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SUBCHAPTER 1. GENERAL PROVISIONS

5:23-1.1 Title; division into subchapters

(a) These regulations shall be known as the "Regulations for the New Jersey Uniform Construction Code" and are referred to herein as "the regulations".

(b) The chapter consists of the following subchapters:

1. "General provisions" which may be cited throughout the regulations as N.J.A.C. 5:23-1 and when referred to in subchapter 1 of this chapter may be cited as this subchapter.

2. "Administration and enforcement; process" which may be cited throughout the regulations as N.J.A.C. 5:23-2 and when referred to in subchapter 2 of this chapter may be cited as this subchapter.

3. "Subcodes" which may be cited throughout the regulations as N.J.A.C. 5:23-3 and when referred to in subchapter 3 of this chapter may be cited as this subchapter.

i. N.J.A.C. 5:23-3.11B contains references to the Department of Environmental Protection's rules concerning underground storage tanks, codified at N.J.A.C.

Chapter	Section/Title	Responsibility	
		Plan Review	Inspection
	620.1-620.3	Building/Fire	Building
	620.4-620.5	Fire	Fire
	621-622	Building/Fire	Building
	623.1-623.6	Building/Fire	Building
	623.7	Building/Fire	Fire
	624	Plumbing	Plumbing
	625	Building/Fire	Building
	626	Plumbing	Plumbing
	627.1	Building/Fire	Building
	627.2-627.3	Plumbing	Plumbing
	627.4-627.7	Building/Fire	Building
	627.8-627.9	Plumbing	Plumbing
	627.10	Electrical	Electrical
	628.1-628.3	Building/Fire	Building
	628.4	Plumbing	Plumbing
	629-630	Building/Fire	Building
	631-632	Plumbing	Plumbing
	633	Electrical	Electrical
	634	Building/Fire	Building
	635	See Chapter 7	See Chapter 7
Ch. 7	Gaseous Hydrogen Systems		
	703.1	Building	Building
	703.2	Building/Fire	Fire
	703.3-703.5	Fire	Fire
	703.6	Electrical	Electrical
	704.1	Fire	Fire
	704.1.1	Fire	Fire
	704.1.2	Plumbing	Plumbing
	704.2-704.4	Fire	Fire
	705	Plumbing	Plumbing
	706.1	Building	Building
	706.2	Building/Fire	Fire
	706.3	Fire	Fire
	707-708	Fire	Fire

8. Elevator Subcode: All (except as provided for in N.J.A.C. 5:23-12)

9. Radon Hazard Subcode: Building subcode official, except that N.J.A.C. 5:23-10.4(b)14 shall be the responsibility of the Electrical Subcode official.

(b) Where responsibility for enforcement of a section is joint between two officials and there are conflicting opinions regarding enforcement, the construction official shall rule as to which interpretation or application shall be followed.

(c) Responsibility for enforcement of the Barrier Free Subcode and Radon Hazard Subcode shall be in accordance with N.J.A.C. 5:23-7.15 and 10.3, respectively.

(d) Any mechanical inspector employed by the Department or by a municipality, and so assigned by the construction official, shall have the responsibility for enforcement of the provisions of the code, except electrical, relating to the

installation of mechanical equipment, such as refrigeration, air conditioning or ventilating apparatus, gas piping or heating systems, in Group R-3, R-4, or R-5 structures.

1. When assigned by the construction official, a plumbing subcode official shall have the responsibility for the enforcement of the provisions of the code, except electrical, for the replacement of heating or cooling equipment or water heaters in Group R-3, R-4, or R-5 structures. A plumbing subcode official need not be a mechanical inspector to perform these inspections.

Amended by R.1981 d.132, effective May 7, 1981.

See: 13 N.J.R. 121(a), 13 N.J.R. 258(d).

Amended by R.1986 d.380, effective September 22, 1986.

See: 18 N.J.R. 1235(a), 18 N.J.R. 1931(a), 18 N.J.R. 2063(a).

