

Public Employees Occupational Safety and Health Act (PEOSHA)

Updated December 2023



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PUBLIC EMPLOYEES OCCUPATIONAL SAFETY AND HEALTH ACT (PEOSHA)

WHAT IS PEOSHA?

In 1970, the Williams-Steiger Occupational Health and Safety Act was passed by Congress. It required the adoption of occupational safety and health standards for employees. This act has, which has become known by its acronym OSHA, applied nationwide to all private employers and employees. State and local public employees were not covered by this Act.

In 1984, the New Jersey State Legislature enacted the Public Employees Occupational Safety and Health Act (PEOSHA) to establish safety and health standards for State and local public employees. A copy of this Act is provided as Appendix A of this publication. The PEOSHA Act requires that standards adopted in New Jersey be at least as effective as the ones contained in the federal OSHA law and regulations to provide safe and healthful employment conditions and places of employment.

In order to implement the PEOSHA Act, regulations establishing these standards (the standards in the Federal OSHA law and regulations) were adopted in 1984.

In 1992, 1994 and 1998, the New Jersey Department of Labor adopted additional PEOSHA regulations which describe updated standards for protective clothing for the fire service. New Jersey's regulations are different than the Federal OSHA regulations for fire protective clothing only. These State regulations include many new standards, including requirements for protective hoods, aerial ladder testing, and the adoption of the OSHA Respiratory Protection Standard 29 CFR 1910-134.

There are various compliance dates in these new regulations. Some call for eventual compliance with the new standards based on replacing existing equipment when it wears out, rather than disposing of existing equipment. Others require compliance by a particular date. Each is discussed in detail.

Like earlier PEOSHA regulations, the 1992, 1994 and 1998 regulations apply to:

1. "The State, or any department, division, bureau, board, council, agency or authority of the State, except any bi-state agency;"
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."

WHAT STANDARDS APPLY TO FIREFIGHTERS?

Certain sections of the PEOSHA regulations apply only to firefighters. These are the regulations setting standards for fire protective clothing and equipment, and may be found in the regulations of the New Jersey Department of Labor. These regulations may be cited as N.J.A.C. 12:100-10 et seq. A copy of these regulations is included as Appendix B of this publication. These regulations are discussed in detail in this publication.

All PEOSHA regulations relevant to the fire service apply to volunteer, paid and part-paid firefighters. In some cases, implementation details are different for career and volunteer firefighters, but PEOSHA regulations do cover volunteers.

HOW ARE THE REGULATIONS ENFORCED?

The New Jersey Department of Labor enforces these regulations, except for the provisions related to respiratory protective equipment. The state Labor Department enforces all matters related to protective clothing and equipment.

The New Jersey Department of Health enforces the parts of this regulation related to respiratory protective equipment. The state Health Department also enforces PEOSHA regulations related to hazardous materials.

The New Jersey Department of Community Affairs (DCA) is responsible for all matters related to building safety under the Uniform Construction Code or Fire Safety under the Uniform Fire Safety Code. DCA does not enforce regulations or standards related to protective clothing for firefighters. However, DCA maintains information on these standards and works with the New Jersey Department of Treasury to update the state contract for protective clothing.

Any employee or employee representative who believes that a violation of these regulations or imminent danger exists should notify their employer immediately.

Employees or employee representatives who believe that a violation of these regulations or an imminent danger exists may contact the State and request an inspection. Use the explanation above as a guideline to which agency should be contacted. When in doubt, contact the New Jersey Department of Labor.

Requests for inspection must be in writing and must describe the violation or danger that is believed to exist. Such letters must be signed by the employee or employee representative. While such letters must be signed to be acted upon, the State must withhold the name of anyone who requests an inspection if that person asks that their name be withheld.

Once contacted, the relevant state agency must perform an inspection at the earliest date possible. At this inspection, the employee who requested the inspection, a representative of the employer, and a representative of the employee are allowed to accompany the inspector to aid the inspection. Employees who participate in such inspections must receive normal pay for the time spent on the inspection.

Notices of violation and recommendations for improvements will be provided to the employer by the relevant State agency (Labor, Health or Community Affairs) after the inspection. In most cases, the agency that performed the inspection will communicate with the employer. In the case of hazardous material inspections however, the Department of Health will perform the inspection, but notices of violation, if any, will come from the Department of Labor based on the report of the Department of Health.

Inspection reports and notices calling for corrections are generally sent to the mayor of a municipality or the board of a fire district, with copies provided to the chief of the fire department.

SCOPE AND STANDARDS INFORMATION

These regulations apply to both career and volunteer members of the fire service. For purposes related to PEOSHA, use of the term "public employee" does not depend on whether or not the employee is paid. In some cases, different implementation details are set for career and volunteer members of the fire service, but the PEOSHA Act and regulations fully apply to career and volunteer firefighters.

These regulations are applicable to all firefighters. A "firefighter" is a public employee 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. These regulations are not intended for those employed in the industries of construction, maritime, agriculture, airport crash rescue or forest firefighting.

The protective clothing mandated by this regulation must be provided to all firefighters who participate in interior structural firefighting and overhaul. Interior structural firefighting is the physical activity of fire suppression, rescue or both, which is conducted inside buildings or enclosed structures, after the incipient stage of the fire. Overhaul is 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.

