

VOLUME 45, ISSUE 8

ISSUE DATE: APRIL 15, 2013

RULE ADOPTIONS

**LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF EXAMINERS OF HEATING, VENTILATING, AIR
CONDITIONING, AND REFRIGERATION CONTRACTORS**

Adopted New Rules: N.J.A.C. 13:32A

**State Board of Examiners of Heating, Ventilating, Air Conditioning, and Refrigeration
Contractors Rules**

Proposed: March 19, 2012 at 44 N.J.R. 647(a).

Adopted: July 12, 2012 by the State Board of Examiners of Heating, Ventilating, Air
Conditioning, and Refrigeration Contractors, Michael Maloney, President.

Filed: March 18, 2013 as R.2013 d.060, **with substantial and technical changes** not requiring
additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 45:1-15.1, 45:1-21, and 45:16A-1 et seq., specifically 45:16A-4.

Effective Date: April 15, 2013.

Operative Date: October 15, 2013.

Expiration Date: April 15, 2020.

Summary of Public Comments and Agency Responses follows:

The official comment period ended May 18, 2012. The Board received 33 comments from the
following individuals:

1. Daniel Medler, Ambient Conditioning, Inc.
2. Keith J. Elmo, President, Kelin Heating - Air Conditioning, Inc.
3. James W. Jarvis, Sr., Kolmin-Jarvis Electric, LLC

4. Louis Capuano, President, Pascack Valley Master Plumbers Association
5. James B. Kehoe, President, New Jersey State Association of Pipe Trades
6. Stephen Dzieminski, President, New Jersey Association of Plumbing, Heating, and Cooling Contractors
7. Doug Collier, Director of Building Services, H.T. Lyons, Inc.
8. Robert Haitmanek, Education Director, Local 68 Education Fund, International Union of Operating Engineers
9. Thomas Krall, Miller & Chitty Co., Inc.
10. Eric Degesero, Executive Vice President, Fuel Merchants Association of New Jersey
11. Bruce Negri, Apprenticeship & Training Representative, United States Department of Labor, Employment & Training Administration Office of Apprenticeship
12. Gary D. Poppe, President, New Jersey Ground Water Association
13. Michael Moscatiello
14. Edward P. Latacz II, Bus. Mgr. Sec. Treas., International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths and Forgers & Helpers
15. Thomas F. Walsh, Plumbing Subcode Official, Mechanical Inspector, ASSE Professional Qualifications Instructor, ASSE Professional Qualifications Proctor
16. Frank M North, Vice President, BR & PV Rules Board Member
- [page=911] 17. John Moscatiello, Director, The Training Center
18. Joe Roberts, J.J. Roberts, Inc. Heating and A/C
19. Brian Bovio, Bovio Advanced Comfort & Energy
20. Angela Hines, Rubino Services Co.
21. David Indursky, Encon Mechanical
22. Allen Hauber, Bob Mims Heating & Air
23. Bobby Ring, Meyer & Depew
24. Scott Nelson, Ocean Air Doctors

25. Bob McAllister, McAllister Fuels
26. Fred Hutchinson, Hutchinson PHC
27. Bornstein Sons, Inc.
28. Pete Sanders, President, Sanders Home Services
29. Robert Davis, Business Representative, Operating Engineers, Local 825
30. Bill Alber, President, Alber Service Company, BPI Certified Auditor & Systems Specialist
31. Keith Doell, First Source Contracting LLC
32. James K. Eastbrook, Lindabury, McCormick, Estabrook & Cooper, P.C.
33. Fred Sickels, Director, Division of Water Supply and Geoscience, Department of Environmental Protection

1. COMMENT: A commenter asks how David M. Puteska represents heating, ventilating, air conditioning, and refrigeration (HVACR) contractors.

RESPONSE: David M. Puteska was the acting Deputy Director of the Division of Consumer Affairs and acting Executive Director of the Board at the time the rules were proposed. He does not represent HVACR contractors.

2. COMMENT: One commenter asks if licensed master HVACR contractors will need to maintain registration as Home Improvement Contractors if they limit themselves to HVACR services. The commenter posits a situation where a licensed master HVACR contractor pours a concrete pad for an air conditioning unit and asks if this would be considered a home improvement.

RESPONSE: A licensed master HVACR contractor will not be required to be registered as a Home Improvement Contractor in order to provide HVACR services. N.J.S.A. 56:8-140 exempts from Home Improvement Contractor registration requirements any person licensed by the State, as long as he or she is acting within the scope of practice of his or her license. As to the specific scenario posited, a licensed master HVACR contractor who pours a concrete pad ancillary to the installation of an air conditioning unit, would be viewed by the Board as acting within the scope of practice, and thus covered by the exemption in N.J.S.A. 56:8-140.

3. COMMENT: A commenter contends that N.J.A.C. 13:32A does not address the impact the adoption of regulations will have on HVACR jobs that are in progress. The commenter asks if an HVACR contractor will need to obtain new permits for jobs that are in progress when he or she initially obtains his or her license. The commenter recommends that N.J.A.C. 13:32A apply only to jobs and projects that began after the regulations are adopted and the grandfathering period

has expired.

RESPONSE: The Board does not have authority over permits and cannot dictate what standards are imposed for permits by municipalities. Pursuant to N.J.S.A. 45:16A-7, an individual working as a master HVACR contractor must be licensed by the Board.

4. COMMENT: One commenter asks if the new HVACR license will allow a licensed master HVACR contractor to perform all HVACR work.

RESPONSE: Yes, a licensed master HVACR contractor will be permitted to perform all HVACR work.

5. COMMENT: Two commenters agree with licensing requirements for master HVACR contractors, but contend that N.J.A.C. 13:32A is an attempt by the State Board of Examiners of Master Plumbers to assert its jurisdiction over plumbers, electricians, steamfitters, HVACR service technicians, gas and oil burner service technicians, and boilermakers.

RESPONSE: The State Board of Examiners of Master Plumbers does not have any authority over the Board or licensed master HVACR contractors.

6. COMMENT: A commenter contends that N.J.A.C. 13:32-3.3, which sets forth the scope of practice for licensed master plumbers, conflicts with National Board of Boilers and Pressure Vessel Inspector's standards for the repair of power boiler systems, fire tube and water tube boilers, pressure steam, and hot water boilers.

RESPONSE: The Board has no authority over licensed master plumbers or the rules in N.J.A.C. 13:32. Concerns with N.J.A.C. 13:32-3.3 should be addressed to the State Board of Examiners of Master Plumbers.

7. COMMENT: Two commenters contend that N.J.A.C. 13:32A is in conflict with the National Board of Boiler and Pressure Vessel Inspectors, the American Society of Mechanical Engineers (ASME) and New Jersey "R" Stamps for welding.

RESPONSE: The Board does not believe that there is any conflict between the standards cited to by the commenter and the Board's rules. The standards identified by the commenters address the operation of boilers, pressure vessels, and refrigerating plants. N.J.S.A. 34:7-1 establishes that an individual needs a license from the Department of Labor and Workforce Development to operate a steam generator, a hoisting machine, a refrigerating plant, or a steam or hot water heating plant. The Board's rules do not address operation of such generators, machines or plants and there is no conflict.

8. COMMENT: Three commenters contend that N.J.A.C. 13:32A infringes on the jurisdiction of the Department of Labor and Workforce Development, which already ensures the proper repair, installation, inspection, alteration, service, and maintenance of boilers and refrigeration systems under its Bureau of Boiler and Pressure Vessel Compliance (Bureau), which licenses stationary engineers, refrigeration engineers, and boiler operators. The Bureau also certifies boiler repair

companies. One of the commenters points out that the Board's regulations do not reference the ASME National Board of Boiler and Pressure Vessel Inspection Code, which is the national standard for power, heating, and refrigeration plants. The commenter contends that the Bureau is the only entity that can regulate this field because the National Board of Boiler and Pressure Vessel certifies State inspectors. The commenter points out that the Division of Consumer Affairs is not accredited as an authorized ASME inspection agency and that there are no National Board commission inspectors on the Division's staff. Another commenter contends that the Bureau adopts codes and standards for construction, installation, service, maintenance, repair, and alteration of pressure equipment, controls, and safety devices used in HVACR systems and that this means that there is no need for N.J.S.A. 45:16A-1 et seq.

RESPONSE: As discussed in the Response to Comment 7, the Board does not believe there is a conflict as the Department of Labor and Workforce Development has authority over operation of steam generators, refrigerating plants, or steam or hot water heating plants, and pursuant to N.J.A.C. 12:90, establishes standards for boilers, unfired pressure vessels, and refrigeration systems. The Board recognizes that authority and nothing in N.J.S.A. 45:16A-1 et seq. or N.J.A.C. 13:32A conflicts with Department of Labor and Workforce Development's standards.

9. COMMENT: Two commenters contend that N.J.A.C. 13:32A will cause confusion and duplication concerning existing statutes and regulations currently enforced by the Bureau of Boiler and Pressure Vessel Compliance. One of the commenters asks why the Division believes it has the same ability to regulate this field as the Department of Labor and Workforce Development. The commenter contends that N.J.A.C. 13:32A should not be adopted and that N.J.S.A. 45:16A-1 et seq. should be repealed. The Board does not believe that N.J.S.A. 45:16A-1 et seq. should be repealed and points out that the authority to repeal legislation rests with the Legislature.

RESPONSE: As discussed in the Responses to Comments 7 and 8, the Board does not believe there is any conflict between the Department of Labor and Workforce Development standards and the Board's rules. The Board has the authority to regulate the practice of HVACR based upon N.J.S.A. 45:16A-1 et seq., while the Department has authority over operators of steam generators, refrigeration plants, and steam or hot water heating plants.

10. COMMENT: A commenter contends that the only inspection agencies or repair companies that may install, repair, service, or maintain boilers, water heaters, and pressure vessels are the ones that have adopted [page=912] Department of Community Affairs' International Mechanical Code 2009 and the ASME Code Qualifications for Authorized Inspection.

RESPONSE: The Board agrees that the Department of Community Affairs' International Mechanical Code 2009 and the ASME Code Qualifications for Authorized Inspection are the appropriate standards to follow for boilers, water heaters, and pressure vessels and nothing within the Board's rules impinges on that authority.

11. COMMENT: A commenter contends that drilling of wells, installation of vertical closed loop and open loop pumping systems, and horizontal piping and manifold installations incorporating the use of high density polyethylene is, under existing regulations, signed off by licensed well

drillers. The commenter asks if this will continue after the adoption of N.J.A.C. 13:32A.

RESPONSE: The tasks referred to by the commenter are regulated by the Department of Environmental Protection and the adoption of N.J.A.C. 13:32A will not change this.

12. COMMENT: Several commenters recommend that N.J.A.C. 13:32A be amended to refer to N.J.S.A. 45:5A-18(m), which exempts maintaining, installing, or connecting automatic oil, gas, or coal burning equipment, gasoline or diesel oil dispensing equipment, and the lighting in connection therewith to a supply of adequate size at the load side of the distribution board from electrical contracting licensing requirements. The commenters contend that, if air conditioning was more popular when N.J.S.A. 45:5A-18 was drafted, the law would have included an exemption for air conditioning power wiring.

RESPONSE: The Board believes that the definition of "HVACR" in N.J.A.C. 13:32A-1.2 and that N.J.A.C. 13:32A-1.3 adequately sets forth the electrical work that a licensed master HVACR contractor may perform and that it is unnecessary to cite to N.J.S.A. 45:5A-18(m) as the commenters recommend. The Board points out that there is no exemption in N.J.S.A. 45:5A-18 for air conditioning power wiring.

13. COMMENT: Several commenters are concerned with forms needed to install HVACR equipment and with HVACR inspectors. The commenters contend that licensed master HVACR contractors should be able to obtain a single permit and have their work inspected by one inspector as opposed to having four separate permits and inspections. The commenters contend that an electronic version of a seal should be provided as it is unrealistic to require permits to be stamped by hand. One of the commenters asks if the process at municipal code offices will change with regard to issuing permits to install HVACR systems.

RESPONSE: The Board has no authority over municipal forms and permits needed to install HVACR equipment or over inspections. The Board does not believe that the technology underlying electronic versions of pressure seals has been sufficiently developed to ensure that they are secure enough to guarantee that pressure seals are not misused. The Board will revisit this issue in the future when the technology for electronic pressure seals has advanced.

14. COMMENT: One commenter contends that 80 percent of Board members should be individuals who have worked solely in HVACR for more than 25 years. Of these individuals, half should be union representatives and half shall not be part of a union. The commenter contends that Board members from other trades, such as electrical or plumbing, would represent those other trades to the detriment of the HVACR trade.

RESPONSE: The Board does not establish the criteria for who may or may not be appointed as a Board member. N.J.S.A. 45:16A-3 establishes this criteria.

15. COMMENT: A commenter asks how many members of the Board are HVACR contractors and how many are electricians or plumbers.

RESPONSE: Of the eight Board members, six provide HVACR services. Three of those six

members are also licensed as master plumbers. None of the Board members are licensed as electricians.

16. COMMENT: One commenter asks if he may meet with the Board in order to ensure that HVACR contractors have fair and equal representation.

RESPONSE: Board meetings are open to the public and the public is afforded an opportunity to address the Board at these meetings. The commenter is welcome to attend.

17. COMMENT: A commenter asks if there is a process to register HVACR journeypersons. The commenter also asks if HVACR journeypersons are required to complete continuing education.

RESPONSE: N.J.S.A. 45:16A-1 et seq. does not establish a process to register HVACR journeypersons or impose continuing education requirements on journeypersons.

18. COMMENT: A commenter contends that licensed HVACR contractors should not be permitted to work on electrical systems, no matter the voltage. The commenter has done many electrical inspections and has seen many code violations committed by HVACR contractors.

