

**CHAPTER 45**  
**CONSTRUCTION CONTROL**

**Authority**

N.J.S.A. 27:1A-5, 27:1A-6 and 27:2-1 through 2-8.

**Source and Effective Date**

R.1994 d.454, effective August 12, 1994.  
See: 26 N.J.R. 2547(b), 26 N.J.R. 3740(c).

**Executive Order No. 66(1978) Expiration Date**

Chapter 45, Construction Control, expires on August 12, 1999.

**Chapter Historical Note**

Chapter 45, Construction Control, was adopted as R.1989 d.505, effective September 18, 1989. See: 21 N.J.R. 1972(c), 21 N.J.R. 3020(b). Prior rules regarding Construction Control were filed under N.J.A.C. 16:33, which was repealed by R.1989 d.505.

Pursuant to Executive Order No. 66(1978), Chapter 45 was readopted as R.1994 d.454. See: Source and Effective Date. As a part of R.1994 d.454, a new Subchapter 1, General Provisions, and Subchapter 4, Claims Review Board, were adopted, and existing Subchapters 1 and 2 were redesignated Subchapters 2 and 3, respectively, effective September 6, 1994. See: 26 N.J.R. 2547(b), 26 N.J.R. 3740(c). See, also, section annotations.

**CHAPTER TABLE OF CONTENTS**

**SUBCHAPTER 1. GENERAL PROVISIONS**

16:45-1.1 Scope and purpose  
16:45-1.2 Definitions

**SUBCHAPTER 2. CLAIMS COMMITTEE**

16:45-2.1 Claims committee  
16:45-2.2 Claims committee procedures  
16:45-2.3 Disposition

**SUBCHAPTER 3. SUBSTANTIAL COMPLETION**

16:45-3.1 Purpose  
16:45-3.2 Definition of substantial completion

**SUBCHAPTER 4. CLAIMS REVIEW BOARD**

16:45-4.1 Claims review board  
16:45-4.2 Claims review board procedures  
16:45-4.3 Disposition

**SUBCHAPTER 1. GENERAL PROVISIONS**

**16:45-1.1 Scope and purpose**

The rules of this chapter outline when it is appropriate, and the procedures to be followed, to bring contract claims matters before the Department's claims committee and the Department's claims review board. These two groups may each provide a level of claims review above that which is routinely available at the Department's construction project

field staff level and its regional management level. Also, this chapter indicates whether the claims committee is the final level of agency review available for a particular claimant or whether the review can go a step further, that is, to the claims review board level.

**16:45-1.2 Definitions**

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

"Specifications" means the Standard Specifications and the Supplemental Specifications.

"Standard Specifications" means the 1983 and the 1989 edition of the book entitled "New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction," as appropriate, as amended and supplemented.

"Supplementary Specifications" means amendments or revisions that update the Standard Specifications, or which customize the Standard Specifications for particular road and/or bridge construction contracts.

**SUBCHAPTER 2. CLAIMS COMMITTEE**

**16:45-2.1 Claims committee**

(a) The claims committee is an administrative body available to review and resolve claims that arise under the contract. At the option of the contractor, claims may be presented to the claims committee for administrative resolution. The presentation of a claim to the claims committee shall in no way alter or affect other rights of the contractor, including the right, pursuant to the Contractual Liability Act, N.J.S.A. 59:13-1 et seq., to seek redress in the courts. Said presentation to the claims committee shall in no way alter or affect the applicable statute of limitations.

(b) The claims committee shall be comprised of the following:

1. Chairperson—Executive Director, Regional Operations, Region 5;
2. Director, Division of Regional Design;
3. Director, Division of Accounting and Auditing;
4. Deputy Attorney General (non-voting member);
5. Secretary for the claims committee (non-voting member to be designated by the chairperson).

Amended by R.1994 d.454, effective September 6, 1994.  
See: 26 N.J.R. 2547(b), 26 N.J.R. 3740(c).

