

LEXSTAT 40 NJR 1069(A)

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RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
PUBLIC SAFETY AND OCCUPATIONAL SAFETY AND HEALTH**

40 N.J.R. 1069(a)

Proposed New Rule: *N.J.A.C. 12:90-5.16*

Proposed Amendments: *N.J.A.C. 12:90-2.1, 4.13 and 5.14*

Proposed Recodification with Amendments: *N.J.A.C. 12:90-5.16 as 5.17*

[Click here to view Interested Persons Statement](#)

Boilers, Pressure Vessels and Refrigeration

Inspection of Boilers and Pressure Vessels

Authorized By: David J. Socolow, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:7-18* and Reorganization Plan No. 002-2002.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2008-50.

A **public hearing** on the proposed amendments and new rule will be held on the following date at the following location:

Thursday, March 20, 2008
10:00 A.M. to 12:00 Noon
New Jersey Department of Labor and Workforce Development
John Fitch Plaza
1st Floor Conference Room
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by May 2, 2008 to:

David Fish, Regulatory Officer
Office of Legal and Regulatory Services
P.O. Box 110, 13th Floor
Trenton, New Jersey 08625-0110
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The agency proposal follows:

Summary

P.L. 2003, c. 117, codified in pertinent part at *N.J.S.A. 34:7-3*, 14, 15, 16, 19 and 25, sets fees pertaining to the inspection of boilers, pressure vessels and refrigeration systems for fiscal years 2003-04 and 2004-05 and instructs that after fiscal year 2004-05, "such fees may be adjusted by the Commissioner of Labor (and Workforce Development) in accordance with fee schedules adopted by regulation." Pursuant to the fee adjustment provision in P.L. 2004, c. 117, the Department is proposing to amend *N.J.A.C. 12:90-4.13*, the section which addresses the fee charged for the field inspection of boilers, so as to raise the fee that an insurance company making an annual field inspection must pay to the Department from \$ 40.00 to \$ 50.00.

The Department is also proposing amendments to *N.J.A.C. 12:90-2.1* and *5.14* and a new rule at *N.J.A.C. 12:90-5.16*, which would for the first time comprehensively address the field inspection of pressure vessels. Existing *N.J.A.C. 12:90-5.14* only partially addresses the issue of field inspection of pressure vessels, requiring that pressure vessels and unfired boilers that are under the supervision of a registered owner-user inspection agency shall be inspected at intervals required by the National Board Inspection Code (NBIC) or American Petroleum Institute-510 (API-510), Pressure Vessel Inspection Code, as applicable, and requiring the retention of certain inspection records by those owner-user inspection agencies. The proposed amendments and new rule would explicitly require that each pressure vessel, except for "UM" stamped pressure vessels, shall be subject to an initial field inspection, which shall take place within a period of no more than three years from the effective date of the proposed amendments and new rule. The proposed amendments and new rule would also require that after the performance of the initial field inspection, each pressure vessel (with the exception of pressure vessels which are under the supervision of a registered owner-user inspection agency) shall receive a certificate of inspection triennially. Finally, the proposed amendments and new rule would establish a fee schedule for the performance of field inspections of pressure vessels.

N.J.S.A. 34:7-14b, which addresses the inspection of pressure vessels, states that "all other pressure vessels [that is, all pressure vessels other than those covered under *N.J.S.A. 34:7-14a*; which is to say, essentially, all pressure vessels which are not boilers] **may** be inspected and be subject to test after installation and periodically at such intervals as the commissioner [of labor and workforce development] may by rule establish." (emphasis added). *N.J.S.A. 34:7-14a*, by comparison, which addresses the inspection of boilers, states that "all steam or hot water boilers or similar equipment capable of generating steam . . . **shall** be inspected and be subject to a hydrostatic test, if necessary, at least once each year, at 12-month intervals . . ." (emphasis added). Apparently, it is because requiring the field inspection of "all other pressure vessels" is by law discretionary (that is, at the discretion of the Commissioner of Labor and Workforce Development), whereas, requiring the field inspection of boilers is by law mandatory, that there have prior to now been no rules promulgated which explicitly require the field inspection of "other pressure vessels" and which set a fee schedule for such inspections.