RESPONSE: N.J.S.A. 45:16A-1 et seq. authorizes licensed master HVACR contractors to provide limited work on electrical systems. The Board recommends that the commenter report any code violations committed by licensed master HVACR contractors to the Board for disciplinary review.

19. COMMENT: Several commenters request the Board to support legislative efforts to amend N.J.S.A. 45:16A-2 and the definition of "plumbing" in N.J.S.A. 45:14C-2, so that licensed master HVACR contractors may install backflow preventers. The commenters contend it is burdensome for homeowners to have to employ two professionals who are doing the same work and whose work is inspected by the same inspector. The commenters contend that it is not logical that N.J.S.A. 45:16A-2 permits a licensed master HVACR contractor to replace a backflow preventer but does not permit him or her to install a new backflow preventer.

RESPONSE: The Board believes that the existing statutes provide for the appropriate practice of licensed master HVACR contractors with regard to backflow devices and would not support any changes to these statutes.

20. COMMENT: Several commenters ask the Board to support legislative efforts to amend N.J.S.A. 45:16A-2 to permit licensed master HVACR contractors to replace an existing electrical disconnect box if the wiring from the distribution panel is properly sized. The commenters also support legislative efforts to amend N.J.S.A. 45:16A-2 to recognize that licensed master HVACR contractors can insulate ductwork, refrigeration lines, tanks, and accessories.

RESPONSE: The Board believes that the existing statutes provide for the appropriate practice of licensed master HVACR contractors with regard to electrical systems and would not support any changes to these statutes. The Board points out that there is nothing in N.J.S.A. 45:16A-2 that prohibits a licensed master HVACR contractor from insulating ductwork, refrigeration lines,

tanks, and accessories.

21. COMMENT: A commenter contends that N.J.A.C. 13:32A does not identify which body is responsible for enforcing the regulations.

RESPONSE: Pursuant to N.J.S.A. 45:16A-4, the Board is responsible for enforcing N.J.A.C. 13:32A.

22. COMMENT: A commenter contends that the Board has no means to enforce N.J.A.C. 13:32A, as there is no reference to the codes and standards of N.J.A.C. 12:90, which deals with the Boiler, Pressure Vessel and Refrigeration Law, N.J.S.A. 34:1-20, 34:1-47, 34:1A-3, 34:7-1, 34:7-14, and 34:7-18.

RESPONSE: Pursuant to N.J.S.A. 45:16A-4, the Board has the authority to enforce N.J.A.C. 13:32A. There is no need to reference the Department of Labor and Workforce Development rules and statutes to exercise this authority.

23. COMMENT: One commenter asks how licensing requirements were established and who established them.

RESPONSE: Licensing requirements were established by the Legislature in N.J.S.A. 45:16A-7.

24. COMMENT: One commenter is concerned that licensure requirements will have an impact on stationary engineers and personnel who perform routine maintenance on heating equipment, boilers, and air conditioners. The commenter contends that such individuals do not install HVACR equipment and does not believe that such individuals are required to obtain licensure by N.J.S.A. 45:16A-1 et seq. The commenter asks the Board to create an exemption for these individuals similar to the one provided for electricians and that N.J.A.C. 13:32A-1.1 be amended to state that: "A person who performs heating, ventilating, air conditioning and refrigeration work is exempt from licensure requirements if (1) the person is an HVACR maintenance engineer and is a regular employee of [page=913] the owner, lessee, or management company of the property where the work is being performed; (2) the person performs the HVACR work in connection with the business in which the person is employed; and (3) the person and the person's employer do not engage in HVACR work for the public." The commenter recommends that an "HVACR maintenance engineer" should be defined as "a person who performs the repair or maintenance of work necessary for the continued normal performance of heating, ventilating, air conditioning and refrigeration systems."

RESPONSE: Stationary engineers are licensed professionals and are exempt from N.J.S.A. 45:16A-1 et seq. and N.J.A.C. 13:32A pursuant to N.J.S.A. 45:16A-8, N.J.S.A. 45:16A-7 requires any person who works as a master HVACR contractor to be licensed by the Board. N.J.S.A. 45:16A-2 defines a "master heating, ventilating, air conditioning and refrigeration contractor" as a person who ". . . planning, laying out, supervising, installing, servicing or repairing of HVACR systems, apparatus or equipment." A person who performs routine maintenance on heating equipment, boilers, and air conditioners is acting as a master HVACR contractor pursuant to N.J.S.A. 45:16A-2 and is required to be licensed by the Board pursuant to

N.J.S.A. 45:16A-7. The Board does not have the authority to amend N.J.A.C. 13:32A-1.1 as the commenter recommends.

25. COMMENT: Several commenters ask the Board to support a legislative effort to delete N.J.S.A. 45:16A-10. One of the commenters contends that it is inappropriate to exempt individuals from licensing requirements solely because they work for a public utility. The commenter asks what a public utility knows about HVACR systems.

RESPONSE: The Board is not aware of any legislative efforts to delete N.J.S.A. 45:16A-10. The Board believes that the existing statutes provide for the appropriate practice by public utility companies and would not support any changes to the statutes.

26. COMMENT: One commenter asks for the definition of "engaging" as the term is used in N.J.S.A. 45:16A-27. The commenter asks if this statute allows licensed master plumbers to install, maintain, and repair the equipment listed or if it means that licensed master plumbers are allowed to perform HVACR work under the supervision of a licensed HVACR contractor.

RESPONSE: The Board believes that the term is easily understood to mean that licensed master plumbers and licensed electrical contractors can provide the services listed in N.J.S.A. 45:16A-27 without obtaining a license as a master HVACR contractor. The statute allows a licensed master plumber to provide the listed services without supervision from a licensed master HVACR contractor.

27. COMMENT: Two commenters ask the Board to amend N.J.A.C. 13:32A-1.1(b) to include licensed well drillers and pump installers within the list of individuals exempt from licensure requirements, as long as they are acting within the scope of practice of their license.

RESPONSE: Licensed well drillers and pump installers are included in N.J.A.C. 13:32A-1.1(b) as they are "licensed to practice in New Jersey." In order to provide clarity, the Board has changed N.J.A.C. 13:32A-1.1(b) upon adoption to include licensed well drillers and pump installers in the list of examples of licensed professionals.

28. COMMENT: Two commenters contend that allowing a licensed master plumber to install or service pneumatic building temperature controls, air-handling equipment, classroom unit ventilators, air condition, heat-pumps, boilers, burners, and refrigeration does not protect public safety. One of the commenters contends that a licensed master plumber should not be able to install HVACR systems, boilers, or burners simply because he or she can install water, sewer, and gas piping. The commenter also contends that allowing plumbers who are not educated in HVACR work to provide HVACR services in New Jersey will result in improperly installed boiler and burner units.

RESPONSE: Licensed master plumbers are permitted to provide the services identified by the commenters pursuant to N.J.S.A. 45:16A-27, which indicates that the Legislature believes that allowing licensed master plumbers to provide these services will not threaten public safety.

29. COMMENT: One commenter is concerned with N.J.A.C. 13:32A-1.1(b)3, which prohibits a

single-family homeowner from performing work involving the use of chlorofluorocarbons (CFCs) or hydrochlorofluorocarbons (HCFCs). The commenter contends that this conflicts with a United States Department of Environmental Protection regulation, 40 CFR 82.161 through 82.164 (April 12, 2012), which establishes training standards for home owners who are qualified to perform this work on their own homes.

RESPONSE: The exemption for single-family homeowners, and the prohibition on such homeowners working with CFCs or HCFCs, is established by N.J.S.A. 45:16A-9. The Board does not have the authority to permit homeowners to work with CFCs or HCFCs.

30. COMMENT: N.J.S.A. 45:16A-12 provides an exemption to licensing requirements for any liquefied petroleum gas marketer licensed by the Department of Community Affairs pursuant to N.J.A.C. 5:18-10. N.J.A.C. 13:32A-1.1(d) exempts any liquefied petroleum gas (LP-Gas) marketer licensed by the Department of Community Affairs. A commenter contends that the regulatory exemption is more narrow than the statutory exemption because N.J.A.C. 5:18-10 only applies to persons, firms, or corporations involved in marketing of LP-Gas in the State. The commenter asks what happens if a propane company is working on heating systems that do not use propane or if they work on air conditioning. The commenter contends that N.J.S.A. 45:16A-1 et seq. requires propane companies to obtain HVACR licensing if they work on non-propane systems and that N.J.A.C. 13:32A-1.1(d) should be rewritten to read: "This chapter shall not apply to any liquefied petroleum gas marketer which is licensed by the Department of Community Affairs and is working on liquefied petroleum gas equipment."

RESPONSE: The Board points out that N.J.A.C. 5:18-10 refers to licensing of liquefied petroleum gas marketers by the Department of Community Affairs. The reference to such licensing in N.J.A.C. 13:32A-1.1(d) effectuates the exemption in N.J.S.A. 45:16A-12 in clear language. The commenter's recommended amendment would impose restrictions on the exemption provided in N.J.S.A. 45:16A-12 that are not part of the statute. The Board cannot impose these restrictions without statutory authority and it cannot amend N.J.A.C. 13:32A-1.1(d) as the commenter recommends.

31. COMMENT: The definition of "HVACR" in N.J.A.C. 13:32A-1.2 includes "the installation, servicing, connecting, maintenance, or repair of power boiler systems, hydronic heating systems, fire-tube and water-tube boilers." A commenter contends that this contradicts existing safety regulations that ensure the mechanical and structural integrity of hazardous equipment such as boilers, pressure vessels, and refrigeration systems.

RESPONSE: The terms identified by the commenter in N.J.A.C. 13:32A-1.2 are taken from N.J.S.A. 45:16A-2. As discussed in the Response to Comments 7 and 8, the Board does not believe that there is a conflict between N.J.A.C. 13:32A and existing standards for boilers, pressure vessels, and refrigeration plants.

32. COMMENT: Three commenters are concerned with a section of the definition of "HVACR" in N.J.A.C. 13:32A-1.2 that indicates that drilling of a well point for a geo-thermal system is outside the scope of practice for licensed master HVACR contractors. The commenters agree with this provision, but are concerned that the definition does not recognize the functions that are

within the scope of practice for licensed well drillers. The commenters recommend that the phrase "not including drilling of the well point" be amended to read: "not including wells or connecting pipes, pumping equipment and appurtenances, and circulating fluids between the wells and geo-thermal equipment." The commenters point out that the Department of Environmental Protection regulates anti-freeze solutions that are approved for use in loop systems included in heat pump equipment and the underground buried portion of a heat exchanger. One of the commenters is concerned that the inclusion of geo-thermal systems in the definition of "HVACR" in N.J.A.C. 13:32A-1.2 would permit licensed master HVACR contractors to work on wells associated with geo-thermal systems and points out that such work is regulated by the Department of Environmental Protection (DEP) under N.J.A.C. 7:9D.

RESPONSE: To clarify that licensed master HVACR contractors cannot work on wells associated with geo-thermal systems, the Board has amended N.J.A.C. 13:32A-1.2 upon adoption to state that geo-thermal systems are "limited to horizontal or lateral connections between wells to the heat pump and appurtenances therefrom into the structure, but does not include the drilling of the well, grouting of the borehole, placement of any components into the well, or decommissioning the borehole, which require licensing and permitting under N.J.A.C. 7:9D."

[page=914] 33. COMMENT: A commenter recommends that the definition of "heating, ventilating, air-conditioning and ventilation" in N.J.A.C. 13:32A-1.2 be amended to add "which includes all geo-thermal horizontal piping in or above ground outside of the building" after the phrase "geo-thermal systems."

RESPONSE: As discussed in the Response to Comment 32, the Board has changed the definition of "HVACR" to address concerns raised regarding licensed master HVACR contractors working on geo-thermal systems.

34. COMMENT: N.J.A.C. 13:32A-1.2 defines "HVACR" as including the "installation, servicing, connecting, maintenance or repair of . . . condensate piping in a dwelling, as defined in N.J.A.C. 5:28-1.2, not regulated under P.L. 1968, c. 362 (N.J.S.A. 45:14C-1 et seq.) . . ." Several commenters recommend that this definition be amended to delete the phrase "in a dwelling as defined in N.J.A.C. 5:28-1.2 . . ." One of the commenters contends that this is more restrictive than the definition of "HVACR" in N.J.S.A. 45:16A-2. The commenters contend that HVACR contractors can currently install air conditioning condensate lines without the services of a licensed master plumber, as long as the condensate line is not being discharged to a sanitary sewer. The commenters believe that the Board is restricting the practices of licensed master HVACR contractors in this definition and contend that licensed master HVACR contractors should be permitted to install condensate piping in any class of structure to any outside drain, any floor drain, or any existing receptacle that leads to a sanitary sewer. One of the commenters asks what the difference is between dwellings defined in N.J.A.C. 5:28-1.2 and other structures with the same sized equipment and how condensate piping on rooftop air conditioners will be addressed.

RESPONSE: The Board discussed condensate piping with the Board of Examiners of Master Plumbers prior to proposing N.J.A.C. 13:32A. Those discussions indicated that condensate

pipng outside of dwellings as defined in N.J.A.C. 5:28-1.2 is regulated by Board of Examiners of Master Plumbers under P.L. 1968, c. 362 (N.J.S.A. 45:14C-1 et seq.). Reference to such dwellings provides clear guidance as to what is regulated by the Board of Examiners of Master Plumbers and is therefore not part of the practice of HVACR. The commenters concerns regarding regulated practices under P.L. 1968, c. 362 (N.J.S.A. 45:14C-1 et seq.) should be addressed to the Board of Examiners of Master Plumbers.

35. COMMENT: One commenter opposes permitting licensed HVACR contractors to install a backflow device on a heating system. The commenter contends that licensed HVACR contractors do not have the experience to recognize cross connections and that incorrectly installed backflow preventers can endanger drinking water.