ORGANIZATION INFORMATION

Employers must prepare a written description of:

1. The organizational structure of the fire department;
2. The expected number of members of the fire department;
3. The functions the fire department is expected to perform.

This document must be available for inspection by:

1. Employees
2. Their designated representatives (for example, labor unions)
3. The New Jersey Department of Labor.

PHYSICAL ABILITY AND DISABILITY

The employer must assure that employees who are expected to fight interior structural fires are physically capable to do this work. The employer must make this determination in a way that is compatible with the Americans with Disabilities Act (ADA) of 1990, a federal law governing certain disability issues.

The details of ADA are beyond the scope of this document. For further information on ADA issues, review of the Act, discussions with legal advisors, or both may be necessary.

PROTECTIVE CLOTHING REQUIREMENTS AND DEADLINES

Protective clothing must protect the:

1. Head, including face and eyes
2. Body
3. Extremities, that is, the arms, legs, feet and hands

Employers must provide, at no cost to the employee, the protective clothing described in this regulation. The relationship between this mandate and any contracted clothing allowance must be agreed upon through collective bargaining between employers and employees.

Employees who perform interior structural firefighting and overhaul must be provided with this equipment.

This law calls for cooperation from both employers and employees. Employers must assure that employees wear the protective clothing, use the safety equipment and follow safety procedures. Employees must wear the required protective clothing, use the required equipment and follow safety procedures at the times and in the ways specified by the law and their employer.

For the most part, these regulations call for the eventual replacement of current equipment with new equipment that complies with more stringent standards. However, career firefighters must wear protective coats, pants, station uniforms and boots that comply with these new standards.

FOOT AND LEG PROTECTION

New boots must comply with NFPA 1974-1987, "Protective Footwear for Structural Fire Fighting." This standard is the 1987 edition of NFPA standard number 1974.

Design and Performance Features

Footwear which meets the NFPA standard will bear a label or stamp specifically stating that it complies with NFPA 1974-1987. Only boots with such a label will be considered to comply with the law.

The standard requires that boots will be at least 8 inches high, water resistant, with a puncture resistant sole, a ladder shank and an impact- and compression-resistant toe cap.

Boots must also meet standards for resistance to heat, corrosion, punctures, electricity, impact and compression, flame, abrasion, wear and water. The details of these technical standards can be found in the NFPA text, along with information on testing methods.

Firefighters must remember that meeting standards for protection or resistance to certain substances or forces does not mean that a product will protect a firefighter from every possible condition experienced in the line of duty or that exceed the tests performed. Exposure to conditions that exceed the product's tested performance can lead to serious injury or death.

Compliance Deadlines

All firefighters must wear boots and bunker pants which comply with the standard at this time.

BODY PROTECTION

This section covers both turnout (or bunker) gear and station uniforms.

Turnout Gear

Turn out gear must comply with NFPA 1971-1986, "Protective Clothing for Structural Fire Fighting." This is the 1986 edition of NFPA standard number 1971. Turn out gear includes both a protective coat and protective pants.

Design and Performance Features

Turn out gear which meets the NFPA standard will bear a label specifically stating that it fully complies with NFPA 1971-1986. Only coats and pants with such a label will be considered to comply with the law.

The NFPA standard for turnout gear includes tests for thermal protection; thermal shrinkage; heat, char and ignition resistance; tear resistance; and retroreflectivity.

The protective coat is designed to protect the upper torso, neck, arms and wrists. It must be composed of three layers: outer shell, moisture barrier and thermal barrier.

Because it will be worn with protective trousers, the new standard protective coat may be shorter than coats used in the past. To protect the neck, a collar, at least 4 inches wide and containing at least the same three layers as the body of the coat, must be part of the coat. Coats must also contain wristlets which meet the same performance standards as the body of the coat.

High visibility safety trim must be included on the protective coat. This trim must be at least two inches wide and have both retroreflective and fluorescent surfaces. Each coat must have a continuous band of fluorescent and retroreflective material, at least two inches wide, around the coat, as well as a similar band at least two inches wide around each wrist. Each coat must have at least 325 square inches of fluorescent trim. Retroreflective surfaces must be at least 0.625 inches wide.

Protective pants, also known as bunker pants, are required. These are designed to protect the lower torso and legs (excluding the ankles and feet). Like the protective coat, protective pants must be composed of three layers: outer shell, moisture barrier and thermal barrier.

Bands of the same high visibility trim used on the protective coat must be placed between the bottom hem and the knee of each leg of the pants. Protective trouser trim must include at least 80 square inches of fluorescent surface area.

For career firefighters, these protective garments must be worn in conjunction with a station uniform which complies with the regulations.

Firefighters must remember that meeting standards for protection or resistance to certain substances or forces does not mean that a product will protect a firefighter from every possible condition experienced in the line of duty or that exceed the tests performed. Exposure to conditions that exceed the product's tested performance can lead to serious injury or death.

Compliance Deadlines for Turn Out Gear

All firefighters must wear protective coats and pants which meet the standard at this time.