It is in the public interest (that is, the public's interest in their own safety) that there be uniform standards for the field inspection of pressure vessels. The reality is that many if not most of the pressure vessels in New Jersey are located in close proximity to boilers and, so, have been field inspected over the years in conjunction with the mandatory field inspection of boilers. However, these field inspections of pressure vessels have prior to now not been conducted in accordance with any regulatory mandate. Consequently, they have been conducted with none of the structure and reliability which accompanies the publication of uniform field inspection standards. Moreover, these field inspections have been conducted without the financial support which comes from the charging of reasonable fees for same. Indeed, the law (*N.J.S.A. 34:7-14b*), which as mentioned above, gives the Commissioner of Labor and Workforce Development the discretion to, by regulation, prescribe the field inspection of pressure vessels, also (see *N.J.S.A. 34:7-15b*) permits the Commissioner of Labor and Workforce Development to, by regulation, set a fee schedule for such field inspections of pressure vessels. It is on the basis of the foregoing and within the discretion granted the Department by the legislature under *N.J.S.A. 34:7-14* and *34:7-15* that the Department proposes amendments to *N.J.A.C. 12:90-2.1* and *5.14* and a new rule at *N.J.A.C. 12:90-5.16*, which would set forth a uniform standard for the field inspection of pressure vessels and which would establish a reasonable fee schedule for the support that field inspection program.

In addition, the Department is proposing amendments to existing *N.J.A.C. 12:90-5.16* (proposed for recodification at *N.J.A.C. 12:90-5.17*), which would address the registration of pressure vessels and clarify when and how pressure

vessels must be registered with the Bureau of Boiler and Pressure Vessel Compliance. It is the Department's belief that existing *N.J.A.C. 12:90-5.16* is unnecessarily confusing in that it speaks of "unfired pressure vessels" generally, then addresses pressure vessels "registered with the National Board," then mentions pressure vessels "inspected by State inspectors," then addresses "instances other than (b) or (c) above," without explicitly indicating which sort of pressure vessels that would include. Instead, the proposed amendments would indicate simply that each pressure vessel must be registered with the Bureau of Boiler and Pressure Vessel Compliance, with the exception of UM pressure vessels exempt from inspection under *N.J.A.C. 12:90-5.13(b)* and pressure vessels inspected by an owner-user inspection agency registered with the Bureau of Boiler and Pressure Vessel Compliance under *N.J.A.C. 12:90-5.19*. The proposed amendments would then also make clear that in lieu of registration, when a facility has registered as an owner-user inspection agency in accordance with *N.J.A.C. 12:90-5.19*, the facility is required to maintain a listing of each pressure vessel at that facility and must, during the triennial audit required under *N.J.A.C. 12:90-5.19(e)*, provide the listing of pressure vessels to the Bureau of Boiler and Pressure Vessel Compliance. Finally, the proposed amendments would for the first time require that when a pressure vessel is registered with the Bureau of Boiler and Pressure Vessel Compliance and after it has been inspected by a certified inspector, it must receive a jurisdiction number. The introduction of a uniformly applied jurisdiction number system for pressure vessels is an important component of the Department's overall regulatory scheme as it appears within *N.J.A.C. 12:90* and as it pertains, specifically, to the regulation of pressure vessels. With the uniform assignment of jurisdiction numbers, the Bureau of Boiler and Pressure Vessel Compliance will be assisted in its ongoing effort to promote the safe operation of pressure vessels throughout the State, as is its charge under *N.J.S.A. 34:7-14* et seq. Incidentally, with the proposed amendments to *N.J.A.C. 12:90-5.16* (proposed for recodification as *N.J.A.C. 12:90-5.17*) comes the elimination of a \$ 4.00 fee, which had been charged for the filing with the Bureau of Boiler and Pressure Vessel Compliance of data reports of the manufacturer of pressure vessels, in instances other than those addressed under existing *N.J.A.C. 12:90-5.16(a)* or (b).