RESPONSE: N.J.S.A. 45:16A-2 states that "HVACR" includes ". . . the installation of the required approved backflow device downstream from a pre-existing valve." As the statute includes this in the practice of HVACR, the Board does not have the authority to prevent licensed master HVACR contractors from installing backflow devices.

36. COMMENT: A commenter is concerned that the definition of "HVACR" in N.J.A.C. 13:32A-1.2 includes, in residential dwellings categorized as in Group R-4 or R-5 pursuant to N.J.A.C. 5:23-3.14, the installation of a replacement non-testable backflow device downstream from a pre-existing valve. The commenter contends that this conflicts with N.J.S.A. 45:14C-2(g) and N.J.A.C. 13:32-1.4(c)3 and 7, which provide licensed master plumbers with the exclusive responsibility for protecting the potable water supply by installing backflow prevention devices. The commenter contends that the Board's regulations should not reference the R-4 group as the Board of Examiners of Master Plumbers only endorsed limited cross connection control responsibilities for licensed master HVACR contractors. The regulation expands what a license master HVACR contractor may do beyond what the Board of Examiners of Master Plumbers intended. The commenter contends that the provision allowing licensed master HVACR contractors to install or replace non-testable backflow devices should be read in light of exemptions to licensing requirements to the State Plumbing Licensing Law of 1968, the Electrical Contractors Licensing Act of 1962, and the Contractors Registration Act, all of which exempt a person performing work on his or her own dwelling. The commenter recommends that the Board remove any reference to R-4 Use Group buildings from the definition of "HVACR" in N.J.A.C. 13:32A-1.2.

RESPONSE: As stated in the Response to Comment 35, N.J.S.A. 45:16A-2 recognizes that the installation of backflow devices is part of the practice of HVACR. As the statute includes this in the practice of HVACR, there is no conflict with other statutes or rules as the commenter contends.

37. COMMENT: A commenter points out that N.J.A.C. 13:32A refers to pneumatic controls and asks why the regulations do not refer to direct digital controls (DDC).

RESPONSE: The Board agrees that direct digital controls are substantially similar to pneumatic controls and that any reference to "pneumatic controls" in N.J.A.C. 13:32A should be changed to read "pneumatic and/or direct digital controls."

38. COMMENT: Several commenters point out that the definition of "HVACR" in N.J.A.C. 13:32A-1.2 includes the replacement of wiring for "mechanical refrigeration equipment." The commenters contend that "mechanical refrigeration equipment" is the same as cooling and air conditioning equipment and ask that the definition be amended to clarify that the term "mechanical refrigeration equipment" does not apply solely to commercial refrigeration equipment.

RESPONSE: The provision referred to by the commenters is taken from N.J.S.A. 45:16A-2. It permits licensed master HVACR contractors to engage in a practice that would otherwise be considered the practice of electrical contracting. Given that this is an exemption to another statutory provision, the Legislature would have explicitly included wiring of cooling and air conditioning equipment in N.J.S.A. 45:16A-2 if it had intended to include such wiring among the tasks that are part of the practice of HVACR. As N.J.S.A. 45:16A-2 does not reference such wiring as within the practice of HVACR, the Board cannot amend N.J.A.C. 13:32A-1.2 as the commenters recommend.

39. COMMENT: Several commenters contend that the reference to "mechanical refrigeration equipment" in the definition of "HVACR" in N.J.A.C. 13:32A-1.2 means that a licensed master HVACR contractor can wire, in replacement cases, air conditioning equipment on the load side of a service disconnect. The commenters also contend that the addition or replacement of a properly sized electrical disconnect should be within the scope of practice of licensed master HVACR contractors. The commenters contend it is not in the public interest for licensed master HVACR contractors to have an incentive to leave old, existing connections as opposed to replacing them with new disconnects.

RESPONSE: As discussed in the Response to Comment 38, the recognition that the practice of HVACR includes wiring for mechanical refrigeration equipment in N.J.S.A. 45:16A-2 does not indicate that wiring air conditioning equipment is part of HVACR practice. The addition or replacement of an electrical disconnect is not recognized as part of HVACR practice in N.J.S.A. 45:16A-2 and licensed master HVACR contractors cannot perform this work.

40. COMMENT: One commenter contends that the definition of "HVACR" in N.J.A.C. 13:32A-1.2 expands the statutory definition of "HVACR" to cover types of work that are not in the statute and requires new types of professionals to obtain licensure as master HVACR contractors. The commenter points out that water recovery systems, energy recovery systems, geo-thermal systems (not including drilling of the well point), related air distribution systems connected to any of these systems and appurtenances, and any other product of combustion equipment, are not part of the definition of "HVACR" in N.J.S.A. 45:16A-2 but are in N.J.A.C. 13:32A-1.2. The commenter recommends that the Board amend N.J.A.C. 13:32A-1.2, so that the definition of "HVACR" is the same as it appears in N.J.S.A. 45:16A-2.

RESPONSE: The tasks identified by the commenter are substantially similar to systems that are part of N.J.S.A. 45:16A-2. The Board specifically identified these systems, offering its interpretation, in order to clarify the statute as to the practice of HVACR. The Board will not amend N.J.A.C. 13:32A-1.2 as the commenter recommends.

41. COMMENT: The definition of "HVACR" in N.J.A.C. 13:32A-1.2 includes, in replacement cases, connection of wiring from an equipment service disconnect box of adequate size to accommodate pneumatic controls and control piping of automatic oil, gas, coal burning, or any other product of combustion equipment, mechanical refrigeration equipment, gasoline, or diesel oil dispensing equipment previously dedicated to that equipment. The definition requires that the heating and [page=915] cooling capacity of the equipment be 25 tons or less, the voltage of the system to be 240 volts or less, and that the connection be performed pursuant to the Uniform Construction Code. N.J.A.C. 13:32A-1.3 states that, except in replacement cases, licensed master HVACR contractors may not perform electrical work with a potential of more than 10 volts or, in class III structures, with a potential of more than 30 volts. A commenter contends that these provisions expand the scope of work that is covered by HVACR licensure and recommends that the Board amend the definition of "HVACR" to be the same as that found in N.J.S.A. 45:16A-2. The commenter also recommends that N.J.A.C. 13:32A-1.3 be amended to be the same as N.J.S.A. 45:16A-28.

RESPONSE: The provisions in N.J.A.C. 13:32A-1.2 referred to by the commenter do not expand the scope of work covered by HVACR licensure beyond that found in N.J.S.A. 45:16A-2. The rule includes additional requirements that heating or cooling capacity be 25 tons or less, the voltage of the system is 240 volts or less and the wiring be performed pursuant to the Uniform Construction Code. These additional requirements were developed after consultation with the Board of Examiners of Electrical Contractors in order to ensure that the work being performed by licensed master HVACR contractors is done in a safe and effective manner. The Board believes these additional requirements are appropriate and will not amend N.J.A.C. 13:32A-1.2 as the commenter recommends.

N.J.A.C. 13:32A-1.3 provides limitations that go beyond those imposed by N.J.S.A. 45:16A-28 in that licensed master HVACR contractors cannot perform electrical work with a potential of more than 10 volts, except in class III structures where they can perform electrical work with a potential of up to 30 volts. Again, these limitations were developed in consultation with the Board of Examiners of Electrical Contractors to ensure that electrical work is done in a safe and effective manner. The Board will not amend N.J.A.C. 13:32A-1.3 as the commenter recommends.

42. COMMENT: A commenter contends that the definition of "heating, ventilating, air conditioning, and refrigeration contracting" in N.J.A.C. 13:32A-1.2 includes provisions that are not in the definition in N.J.S.A. 45:16A-2. The term "piping" is not in N.J.S.A. 45:16A-2 and the definition has been expanded so that it covers any equipment "regardless of its location on the property." The commenter contends that this expands the services covered by the definition beyond what was contemplated by the statute and recommends that the Board amend the definition, so that it is the same as that in N.J.S.A. 45:16A-2.

RESPONSE: The Board has changed N.J.A.C. 13:32A-1.2 upon adoption to remove the term piping and the reference to the location of equipment.

43. COMMENT: A commenter recommends that the phrase "apprenticeship or other training

program" in the definition of "HVACR apprentice" in N.J.A.C. 13:32A-1.2 be amended to read: "apprenticeship program."

RESPONSE: N.J.S.A. 45:16A-13 refers to an "apprenticeship or other training program." The Board does not believe it is appropriate to limit the education an applicant for licensure may complete by amending the definition of "HVACR apprentice" in N.J.A.C. 13:32A-1.2 as the commenter recommends.

44. COMMENT: One commenter is confused by the definition of "master HVACR contractor" in N.J.A.C. 13:32A-1.2 because the definition references a bona fide representative. The commenter points out that every licensed master HVACR contractor will not necessarily be a bona fide representative and asks why a bona fide representative is therefore mentioned in the definition of "master HVACR contractor." The commenter believes that this definition means that the Board is using the word "contractor" to refer to both the individual who holds a license and the business that offers HVACR services to the public.

RESPONSE: The definition of "master HVACR contractor" in N.J.A.C. 13:32A-1.2 is taken from N.J.S.A. 45:16A-2. The Board agrees that the reference to a bona fide representative in this definition is confusing and is not in keeping with the way the terms are used throughout N.J.S.A. 45:16A-1 et seq. The Board believes that the second sentence in the definition does not provide an accurate definition for the term "master HVACR contractor" as the term is used throughout N.J.A.C. 13:32A; however, the Board does not have the authority to change this definition.

45. COMMENT: Several commenters are concerned with the definition of "HVACR contractor" in N.J.A.C. 13:32A-1.2. The commenters contend that the term "contractor" is sometimes used to refer to a person and at other times, is used to refer to the entity that offers HVACR services to the public. They are concerned that this is vague and open to differing interpretations.

RESPONSE: As discussed in the Response to Comment 44, the Board does not have the authority to amend definition of "HVACR contractor."

46. COMMENT: A commenter points out that the definition of "master HVACR contractor" in N.J.A.C. 13:32A-1.2 has been expanded from the definition found in N.J.S.A. 45:16A-2 to include maintaining, renovating, testing, commissioning, and starting up an HVACR system. The commenter contends that this improperly expands the scope of practice covered by master HVACR licensure and recommends that the definition in N.J.A.C. 13:32A-1.2 be amended to be the same as that found in N.J.S.A. 45:16A-2.

RESPONSE: The Board believes that the terms referenced by the commenter are necessarily included within the terms "installing," "servicing," or "repairing" in the definition of "HVACR" and "heating, ventilating, air conditioning and refrigeration contracting" in N.J.S.A. 45:16A-2 and are included in the other terms in the definition of "master heating, ventilating, air conditioning and refrigeration contractor" in N.J.S.A. 45:16A-2. These additional terms provide guidance as to the tasks that the Board believes are within the scope of practice of HVACR. As these terms are substantially similar to those included in the statute and provide guidance as to what constitutes the scope of HVACR practice, the Board believes it is appropriate to include

these terms in the definition of "master HVACR contractor" in N.J.A.C. 13:32A-1.2 and will not amend the rule as the commenter recommends.

47. COMMENT: A commenter recommends that the Board amend N.J.A.C. 13:32A-1.2 to define the term "sponsor" as "any person, association, committee, or organization operating an apprenticeship program and in whose name the program is, or is to be, registered or approved the registering agency approved by the United States Department of Labor."

RESPONSE: The term "sponsor" is used in the rules to refer to individuals or entities that provide continuing education courses. The definition recommended by the commenter does not accurately define the term as it is used in N.J.A.C. 13:32A and the Board will not amend N.J.A.C. 13:32A-1.2 as the commenter recommends.

48. COMMENT: A commenter recommends that N.J.A.C. 13:32A-2.1(a)4 be amended to recognize that Certificate of Completion of Apprenticeship issued by the United States Department of Education - Office of Apprenticeship or a Certificate of Completion of Apprenticeship issued by the registration agency of an apprenticeship program, from states in which a State Apprenticeship Council exists, approved by the United States Department of Labor, is proof that an applicant has met the education requirements of N.J.A.C. 13:32A-2.2.

RESPONSE: The Board agrees that such a certificate would be proof that an applicant has met the education requirements of N.J.A.C. 13:32A-2.2. Such a certificate is not the only proof that an applicant has met these requirements and it would not be appropriate to amend N.J.A.C. 13:32A-2.1 as the commenter recommends.

49. COMMENT: A commenter contends that licensed plumbers or electricians who apply for an HVACR license should be required to complete an education in HVACR.

RESPONSE: A licensed plumber or electrician who does not meet the requirements of N.J.A.C. 13:32-2.6 may obtain a license only by meeting the requirements of N.J.A.C. 13:32A-2.2. This rule requires every applicant for licensure to meet the same education requirements, regardless of whether he or she is a licensed plumber or licensed electrician.

50. COMMENT: One commenter contends that HVACR courses should not be given solely by unions and should be given by accredited schools.

RESPONSE: Neither N.J.S.A. 45:16A-1 et seq., nor N.J.A.C. 13:32A, requires that unions be the sole source for HVACR courses. Such courses [page=916] can be given by any entity that meets the requirements of N.J.A.C. 13:32A-2.2.

51. COMMENT: A commenter asks if an electrical contractor who has worked on HVACR systems since 1979, graduated from an air conditioning and refrigeration course from a vocational school and passed the Air Conditioning & Refrigeration Institute EPA Certification test will be able to obtain licensure as an HVACR contractor.

RESPONSE: Such an electrical contractor would appear to meet the requirements of N.J.A.C.

13:32A-2.6 and would be able to obtain a license without meeting the education requirements of N.J.A.C. 13:32A-2.2 or the examination requirements of N.J.A.C. 13:32A-2.3.