Station Uniforms

Station uniforms may comply with NFPA 1975-1985, "Station/Work Uniforms for Fire Fighters," or be made of a non-meltable material, such as cotton. Station uniforms include a shirt and pants.

Design and Performance Requirements for Station Uniforms

Station gear which meets the NFPA standard will bear a label or stamp specifically stating that it fully complies with NFPA 1975-1985. State PEOSHA regulations do not require station uniforms which comply with this NFPA standard. Another acceptable option is garments which are made of non-meltable material, such as cotton.

Station uniforms are not meant to take the place of turnout gear.

Compliance Deadlines for Station Uniforms

Career firefighters must wear station uniforms that comply with this regulation at this time.

If the employer issues or requires the wearing of uniforms for volunteer firefighters, then station uniforms must comply with this regulation at this time.

HAND PROTECTION

New gloves must comply with NFPA 1973-1988, "Gloves for Structural Fire Fighting." This standard is the 1988 edition of NFPA standard number 1973.

Design and Performance Features

Gloves which meet the NFPA standard will bear a label inside each glove specifically stating that it fully complies with NFPA 1973-1988. Only gloves with such a label will be considered to comply with the law.

Compliant gloves are designed to minimize the effects of flame, heat, sharp objects and other hazards associated with structural fire fighting. Gloves must provide complete and secure thermal and moisture protection, and are designed to interfere as little as possible with movement and dexterity.

Gloves must extend at least 1 inch above the wrist, and must also contain a secure wristlet to prevent the entry of embers and other matter.

There are specific sizing criteria in the NFPA standard to ensure uniformity of hand measurement and sizing. These criteria are included in the standard.

Firefighters must remember that meeting standards for protection or resistance to certain substances or forces does not mean that a product will protect a firefighter from every possible condition experienced in the line of duty or that exceed the tests performed. Exposure to conditions that exceed the product's tested performance can lead to serious injury or death.

Compliance Deadlines

Gloves must comply with the standard at this time.

HEAD, EYE AND FACE PROTECTION (HELMETS AND PROTECTIVE HOODS)

Helmets must comply either with the existing OSHA standard for helmets, found in Federal regulations at 29 CFR Part 1910.156(e)(5), or NFPA 1972-1987, "Helmets for Structural Fire Fighting." The 1994 State PEOSHA regulation continues to approve of the current OSHA- standard helmet and adds the NFPA-standard helmet as an alternative.

Protective hoods must comply with NFPA 1971-1991, "Protective Clothing for Structural Fire Fighting."

Design and Performance Features

Helmets must protect the head, eyes and face, and must include ear flaps and a chin strap.

Helmets which meet the NFPA standard will bear a label specifically stating that it fully complies with NFPA 1972-1987. Helmets which comply with the OSHA standard will also bear a label specifically stating that it complies with the appropriate OSHA standard. Only helmets which bear one of these labels will be considered to comply with the law.

The NFPA performance requirements for helmets cover protection from impact, penetration, heat, flame and electricity. Ancillary features such as the chin strap, ear covers, face shield and

retroreflective markings are also designed to meet NFPA criteria, although the criteria and testing are not necessarily identical to those for the body of the helmet.

Face shields or goggles which comply with the standards will bear a label stating compliance with the requirements of 29 CFR 1910.134. The label will also point out that users may still require additional eye protection.

Protective hoods must protect areas of the head and neck excluding the face which is normally protected by the SCBA facepiece. Protective hoods which meet the NFPA standard will bear a label specifically stating that it fully complies with NFPA 1971-1991.

Firefighters must remember that meeting standards for protection or resistance to certain substances or forces does not mean that a product will protect a firefighter from every possible condition experienced in the line of duty or that exceed the tests performed. Exposure to conditions that exceed the product's tested performance can lead to serious injury or death.

Compliance Deadlines for Helmets and Protective Hoods

This regulation allows the use of helmets which comply with the existing OSHA standard, and allows the use of the NFPA helmet standard as an alternative.

Helmets must comply with this regulation at this time.

Protective hoods must be provided and worn at this time unless the hood interferes with the proper fit of the firefighter's helmet. If this is the case, a hood shall be provided at such time as the helmet becomes unserviceable and is replaced.

RESPIRATORY PROTECTION DEVICES

Respiratory protection equipment must comply with 29 CFR 1910.134 and NFPA 1981-1987, "Open-Circuit Self-Contained Breathing Apparatus for Firefighters." This is the 1987 edition of NFPA standard number 1981.

Employers must establish and maintain a respiratory protection program complying with 29 CFR 1910.134. This OSHA standard has been adopted by PEOSHA in its entirety.

Design and Performance Features

Respiratory protection equipment which complies with the NFPA standard will bear a label specifically stating that it complies with NFPA 1981. Only equipment that bears such a label will be considered to comply with the law.

To bear the NFPA label, this equipment must be certified by the National Institute of Occupational Safety and Health (NIOSH) and the Mine Safety and Health Administration. These organizations require that the equipment weigh no more than 35 pounds and carry at least a 30 minute supply of air.

Respiratory protection equipment must be of the open circulation type, which means that exhaled air is expelled from the equipment and not reused in anyway.