The proposed amendments to *N.J.A.C. 12:90-2.1* would facilitate the other proposed amendments at *N.J.A.C. 12:90-5.14* and *5.16* (recodified as *5.17*) and the new rule at *N.J.A.C. 12:90-5.16* (recodified as *5.17*), in that they would add definitions for words and terms used throughout the amendments and new rule, such as "certificate of inspection," "chief inspector," "in-service," "in-service inspection" and "inspector." The proposed amendments to *N.J.A.C. 12:90-2.1* would also correct errors in the existing definitions, namely, the use in certain instances of the term "owner or user" when the appropriate term is "owner-user," the use in certain instances of the term "certificate of inspection," when the appropriate term is "certificate inspection," and, finally, use in one instance of the term "chief boiler inspector," when the appropriate term is "chief inspector."

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to *N.J.A.C. 1:30-3.3(a)5*.

Social Impact

The proposed amendments and new rule would have a positive social impact in that the uniform standard for registration and inspection of pressure vessels introduced thereby would greatly assist the Department in fulfilling its statutory charge under *N.J.S.A. 34:7-14* et seq., that is, ensuring through appropriate inspection, the safe operation of boilers, pressure vessels and refrigeration systems throughout the State. Moreover, the collection of appropriate fees for the field inspection of pressure vessels would generate much needed revenue for the Department, which would further enable the Department to more effectively meet its enforcement obligations under the law with regard to the inspection of boilers, pressure vessels and refrigeration systems. The Department's improved enforcement capability would, in turn, benefit the general public in that they would be considerably safer when working or living in or near the numerous structures throughout the State which contain boilers, pressure vessels and refrigeration systems.

Economic Impact

The proposed amendments and new rule would increase the fee for the annual field inspection of boilers by insurance companies from \$ 40.00 to \$ 50.00. In addition, the proposed amendments and new rule would for the first time impose a schedule of fees for the field inspection of pressure vessels. As indicated earlier, the proposed amendment to *N.J.A.C. 12:90-5.16* (proposed for recodification at *N.J.A.C. 12:90-5.17*) would also eliminate a fee of \$ 4.00 which had been charged to certain owners and users for the filing of manufacturer data reports. The first time fee schedule for field inspection of pressure vessels and the increase in the fee for annual field inspection of boilers by insurance companies would increase the revenues received by the Department from fees associated with the inspection of boilers and pressure vessels. Conversely, the proposed amendments and new rules would increase the amount of fees paid by owners and

operators of boilers and pressure vessels who are responsible for ensuring that these objects are regularly inspected. The Department believes that the negative economic impact on such persons which would result from the proposed increase in fees and imposition of first time fees would, as indicated within the Social Impact statement above, be outweighed by the positive social impact on the public, namely, the improvement in the safety of boilers, pressure vessels and refrigeration systems which would result from the influx of much needed funds to the Bureau of Boiler and Pressure Vessel Compliance. The Department has certain statutory obligations with regard to the inspection of boilers, pressure vessels and refrigeration systems which, at current revenue levels, it will be unable to meet. The proposed increase in fees and imposition of first time fees should enable the Department to more effectively address these statutory obligations. The proposed fee schedule for the field inspection of pressure vessels and the proposed increase in the fee for the field inspection of boilers by insurance companies is comparable to the fees charged by jurisdictions throughout the United States where equivalent services and protections are afforded, such as New York, Connecticut, Rhode Island, California and Michigan.

Federal Standards Statement

The proposed amendments and new rule are governed by *N.J.S.A. 34:7-14* et seq., and are not subject to any Federal standards or requirements. Therefore, a Federal standards statement is not required.