52. COMMENT: One commenter asks if a mechanical engineering degree will satisfy educational requirements for HVACR licensure.

RESPONSE: N.J.A.C. 13:32A-2.2(a)3 states that a bachelor's degree in a field related to HVACR, such as mechanical engineering, along with three years of practical experience of installing, servicing, and maintaining HVACR systems will satisfy educational requirements for HVACR licensure.

53. COMMENT: Several commenters recommend that N.J.A.C. 13:32A-2.2 be amended to permit military experience to count toward some, or all, of the educational requirements for licensure.

RESPONSE: The Board supports recognizing military experience towards some of the educational requirements for licensure; however, N.J.S.A. 45:16A-13 does not allow the Board to recognize such experience and the Board cannot amend N.J.A.C. 13:32A-2.2 as the commenters recommend.

54. COMMENT: A commenter recommends that the phrase "Four or more years in an HVACR apprenticeship or other training program" in N.J.A.C. 13:32A-2.2(a)1i be amended to read: "completion of a registered HVACR apprenticeship program."

RESPONSE: The requirement that at least four of the five years of education be in an HVACR apprenticeship or other training program is derived from N.J.S.A. 45:16A-13 and the Board cannot amend N.J.A.C. 13:32A-2.2 as the commenter recommends.

55. COMMENT: A commenter recommends that N.J.A.C. 13:32A-2.2(a)1ii be amended to read: "Since registered HVACR apprenticeship programs involve a minimum of several years and can (depending upon a sponsor's standards approved by the registering agency) last up to four and one half years, employment as an HVACR journeyman is required upon completion of the apprenticeship program for a minimum of one-half year up to two years such that a total of five consecutive years of full time employment is attained that includes completion of a registered HVACR apprenticeship."

RESPONSE: N.J.S.A. 45:16A-13 requires that an applicant complete five years employed in the HVACR contracting business with one year of experience as an HVACR journeyman and four years in an HVACR apprenticeship or other training program. The Board cannot amend N.J.A.C. 13:32A-2.2 as the commenter recommends because the amendment would not comply with the statutory requirements.

56. COMMENT: A commenter contends that N.J.S.A. 45:16A-13 requires an applicant for licensure to complete one or more years engaged or employed as an HVACR journeyman or licensed plumber. N.J.A.C. 13:32A-2.2 requires that an applicant complete one year employment as an HVACR journeyman. The commenter contends that N.J.A.C. 13:32A-2.2

inappropriately diverges from the statutory language and recommends that N.J.A.C. 13:32A-2.2 be amended to allow an applicant to complete the journeyman requirement by working for one year as a licensed plumber.

RESPONSE: N.J.S.A. 45:16A-13 requires an applicant to complete one or more years engaged or employed as an HVACR journeyman or licensed plumber engaged in the work described. The Board has determined that the phrase "engaged in the work described" means that the licensed plumber would have to be engaged or employed in the same HVACR work that an HVACR journeyman is required to complete. As such, a licensed master plumber completing HVACR work would be considered an HVACR journeyman by the Board. N.J.A.C. 13:32A-2.2 reflects the Board's interpretation of N.J.S.A. 45:16A-13 and the Board will not amend the rule as the commenter recommends.

57. COMMENT: A commenter recommends that N.J.A.C. 13:32A-2.2(b) be amended to require an HVACR program to meet the United States Department of Education definition that the program be a "career and technical program of study that incorporates secondary and postsecondary elements, includes coherent and rigorous content aligned with challenging academic standards and relevant career and technical contents in a coordinated, non-duplicative progression of courses that align secondary to postsecondary education; that may include opportunity for secondary education student to gain postsecondary education credits through dual or concurrent enrollment programs or other means; and leads to an industry-recognized credential or certificate at the postsecondary level of an associate or baccalaureate degree."

RESPONSE: N.J.S.A. 45:16A-13 requires that an apprenticeship program or other training program be approved by the United States Department of Labor. The Board believes that this standard provides the necessary assurances that an apprenticeship program or other training program provides adequate education in HVACR and the Board will not amend N.J.A.C. 13:32A-2.2 as the commenter recommends.

58. COMMENT: Several commenters recommend that the licensing examination be broken into separate disciplines. The commenters contend that some companies only focus on one area of HVACR practice and have little or no knowledge of the other fields in HVACR.

RESPONSE: N.J.S.A. 45:16A-14 requires the licensing examination to "establish the competence and qualifications of the applicant to perform the type of work and business described in this act." The law does not authorize the Board to establish examinations for separate disciplines. A license issued by the Board authorizes a licensee to perform all aspects of HVACR work and the licensing examination needs to establish competency to practice this work.

59. COMMENT: A commenter asks if a bond held by a plumbing contractor may satisfy the bond requirement for a licensed HVACR contractor.

RESPONSE: N.J.A.C. 13:32A-2.4(a)1 states that a surety bond held pursuant to N.J.S.A. 45:14C-26, which establishes bond requirements for licensed master plumbers, will meet the bond requirement for licensed master HVACR contractors. The Board notes that there is a

typographical error in N.J.A.C. 13:32A-2.4(a)1. The citation to N.J.A.C. 13:32A-2.5 should be N.J.A.C. 13:32-2.5. The Board has changed N.J.A.C. 13:32A-2.4 upon adoption to correct this error.

60. COMMENT: Several commenters request that N.J.A.C. 13:32A-2.4 be amended to increase the amount of required liability insurance from \$ 500,000 to \$ 1,000,000. The commenters contend that \$ 500,000 is too low an amount to protect the safety of consumers. They point out that N.J.S.A. 45:16A-24 set \$ 500,000 as the minimum amount of required insurance and that many existing HVACR contractors already have insurance in an amount greater than \$ 500,000.

RESPONSE: The Board believes that the \$ 500,000 minimum provides adequate protection for consumers. The Board points out that licensed master HVACR contractors will be able to determine if they need to carry more than the minimum amount of insurance to adequately cover the work they perform.

61. COMMENT: A commenter asks if N.J.A.C. 13:32A-2.4(a)2 requires all licensed master HVACR contractors to obtain liability insurance or if this only applies to licensees who act as bona fide representatives.

RESPONSE: N.J.A.C. 13:32A-2.4(a)2 requires that an applicant for a license as a master HVACR contractor hold general liability insurance if he or she will be offering HVACR contracting services to the public.

62. COMMENT: A commenter is confused by N.J.A.C. 13:32A-2.4(a), which requires a licensed master HVACR contractor who offers HVACR contracting services to the public to hold a general liability insurance policy. The commenter is not clear if a general liability insurance held by a company satisfies this requirement for a licensed master HVACR contractor who owns a business, who is a bona fide representative of a business, or who is an employee of a business. The commenter recommends that the Board amend N.J.A.C. 13:32A-2.4 to clarify if a business' general liability insurance covers its owners, bona fide representatives, and employees.

RESPONSE: N.J.A.C. 13:32A-2.4(a)2 states that general liability insurance obtained by an HVACR company satisfies the insurance requirement.

[page=917] 63. COMMENT: Several commenters agree with the intent of N.J.A.C. 13:32A-2.6 of allowing existing practitioners to continue providing HVACR services. The commenters contend that the Board should require that individuals applying for a license under N.J.A.C. 13:32A-2.6 demonstrate that they installed or worked on HVACR equipment.

RESPONSE: N.J.A.C. 13:32A-2.6 requires that an applicant have engaged in the practice of installing, servicing, and maintaining HVACR systems for two years prior to applying for a license.

64. COMMENT: One commenter is not clear if an applicant for a license pursuant to N.J.A.C. 13:32A-2.6 must indicate that he or she has experience in all aspects of HVACR practice or if it will be enough to show that he or she has experience in one aspect of the trade. The commenter

recommends that the Board amend N.J.A.C. 13:32A-2.6 to clarify that an applicant who has experience in only one area of the HVACR trade may obtain a license.

RESPONSE: N.J.A.C. 13:32A-2.6 does not require an applicant to work in all aspects of HVACR. The rule requires that an applicant have worked on HVACR systems for the past two years. If all of the work is in one aspect of HVACR practice, the applicant would qualify for a license under N.J.A.C. 13:32A-2.6.

65. COMMENT: Several commenters recommend that the Board recognize the following documentation as evidence of experience in HVACR for purposes of N.J.A.C. 13:32A-2.6: certification by the Building Performance Institute (BPI) as a Certified Heating Professional or Certified Air Conditioning Professional; certification by the North American Technician Excellence (NATE) in Oil, Gas, Air Conditioning and/or Heat Pump Service or Installation; certification by the National Oilheat Research Alliance as a Gold or Silver certified technician; a letter from a municipal code official certifying the longevity of an HVACR business if the license is sought by a business owner; and copies of old insurance policies. One of the commenters recommends that the Board permit applicants to establish experience by submitting proof of permits they have taken out to provide HVACR services in the past.

RESPONSE: Any of the documentation cited by the commenters would constitute proof that an applicant has engaged in the practice of installing, servicing, and maintaining HVACR systems pursuant to N.J.A.C. 13:32A-2.6.

66. COMMENT: Several commenters contend that two years of W-2s do not provide proof of technical expertise and should not be the basis for issuing a license under N.J.A.C. 13:32A-2.6. The commenters contend that administrative staff of a business could obtain a license by submitting W-2s even if they have no experience in providing HVACR services.

RESPONSE: N.J.A.C. 13:32A-2.6 requires that an applicant have been engaged in the practice of installing, servicing and maintaining HVACR systems. If a Form W-2 indicates that an applicant engaged in such practice, he or she would qualify for licensure. If a Form W-2 does not indicate that an applicant engaged in such practice, the submission of the Form W-2 would not indicate that the applicant has qualified for a license.

67. COMMENT: Several commenters suggest that anyone who qualifies as a bona fide representative of an HVACR business should be able to obtain a license pursuant to N.J.A.C. 13:32A-2.6, even if he or she does not end up acting as the bona fide representative for that business. The commenters do not believe that employees of an HVACR business should be able to obtain a license under N.J.A.C. 13:32A-2.6, but contend that individuals who provided HVACR journeyman level services should be able to take the licensing examination without completing the required education.

RESPONSE: In order to qualify as a bona fide representative, an individual has to be licensed by the Board as a master HVACR contractor. A person cannot be a bona fide representative before he or she is licensed. Under N.J.S.A. 45:16A-26, any person who has been engaged in the practice of installing, servicing, and maintaining HVACR systems for at least two years will

qualify for a license pursuant to N.J.A.C. 13:32A-2.6 without passing an examination regardless of whether they are employees or journeyman. N.J.S.A. 45:16A-26 does not authorize the Board to allow applicants to take the licensing examination without meeting educational requirements.

68. COMMENT: N.J.A.C. 13:32A-2.6 requires an applicant for licensure who is currently practicing to have been engaged in the practice of installing, servicing and maintaining HVACR systems for the past two years. A commenter contends that this requirement imposes greater restrictions than those that exist in N.J.S.A. 45:16A-26, which allows a license to be issued if an applicant is a licensed master plumber who has been engaged in the heating, ventilating, air conditioning, or refrigeration business for at least two years or if he or she has been engaged as a heating, ventilating, air conditioning, and refrigeration contractor for at least two years. The commenter contends that the definition of "heating, ventilating, air conditioning, and refrigeration contracting" and "heating, ventilating, air conditioning, and refrigeration contractor" in N.J.A.C. 13:32A-1.2 do not limit contracting or contractor to those who install, service, and maintain HVACR systems. Those definitions also include the planning, laying out, installation, construction, maintenance, service, repair, alteration, or modification to any portion of any system, product, or equipment or appurtenances used for the environmental needs or control of any heating, ventilating, air conditioning, and refrigeration system. The commenter contends that N.J.A.C. 13:32A-2.6 contravenes the statute by not recognizing those who plan, lay out, or supervise HVACR systems and recommends that N.J.A.C. 13:32A-2.6 be amended to recognize these individuals.

RESPONSE: The Board believes that those who engage in the planning, laying out, and supervision of the installation or service of HVACR systems will have obtained the requisite experience to qualify them to obtain a license as a master HVACR contractor. The Board does not believe that those who supervise maintenance would necessarily obtain the requisite experience, because such supervision of maintenance could be solely administrative in nature, such as dispatching individuals who perform the actual maintenance. As the definition of "master heating, ventilating, air conditioning, and refrigeration contractor," in N.J.S.A. 45:16A-2 include planning, laying out, and supervising, the Board has changed N.J.A.C. 13:32A-2.6 upon adoption, so that those who engage in planning the installation, laying out the installation, or supervising the installation and/or service of HVACR systems for at least two will qualify for a license.

69. COMMENT: One commenter objects to N.J.A.C. 13:32A-4.2(g) which limits continuing education classes to no more than 50 people. The commenter contends that this would mean there must be at least 160 continuing education courses offered every biennial period to accommodate the approximately 8,000 licensed master HVACR contractors the Board anticipates. The commenter contends that this is an inordinate number of courses that will reduce the opportunity to attend courses that fit into a licensed master HVACR contractor's schedule. The commenter recommends that the Board delete the 50 attendee limitation in N.J.A.C. 13:32A-4.2.

RESPONSE: The Board believes that the 50 attendee limitation helps to ensure that continuing education teachers are able to provide adequate interaction with attendees during continuing education courses and that such courses, therefore, provide educational experiences that support

a licensed HVACR contractor's competency. As such, the Board will not amend N.J.A.C. 13:32A-4.2 as the commenter requests.

70. COMMENT: A commenter points out that there is no limitation as to the number of licensed master HVACR contractors who can be the owners, bona fide representatives, or employees of an HVACR business. Given this, the commenter asks how the Board intends to apply N.J.A.C. 13:32A-5.1, which requires commercial vehicles, correspondence, and advertising to identify the licensed master HVACR contractor by name and license number, to HVACR companies that have more than one licensed master HVACR contractor as owners, bona fide representatives of employees.