**Case Notes**

Department failed to deal expressly and clearly with effect of administrative review of disputed claims on statute of limitations, and thus could not insist on limitations defense. *W.V. Pangborne & Co., Inc. v. New Jersey Dept. of Transp.*, 116 N.J. 543, 562 A.2d 222 (1989).

Contract was completed when project was accepted and conditional final payment was made, rather than at expiration of one-year surety agreement. *W.V. Pangborne & Co., Inc. v. New Jersey Dept. of Transp.*, 226 N.J.Super. 367, 544 A.2d 423 (A.D.1988) certification granted 114 N.J. 301, 554 A.2d 854, reversed 116 N.J. 543, 562 A.2d 222.

**16:45-2.2 Claims committee procedures**

(a) The procedures set forth in this section establish a method of reviewing contractual disputes and in no way constitute a waiver by the State of New Jersey of its sovereign immunity from suit.

(b) For contracts in which the specifications do not provide for the review of claims by the claims committee prior to contract completion, the following procedures apply:

1. The contractor shall comply with the provisions of the contract specifications which govern the documentation and submission of claims.

2. The claims committee will accept for consideration all claims which have been properly presented and reserved under the specifications and which have not been resolved prior to the completion of the contract.

3. The contractor shall notify the secretary of the claims committee in writing of its desire to have unresolved claims reviewed by the committee. This written notice shall be given within 30 days of the completion of the contract and a copy of this notice shall be sent by the contractor to the executive director (also referred to as the regional director) of the region in charge of administering the contract. The appropriate executive director shall forward to the secretary of the claims committee all information previously submitted by the contractor in support of its claims. Failure by the contractor to give such written notice within 30 days of the completion of the contract shall bar review by the claims committee.

4. Within 45 days of the receipt of the contractor's written request for claims committee review, the claims committee will schedule a meeting for review of the claims submitted. The contractor may appear at the meeting and make an oral presentation in support of its claims. If the contractor does not appear at the meeting, the claims committee will base its review of the claims on the written information previously supplied by the contractor and forwarded to the committee by the appropriate executive director.

(c) For contracts in which the specifications provide for the review of claims by the claims committee prior to contract completion, the procedure shall be as set forth in contract specifications Section 100—General Provisions (typically found in Sections 107 and 109 of the specifications).

Amended by R.1994 d.454, effective September 6, 1994.  
See: 26 N.J.R. 2547(b), 26 N.J.R. 3740(c).

**16:45-2.3 Disposition**

(a) The Commissioner or the Commissioner's designee shall make final determination on all claims reviewed by the Department's claims committee.

(b) For contracts in which the specifications do not provide for the review of claims prior to contract completion, the secretary of the claims committee shall notify the contractor of the Commissioner's or Commissioner designee's decision and the contractor shall accept or reject the decision within 60 days. The contractor shall, within 60 days of that notification, indicate that the decision is acceptable by executing and delivering an unconditional release of all claims against the State, the Commissioner and the Department, their agents, officers and employees as to all claims. If the contractor rejects the decision, no further Departmental action will be taken. If the contractor has not indicated its acceptance of the decision in the manner stated above, the claims committee decision will be considered rejected and no further Departmental action will be taken. Upon acceptance of the claims committee decision, the Department shall pay the decision amount to the contractor in accordance with the New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq.

(c) For contracts in which the specifications provide for the review of claims by the claims committee prior to contract completion, the Department and the contractor shall comply with the provisions of the specifications which govern the disposition of claims as set forth in contract specifications Section 100—General Provisions (typically found in Sections 107 and 109 of the specifications).

(d) For contracts in which the specifications do not provide for the review of claims by a claims review board, and where the claims committee has completed its review and a final Commissioner (or designee) determination has been made, there shall be no further Departmental review of the claims.

Amended by R.1994 d.454, effective September 6, 1994.  
See: 26 N.J.R. 2547(b), 26 N.J.R. 3740(c).