Substantially amended.

Amended by R.1987 d.14, effective January 5, 1987.

See: 18 N.J.R. 2083(a), 19 N.J.R. 63(a).

(f)4 added; old (f)4-6 renumbered (f)5-7.

Amended by R.1987 d.374, effective September 21, 1987.

See: 19 N.J.R. 1024(a), 19 N.J.R. 1720(b).

(a)1 through 4; model subcode revisions.
Amended by R.1990 d.226, effective May 7, 1990.
See: 21 N.J.R. 3696(a), 22 N.J.R. 1356(a).
Provisions for enforcement of radon subcode added at (g).
Amended by R.1990 d.507, effective October 15, 1990.
See: 22 N.J.R. 2208(a), 22 N.J.R. 3214(a).
Text conformed to BOCA National Code/1990.
Amended by R.1991 d.325, effective July 1, 1991.
See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).
Other elevator devices covered; enforcement responsibilities clarified.
Amended by R.1992 d.147, effective April 6, 1992.
See: 24 N.J.R. 170(a), 24 N.J.R. 1397(a).
Elevators wholly within R-2 residences exempt.
Amended by R.1992 d.183, effective April 20, 1992.
See: 24 N.J.R. 167(a), 24 N.J.R. 1475(b).
Enforcement of indoor air quality subcode assigned to building subcode official.
Amended by R.1993 d.187, effective May 3, 1993.
See: 25 N.J.R. 624(a), 25 N.J.R. 1875(a).
Added subsection (j); deleted "Allocation of enforcement" from heading.
Amended by R.1993 d.662, effective December 20, 1993.
See: 25 N.J.R. 3891(a), 25 N.J.R. 5918(a).
Amended by R.1995 d.143, effective March 20, 1995 (operative July 1, 1995).
See: 26 N.J.R. 4872(a), 27 N.J.R. 1179(b).
Amended by R.1997 d.409, effective October 6, 1997.
See: 29 N.J.R. 2736(a), 29 N.J.R. 4281(a).
In (g), deleted reference to exception to exclusive authority provided in N.J.A.C. 5:23-3.11(h).
Amended by R.1997 d.418, effective October 6, 1997.
See: 29 N.J.R. 3402(a), 29 N.J.R. 4286(a).
In (f), inserted reference to (j); and added (j)1.
Amended by R.1998 d.28, effective January 5, 1998.
See: 29 N.J.R. 3603(a), 30 N.J.R. 129(a).
Inserted (k) stating responsibility for the enforcement of the rehabilitation subcode.
Repeal and New Rule, R.1998 d.332, effective July 6, 1998.
See: 30 N.J.R. 1377(a), 30 N.J.R. 2421(b).
Section was "Responsibility".
Amended by R.1999 d.259, effective August 16, 1999.
See: 31 N.J.R. 825(a), 31 N.J.R. 2330(a).
In (d)1 and (d)2, under "MECHANICAL SUBCODE", added references to N.J.A.C. 5:23-3.20(c).
Amended by R.2000 d.166, effective April 17, 2000.
See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).
In (b)2, changed Chapter 21 and Chapter 31 through 33 references in the Building Subcode, and inserted Chapter 12 reference in the Mechanical Subcode; and in (d)2, deleted a former Chapter 21 reference in the Building Subcode, and changed Chapter 12 reference in the Mechanical Subcode.
Amended by R.2001 d.141, effective May 7, 2001.
See: 32 N.J.R. 3917(a), 33 N.J.R. 746(a), 33 N.J.R. 1399(d).
In (b)1 and (b)2, deleted "as follows: (All except M-801.2)" following "Chapter 8" in the Mechanical Code; in (d)1, deleted "Chapter 8 as follows: M-801.2" in the Mechanical Code; in (d)2, deleted "3007.3" following "413.5.2", inserted "3305.0" following "414.5", and deleted "408.3.1", "3305.0" and "414.5" at the end of the Building Subcode, and deleted "Chapter 8 as follows: M-801.2" in the Mechanical Subcode.
Amended by R.2001 d.196, effective June 18, 2001.
See: 33 N.J.R. 6(a), 33 N.J.R. 2090(a).
In (a)1, (a)2, (b)1, (b)2, (d)1 and (d)2, rewrote Mechanical Subcode and inserted Fuel Gas Subcode.
Amended by R.2001 d.244, effective July 16, 2001 (operative January 16, 2002).
See: 33 N.J.R. 1241(a), 33 N.J.R. 2471(a).
In "ENERGY SUBCODE" categories of (a) through (c), listed specific sections of Chapters 5 and 6, relating to building subcode official responsibility.
Administrative correction.
See: 33 N.J.R. 3308(a).
Amended by R.2002 d.6, effective January 7, 2002.
See: 33 N.J.R. 2570(a), 33 N.J.R. 3883(a), 34 N.J.R. 268(a).