RESPONSE: The Board disagrees with the commenter's contention that the rules do not recognize that an HVACR company should have only one bona fide representative. Throughout N.J.A.C. 13:32A-5.2 and 5.3, the rules indicate that there will be only one bona fide representative for an HVACR company. In order to provide further clarification on this, the Board will amend N.J.A.C. 13:32A-5.2 at a later date, so that it is clear that an HVACR company can have only one bona fide representative. Given this, the Board believes it is clear how it will apply [page=918] N.J.A.C. 13:32A-5.1. As there should be only one bona fide representative for a company, his or her name must appear on vehicles.

71. COMMENT: Several commenters contend that it is not feasible to include a licensed master HVACR contractor's name and business address in a radio advertisement. The commenters recommend that N.J.A.C. 13:32A-5.1(c) be amended, so that a radio advertisement need only include a licensed master HVACR contractor's license number.

RESPONSE: The Board agrees that it may not be feasible to provide a business address in a radio advertisement. It also believes that the benefit of requiring a business address to appear in an advertisement does not outweigh the costs of imposing this requirement. A consumer who needs to find out a business address for a company can obtain this information from the Board if he or she has a licensee's name and license number. The Board will change N.J.A.C. 13:32A-5.1(c) upon adoption, so that a business address need not appear in every advertisement. The Board believes that providing a licensee's name is not overly burdensome, even on a radio advertisement, and that this requirement provides consumers vital information as to the identity of the individual advertising HVACR services.

72. COMMENT: N.J.A.C. 13:32A-5.1(d) requires every licensed master HVACR contractor whose name appears in an advertisement to be responsible for the advertisement. A commenter contends that this regulation is impractical for HVACR companies that have multiple owners, bona fide representatives, or employees.

RESPONSE: The point of N.J.A.C. 13:32A-5.1(d) is to ensure that consumers can rely on the accuracy of an advertisement. If an advertisement is not accurate, the licensed master HVACR contractor whose name appears on the advertisement should be the one who is responsible.

73. COMMENT: N.J.A.C. 13:32A-5.1(e) requires a licensed master HVACR contractor to identify in advertising if he or she intends to subcontract more than one-third of the work he or

she contracts to perform. A commenter points out that this requirement is not part of N.J.S.A. 45:16A-1 et seq. The commenter contends that subcontracting HVACR work is common and that requiring licensed master HVACR contractors to include this statement in advertising would damage their reputations. The contractor contends that the regulation requires licensed master HVACR contractors to include this statement even if the work they subcontract is not HVACR work. The commenter recommends that the Board not adopt N.J.A.C. 13:32A-5.1(e).

RESPONSE: The Board does not believe that recognizing in advertisements that a licensed master HVACR contractor usually subcontracts the work he or she contracts to perform will damage his or her reputation. The Board does not believe there is anything suspect with subcontracting, but it believes that consumers should know when the person they are contracting with usually does not perform the work they contract to perform. The Board believes that such a statement should only be included in advertisements when the work being subcontracted is HVACR work. The Board has changed N.J.A.C. 13:32A-5.1(e) upon adoption, so that the rule only applies to HVACR work that has been subcontracted.

74. COMMENT: A commenter is concerned with N.J.A.C. 13:32A-5.2(a), which requires a bona fide representative to be the agent for service of process for his or her company. The commenter is unclear how this rule would be applied if there is more than one bona fide representative for an HVACR company. The commenter also asks if the bona fide representative is also the agent for service of process for the Department of the Treasury, Division of Revenue.

RESPONSE: As stated in the Response to Comment 70, the Board believes that an HVACR company may have only one bona fide representative and will propose to amend N.J.A.C. 13:32A at a later date to clarify this. As there may be only one bona fide representative for an HVACR company, there will be no confusion as to who should be the agent for service of process for the company. The Board has no authority over who is an agent for service of process for Department of the Treasury purposes.

75. COMMENT: N.J.S.A. 45:16A-22 allows an HVACR company to function for six months without a bona fide representative if the company's original bona fide representative dies, is fired, is ill, or has a substantial disability. N.J.A.C. 13:32A-5.2(b) allows an HVACR company to function for 60 days if its bona fide representative withdraws from the business. A commenter contends that, while N.J.S.A. 45:16A-22 does not address the withdrawal of a bona fide representative, it should be applied to withdrawals and that the Board should either not adopt N.J.A.C. 13:32A-5.2(b) or amend the rule to allow for the six month time frame established in the law.

RESPONSE: The Board believes that the position that an HVACR company is placed in when the company's bona fide representative dies or leaves due to illness or disability is a different circumstance than that when a bona fide representative withdraws. In most cases, the stress and disturbance for a business is greater when a bona fide representative dies or leaves due to an illness or disability than it is when a bona fide representative leaves of his or her own accord. Given the differing natures of these two circumstances, the Board believes it is appropriate to provide different time frames during which a company may continue to operate without a bona fide representative and the Board has adopted N.J.A.C. 13:32A-5.2(b) without changes.

76. COMMENT: A commenter asks if one person may be the bona fide representative licensed master plumber and the bona fide representative licensed HVACR contractor for the same company.

RESPONSE: There is nothing in N.J.A.C. 13:32A that would prohibit an individual from being the bona fide representative licensed master plumber and bona fide representative licensed HVACR contractor for the same company.

77. COMMENT: N.J.A.C. 13:32A-5.3(a) prevents a licensed master HVACR contractor from acting as a bona fide representative for more than one company. A commenter contends that it is common for a person to own and operate more than one HVACR business. The commenter contends that the limitation in N.J.A.C. 13:32A-5.3(a) is not contemplated in the definition of "bona fide representative" in N.J.S.A. 45:16A-2 and recommends that the Board not adopt this restriction.

RESPONSE: The limitation on acting as a bona fide representative for more than one HVACR company will avoid confusion for both the Board and consumers as to the identity of the licensed master HVACR contractor responsible for an HVACR company. Accordingly, the Board believes it is necessary to prohibit a bona fide representative from representing more than one company and will not amend N.J.A.C. 13:32A-5.3 as the commenter recommends.

78. COMMENT: Several commenters contend that N.J.A.C. 13:32A-5.3(a)3, which sets forth how a bona fide representative supervises HVACR work performed by a business entity, should be deleted. The commenters contend that there is no statutory authority to impose such strict oversight on how a business operates. The commenters contend that a bona fide representative will fear losing his or her license if work performed by a business is not done properly and that this fear is enough to ensure that the work is done properly. The commenters ask if the supervision requirement means that a licensed master HVACR contractor would have to provide on-site supervision for an apprentice who is on a routine preventative maintenance call. The commenters contend that this would be unrealistic and cost prohibitive. They also contend that N.J.A.C. 13:32A-5.3(a)3 violates Executive Order No. 2 (2010).

RESPONSE: The purpose for requiring a bona fide representative is to ensure that a licensed master HVACR contractor is responsible for the work being performed by an HVACR business. The only way to ensure that this work is being performed properly is to supervise those performing the work. The Board agrees that an apprentice who has some experience should be able to provide some services without on-site supervision from a licensed master HVACR contractor. The Board notes that an HVACR journeyman could have significantly less experience than an apprentice, depending on how long the journeyman has been engaged in HVACR services under supervision. The Board will propose amendments to N.J.A.C. 13:32A-5.3 at a future date so that the level of supervision will be based on years of experience and the nature of the work being performed rather than designation as an apprentice or journeyman.

79. COMMENT: A commenter contends that the supervisory requirements of N.J.A.C. 13:32A-5.3(a) are geared towards small businesses and are not appropriate for large companies. The

commenter contends that these requirements are burdensome for large companies. The commenter points out that the United Association of Plumbers and [page=919] Pipe Fitters of the United States and Canada, AFL-CIO, allows third year apprentices to work unsupervised. The commenter recommends that the Board amend N.J.A.C. 13:32A-5.3(a) to clarify how supervisory requirements apply to large businesses.

RESPONSE: The requirements of N.J.A.C. 13:32A-5.3(a) are not geared towards small businesses. These requirements were drafted to apply to every HVACR company, regardless of its size. As discussed above, the Board will proposed amendments to N.J.A.C. 13:32A-5.3(a) at a future date to address the experience of apprentices.

80. COMMENT: N.J.A.C. 13:32A-5.3(a)4 makes a bona fide representative responsible for any violations of N.J.S.A. 45:16A-1 et seq. committed by employees of his or her HVACR business. A commenter contends that this rule is too broad, especially for large HVACR businesses. The commenter contends that the purpose for forming a corporation is to protect owners from liability for business related conduct. The commenter contends that N.J.A.C. 13:32A-5.3(a)4 would result in a bona fide representative losing these protections. The commenter recommends that the Board not adopt N.J.A.C. 13:32A-5.3(a)4.

RESPONSE: The Act requires HVACR companies to have a bona fide representative so that there is a licensed master HVACR contractor responsible to the Board for the HVACR services provided by the company. N.J.A.C. 13:32A-5.3(a)4 does not result in a bona fide representative losing protections provided by incorporation laws. The regulation ensures that there is a licensed master HVACR contractor responsible to the Board.

81. COMMENT: N.J.A.C. 13:32A-5.3(c)4 requires a bona fide representative, when his or her business subcontracts work, to inform consumers prior to the commencement of work that the consumer has a right to terminate the contract because of the subcontracting. A commenter contends that this interferes with the right of parties to enter into contracts and recommends that the Board not adopt N.J.A.C. 13:32A-5.3(c)4.

RESPONSE: The Board does not believe that N.J.A.C. 13:32A-5.3(c)4 interferes with the ability to enter into contracts. The regulation ensures that consumers are fully aware of which entity will be providing the HVACR work they have contracted to receive and will have a remedy if they are not comfortable with the work being performed by a third party.

82. COMMENT: A commenter objects to N.J.A.C. 13:32A-5.3(c)5, which requires a bona fide representative, when his or her HVACR business subcontracts work, to inform consumers that the original HVACR business and the subcontractor are liable for any negligence or misconduct on the subcontractor's part. The commenter contends that liability for a subcontractor's negligence or misconduct is appropriately the matter for contracts and not regulations. The commenter recommends that the Board not adopt N.J.A.C. 13:32A-5.3(c)5.

RESPONSE: N.J.A.C. 13:32A-5.3(c)5 protects consumers when HVACR work has been provided negligently or there is misconduct on the part of the licensed master HVACR contractor who provided that work. The Board does not believe that an original contractor should be able to

divest itself from responsibility to the consumer with whom it contracted to provide HVACR work and will not amend N.J.A.C. 13:32A-5.3(c)5 as the commenter recommends.

83. COMMENT: N.J.A.C. 13:32A-5.3(c)6 requires a subcontractor to notify an original contractor immediately of any complaints from a consumer. N.J.A.C. 13:32A-5.3(c)7 requires a bona fide representative, when his or her HVACR business subcontracts work, to supervise the subcontractor. A commenter contends that there is no way to implement these requirements and recommends that the Board not adopt N.J.A.C. 13:32A-5.3(c)6 and 7.

RESPONSE: The Board disagrees that N.J.A.C. 13:32A-5.3(c)6 and 7 cannot be implemented. It should not be burdensome for the agreement between a subcontractor and the original contractor to include a provision that ensures the subcontractor will inform the original contractor of complaints and that the original contractor will be able to supervise the subcontractor. These provisions ensure that a consumer is protected and the Board will not amend N.J.A.C. 13:32A-5.3 as the commenter recommends.

84. COMMENT: One commenter is concerned with N.J.A.C. 13:32A-5.3(d), which requires bona fide representatives to have adequate knowledge of his or her business' bookkeeping systems and financial accounts to provide the Board with information on price-setting, billing, costs, subcontracts, overhead costs, and profits. The commenter points out that the Board consists of licensed master HVACR contractors who may be business competitors of a bona fide representative's company and that the Open Public Records Act applies to the Board. The commenter is concerned that this requirement could result in the theft of proprietary business information or trade secrets, or could be seen as collusion under Federal and State antitrust laws. The commenter contends that information regarding a business' bidding practices, costs, profits, subcontractors, and material supplies could be trade secrets under the Trade Secrets Act, N.J.S.A. 56:15-1 et seq. and that such information is not considered a public record under the Open Public Records Act. The commenter contends that Board members should not be privy to records that they would be prohibited from obtaining as licensed master HVACR contractors. The commenter contends that N.J.A.C. 13:32A-5.3(d) would require that confidential information be made available to the Board and that the regulation should not be adopted.

RESPONSE: The Board needs this information in order to undertake an investigation into the conduct of an HVACR company. The commenter is correct that such information would not be subject to record release under the Open Public Records Act. A Board member who used this confidential information in an inappropriate manner would at a minimum be subject investigation and possible dismissal from the Board.

85. COMMENT: A commenter recommends that N.J.A.C. 13:32A-5.4 be amended to recognize that a licensed master HVACR contractor may subcontract to a licensed master plumber to engage in the limited scope of practice permitted by N.J.S.A. 45:16A-27.

RESPONSE: The Board has changed N.J.A.C. 13:32A-5.4 upon adoption so that it will not be read as requiring a licensed master HVACR contractor to limit subcontracting to other licensed master HVACR contractors.

86. COMMENT: A commenter recommends that the Board not adopt N.J.A.C. 13:32A-5.8(b)6. This provision establishes that the price customarily charged in the locality for similar services is a factor in determining whether a price is unconscionable. The commenter contends that this provision will harm consumers and that it is inappropriate to base charges upon what other contractors charge. The commenter contends that, if contractors discuss prices to abide by this provision, it could be considered a violation of anti-trust laws. There is also the possibility that the provision will force contractors to artificially keep their charges low. The commenter is concerned that the provision will result in charges being calculated based on the minimum level of competency and will not take into account expertise or workmanship. The commenter points out that different contractors have different costs of operation and that consumers should have the opportunity to get the best performance for the best price.