There are two types of open circulation systems, positive pressure and negative pressure. Only positive pressure open circulation systems comply with the NFPA standard. Devices which operate in positive pressure mode but can be switch to negative pressure mode do not meet the standard.

No respiratory protection equipment that has been approved by the Bureau of Mines complies with the NFPA standard, regardless of any grandfather provision or statement to the contrary by any government or private group.

Respiratory protection equipment must meet standards for airflow as well as resistance to heat, vibration and shock, flame, corrosion, dust, facepiece lens abrasion and voice communication.

Firefighters must remember that meeting standards for protection or resistance to certain substances or forces does not mean that a product will protect a firefighter from every possible condition experienced in the line of duty or that exceed the tests performed. Exposure to conditions that exceed the product's tested performance can lead to serious injury or death.

Compliance Deadlines

Respiratory protection equipment ordered or purchased after January 4, 1993 must comply with the NFPA standard.

Existing respirators which comply with the previous OSHA standards may be worn until they are unserviceable under certain conditions. Specifically, these respirators may be used with approved air cylinders from other approved systems as long as they are of the same capacity and pressure rating. Existing respirators which are switchable from demand to positive pressure mode must be used in positive pressure mode during all firefighting and overhaul work.

Career and volunteer firefighters must be provided with compliant respiratory protection equipment upon the next replacement of current equipment.

LIFE-SAFETY ROPE, HARNESS AND HARDWARE

Life safety rope, harnesses and hardware must comply with NFPA 1983-1985. This standard is the 1985 edition of NFPA standards number 1983.

This equipment need only be provided in those departments that train and perform rope rescue services. In those departments, this equipment need only be provided to those employees who perform rope rescue services.

Design and Performance Features

Firefighters must remember that meeting standards for protection or resistance to certain substances or forces does not mean that a product will protect a firefighter from every possible condition experienced in the line of duty or that exceed the tests performed. Exposure to conditions that exceed the product's tested performance can lead to serious injury or death.

Life Safety Rope

Life safety rope which meets the NFPA standard will bear a label specifically stating that it complies with NFPA 1983. It will also contain an identification tape wound into the full length of the rope bearing the same statement.

Only life safety ropes with both the label and the tape will be considered to comply with the law. Rope with a tape but without a label should not be used for rescue purposes, because removal of the label is one way of marking rope which is no longer suitable for rescue work.

Life safety rope must be of block creel construction, which means that lengths are made without knots or splices.

Life safety rope that has been previously used for rescue or non-rescue purposes should be destroyed or removed from use for rescue purposes. Failure to observe this recommendation could lead to serious injury or death because no acceptable means of testing used rope exists.

Life safety rope is available in two classes — one person rope and two person rope. Ropes which comply with the law will bear a label identifying whether it is one or two person rope. One person rope is designed with a maximum working load of at least 300 pounds. Its diameter must be between 1-1/8 and 1-1/2 inches. Two person rope has a maximum working load of at least 600 pounds and a diameter between 1-1/2 and 2-1/4 inches.

Life Safety Harnesses

Life safety harnesses which meet the NFPA standard will bear a cloth label or a riveted metal tag stating that it complies with NFPA 1983. Only harnesses with such a label or tag will be considered to comply with the law.

Webbing for these harnesses must be constructed of virgin continuous fibers and be at least 1-3/4 inches wide. Webbing, structural stitching and rivets are designed and tested to meet and exceed their intended use situations.

Harnesses are designated as being from one of three classes. Class I harnesses fasten around the waist. They are designed to secure one person to a ladder or to bear the weight of one person in an emergency rescue. Class I harnesses should not be worn by firefighters during efforts to rescue another person.

Class II harnesses are worn around the waist and around the thighs or under the buttocks. They are designed for use in rescue situations where two person loads (e.g., one firefighter and one victim) may be encountered.

Class III harnesses are fastened around the waist, around the thighs or under the buttocks, and over the shoulders. They are designed for rescue situations where a two person load and inverting may be encountered.

Life Safety Hardware

There is no NFPA label applied to life safety hardware, but load bearing hardware will carry the name of the manufacturer and the MIL-SPEC number, if applicable.

All hardware must be able to withstand corrosion in a laboratory salt spray test. In addition, all load-bearing hardware, buckles, rings, snap links, ascent and descent devices are tested to withstand forces that match and exceed expected use conditions. Snap-link gates, which are load bearing, gated fasteners, must lock automatically.

Compliance Deadlines for Life Safety Rope, Harnesses and Hardware

Life-safety rope, harness and hardware must comply with this standard at this time.

PERSONAL ALERT SAFETY SYSTEM

Personal Alert Safety System (PASS) devices must comply with NFPA 1982-1988. This is the 1988 edition of NFPA standard number 1982. However, devices which comply with the 1983 edition of this standard, NFPA 1982-1983, may continue in use until they become unserviceable.

PASS devices are motion-detector-based devices, worn by individual firefighters, which emit an alarm when a firefighter has not moved in approximately 30 seconds. The purpose of a PASS is to alert other firefighters that the wearer may be unable to move and in need of assistance. They must be worn by firefighters in the following situations:

1. While engaging in interior structural firefighting;
2. While working in confined spaces;
3. During all phases of overhaul

The PASS device shall be attached to the exterior of the firefighter's turnout gear.