In (a), inserted "ELECTRICAL SUBCODE" in categories 1 and 2, and updated references to officials in "ENERGY SUBCODE" category 1; in (c)1 and 2, updated "ELECTRICAL SUBCODE" chapter references.

Amended by R.2003 d.240, effective June 16, 2003.

See: 34 N.J.R. 3045(a), 35 N.J.R. 2637(c).

In (c)2, added "N.J.A.C. 5:23-3.16(c) Automatic rain sensor device".

Amended by R.2003 d.418, effective November 3, 2003.

See: 35 N.J.R. 21(a), 35 N.J.R. 5064(a).

Rewrote the section.

Amended by R.2004 d.131, effective April 5, 2004.

See: 35 N.J.R. 5336(a), 36 N.J.R. 1755(a).

In (a), (b), and (c), inserted "CABO Model Energy Code" following "ENERGY SUBCODE" and added ASHRAE Standard 90.1 tables throughout.

Amended by R.2004 d.312, effective August 16, 2004.

See: 35 N.J.R. 4947(a), 36 N.J.R. 3894(d).

Rewrote the section.

Administrative correction.

See: 37 N.J.R. 269(a).

Amended by R.2005 d.364, effective November 7, 2005.

See: 37 N.J.R. 2112(a), 37 N.J.R. 4216(a).

Rewrote the section.

Amended by R.2005 d.446, effective December 19, 2005.

See: 37 N.J.R. 2747(a), 37 N.J.R. 4907(a).

Rewrote (a)3.

Administrative correction.

See: 38 N.J.R. 926(a).

Administrative correction.

See: 38 N.J.R. 1827(b).

In (a)3, Note 1 of the table, inserted "in" following "not installed".

Amended by R.2007 d.310, effective October 1, 2007.

See: 39 N.J.R. 135(a), 39 N.J.R. 4113(b).

Added (a)9.

Amended by R.2008 d.112, effective May 5, 2008.

See: 39 N.J.R. 4366(a), 40 N.J.R. 2229(a).

In the table at (a)1, rewrote entries in "Ch. 4", "Ch. 16", "Ch. 30" and "Ch. 31", and in entries "Ch. 5" and "Ch. 6", inserted "Fire" in the third column; in the table at (a)2, deleted entry "Ch. 17" and added entries "Ap. J", "Ap. K" and "Ap. L"; rewrote tables at (a)4, (a)5 and (a)6; and in the table at (a)7, under "Ch. 6", inserted entry "635" and rewrote entry "Ch.7".

Amended by R.2009 d.51, effective February 2, 2009.

See: 40 N.J.R. 5325(a), 41 N.J.R. 738(a).

In the table in (a)1, in the entry for "Ch. 9", inserted "909.12.1 and 910.4.4" in column "Section/Title" and, under the sub-headings "Plan Review" and "Inspection" under column "Responsibility", inserted "(except 909.12.1 and 910.4.4)" following "Fire" and inserted "Fire/Electric"; and in (c), updated the first N.J.A.C. reference.