RESPONSE: N.J.A.C. 13:32A-5.8 does not dictate how licensed master HVACR contractors set their prices. The prices customarily charged in the locality for similar services is only one of many factors in determining if a price is so high that a licensed master HVACR contractor of ordinary prudence would be convinced that it was manifestly unconscionable. It does not tell licensed master HVACR contractors what they should charge. The rule provides guidelines for the Board to determine if a price charged was so outrageous that it could only be charged by a licensed master HVACR contractor seeking to defraud a consumer.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the adopted new rules.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

[page=920] CHAPTER 32A

STATE BOARD OF EXAMINERS OF HEATING, VENTILATING, AIR CONDITIONING,
AND REFRIGERATION CONTRACTORS RULES

SUBCHAPTER 1. PURPOSE AND SCOPE; DEFINITIONS

13:32A-1.1 Purpose and scope

(a) The rules contained in this chapter provide for the licensing and regulation of master heating, ventilating, air conditioning, and refrigeration contractors, implementing the provisions of the State Heating, Ventilating, Air Conditioning and Refrigeration Contracting License Law (P.L. 2007, c. 211, N.J.S.A. 45:16A-1 et seq.).

(b) This chapter does not apply to any person who is:

1. Licensed to practice in New Jersey and is practicing within the scope of practice of his or her profession including architects, professional engineers, ***well drillers and pump installers,*** electrical contractors, and master plumbers, as long as such person does not identify him- or

herself as a licensed Master HVACR contractor;

2. A chimney service professional regulated by the Division of Consumer Affairs as a home improvement contractor acting within the scope of practice of his or her profession as long as such person does not identify him- or herself as a licensed Master HVACR contractor;

3. A single-family home owner who personally occupies his or her own dwelling and who performs work on his or her own dwelling, except that any HVACR work involving chlorofluorocarbons (CFCs) or hydrochlorofluorocarbons (HCFCs) shall be performed only by a licensed Master HVACR contractor;

4. Licensed as a master plumber and is engaged in the installation, maintenance, and repair of:

i. Power boiler systems, hot water and steam heating systems, fire tube and water tube boilers, pressure steam and hot water boilers, space heaters, unit heaters, and appurtenances utilizing electricity, fossil fuel, or solar energy;

ii. Steam, hot water and chilled water pipe, condensate piping, valves, fittings, burners and piping, expansion tanks, pumps, and gauges on the load side of a meter;

iii. Thermostatic controls; or

iv. Natural or manufactured gas piping;

5. Licensed as a master plumber and is engaged in the installation, maintenance, or connection of:

i. Pneumatic ***and/or direct digital*** controls and control piping for the control of air, liquid, or gas temperatures, radiators, convectors, cabinet unit heaters, fan coil units, air handlers utilizing hydronic coils, mechanical ventilation for radon mitigation, humidifiers, flues, and patented chimneys; or

ii. Pneumatic ***and/or direct digital*** controls and control piping of automatic oil, gas, or coal burning equipment, gasoline or diesel oil dispensing equipment, and, in replacement cases only, connecting to them the wiring from a dedicated electrical service disconnect box of adequate size to accommodate the equipment and controls, and the testing and balancing of hydronic systems;

6. Licensed as a master plumber and is engaged in the installation, repair, testing, or closure of waste oil underground storage tanks;

7. Licensed as an electrical contractor and is engaged in the installation of:

i. Electrical resistance heating equipment and ventilation equipment with an exhaust duct not exceeding 60 square inches in area; or

ii. In commercial applications the connection sleeve between a roof-top mounted exhaust fan and

its central connecting register, provided that this connection sleeve is not more than 15 inches in length or the length necessary to penetrate a roof or other similar openings; or

8. Licensed as an electrical contractor and is engaged in the maintenance and repair of the electrical sections of any equipment used for heating, ventilating, air conditioning, or refrigeration.

(c) This chapter shall not apply to any public utility company regulated by the Board of Public Utilities or any related competitive business segment of that public utility that offers competitive services pursuant to the "Electric Discount and Energy Competition Act," P.L. 1999, c. 21 (N.J.S.A. 48:3-49 et seq.). This chapter does not apply to HVACR work performed on buildings, structures, or premises owned or operated by a public utility holding company or its subsidiaries.

(d) This chapter shall not apply to any liquefied petroleum gas marketer licensed by the Department of Community Affairs.

13:32A-1.2 Definitions

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

"Board" means the State Board of Examiners of Heating, Ventilating, Air Conditioning, and Refrigeration Contractors.

"Bona fide representative" means a licensed master HVACR contractor who:

1. In the case of a sole proprietorship, is the owner of the business;
2. In the case of a partnership, is a partner in the business;
3. In the case of a limited liability company, is a manager; or
4. In the case of a corporation, is an executive officer.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety.

"Heating, ventilating, air conditioning, and refrigeration" or "HVACR" means the process of treating and protecting the environment by the responsible handling, dispensing, collecting, and cleaning of chlorofluorocarbons and other refrigerants in stationary sources, and controlling the temperature, humidity, and cleanliness of air by using the "wet," "dry," "radiant," "conduction," "convection," "direct," or "indirect" method or combination of methods, including those that utilize solar energy, to meet the environmental requirements of a designated area. "HVACR" also means the installation, servicing, connecting, maintenance, or repair of the following:

1. Power boiler systems, hydronic heating systems, fire tube and water tube boilers, pressure

steam and hot water boilers, furnaces and space heaters, water recovery systems, and appurtenances utilizing electric, fossil fuel, wood pellets, or solar energy, other than those appurtenances utilized solely for the purpose of heating potable water;

2. Warm air heating or refrigeration and evaporative cooling systems, ventilation and exhaust systems, dust collectors, air handling equipment, heating or cooling coils, air or refrigerant compressors, chillers, cooling towers, evaporators, condensers, plenums, fans, blowers, air cleaners, mechanical ventilation for radon mitigation, humidifiers, filters, louvers, mixing boxes and appurtenances, energy recovery systems, geo-thermal systems (*[not including drilling of the well point]* ***limited to horizontal or lateral connections between wells to the heat pump and appurtenances therefrom into the structure, but does not include the drilling of the well, grouting of the borehole, placement of any components into the well, or decommissioning the borehole, which all require licensing and permitting under N.J.A.C. 7:9D***), and related air distribution systems connected to any of these systems and appurtenances;

3. Hydronic heating and chilled water pipe, valves, fittings, burners and piping, hydronic heating, expansion tanks, refrigeration piping, pumps, gauges, humidity, and thermostatic controls;

4. Condensate piping in a dwelling, as defined in N.J.A.C. 5:28-1.2, not regulated under P.L. 1968, c. 362 (N.J.S.A. 45:14C-1 et seq.) (disposal of condensate from such piping must be performed pursuant to the Uniform Construction Code and any relevant local ordinances);

5. Natural or manufactured gas piping on the load side of a meter;

6. Supply water piping to equipment being served from an existing dedicated source connected downstream from an approved backflow preventer;

7. The installation of a replacement non-testable backflow device downstream from a pre-existing valve, in residential dwellings categorized as in Group R-4 or R-5 pursuant to N.J.A.C. 5:23-3.14;

8. Pneumatic ***and/or direct digital*** controls, control piping, and any type of heat tracing, for the control of air, liquid, or gas temperatures, radiators, convectors, unit cabinet heaters, or fan coil units;

9. Pneumatic ***and/or direct digital*** controls and control piping of automatic oil, gas, coal burning, or any other product of combustion equipment, mechanical refrigeration equipment, gasoline, or diesel oil dispensing equipment, and the testing and balancing of air and hydronic systems, but does not include the design or preparation of specifications for equipment or systems to be installed that are within the practice of [page=921] professional engineering as defined in subsection (b) of section 2 of P.L. 1938, c. 342 (N.J.S.A. 45:8-28); and

10. In replacement cases only, the connection of the wiring from an equipment service disconnect box of adequate size to accommodate pneumatic ***and/or direct digital*** controls and control piping of automatic oil, gas, coal burning, or any other product of combustion equipment,

mechanical refrigeration equipment, gasoline, or diesel oil dispensing equipment previously dedicated to that equipment, as long as:

- i. The heating or cooling capacity of each piece of equipment is 25 tons or less;
- ii. The voltage of the system is 240 volts or less; and
- iii. The connection of the wiring is performed according to all relevant provisions in the Uniform Construction Code.

"Heating, ventilating, air conditioning, and refrigeration contracting" means undertaking or advertising to undertake, for a fixed price, fee, commission, or gain of whatever nature, the planning, laying out, installation, *[piping,]* construction, maintenance, service, repair, alteration*,* or modification to any portion of any system, product*,* or equipment, or appurtenances used for the environmental needs or control of any heating, ventilating, air conditioning, and refrigeration system*[, regardless of its location on the property]*.

"HVACR apprentice" means a person who is enrolled in an HVACR apprenticeship or other training program approved by the United States Department of Labor and who engages in the installation, alteration, repair, service, or renovation of HVACR systems under the supervision of a Master HVACR contractor as part of that apprenticeship or other training program.

"HVACR journeyman" means any person who installs, alters, repairs, services, maintains, or renovates HVACR systems and who works under the supervision of a Master HVACR contractor.

"Master heating, ventilating, air conditioning, and refrigeration contractor" or "master HVACR contractor" means any person licensed by the Board who obtains a pressure seal and advertises, undertakes, or offers to undertake for another, the planning, laying out, supervising, installing, servicing, maintaining, renovating, testing, commissioning, starting-up, or repairing of HVACR systems, apparatus, or equipment. In order to act as a "Master HVACR contractor," an individual shall be a bona fide representative of the legal entity licensed pursuant to the provisions of this chapter.

"Replacement" means a change of equipment with the same type or similar equipment.

"Retrofit" means a change in design, construction, or equipment already in operation in order to incorporate later improvements.

13:32A-1.3 Electrical work

(a) Except in replacement cases described in the definition of "heating, ventilating, air conditioning, and refrigeration," a master HVACR contractor shall not perform any electrical work:

1. With a potential of more than 10 volts, except as provided in (a)2 below; or

2. With a potential of more than 30 volts, in class III structures, as defined by N.J.A.C. 5:23-1.4.

SUBCHAPTER 2. APPLICATION FOR LICENSURE

13:32A-2.1 Eligibility for examinations

(a) An applicant for the master HVACR licensing examination shall submit to the Board:

1. A completed application for examination, on a form provided by the Board, including a full street name and number. An application containing only a post office box number as a mailing address shall not be considered a complete application;
2. Proof that the applicant is at least 21 years of age;
3. A passport size photograph of the applicant taken within the last six months;
4. Proof that the applicant has met the education requirements of N.J.A.C. 13:32A-2.2; and
5. The application fee as set forth in N.J.A.C. 13:32A-6.1.

(b) After the Board has reviewed the information required in (a) above, the Board shall send a letter that informs the applicant whether he or she is eligible to take the licensing examination required by N.J.A.C. 13:32A-2.3 and, if deemed eligible, of the time and place of examination.

13:32A-2.2 Education requirements

(a) An applicant for licensure as a master HVACR contractor shall complete one of the following:

1. Five years of employment in the HVACR contracting business, which consists of:
 - i. Four or more years in an HVACR apprenticeship or other training program approved by the United States Department of Labor, which includes education in the proper management of chlorofluorocarbons and other refrigerants, including high global warming potential gases; and
 - ii. One or more years employment as an HVACR journeyman;
2. A bachelor's degree in HVACR from a college or university accredited by a regional accrediting body recognized by the United States Department of Education, Office of Postsecondary Education, which includes education in the proper management of chlorofluorocarbons and other refrigerants, including high global warming potential gases, and one year experience in the practical work of installing, servicing, or maintaining HVACR systems; or
3. A bachelor's degree in a field related to HVACR from a college or university accredited by a

regional accrediting body recognized by the United States Department of Education, Office of Postsecondary Education, which includes education in the proper management of chlorofluorocarbons and other refrigerants, including high global warming potential gases, and three years experience in the practical work of installing, servicing, and maintaining HVACR systems.

(b) Pursuant to N.J.S.A. 45:16A-13, successful completion of an HVACR program given by a technical school, trade school, county college, or community college accredited by a regional accrediting body recognized by the United States Department of Education, Office of Postsecondary Education, shall satisfy two of the four years required by (a)1i above.

13:32A-2.3 Examinations

(a) Examinations shall be prepared and administered by a third-party vendor, but no license shall be granted except by the Board. The Board chairperson may designate members of the Board to oversee the administration of the examination.

(b) Examinations shall be held at least four times annually.

(c) Examinations shall consist of a written portion covering practice issues in HVACR contracting and a written portion on the laws and rules governing the practice of HVACR contracting in New Jersey.

(d) In order to pass the examination an applicant must receive a minimum grade of 70 in each of the two areas set forth in (c) above.

(e) An applicant who fails the master HVACR licensing examination shall not be permitted to retake the examination for six months from the date he or she failed the examination.

