the incident is declared under control.
  - When changing attack modes (i.e. offensive to defensive).
  - Anytime the Incident Commander feels it necessary to conduct a PAR.
13. When it is announced that a PAR is to be conducted all companies will:
  - Conduct a role call of the members in that company to ensure all members are accounted for.
  - Cease all but emergency radio communications.
  - Report all members accounted for or report members missing.
14. If a member should lose their primary PAT, they must immediately report this to a company officer or the Incident Commander.
15. Members without PATs shall not be permitted inside hazardous areas or structures.