Amended by R.2011 d.269, effective November 7, 2011.

See: 43 N.J.R. 904(a), 43 N.J.R. 3008(a).

Rewrote the tables in (a)1 through (a)7.

Amended by R.2013 d.081, effective June 3, 2013.

See: 44 N.J.R. 1303(a), 45 N.J.R. 1393(a).

In the table in (a)6, for the "Appx G" entry, substituted "105.1-105.4" for "105" and inserted "105.5" under the "Section/Title" heading, and under the sub-headings "Plan Review" and "Inspection" under column "Responsibility", inserted "Electrical".

5:23-3.5 Posting structures

(a) Posted use and occupancy: Every building and structure and part thereof designed for business, factory and industrial, high hazard, mercantile, or storage use, (use groups B, F, H, M and S) as defined in chapter 3 of the building subcode shall be posted on all floors by the owner with a suitably designed placard in a form designated by the building subcode official, which shall be securely fastened to the structure in a readily visible place, stating the use group and the live load and occupancy load.

(b) Posted occupancy load: Every building and structure and part thereof designed for use as a place of public assembly or as an institutional building for harboring people for penal, correctional, educational, medical or other care or treatment (use groups A, E and I) shall be posted with an approved placard designating the maximum occupancy load.

(c) Replacement of posted signs: All posting signs shall be furnished by the owner and shall be of permanent design; they shall not be removed, or defaced and, if lost, removed or defaced, shall be immediately replaced.

(d) Posted hydraulic system data plate: In lieu of the nameplate of the referenced NFPA standard(s), fire sprinkler system contractors are required to identify hydraulically designed fire sprinkler systems by affixing a permanently marked weatherproof metal or rigid plastic sign at the alarm valve. The nameplate shall contain information relative to the design parameters of the system as indicated on Form No. F380. The plate shall be secured at the alarm valve with corrosion resistant wire, chain, or other approved means.

(e) Identifying emblems for structures with truss construction: Identifying emblems shall be permanently affixed to the front of structures with truss construction as required by N.J.A.C. 5:70-2.20.

1. The emblem shall be of a bright and reflective color, or made of reflective material. The shape of the emblem shall be an isosceles triangle and the size shall be 12 inches horizontally by six inches vertically. The following letters, of a size and color to make them conspicuous, shall be printed on the emblem:

- i. "F" to signify a floor with truss construction;
- ii. "R" to signify a roof with truss construction; or
- iii. "F/R" to signify both a floor and roof with truss construction.

2. The emblem shall be permanently affixed to the left of the main entrance door at a height between four and six feet above the ground and shall be installed and maintained by the owner of the building.

3. Detached one and two-family residential structures with truss construction that are not part of a planned real estate development shall be exempt from the requirements of (e) above, unless required by municipal ordinance.

4. Individual structures and dwelling units with truss construction that are part of a planned real estate development shall not be required to have an identifying emblem if there is an emblem affixed at each entrance to the development.

(f) Swimming pools, spas and hot tubs: A valid electrical certificate of compliance and a bonding and grounding certificate shall be posted by the owner in a conspicuous place in or around the pool pump house or equipment control room.

Amended by R.1989 d.555, effective November 6, 1989.
See: 21 N.J.R. 2783(a), 21 N.J.R. 3460(a).

Added reference to E Use Group (educational facilities) at (b).
Amended by R.1990 d.507, effective October 15, 1990.
See: 22 N.J.R. 2208(a), 22 N.J.R. 3214(a).

Text conformed to BOCA National Code/1990.
Amended by R.2000 d.47, effective February 7, 2000.
See: 31 N.J.R. 2314(a), 32 N.J.R. 443(a).

Added (f).
Amended by R.2000 d.166, effective April 17, 2000.
See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).