13:32A-2.4 Licensure and pressure seal

(a) After an applicant has successfully passed the master HVACR licensing examination, or has been informed by the Board that he or she qualifies for licensure pursuant to N.J.A.C. 13:32A-2.5 or 2.6, he or she shall submit to the Board:

1. A surety bond in the sum of \$ 3,000 as required pursuant to N.J.S.A. 45:16A-23. An applicant who has obtained a surety bond in the sum of \$ 3,000 in order to satisfy the requirements of N.J.S.A. 45:14C-26 and N.J.A.C. *[13:32A]* ***13:32***-2.5 shall meet this requirement if he or she submits proof that such a bond has been submitted to the State Board of Examiners of Master Plumbers;

2. A certificate of general liability insurance from an insurance company authorized and licensed to do business in New Jersey in the amount of \$ 500,000 for combined property damage and bodily injury to or death of one or more persons in any one accident or occurrence or proof of self-insurance approved by the Department of Banking and Insurance, obtained by the applicant or the HVACR company or corporation, if the applicant will offer HVACR contracting services

to the public, which includes instances when the applicant will act as a bona fide representative for a company or corporation;

3. A Federal Tax Identification number for the HVACR business, if the applicant will be engaging in the business of HVACR contracting, [page=922] which includes instances when the applicant will act as a bona fide representative for a company or corporation; and

4. The licensing fee as set forth in N.J.A.C. 13:32A-6.1.

(b) At the time of the issuance of the license to a master HVACR contractor, the Board shall authorize the vendor that issues pressure seals to furnish a pressure seal to the master HVACR contractor. After the Board has informed an applicant that he or she has passed the licensing examination, or has qualified for licensure pursuant to N.J.A.C. 13:32A-2.5 or 2.6, the applicant shall submit to the Board the initial pressure seal fee pursuant to N.J.A.C. 13:32A-6.1. The pressure seal shall remain the property of the Board and shall be returned to the Board as provided in (f) below.

(c) The seal shall be used exclusively by the master HVACR contractor in the conduct of the heating, ventilating, air conditioning, and refrigeration business practice. The master HVACR contractor shall impress the seal upon all applications for heating, ventilating, air conditioning, and refrigeration permits.

(d) Use of a seal by any person other than the master HVACR contractor to whom it was issued or the securing of a heating, ventilating, air conditioning, and refrigeration permit for an unlicensed person shall be deemed to be the use or employment of dishonesty, fraud, deception, misrepresentation, or false pretense. Such conduct may be grounds for the suspension or revocation of the license of an unauthorized user if he or she is already licensed by the Board. With respect to an unlicensed user, such conduct shall be grounds for the refusal to issue a State license at any point in the future, which does not preclude the Board from proceeding against unlicensed practice pursuant to any other law or rule. Nothing in this subsection shall be deemed to preclude a bona fide representative from securing a heating, ventilating, air conditioning, and refrigeration permit for the heating, ventilating, air conditioning, and refrigeration business he or she represents.

(e) A master HVACR contractor who willfully or negligently allows an unlicensed or unauthorized person to use his or her seal shall be subject to such penalties and sanctions as shall be imposed by the Board pursuant to authority granted by N.J.S.A. 45:16A-1 et seq. and 45:1-14 et seq.

(f) A master HVACR contractor who has been suspended for failure to renew a license in accordance with N.J.A.C. 13:32A-3.1 or who has had his or her license suspended or revoked for any reason shall return the pressure seal to the Board within 30 days of the suspension, revocation, or lapse of license.

(g) A master HVACR contractor who no longer possesses a pressure seal due to theft, loss, or other cause shall replace the seal by submitting to the Board a notarized letter detailing why the

master HVACR contractor no longer possesses the pressure seal. The master HVACR contractor shall submit to the Board the replacement pressure seal fee pursuant to N.J.A.C. 13:32A-6.1. The replacement pressure seal shall remain the property of the Board and shall be returned to the Board as provided in (f) above.

(h) Only the Board recognized vendor of seal presses shall issue or create seal presses. No other entity or person shall issue or create seal presses.

13:32A-2.5 Reciprocity with other states

(a) An individual who is licensed to practice HVACR contracting in another state may obtain a license in New Jersey without taking the master HVACR licensing examination as long as the other state:

1. Has licensure standards equal to or comparable to licensure requirements in New Jersey; and
2. Permits New Jersey licensees to obtain licensure based upon a New Jersey license.

(b) An applicant for a master HVACR contractor license who is licensed in another state shall submit:

1. A completed application for licensure through reciprocity, on a form provided by the Board, which shall include a full street name and number. An application containing only a post office box number as a mailing address shall not be considered a complete application;
2. Proof that the applicant is at least 21 years of age;
3. A passport size photograph of the applicant taken within the last six months;
4. Proof that the applicant has met the education requirements of N.J.A.C. 13:32A-2.2;
5. Proof that the state in which he or she is licensed allows New Jersey licensed master HVACR contractors to obtain a license in that state based upon New Jersey licensure;
6. Proof that the applicant is licensed in the other state; and
7. The application fee as set forth in N.J.A.C. 13:32A-6.1.

(c) Once the Board has reviewed the submitted information, and has determined whether the other state meets the requirements of (a) above, the Board shall inform the applicant whether he or she qualifies for licensure and, if eligible, that he or she should submit the information and documentation required by N.J.A.C. 13:32A-2.4.

13:32A-2.6 Issuance of license to individuals engaged in practice as of *[(two years prior to effective date of rules)]* ***October 15, 2011***

(a) Prior to *[(six months from the effective date of these rules)]* ***April 15, 2014*** a licensed master plumber or any other person may apply for a license as a master HVACR contractor without satisfying the education requirements of N.J.A.C. 13:32A-2.2 or the examination requirements of N.J.A.C. 13:32A-2.3 if the person has for at least two years prior to the date the application is submitted to the Board engaged in the practice of installing, servicing*, * [and]* maintaining*, **planning the installation, laying out the installation, and supervising the installation and/or servicing of*** HVACR systems.

1. For the purposes of this subsection, engaging in the practice of installing, servicing, *[and]* maintaining*, **planning the installation, laying out the installation, or supervising the installation and/or servicing of*** HVACR systems shall include:

i. Being employed as an inspector of HVACR systems and holding a license as a mechanical inspector or a plumbing inspector from the Department of Community Affairs; and

ii. Teaching courses in the HVACR field at an apprentice or other training program approved by the United States Department of Labor or a bachelor's degree program in a college or university accredited by a regional accrediting body recognized by the United State Department of Education, Office of Postsecondary Education. Such an applicant shall have worked as a master HVACR contractor for at least five years prior to, or during, the time he or she was teaching HVACR courses.

(b) An applicant who meets the requirements of (a) above shall submit:

1. A completed application for licensure, on a form provided by the Board, including a full street name and number. An application containing only a post office box number as a mailing address shall not be considered a complete application;

2. A passport size photograph of the applicant taken within the last six months;

3. Proof that the applicant has met the experience requirements of (a) above. Such proof may include:

i. An attestation from a master HVACR contractor indicating that the applicant has completed the requirements of (a) above;

ii. Any certifications the applicant has obtained indicating expertise in the field of heating, ventilating, air conditioning, and refrigeration contracting;

iii. Any education the applicant has completed related to the field of heating, ventilating, air conditioning, and refrigeration contracting;

iv. An employment history showing that the applicant has engaged in the practice of heating, ventilating, air conditioning, and refrigeration contracting;

v. A copy of a Form W-2 that has been submitted to the Internal Revenue Service indicating that

the applicant engaged in the practice of heating, ventilating, air conditioning, and refrigeration contracting; or

vi. Any other documentation that demonstrates to the Board that the applicant has completed at least two years of experience in heating, ventilating, air conditioning, and refrigeration contracting.

4. The application and licensing fees as set forth in N.J.A.C. 13:32A-6.1.

[page=923] SUBCHAPTER 3. RENEWAL OF LICENSURE

13:32A-3.1 Renewal of license

(a) Licenses shall be renewed biennially on a form provided by the Board. Each applicant for renewal shall attest that the continuing education requirements of N.J.A.C. 13:32A-4.1 have been completed during the prior biennial period.

(b) The Board shall send a notice of renewal to each master HVACR contractor, at least 60 days prior to the expiration of the license. If the notice to renew is not sent at least 60 days prior to the expiration date, no monetary penalties or fines shall apply to the holder for any unlicensed practice during the period following the licensure expiration, not to exceed the number of days short of the 60 before the notice of renewal was sent.

(c) The master HVACR contractor shall submit the renewal application and pay the renewal and pressure seal fees pursuant to N.J.A.C. 13:32A-6.1 prior to the date of expiration of the license.

(d) If the master HVACR contractor does not renew the license prior to its expiration date, the master HVACR contractor may renew the license no later than 30 days after its expiration date by submitting a renewal application and paying a renewal fee and a late fee pursuant to N.J.A.C. 13:32A-6.1. If a master HVACR contractor fails to renew the license within 30 days after the expiration date, the license shall be suspended without a hearing. A master HVACR contractor whose license has been suspended shall return his or her pressure seal to the Board.

(e) A person who continues to practice or hold himself or herself out as a master HVACR contractor after his or her license has been suspended pursuant to (d) above shall be deemed to have committed unlicensed practice pursuant to N.J.S.A. 45:16A-7, even if no notice of suspension has been provided to the person.

(f) A person seeking reinstatement within five years following the suspension of a license pursuant to (d) above shall submit the following to the Board:

1. A completed reinstatement application;
2. Payment of all past delinquent renewal fees as set forth in N.J.A.C. 13:32A-6.1;
3. Payment of a reinstatement fee as set forth in N.J.A.C. 13:32A-6.1;

4. A certification verifying completion of the continuing education credits required pursuant to N.J.A.C. 13:32A-4.1 for the biennial renewal period immediately preceding the date the application for reinstatement is submitted; and

5. An affidavit of employment listing each job held during the period of suspension which includes the names, addresses, and telephone numbers of each employer.

(g) A person seeking reinstatement after more than five years following the suspension of a license pursuant to (d) above shall successfully complete the examination required for initial licensure as set forth in N.J.A.C. 13:32A-2.3 and shall submit:

1. A completed reinstatement application;

2. Payment of all past delinquent renewal fees as set forth in N.J.A.C. 13:32A-6.1;

3. Payment of a reinstatement fee as set forth in N.J.A.C. 13:32A-6.1; and

4. An affidavit of employment listing each job held during the period of suspension, which includes the names, addresses, and telephone numbers of each employer.

(h) Renewal applications for all master HVACR contractors shall provide the applicant with the option of either active or inactive renewal. Applicants electing to renew as inactive shall not practice or hold themselves out to the public as master HVACR contractors. A master HVACR contractor renewing as inactive shall submit to the Board:

1. A completed renewal application; and

2. The pressure seal.

(i) Upon application to the Board, the Board may permit an applicant who has been on inactive status to return to active status provided such applicant completes the continuing education credits that are required pursuant to N.J.A.C. 13:32A-4.1 for the biennial period immediately preceding the date the application for reactivation is submitted and the applicant pays the renewal fee as set forth in N.J.A.C. 13:32A-6.1. The Board shall return the master HVACR contractor's pressure seal, or arrange for a new pressure seal to be issued, when the master HVACR contractor returns to active status.

SUBCHAPTER 4. CONTINUING EDUCATION

13:32A-4.1 License renewal; continuing education requirement

(a) Every master HVACR contractor shall successfully complete five credits of continuing education at an approved course every biennial period. Master HVACR contractors applying for their first biennial renewal are exempt from this continuing education requirement.

(b) A master HVACR contractor shall indicate on the license renewal form that he or she has completed the continuing education requirements of this subchapter. Failure to meet the continuing education requirements as set forth in this subchapter or the falsification of any information submitted with the renewal application may result in the imposition of disciplinary sanctions pursuant to N.J.S.A. 45:1-21 et seq.

(c) Every master HVACR contractor shall maintain, for a period of four years, all verification of attendance forms for all continuing education courses the master HVACR contractor has completed. Master HVACR contractors who teach a continuing education course during a biennial period shall maintain, for a four-year period, records that indicate that the master HVACR contractor has taught a Board-approved continuing education course.

(d) The Board may review the records of any master HVACR contractor, at any time, in order to ensure that the master HVACR contractor has complied with the continuing education requirements.

13:32A-4.2 Continuing education sponsors; Board approval; duties

(a) All sponsors of continuing education courses shall obtain Board approval prior to offering a continuing education course for an upcoming biennial period. The Board shall maintain a list of approved courses at the Board offices and shall furnish this information to master HVACR contractors upon request.

(b) A sponsor seeking Board approval shall appear before the Board and submit, prior to that appearance, the following:

1. Detailed descriptions of course content and estimated hours of instruction;
2. Curriculum vitae of each instructor, including the background that qualifies him or her as an instructor in specific areas; and
3. The continuing education sponsor application fee pursuant to N.J.A.C. 13:32A-6.1.

(c) The sponsor of a continuing education course shall furnish each attendee a verification of attendance, which shall include the following:

1. The title, date, and location of course or program offering;
2. The name and license number of the attendee;
3. The number of hours attended; and
4. The name and signature of the sponsor or instructor.

(d) The sponsor of a continuing education course shall monitor the attendance at each approved course and maintain an attendance log, which lists the name and license number of every master

HVACR contractor who attends a course. The log shall document that each master HVACR contractor has completed the sponsor's course.

(e) The sponsor shall obtain course evaluations from both participants and instructors and maintain these evaluations as part of the sponsor's records.

(f) The Board may evaluate the performance of any continuing education instructor through observation of the instructor during the presentation of a course or evaluate the qualifications and abilities of the instructor by conducting an interview during a Board meeting.

(g) A continuing education class shall consist of no more than 50 people.

13:32A-4.3 Required course topics

(a) Every biennial period, master HVACR contractors shall complete one hour of continuing education in statutes and rules governing the practice of heating, ventilating, air conditioning, and refrigeration, including the Uniform Construction Code, N.J.A.C. 5:23.

(b) Three months prior to the beginning of a biennial period, the Board shall determine the topics for the remaining four hours of continuing education that shall be provided by program sponsors for the upcoming [page=924] biennial period. The Board shall determine these topics at a regularly scheduled public Board meeting.

(c) The list of required topics shall be published as a public notice in the New Jersey Register and shall be available at the Board offices.