Design and Performance Features

PASS devices which meet the NFPA standard will bear a label specifically stating that it fully complies with NFPA Standard 1982. There are 1988 and 1983 editions of this standard, and an explanation of which edition of the standard must be met is provided under "Compliance Deadlines." Only devices with labels specifically mentioning the appropriate standard will be considered to comply with the law.

PASS devices emit an alarm sound when the firefighter has not moved for approximately 30 seconds, or when the firefighter manually operates the alarm switch. They are battery-powered devices, weighing no more than 16 ounces, which can be attached to a firefighter's SCBA gear or elsewhere.

PASS are designed to be operated in three modes — automatic, manual and off. In automatic mode, the motion detector will activate a pre-alarm warning after approximately 30 seconds of no motion by the wearer. This warning sound will be distinct from the alarm sound. Motion sensed after the pre-alarm warning sound will return the device to automatic mode. Under normal operating conditions, the device will be able to sound its alarm for at least one hour.

- When the wearer or operator switches the device to manual mode, the alarm will sound within one second.
- In the off mode, the device does not function and there is no drain on battery power.

- The switch used to change modes must be operable by a hand wearing a heavy glove. Turning the switch to the off position requires two distinct motions to limit the possibility of accidental shutoff.

The device must also emit a low battery warning sound when the battery is drained to the point it would be unable to sustain a full alarm sound for one hour. The low battery warning is distinct from other sounds emitted by the device.

Firefighters must remember that meeting standards for protection or resistance to certain substances or forces does not mean that a product will protect a firefighter from every possible condition experienced in the line of duty or that exceed the tests performed. Exposure to conditions that exceed the product's tested performance can lead to serious injury or death.

Compliance Deadlines

A career or volunteer firefighter who does not currently have any PASS device must begin to wear a PASS device which complies with NFPA 1982-1988 by January 4, 1994.

A career or volunteer firefighter who has a PASS that does not comply with any edition of NFPA Standard Number 1982 must have a device which complies with NFPA 1982-1988 by January 4, 1994.

A career or volunteer firefighter whose current PASS complies with the 1983 edition of the NFPA standard (NFPA 1982-1983), must be issued a device which complies with the 1988 edition of the standard (NFPA 1982-1988) upon replacement of the current device.

HEARING PROTECTION

PEOSHA hearing protection standards do not apply to working in emergency situations. They apply only to the use of power tools or any other noise emitting devices during testing or other non-emergency situations.

In general noise above 90 decibels, when encountered in a non-emergency situation, requires hearing protection provided by the employer. However, hearing protection is not required (even in a non-emergency situation) if its use would create an additional hazard to the user.

Employers must engage in a noise reduction program to identify potentially harmful noise sources and reduce or eliminate these sources. The program should be described in writing by the employer and may be incorporated into the employer's Standard Operating Procedures.

Federal and state regulations on general workplace noise (N.J.A.C. 12:100-4.2(a)6 and US CFR 1910.95) also apply to firefighters.

Compliance Deadlines

Career and volunteer firefighters are covered by PEOSHA hearing protection rules at this time.

FILLING AIR CYLINDERS

Filling of air cylinders must be performed only by employees specifically trained to do this work.

Filling gas cylinders must be done only in areas equipped to protect the operator and nearby personnel.

Compliance Deadline

These regulations on filling air cylinders are effective at this time.

APPARATUS OPERATION AND PASSENGER SAFETY

All firefighters (except the driver) must don protective gear before boarding apparatus leaving the station for a fire or other emergency. No firefighter is allowed to put on protective coat, boots, pants, helmet or other protective gear while riding on moving apparatus.

Employers must provide seat belts or harnesses for all firefighters riding apparatus.

All fire apparatus purchased or remanufactured after January 4, 1993 must have enclosed seating with seat belts for all personnel riding on the apparatus.

Standards for this seating can be found in the following NFPA standards:

- Pumpers - NFPA 1901-1991
- Initial Attack - NFPA 1902-1991
- Mobile Water Supply - NFPA 1903-1991
- Aerial Ladder and Elevating Platform - NFPA 1904-1991.

These standards call for fully enclosed seats with seatbelts for whatever number of personnel is specified by the purchasing employer. A seat must be provided for each firefighter the apparatus is designed to carry.

Each seat must be at least 18 inches wide by 15 inches deep. Headroom must be at least 36 inches from the top of the cushion to any overhead obstruction. Each seat must have at least 22 inches shoulder room. Driver seats must be adjustable from front to back, and driver compartments must have seating capacity for at least two firefighters.

MAINTENANCE OF FIREFIGHTER EQUIPMENT

Any equipment required by PEOSHA rules must be removed from service if it is damaged or unserviceable.

Fire department aerial apparatus is required under these revised standards to be tested in accordance with NFPA 1914-1991, Testing Fire Department Aerial Devices. This standard calls for annual visual, operational and load testing. Additionally, every five years, or if the ladder is damaged or fails the annual testing, ladders shall be subjected to complete inspections and non-destructive testing as described in NFPA 1914-1991. 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 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.