Jobs Impact

The Department does not anticipate that the proposed amendments or new rule would have an impact on either the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments and new rule would have an impact on the agriculture industry to the extent that those in the industry may own or operate boilers or pressure vessels, in which case those persons would be required to remit the same increased fees and/or first time fees for inspections associated with the ownership and operation of such equipment. The actual impact upon such persons would, of course, vary depending on the size, nature and condition of the equipment.

Regulatory Flexibility Analysis

The proposed amendments and new rule would require the field inspection of covered pressure vessels and would set forth a fee schedule for the performance of such inspections. The proposed amendments would also require that each pressure vessel be registered with the Department and receive a jurisdiction number following inspection by a certified inspector, with the exception of UM pressure vessels and pressure vessels inspected by an owner-user inspection agency. In addition, the proposed amendments and new rule would increase the existing fee charged for the annual field inspection of boilers by insurance companies. The owners and users of boilers or pressure vessels who would be affected by these reporting and compliance requirements and who would also be affected economically by the increase in fees and imposition of certain new fees could include small businesses as that term is defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. As explained earlier in the Economic Impact statement, the Department believes that the negative economic impact on such persons which would result from the proposed amendments and new rule would be outweighed by the improvement in safety of boilers, pressure vessels and refrigeration systems throughout the State. The Department does not anticipate that professional services will be needed in order to comply with the proposed amendments.

With regard to how the proposed amendments and new rule are designed to minimize adverse impact on small businesses, the Department has determined that the proposed fee increase and imposition of new fees are the minimum necessary in order to more effectively enforce *N.J.S.A. 34:7-14* et seq. and thereby protect the lives and safety of persons who work with, or who live or work in proximity to boilers, pressure vessels and refrigeration systems.

Smart Growth

The proposed amendments and new rule would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

12:90-2.1 Definitions

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

...

"Authorized inspection agency" means one of the following:

1.-2. (No change.)

3. An [owner or user] **owner-user** of pressure vessels who maintains an established inspection department, whose organization and inspection procedures comply with the requirements of the National Board or the American Petroleum Institute, as applicable, and which is registered with the Bureau of Boiler and Pressure Vessel Compliance (BBPVC).

...

"Certificate [of] inspection" means an inspection, the report of which is used by the [chief boiler inspector] **Chief Inspector** as justification for issuing, withholding or revoking the [certificate] **Certificate of Inspection** as provided for in *N.J.S.A. 34:7-24*.

"Certificate of Inspection" means the document which is issued by the Chief Inspector indicating that the pressure retaining item meets the requirements of this chapter.

...

"Chief Inspector" means the Chief of the Bureau of Boiler and Pressure Vessel Compliance.

...

"In-service" means the term as it is defined in the National Board Inspection Code or API-510, Pressure Vessel Inspection Code, as applicable.

"In-service inspection" means an external or internal inspection made by an Inspector in order to determine that the pressure-retaining item complies with the requirements of this chapter.

"Inspector" means the Chief Inspector, State Inspector, Agency Inspector or Owner-User Inspector.

...

12:90-4.13 Fee for field inspection

(a) An insurance company making an annual field inspection shall pay a fee of [\$ 40.00] **\$ 50.00** for each boiler inspected. The insurance company shall pay the fee to the Commissioner of Labor and Workforce Development within 30 days of performing the inspection.

(b)-(d) (No change.)

12:90-5.14 Field inspection of unfired pressure vessels

(a) Each pressure vessel, except for "UM" stamped pressure vessels, shall be subject to either initial in-service inspection (for a newly manufactured pressure vessel) or initial field certificate inspection (for an existing pressure vessel).

(b) The initial field certificate inspection of existing pressure vessels shall take place within a period of no more than three years from the effective date of (a) above.

(c) After performance of the initial in-service inspection or initial field certificate inspection under (a) above, each pressure vessel, with the exception of pressure vessels that are under the supervision of a registered owner-user inspection agency, shall receive a certificate inspection triennially.