13:32A-4.4 Credit awarded

(a) One continuing education credit shall equal one hour of attendance at a continuing education course.

(b) A master HVACR contractor who teaches a continuing education course approved by the Board shall earn five credits of continuing education for the biennial period in which he or she teaches the course and shall be exempt from the requirement of N.J.A.C. 13:32A-4.3(a).

(c) A master HVACR contractor who has completed the continuing education requirements for renewal of a license as a master plumber shall earn four credits of continuing education. Such a master HVACR contractor shall be required to complete one hour of continuing education in the statutes and rules governing the practice of heating, ventilating, air conditioning, and refrigeration required by N.J.A.C. 13:32A-4.3.

13:32A-4.5 Waiver of continuing education requirement

(a) The Board may waive continuing education requirements on an individual basis for reasons of hardship, such as illness, disability, military duty, or other good cause that prevents the master HVACR contractor from completing continuing education credits during a biennial period.

(b) Any master HVACR contractor seeking a waiver of the continuing education requirements shall apply to the Board in writing and set forth in specific detail the reasons for requesting the waiver. The master HVACR contractor shall provide the Board with such supplemental materials as will support the request for waiver.

SUBCHAPTER 5. IDENTIFICATION OF LICENSEES; BONA FIDE REPRESENTATIVE; SUPERVISION

13:32A-5.1 Identification of master HVACR contractor; vehicles, stationery; advertising

(a) All commercial vehicles used by a master HVACR contractor shall be marked on driver's and passenger's sides with the following information:

1. The name of the HVACR business;
2. The name of the master HVACR contractor who owns the business or the name of the bona fide representative for the business in lettering at least one inch in height;
3. The words "Master HVACR contractor license number" or "Master HVACR contractor Lic. #" followed by the license number of the master HVACR contractor in lettering at least one inch in height; and
4. The municipality from which the master HVACR contractor practices or where the master HVACR contractor has a principal office in lettering at least three inches in height.

(b) All business correspondence, invoices, and stationery shall display:

1. The name of the master HVACR contractor;
2. The words "Master HVACR contractor license number" or "Master HVACR contractor Lic. #" followed by the license number of the master HVACR contractor; and
3. The New Jersey business address, including the street name and number.

(c) All advertising shall include:

1. The name of the master HVACR contractor; ***and***
- *[2. The New Jersey business address, including the street name and number; and]***
- *[3.]* *2.*** The words "Master HVACR contractor license number" or "Master HVACR contractor Lic. #" followed by the license number of the master HVACR contractor.

(d) Every master HVACR contractor whose name, office address, or license number appears or is mentioned in any advertisement of any kind or character shall be presumed to have caused,

permitted, or approved the advertising and shall be personally responsible for its content and character.

(e) If a master HVACR contractor intends to subcontract, in a calendar year, more than one-third of the ***HVACR*** work that he or she contracts to perform, or subcontracted in the previous calendar year more than one-third of the work that he or she contracted to perform, all advertising by the master HVACR contractor shall state: "A substantial part of the ***HVACR*** work which we undertake may be subcontracted to independent licensed HVACR contractors."

13:32A-5.2 Bona fide representative; reporting responsibilities

(a) A master HVACR contractor seeking to act as a bona fide representative shall comply with the following within 30 days of assuming the role of a bona fide representative:

1. Register with the Board, providing the name of the HVACR business, its address and if the HVACR business is a corporation, the names of the officers of record;
2. Provide to the Board proof that the HVACR business has consented that the bona fide representative will act as the agent for service of process within this State. Such proof shall be in writing and on a form provided by the Board; and
3. Provide to the Board the acceptance of liability by the HVACR business for any monetary penalty, monies to be paid for restoration to consumers of fees paid for services or for delays suffered by consumers, and costs assessed against the bona fide representative while acting within the scope of his or her employment on behalf of the HVACR business. Such acceptance of liability shall be in writing and on a form provided by the Board.

(b) If a bona fide representative for an HVACR business withdraws as the bona fide representative, the HVACR business may continue to operate for 60 days without a bona fide representative provided that:

1. A master HVACR contractor supervises all work to be conducted in the same manner as required by a bona fide representative pursuant to N.J.A.C. 13:32A-5.3(a)3;
2. The bona fide representative and the HVACR business notifies the Board within 10 days of the withdrawal of the bona fide representative; and
3. The supervising master HVACR contractor licensee notifies the Board within 10 days of being appointed as the supervising master HVACR contractor.

(c) If the bona fide representative for any HVACR business is unable to perform the duties of a bona fide representative because of death, illness, or disability, the HVACR business may continue to operate for six months without a bona fide representative provided that:

1. A master HVACR contractor supervises all work to be conducted in the same manner as required by a bona fide representative pursuant to N.J.A.C. 13:32A-5.3(a)3; and

2. The supervising master HVACR contractor and the HVACR business notify the Board within 10 days of the death, illness, or disability of the bona fide representative.

13:32A-5.3 Bona fide representative responsibilities

(a) A bona fide representative registered with the Board pursuant to N.J.A.C. 13:32A-5.2 shall:

1. Give notice to the Board in writing concerning any change in the name or address of the entity within 10 days of the change;

2. Secure or instruct an authorized employee, or an independent master HVACR contractor, to secure all necessary permits as may be required by State and local law for the performance of HVACR work to be performed by the HVACR business. In making an application for permit issuance, the authorized employee or independent master HVACR contractor shall have in his or her possession a letter authorizing him or her to make the application. A letter of authorization may authorize a permit application for a specific period of time, not to exceed 60 days, and shall have affixed to it the seal of the bona fide representative. In all circumstances, the permit shall be signed by a master HVACR contractor and all work shall be supervised in the manner set forth in (a)3 below;

3. Supervise the performance of all HVACR work performed by the HVACR business as follows:

i. If the person performing the work is a master HVACR contractor, the bona fide representative shall require at the beginning of the job an initial report on the work to be performed and upon completion of the job a final report on the work performed;

ii. If the person performing the work is an HVACR journeyman, the bona fide representative or a master HVACR contractor employed by the HVACR business shall maintain daily contact with the HVACR [page=925] journeyman either directly, by telephone or through writing and, where the work requires *[a]* ***an*** HVACR permit, shall inspect the work upon completion. Any such contact shall be recorded by the bona fide representative or the master HVACR contractor employed by the HVACR business; and

iii. If the person performing the work is an apprentice, the bona fide representative shall ensure constant on-site supervision by a master HVACR contractor, or *[a]* ***an*** HVACR journeyman with at least five years experience, during all times that HVACR services are being performed;

4. Be responsible for any and all violations of N.J.S.A. 45:16A-1 et seq. committed by employees of the HVACR business if said violations were committed during the course of work that he or she was required to supervise;

5. Serve as a bona fide representative for only one HVACR business; and

6. Maintain a place of business in the State of New Jersey or designate, and notify the Board of the identity of, an agent or entity in New Jersey for service of process.

(b) Nothing in this chapter shall preclude the Board from proceeding against both the bona fide representative for an HVACR business or any other master HVACR contractor employed by such a business who can be shown to have violated N.J.S.A. 45:16A-1 et seq. or Board rules. Nothing shall preclude any person entitled to maintain an action on a bond from proceeding pursuant to N.J.A.C. 13:32A-5.6 against the bona fide representative and any other master HVACR contractor who has failed to perform the duties required by N.J.S.A. 45:16A-1 et seq.

(c) The bona fide representative of any HVACR business that contracts to provide HVACR services to a consumer and wishes to subcontract that HVACR work to another HVACR business shall:

1. Subcontract only to a business whose sole proprietor is a licensed master HVACR contractor or which has a bona fide representative who is registered with the Board. The bona fide representative for the original master HVACR contractor shall be responsible for ensuring that the subcontractor has a registered bona fide representative;
2. Require of the subcontractor that a copy of any permit applications, permits, and changes in application or permit shall be delivered to the original HVACR business within five business days of the date the application or permit is filed;
3. Notify the consumer, prior to the beginning of any work, that the work has been subcontracted to another HVACR business and provide the consumer with the name, address, and telephone number of the subcontractor and the name and license number of the subcontractor's bona fide representative;
4. Advise the consumer prior to the beginning of any work that he or she has the right to terminate the contract prior to the beginning of any work because of the subcontracting;
5. Notify the consumer that the original HVACR business as well as the subcontractor remain liable for any defects, damages, or other losses that may result from the negligence, misconduct, or insolvency of the subcontractor;
6. Require that the subcontractor immediately notify the original HVACR business of any complaints by the consumer or the consumer's representative or by any governmental official; and
7. Supervise the work of the subcontractor in the same manner as required by (a)3i above.

(d) The bona fide representative shall have sufficient knowledge of the HVACR business' bookkeeping system and financial accounts to inform the Board, upon request by the Board, regarding the business' price-setting, billings, costs, subcontractors, overhead costs, and profits.

13:32A-5.4 Supervision

Any HVACR work that a master HVACR contractor agrees to perform, that has not been subcontracted *[to another master HVACR contractor]*, shall be performed only by the master HVACR contractor or those employees of the master HVACR contractor or the HVACR business whose remuneration is reported on a Form W-2 to the Internal Revenue Service.

13:32A-5.5 Requirement of identification card

(a) At the time of the biennial renewal of the license, the Board shall furnish a wallet size identification card to every master HVACR contractor. The card shall be used exclusively by the master HVACR contractor in the conduct of his or her practice. A master HVACR contractor is required to present the identification card upon request when applying for HVACR permits.

(b) Use of an identification card by any person, other than the master HVACR contractor to whom the identification card is issued or by the agent authorized to act on behalf of the master HVACR contractor, shall be deemed to be the use or employment of dishonesty, fraud, deception, misrepresentation, or false pretense. Such conduct shall be unlawful and may be grounds for the suspension or revocation of the license of the unauthorized user if he or she is already licensed by the Board. With respect to an unlicensed user, such conduct shall be grounds for the refusal to issue a State license in the future, which does not preclude the Board from proceeding against unlicensed practice pursuant to any other law or regulation.

(c) A master HVACR contractor who willfully or negligently allows an unlicensed or unauthorized person to use his or her identification card shall be deemed to have engaged in occupational misconduct and shall be subject to such penalties and sanctions as shall be imposed by the Board pursuant to authority granted by N.J.S.A. 45:16A-1 and 45:1-14 et seq.

13:32A-5.6 Actions on the surety bond

(a) Any person, partnership, or corporation including any political subdivision of State government who has been injured, aggrieved, or damaged through the failure of a master HVACR contractor to perform the duties required by N.J.S.A. 45:16A-1 et seq. or any rule of the Board shall be eligible to receive the financial protection of, and may maintain an action on, the surety bond.

(b) Any restitution to a person, partnership, corporation, or any political subdivision of State government ordered by the Board shall be eligible for the financial protection of the surety bond.

(c) If a bond is used to respond to a claim pursuant to (a) or (b) above, a master HVACR contractor shall replenish the bond so that its sum is \$ 3,000 as required by N.J.S.A. 45:16A-23.

13:32A-5.7 Change of address; service of process

(a) Every master HVACR contractor shall notify the Board in writing of his or her office address. Every master HVACR contractor shall notify the Board in writing of any change in his or her office within 10 days after such change.

(b) Service of an administrative complaint or other process initiated by the Board, the Attorney General, or the Division of Consumer Affairs at the master HVACR contractor's address on file with the Board shall be deemed adequate notice for the commencement of any inquiry or disciplinary proceeding against the master HVACR contractor.

13:32A-5.8 Unconscionable pricing

(a) A master HVACR contractor shall not charge an unconscionable price for services. A price is unconscionable when, after review of the facts, a master HVACR contractor of ordinary prudence would be left with a definite and firm conviction that the price is so high as to be manifestly unconscionable or overreaching under the circumstances.

(b) Factors that may be considered in determining whether a price is unconscionable include the following:

1. The time and effort required;
2. The novelty or difficulty of the job;
3. The skill required to perform the job properly;
4. Any special conditions placed upon the performance of the job by the person or entity for which the work is being performed;
5. The experience, reputation and ability of the master HVACR contractor to perform the services; and
6. The price customarily charged in the locality for similar services.

(c) Charging an unconscionable price shall constitute occupational misconduct within the meaning of N.J.S.A. 45:1-21(e) and may subject the master HVACR contractor to disciplinary action.

[page=926] 13:32A-5.9 Designations for licensees; prohibitions on unlicensed persons

(a) An active licensee may use the title "licensed master HVACR contractor" or "master HVACR contractor."

(b) No person, firm, partnership, corporation, or other legal entity shall engage in the business of HVACR contracting, advertise as a master HVACR contractor or use the title "licensed master HVACR contractor" or "master HVACR contractor" unless the person is licensed by the Board or the firm, partnership, corporation, or other legal entity has a bona fide representative who is licensed by the Board.

SUBCHAPTER 6. FEES

13:32A-6.1 Fee schedule

(a) The following fees shall be charged by the Board:

| | |
|--|-----------|
| 1. Application fee without prior registration (non-refundable).... | \$ 100.00 |
| 2. Initial license fee: | |
| i. If paid during the first year of a biennial renewal period..... | 160.00 |
| ii. If paid during the second year of a biennial renewal period... | 80.00 |
| 3. License renewal fee, biennial..... | 160.00 |
| 4. Late renewal fee..... | 50.00 |
| 5. Reinstatement fee..... | 150.00 |
| 6. Initial pressure seal..... | 25.00 |
| 7. Replacement pressure seal..... | 25.00 |
| 8. Duplicate license fee..... | 25.00 |
| 9. Replacement wall certificate..... | 40.00 |
| 10. Verification of licensure..... | 25.00 |
| 11. Continuing education sponsor application fee..... | 100.00 |