Compliance Deadlines

This standard is in effect at this time.

APPENDICES

- A. NJ Public Employees Occupational Safety and Health Act (PEOSHA)
- B. NJ Public Employees Occupational Safety and Health Act (PEOSHA) Regulations

APPENDIX A
**NJ PUBLIC EMPLOYEES
OCCUPATIONAL HEALTH
AND SAFETY ACT**

**NEW JERSEY DEPARTMENT OF LABOR
DIVISION OF WORKPLACE STANDARDS**

**NEW JERSEY PUBLIC EMPLOYEES
OCCUPATIONAL SAFETY AND HEALTH ACT**

N. J. S. A. 34:6A-25 et. seq,

P. L. 1983, c. 516 effective January 17, 1984

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.

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.

34:6A-27 Definitions

As used in this act:

- a. "Advisory board" means the Public Employees Occupational Safety and Health Advisory Board created by N.J.S.A. 34: 6A-28.
- 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 purposes district create 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, N.J.S.A. 34:13A-l 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, N.J.S.A. 34: 13A-l et seq.;
- f. "Review commission" means the Occupational Safety and Health Review Commission created by N.J.S.A. 34:6A-42;
- g. "Secretary" means the Secretary of the United States Department of Labor;
- h. "Workplace" means a place where public employees are assigned to work.

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 the Department of Health, the Commissioner of the Department of Environmental Protection, the Commissioner of the Department of Community Affairs and the State Treasurer 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 healthcare facilities, one member representing employees of public healthcare 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 3 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.

34:6A-29 Plan for development and enforcement of standards: primary agency responsible for administration and enforcement

The commissioner shall, in consultation with the Commissioner of Health 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, Public Law 91-596 (29 U.S.C.651 et seq.).

The Department of Labor shall be the primary 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, provided, however, that the standards for building and structural safety shall not exceed those established by the Commissioner of Community Affairs pursuant to the State Uniform Construction Code Act, N.J.S.A. 52:27D-19 et seq. nor shall they exceed the standards for fire safety established by the Commissioner of Community Affairs pursuant to the Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et seq.;
- b. Provide for the right of entry and inspection of safety standards in all work places by the commissioner;
- c. Provide for the right of entry and inspection of health standards in all workplaces by the Commissioner of Health;
- d. Prohibit advance notice of inspections;
- e. Contain satisfactory assurances that the Department of Labor has the legal authority and qualified personnel necessary for the enforcement of the standards;
- 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 standards contained in the approved plan; and

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 then requires.

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

No sooner than 180 days after the effective date of this act, the commissioner shall provide at the minimum, 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. 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 and Consent of the advisory board, provide for the development of State standards as may be necessary in special circumstances. The commissioner shall meet with the advisory board at least four times a year for these purposes.

34:6A-31 Regulations to make law enforceable

The commissioner, in consultation with the Commissioner of health and the Commissioner of Community Affairs and with the advice and consent of the advisory board, shall by regulation:

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.

34:6A-32 Regulations for enforcement and administration of act; differentiation in application due to existence prior to promulgation; grant of variance without compliance with procedure; date of application to leases

The commissioner shall, in consultation with the Commissioner of Health and the Commissioner of Community Affairs and with the advice and consent of the advisory board, promulgate all regulations which he deems necessary for the proper administration and enforcement of this act. With respect to any regulations governing standards for either design or construction for structures or for equipment in laboratories of higher education institutions constituting, comprising or part of a workplace, the regulations may distinguish between structures completed or equipment in laboratories of higher education institutions purchased prior to the issuance of the regulations and those to be completed or purchased thereafter. Insofar as design and structural features of workplaces or equipment may, in the commissioner's judgement, be determined to comply with the requirements for a permanent variance as set forth in N.J.S.A. 34:6A-39c without the need for further inquiry into the particular practices, means, methods, operations or process used or to be used in any such workplace, the regulations may provide for the approval of those features, although they do not meet standards promulgated for new construction, without the necessity for a variance procedure. This exemption for obtaining a variance shall not apply to those areas specified in N.J.S.A. 34:6A-37a which are under the jurisdiction of the Commissioner of Health nor to any work for which a construction permit is required pursuant to the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq. and the regulations adopted thereunder, nor to any equipment, device, or procedure required pursuant to the Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et sec., and the regulations adopted thereunder.

Absent a clear and present danger to the employees' health or safety, nothing in this act shall be construed to require landlords of space leased by a public employer to physically upgrade said

premises beyond the level of health or safety rules and regulations in effect at the time the lease was executed. Deficiencies 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 the lease went into effect. However, a lease may not be entered into after promulgation of safety rules and regulations pursuant to this act unless the leased property is in conformance with such rules and regulations.

34:6A-33 Duties of employer

Every employer shall:

- a. Provide each of his employees with employment and place of employment which are free from recognized hazards which may cause serious injury or death to his employees;
- b. Comply with occupational safety and health standards promulgated under this act; and
- c. In the absence of existing standards take all prudent measures to comply with written recommendations made by the Commissioner, the Commissioner of Community Affairs or the Commissioner of Health to reduce the risk of exposure to unsafe or unhealthy conditions which have been shown to be detrimental to employee health or safety. A written rationale including the scientific basis for each recommendation shall be presented to the affected employer.

