

Amended by R.1993 d.433, effective September 7, 1993.  
 See: 25 N.J.R. 2217(a), 25 N.J.R. 4111(a).  
 Amended by R.1998 d.401, effective August 3, 1998.  
 See: 30 N.J.R. 1755(a), 30 N.J.R. 2940(a).  
 Rewrote the section.

#### 16:25-10.2 (Reserved)

Repealed by R.1998 d.401, effective August 3, 1998.  
 See: 30 N.J.R. 1755(a), 30 N.J.R. 2940(a).  
 Section was "Opening permits".

#### 16:25-10.3 (Reserved)

Repealed by R.1998 d.401, effective August 3, 1998.  
 See: 30 N.J.R. 1755(a), 30 N.J.R. 2940(a).  
 Section was "Deposit or bond".

#### 16:25-10.4 (Reserved)

Repealed by R.1998 d.401, effective August 3, 1998.  
 See: 30 N.J.R. 1755(a), 30 N.J.R. 2940(a).  
 Section was "Approval and issuance".

#### 16:25-10.5 (Reserved)

Repealed by R.1998 d.401, effective August 3, 1998.  
 See: 30 N.J.R. 1755(a), 30 N.J.R. 2940(a).  
 Section was "Acceptance of license or permit".

#### 16:25-10.6 (Reserved)

Repealed by R.1998 d.401, effective August 3, 1998.  
 See: 30 N.J.R. 1755(a), 30 N.J.R. 2940(a).  
 Section was "Notice of starting work".

#### 16:25-10.7 (Reserved)

Repealed by R.1998 d.401, effective August 3, 1998.  
 See: 30 N.J.R. 1755(a), 30 N.J.R. 2940(a).  
 Section was "Permit to be kept on job".

#### 16:25-10.8 (Reserved)

Repealed by R.1998 d.401, effective August 3, 1998.  
 See: 30 N.J.R. 1755(a), 30 N.J.R. 2940(a).  
 Section was "Occupancy by unwritten consent".

#### 16:25-10.9 (Reserved)

Repealed by R.1998 d.401, effective August 3, 1998.  
 See: 30 N.J.R. 1755(a), 30 N.J.R. 2940(a).  
 Section was "Right to revoke or annul permit".

#### 16:25-10.10 (Reserved)

Repealed by R.1998 d.401, effective August 3, 1998.  
 See: 30 N.J.R. 1755(a), 30 N.J.R. 2940(a).  
 Section was "Responsibility for costs".

## SUBCHAPTER 11. SPECIAL PERMITS AND AGREEMENTS

### 16:25-11.1 Railroad crossings

(a) The Commissioner of the Department of Transportation has plenary power over all public railroad crossings in the State, in accordance with N.J.S.A. 48:12-49 et seq.

(b) Railroad crossings consist of grade-separated crossings (bridged) and at-grade crossings:

1. The following applies to grade-separated crossings:

i. For grade-separated crossings where the railroad is over the highway, the Department shall determine the vertical and horizontal under clearances and the railroad and the Department shall approve the structure of the crossing;

ii. For grade-separated crossings where the railroad is under the highway, the railroad shall determine the vertical and horizontal under clearances and the Department and railroad shall approve the structure of the crossing;

2. The following applies to at-grade crossings:

i. Public at-grade crossings occur where the railroad intersects an existing or proposed public street or highway. New public at-grade crossings or modifications to existing public at-grade crossings are only permitted by the Commissioner of the Department of Transportation, after he or she exercises the evaluation, public information and response process delineated in (c) below.

ii. Private at-grade crossings occur in areas other than public thoroughfares, and the Commissioner normally does not exercise his or her authority over these crossings; however, where a private at-grade crossing is used primarily by the general public, the Commissioner may take jurisdiction of the private at-grade crossing if he or she is of the opinion such jurisdiction is in the interest of public safety.

(c) The evaluation, public information and response process for at-grade public crossings shall be conducted by the Department as follows:

1. A diagnostic team, composed of Department staff, the applicant for the crossing, and municipal and county officials who have an interest in the crossing, will meet on the site of the proposed crossing or at another convenient location to evaluate the engineering and safety aspects of the crossing;

2. The team leader (a Department staff member) will prepare a memorandum of record, noting the findings of the team;

3. The Department will publish a notice in the newspaper(s) serving the area in which the proposed grade crossing is located, describing the particular work intended at the grade crossing, and calling for members of the public who object, or who have questions or comments regarding the proposed crossing to submit their objections, questions or comments to the Department; and

4. The Department will respond to commenters in writing.

5. The Department shall issue a decision based on the diagnostic team's recommendations and taking into account the comments received.

6. Any person who objects to the Department's decision regarding an at-grade crossing may request a hearing in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

New Rule, R.1993 d.433, effective September 7, 1993.  
See: 25 N.J.R. 2217(a), 25 N.J.R. 4111(a).  
Amended by R.1998 d.401, effective August 3, 1998.  
See: 30 N.J.R. 1755(a), 30 N.J.R. 2940(a).

In (c), inserted "or at another convenient location" following "crossing" in 1, and added 5; and recodified former (d) as (c)6, and substituted a reference to persons for a reference to applicants.

### 16:25-11.2 Local Federal-Aid Agreements

(a) Pursuant to the provisions of Federal-Aid Policy Guide, Title 23, Chapter 1, Subchapter G, Part 645, Subpart B, the Department shall enter into agreements with appropriate county and municipal officials to provide for regulating the use and occupancy of Federal Aid Roads, and to assist local officials in establishing utility accommodation policies conforming, as appropriate for the type of highway involved, to the provisions of this chapter.