[(a)] (d) (No change in text.)

12:90-5.16 Fee for field inspection

(a) An insurance company making a field inspection shall pay a fee of \$ 30.00 for each pressure vessel inspected. The insurance company shall pay the fee to the Commissioner of Labor and Workforce Development within 30 days of performing the inspection.

(b) The owner or user may request a field inspection by the State.

(c) The fee for a State field inspection of a pressure vessel shall be in accordance with the following schedule:

1. \$ 20.00 for vessels not over 30 square feet in size;
2. \$ 40.00 for vessels over 30 but not over 60 square feet in size;
3. \$ 60.00 for vessels over 60 but not over 100 square feet in size; and
4. \$ 80.00 for vessels over 100 square feet in size.

(d) The size of a pressure vessel under (c) above shall be determined by multiplying the extreme diameter of the pressure vessel by the length of the pressure vessel.

(e) The owner-user may make arrangements for the field inspection of a pressure vessel by an owner-user inspector in lieu of either field inspection by an insurance company under (a) above or field inspection by the State under (c) and (d) above.

(f) Where a pressure vessel is being inspected by an owner-user inspector under (e) above, the owner-user inspector shall inspect the pressure vessel at the interval established for that pressure vessel under either the National Board Inspection Code or the API-510.

(g) Where a pressure vessel is being inspected by an owner-user inspector under (e) above, the owner-user inspector shall on an annual basis record with the Department all inspections performed during the preceding year accompanied by a fee in accordance with the following schedule:

Owner-User Inspection Agency

	Owner-User Object Cost Per Pressure Vessel -----	Table 5.16 Minimum Number Of Pressure Vessels Inspected -----	Maximum Number Of Pressure Vessels Inspected -----
1	\$ 15.00	1	Up to 25
2	\$ 7.50	26	Up to 100

Owner-User Inspection Agency

Table 5.16			
3	\$ 6.00	101	Up to 500
4	\$ 4.50	501	And Over

(h) All fees under (g) above shall be paid to the Commissioner of Labor and Workforce Development.

12:90-[5.16]5.17 Registration of unfired pressure vessels and fees

(a) [Unfired] **Each unfired** pressure vessel[s] shall be registered with the Bureau of Boiler and Pressure Vessel Compliance **and shall receive a jurisdiction number following inspection by a certified inspector, except for the following:**

1. UM pressure vessels exempt from inspection under N.J.A.C. 12:90-5.13(b), or

2. Pressure vessels inspected by an owner-user inspection agency registered with the Bureau of Boiler and Pressure Vessel Compliance under N.J.A.C. 12:90-5.19.

[(b) Unfired pressure vessels registered with the National Board need not be registered with the Bureau of Boiler and Pressure Vessel Compliance if the owner has been provided with a legible copy of the original National Board registered manufacturers' data report and retains it on file for the life of the unit.

(c) No original registration or registration fee shall be required for vessels inspected by State inspectors, since registration is made by the State inspector.

(d) In instances other than (b) or (c) above, the data reports of the manufacturer, in duplicate, with a registration fee of \$ 4.00 for each unfired pressure vessel, shall be forwarded to the Bureau of Boiler and Pressure Vessel Compliance for registration.

1. When registered, one copy of the manufacturer's data report shall be returned to the user of the unfired pressure vessel.

2. If reports are not filed, the unfired pressure vessel shall be subject to State inspection and State inspection fees shall be assessed.]

(b) When a facility has registered as an owner-user inspection agency in accordance with N.J.A.C. 12:90-5.19, the facility shall maintain a listing of each pressure vessel at that facility and shall, during the triennial audit required under N.J.A.C. 12:90-5.19(e), provide the listing of pressure vessels to the Bureau of Boiler and Pressure Vessel Compliance.

Recodify existing 12:90-5.17 and 5.18 as **5.18 and 5.19** (No change in text.)