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.

34:6A-35 Inspections by commissioner; right of entry; records; availability to public; notice of violations

- a. The commissioner shall be charged with making inspections in all regulated areas, except as may be provided pursuant to N.J.S.A. 34:6A-37a.
- b. The commissioner shall have the right of entry at reasonable hours into any workplace when he has reason to believe that a violation of safety standards exists and to conduct such investigations as he may deem necessary. The commissioner shall maintain records of the results of any such investigation, which shall be made available to the public upon request. The authority of the commissioner to inspect any premises for purposes of investigating an alleged violation of safety standards 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 the safety standards promulgated under this act exists.
- c. If the commissioner concludes that conditions or practices in violation of the prescribed safety standards exist in any workplace, he shall inform the affected employees and employers of the danger.

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. The commissioner shall give affected public employers notice that a complaint has been filed within five working days from receipt of the complaint, except that on 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.

34:6A-37 Inspection by commissioner of health; right of entry; records; availability to public; notice of violations

a. The Commissioner of the Department of Health shall be charged with making inspections in the following areas:

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

b. The Commissioner of Health or his designee shall have the right of entry at reasonable hours into any workplace when he has reason to believe that a violation of health standards exists and to conduct such investigations as he may deem necessary. The Commissioner of Health shall maintain records of the results of any such investigation, which shall be made available to the public upon request. The Commissioner of Health shall make the records available to the commissioner for purposes of enforcement and for the purpose of reporting to the Secretary. The authority of the Commissioner of Health to inspect any premises for purpose of investigating an alleged violation of health standards 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 the health standards promulgated under this act exists.

c. If the Commissioner of Health concludes that conditions or practices in violation of the prescribed health standards exist in any workplace, he shall inform the affected employees and employers of the danger.

34:6A-38 Inspection by commissioner of health or of community affairs 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 health standard or of a building, fire safety or structural standard exists, or that an imminent danger exists, may request an inspection by giving notice to the Commissioner of Health or to the Commissioner of Community Affairs, as the case may be, 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. The Commissioner of Health or the Commissioner of Community Affairs, as the case may be, shall give affected public employers notice that a complaint has been filed within five working days from receipt of the complaint, except that on the request of the person giving the notice, his name or any employee representative giving the notice shall be withheld. The Commissioner of Health or the Commissioner of Community Affairs, as the case may be, 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 of Health or the Commissioner of Community Affairs 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 and the Commissioner of Community Affairs shall consult with a reasonable number of employees concerning matters of building, structural and fire safety 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 or the Commissioner of Community Affairs under this section shall be obtained with a minimum burden upon the employer.

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, N.J.S.A. 52:14B-1 et seq. and 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 standards; 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 an 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 first hand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor;

(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., N.J.S.A. 52:14B-1 et seq. and 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 possible under the circumstances justifying the variance. 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 employees 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. In determining whether to grant a variance from a building, fire safety or structural safety standard, the commissioner shall consult with the Commissioner of Community Affairs.

34:6A-40 Employers' records; availability for five years to commissioner and commissioner of health; public inspection; notice to employees of exposure to toxic materials in excess of standards allowed

In accordance with the commissioner's regulations, each employer shall make available for up to five years 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 developing information regarding the causes and prevention of occupational accidents and illness.

b. Such records, which shall be available for public inspection, regarding periodic reports of work-related deaths, and injuries and illnesses which involve lost time from work, medical treatment, loss of consciousness, restriction of work of motion, or which necessitate transfer to another job or function.

c. Such records regarding employee exposure to potentially toxic materials or other harmful physical agents which the regulations require to be monitored or measured. Each employee or former employee shall be informed of 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 of 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 N.J.S.A. 34:6A-41a.

34:6A-41 Violations; determinations; written order of compliance; posting; 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 or health standard or regulation promulgated under this act, he shall with reasonable promptness issue to the employer a written order to comply which shall describe the nature of the violation, including a reference to the provision of this section, standard, regulation or order alleged to have been violated, the sanction therefor, where appropriate, and shall fix a reasonable time for compliance. Determinations regarding health standards, and written orders issued pursuant thereto, shall be made in consultation with the Commissioner of Health.

b. Where 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.

c. 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, within its powers and financial resources, the employer shall be liable to a penalty of not more than \$1,000.00 per day to be collected in a civil action commenced by the commissioner by a summary proceeding under The Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. in the Superior Court, county district court, or a municipal court, all 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 department shall constitute an additional separate and distinct offense.

d. 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, including a rebate of any such penalty paid up to 90% thereof where such person satisfies the commissioner within one year or such other period as the commissioner may deem reasonable that such violation had been eliminated or removed or that such order or injunction has been met or satisfied, as the case may be. 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.

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 from citations, notifications 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 in appeals from citations, notifications and penalties issued under this act. The Review Commission shall adopt rules with respect to the procedural aspects of its hearings.

d. 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 within 30 days of the issuance of the report.

e. In the conduct of hearing the Review Commission may subpoena and examine witnesses, require the production of evidence, administer oaths and take testimony and depositions.

f. After hearing an appeal the Review Commission may sustain, modify or dismiss a citation or penalty.