(b) Such agreements may be entered into on a project-by-project basis handled by the Bureau of Local Aid. Until a county or municipality adopts a utility accommodation policy approved by the Department conforming to Federal requirements, the Utility and Railroad Engineering Unit shall review for conformance with the State requirements in effect at the time all utility rearrangement schemes on Federal-Aid Roads that are subject to the provisions of 23 CFR 645B.

Amended by R.1993 d.433, effective September 7, 1993.  
See: 25 N.J.R. 2217(a), 25 N.J.R. 4111(a).  
Amended by R.1998 d.401, effective August 3, 1998.  
See: 30 N.J.R. 1755(a), 30 N.J.R. 2940(a).

In (b), changed bureau names.

### 16:25-11.3 Private utilities

(a) Requests for permits by private persons or concerns to cross, occupy, or use freeways, State highways, or Federal-Aid Road rights-of-way shall be treated as special cases; and the review, approval, and issuance of any such permits or agreements for the accommodation of such privately-owned facilities shall be on the merits of the individual requests as to its necessity and legal basis consistent with New Jersey law.

(b) Where the requested use and occupancy involve more than a road crossing or a relatively short segment of parallel line (for example, up to  $\frac{1}{8}$  mile (200 m)), or where equivalent utility service is available without the private line installation, then the request shall be reviewed for legal propriety of the requested use. All such private lines must also meet all other applicable provisions of this chapter.

(c) Applications for longitudinal use and occupancy of Federal-Aid highways by private lines shall be submitted by the Department to the Federal Highway Administration Division Administrator for prior approval.

Amended by R.1992 d.194, effective May 4, 1992.  
See: 23 N.J.R. 3739(c), 24 N.J.R. 1801(b).

Added (c).  
Amended by R.1993 d.433, effective September 7, 1993.  
See: 25 N.J.R. 2217(a), 25 N.J.R. 4111(a).  
Amended by R.1998 d.401, effective August 3, 1998.  
See: 30 N.J.R. 1755(a), 30 N.J.R. 2940(a).

In (a), substituted a reference to freeways for a reference to Interstate freeways, and inserted a reference to agreements; and in (b), rewrote the first sentence.

### 16:25-11.4 Highway lighting

Requests for permits to install or revamp highway lighting systems by electric utilities or municipalities shall be treated as special cases; and each such request shall be referred to the Department for review and recommendations as to acceptability of design, adequacy of lighting, and safety factors in addition to the normal review and processing for permit approval of an above-ground utility installation in accordance with N.J.A.C. 16:41.

Amended by R.1998 d.401, effective August 3, 1998.  
See: 30 N.J.R. 1755(a), 30 N.J.R. 2940(a).

Added "in accordance with N.J.A.C. 16:41" at the end.

## SUBCHAPTER 12. UTILITY RELOCATIONS AND ADJUSTMENTS

### 16:25-12.1 Reimbursement

(a) Public utilities and cable television companies are entitled to reimbursement for the costs and expenses of the relocation and removal of their facilities as provided in N.J.S.A. 27:7-44.9a.

(b) Compensation for the acquisition of any property or any property rights or interests of utilities and cable television companies by the Department shall be in accordance with the provisions of the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq.

(c) The reimbursement of utilities for the cost of relocations and adjustments of existing utility lines, systems and facilities required by a highway project will be in accordance with the procedures set forth in 23 CFR 645A.

(d) The Department shall make the contractual arrangements and reimburse for eligible adjustments on all projects whose construction is administered by the Department.

Amended by R.1993 d.433, effective September 7, 1993.  
See: 25 N.J.R. 2217(a), 25 N.J.R. 4111(a).  
Amended by R.1998 d.401, effective August 3, 1998.  
See: 30 N.J.R. 1755(a), 30 N.J.R. 2940(a).

Rewrote the section.

**Law Review and Journal Commentaries**

DOT—Highway Access Permits—Relocation Costs—Transportation—Utilities. P.R. Chenoweth, 134 N.J.L.J. No. 11, 50 (1993).

**Case Notes**

Commercial or housing development that requires relocation of utility may be required to underwrite costs of relocation of any utility poles necessitated by development. Pine Belt Chevrolet, Inc. v. Jersey Cent. Power and Light Co., 249 N.J.Super. 461, 592 A.2d 634 (A.D. 1991), certification granted 130 N.J. 10, 611 A.2d 649, reversed 132 N.J. 564, 626 A.2d 434.

Department of Transportation's road-widening condition for granting highway-access permit was not sufficient to trigger statute requiring Department to pay costs of relocating utility facilities. Pine Belt Chevrolet, Inc. v. Jersey Cent. Power and Light Co., 132 N.J. 564, 626 A.2d 434 (1993).

Department of Transportation, rather than utility or owners, was required to bear costs of relocation of utility poles resulting from

widening of state highway. Pine Belt Chevrolet, Inc. v. Jersey Cent. Power and Light Co., 249 N.J.Super. 461, 592 A.2d 634 (A.D.1991), certification granted 130 N.J. 10, 611 A.2d 649, reversed 132 N.J. 564, 626 A.2d 434.

Department of Transportation need not bear costs of relocation of utility lines. Pine Belt Chevrolet, Inc. v. Jersey Cent. Power and Light Co., 249 N.J.Super. 461, 592 A.2d 634 (A.D.1991), certification granted 130 N.J. 10, 611 A.2d 649, reversed 132 N.J. 564, 626 A.2d 434.

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**SUBCHAPTER 13. SEVERABILITY****16:25-13.1 Severability**

If any provision of this chapter is held invalid, the remainder of the chapter shall not be affected thereby, and shall remain in full force and effect.