**SUBCHAPTER 3. SUBSTANTIAL COMPLETION****16:45-3.1 Purpose**

The following definition of "substantial completion" is adopted pursuant to N.J.S.A. 27:7-34. This definition will be incorporated into contracts on Department of Transportation construction projects in substantially the same form as herein presented.

**16:45-3.2 Definition of substantial completion**

(a) "Substantial completion" as used herein, means the point at which the performance of all work on the project; except landscaping items, including the planting of trees, shrubs, vines, ground covers and seedlings; final clean-up and repair of work performed but not accepted; has been completed, provided the engineer has determined, in his sole discretion, that:

1. The project is safe and convenient for use by the public;
2. Failure to complete the work and repairs excepted above does not result in the deterioration of other completed work; and
3. Provided that the value of landscape work remaining to be performed, repairs and clean-up, is less than two percent of the total adjusted contract price.

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**SUBCHAPTER 4. CLAIMS REVIEW BOARD**
**16:45-4.1 Claims review board**

(a) The claims review board is an administrative body available to review and resolve claims that arise under the contract; and its function is supplemental to the claims committee review process. Only for specific contracts in which the specifications provide for the review of claims by the claims review board, may claims be presented to the claims review board for administrative resolution. The presentation of a claim to the claims review board shall in no way alter or affect other rights of the contractor, including the right, pursuant to the Contractual Liability Act, N.J.S.A. 59:13-1 et seq., to seek redress in the courts. Said presentation to the claims review board shall in no way alter or affect the applicable statute of limitations.

(b) The claims review board is comprised of three members appointed by the Commissioner for a two year term:

1. Chairperson—a Department manager;
2. A Construction Industry Advancement Program (CIAP) representative; and
3. A member who is a subject matter expert (such as an engineer), who is not involved with the Department or with the contractor.

**Case Notes**

Department failed to deal expressly and clearly with effect of administrative review of disputed claims on statute of limitations, and thus could not insist on limitations defense. *W.V. Pangborne & Co., Inc. v. New Jersey Dept. of Transp.*, 116 N.J. 543, 562 A.2d 222 (1989).

Contract was completed when project was accepted and conditional final payment was made, rather than at expiration of one-year surety agreement. *W.V. Pangborne & Co., Inc. v. New Jersey Dept. of Transp.*, 226 N.J.Super. 367, 544 A.2d 423 (A.D.1988) certification granted 114 N.J. 301, 554 A.2d 854, reversed 116 N.J. 543, 562 A.2d 222.

**16:45-4.2 Claims review board procedures**

(a) The procedure set forth in this section establish a method of reviewing contractual disputes and in no way constitute a waiver by the State of New Jersey of its sovereign immunity from suit.

(b) The contractor shall comply with the provisions of the specifications which govern the reservation, presentation, documentation and submission of claims to the claims review board as set forth in contract specifications Section 100—General Provisions (typically found in Sections 107 and 109 of the specifications). Claims review board matters are further limited to those cases in which there is full compliance with the bid document escrow requirement, the cost sharing requirement, and other such requirements, if any, as set forth in contract specifications Section 100—General Provisions (typically found in Sections 103, 107 and 109 of the specifications).

**Case Notes**

Contract between Department and contractor was complete when contractor's work had been accepted and final conditional payment was authorized. *W.V. Pangborne & Co., Inc. v. New Jersey Dept. of Transp.*, 116 N.J. 543, 562 A.2d 222 (1989).

Department failed to deal expressly and clearly with effect of administrative review of disputed claim on statute of limitations and thus could not insist on limitations defense. *W.V. Pangborne & Co., Inc. v. New Jersey Dept. of Transp.*, 116 N.J. 543, 562 A.2d 222 (1989).

**16:45-4.3 Disposition**

The Department and the contractor shall comply with the provisions of the specifications which govern the disposition of claims as set forth in contract specifications Section 100—General Provisions (typically found in Sections 107 and 109 of the specifications).