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.

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 N.J.S.A. 34:6A-41, are such that a danger exists which could reasonable 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 dangers exist.

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, bring an action in the Superior Court against the person alleged to have violated the provisions of this section. In any such action, the Superior Court shall have jurisdiction, for cause shown, to restrain violations of this section and order all appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay.

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 negotiations 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.

34:6A-46 Expenditures to meet standards; exemption from limits imposed by law

The provisions of any law to the contrary notwithstanding, any expenditures required to meet the standards established by this act shall be exempt from any expenditure or appropriation increase limitation imposed under any law.

34:6A-47 Advisors to commission on 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 of Capital Budgeting and Planning on matters of workplace safety and health, to ensure that new construction meets the standards established by this act.

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.

34:6A-49 Inapplicability of act to State Uniform Construction Code Act or Uniform Fire Safety Act

Nothing in this act shall be deemed to conflict with or supersede any provision of the State Uniform Construction Code Act, N.J.S.A. 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. Nothing in this act shall be deemed to conflict with or supersede any provision of the Uniform Fire Safety Act, N.J.S.A. 52:27D192 et seq., 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.

34:6A-50 Appropriations

There is appropriated the sum of \$100,000.00 from the General Fund to effectuate the purposes of this act. The sum appropriated herein shall be allocated by the Director of the Division of Budget and Accounting to the Departments of Labor and Health upon his approval of an application therefor.

34:61-51 Effective date

This act shall take effect immediately, except that the standards adopted pursuant to N.J.S.A. 34:6A-30 shall not become operative with regard to any employer as defined in N.J.S.A. 34:6A-27c(1) until the first day immediately following the first year after the standards otherwise take effect, and further, that the standards adopted pursuant to N.J.S.A. 34:6A-30 shall not become operative with regard to any employer as defined in N.J.S.A. 34:6A-27c(2) until the first day immediately following the second year after the standards otherwise take effect.

APPENDIX B
NJ PUBLIC EMPLOYEES
OCCUPATIONAL HEALTH
AND SAFETY ACT
REGULATIONS

**SUBCHAPTER 10
STANDARDS FOR FIREFIGHTERS**

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 contacting the issuing entities at the addresses listed in N.J.A.C. 12:100-17.3.

12:100-10.2 Definitions

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.

“Career firefighter” means any person who has his or her primary employment as a firefighter, who ordinarily works at that employment at least 20 hours per week and who is enrolled as a firefighter in a public retirement system.

“Career fire service” means a fire department or fire brigade which is composed of persons who have chosen firefighting or related duties as their occupation in paid, part-paid fire departments or fire districts.

“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 adjacent 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, and energy absorbing system, a retention system, fluorescent retro-reflective markings, ear covers and faceshield.

“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.

“Volunteer firefighter” means any person other than a career firefighter who services as a firefighter in a public or private firefighting agency or organization.

“Volunteer fire service” means a fire department or brigade composed of persons who provide their services without compensation in the public interest.

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 of 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 (1-100), 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.

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.

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

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.

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 1971-1 986, 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 firefighters as follows:

1. The performance, construction and testing of station/work uniforms shall be at least equivalent to NFPA 1975-1985, Station/Work Uniform for Firefighters, incorporated herein by reference; or
2. Apparel issued in the firefighter must be of a non-meltable material, such as cotton.

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 No. 1973-1988, Gloves for Structural Fire Fighting incorporated herein by reference.

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 standard 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.

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 No. 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.

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 No. 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.

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 standard 1982-1983, Personal Alert Safety Systems (PASS) for Firefighters, 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 No. 1982-1988, Personal Alert Safety Systems (PASS) for Firefighters, incorporated herein by reference.

(d) Approved personal alert safety systems shall be provided and worn by the firefighters 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.

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.

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.

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 No. 1901-1991 Pumper Fire Apparatus;
2. NFPA No. 1902-1991 Initial Attack Fire Apparatus;
3. NFPA No. 1903-1991 Mobile Water Supply Fire Apparatus; and
4. NFPA No. 1904-1991 Aerial Ladder and Elevating Platform Fire Apparatus.

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 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.

Notes from September 2023 review and update:

NJ PEOSH recommended that the following points be added to this document.

NJ PEOSH has a voluntary, consultative group that will help agencies reach and maintain compliance. Info on this can be found on the NJ DOL PEOSH web site.

NJ PEOSH has a program called SHARP which will earn an agency freedom from unannounced programmed inspections (but not inspections related to referrals/complaints/injuries). Info on this can be found on the NJ DOL PEOSH web site.

NJ PEOSH requires agencies to inspect their own gear and address deficiencies which may contribute to injuries/illnesses, and to do so in a manner approved by the manufacturer of that gear.

NJ PEOSH itself does not have a position on the so-called 10-year rule. If agencies choose to adopt NFPA standards such as a 10-year rule which exceed PEOSH rules, they are responsible for compliance.

NJ PEOSH requires NO facial hair which interferes with the proper seal of an SCBA.