Rewrote (d) and (e).
Amended by R.2009 d.48, effective February 2, 2009.
See: 40 N.J.R. 5319(a), 41 N.J.R. 733(b).

In (a), substituted "chapter 3" for "article 2".

5:23-3.6 Standards; accepted practice

(a) This chapter, together with the subcodes, national standards and appendices it adopts by reference, shall be the primary guide to accepted engineering practice in respect to any material, equipment, system or method of construction therein specified.

(b) When this chapter and the subcodes, national standards and appendices it adopts by reference are silent, a manufacturer's recommendations for the installation of any material or assembly may be considered to be accepted engineering practice; provided, however, that a manufacturer's recommendations shall not be read to overrule this chapter or any subcode, national standard or appendix which it adopts by reference.

1. Exception: Where enforcement of a code provision would violate the condition(s) of the listing of the equipment or appliance, the more restrictive condition(s) shall apply.

New Rule, R.1988 d.283, effective June 20, 1988.
See: 20 N.J.R. 699(a), 20 N.J.R. 1343(c).

Old text repealed and new text substituted.
Amended by R.1998 d.28, effective January 5, 1998.
See: 29 N.J.R. 3603(a), 30 N.J.R. 129(a).
Amended by R.2010 d.195, effective September 7, 2010.
See: 41 N.J.R. 3140(a), 42 N.J.R. 2043(a).
Added (b)1.

Case Notes

Contractor not liable for injuries caused by failure of subcontractor to provide and install material in conformance with State building code. *Miltz v. Borroughs—Shelving, a Div. of Lear Siegler, Inc.*, 203 N.J.Super. 451, 497 A.2d 516 (App.Div.1985).

5:23-3.7 Municipal approvals of alternative materials, equipment, or methods of construction

(a) Approvals: Alternative materials, equipment, or methods of construction shall be approved by the appropriate subcode official provided the proposed design is satisfactory and that the materials, equipment, or methods of construction are suitable for the intended use and are at least the equivalent in quality, strength, effectiveness, fire resistance, durability and safety of those conforming with the requirements of the regulations.

1. A field evaluation label and report or letter issued by a nationally recognized testing laboratory verifying that the specific material, equipment, or method of construction meets the identified standards or has been tested and found to be suitable for the intended use, shall be accepted by the appropriate subcode official as meeting the requirements of (a) above.

2. Reports of engineering findings issued by nationally recognized evaluation service programs, such as, but not limited to, the Building Officials and Code Administrators (BOCA), the International Conference of Building Officials (ICBO), the Southern Building Code Congress International (SBCCI), the International Code Council (ICC), and the National Evaluation Service, Inc., shall be accepted by the appropriate subcode official as meeting the requirements of (a) above. The materials, equipment, or assembly shall be installed in accordance with the conditions specified in the report.

(b) Research and investigations: The appropriate subcode official shall require that sufficient technical data be submitted to substantiate the proposed use of any material or assembly, and if it is determined that the evidence submitted is satisfactory proof of performance for the use intended, he may approve its use subject to the requirements of the regulations. The cost of all tests, reports and investigations required under these provisions shall be paid by the applicant.

(c) Research reports: The appropriate subcode official may accept, as supporting data to assist in this determination, duly authenticated research reports from approved authoritative sources for all materials or assemblies proposed for use which are not specifically provided for in the regulations.

Amended by R.1992 d.390, effective October 5, 1992.

See: 24 N.J.R. 1844(a), 24 N.J.R. 3515(b).

Reference to exception in 3.8 added.

Amended by R.2003 d.384, effective October 6, 2003.

See: 35 N.J.R. 2422(a), 35 N.J.R. 4712(a).

Rewrote (a).

5:23-3.8 Products violating the Code

(a) The Department shall, after public hearing and in accordance with the Administrative Procedure Act (P.L. 1968, c.410, as amended), establish and distribute to all enforcing agencies a list of items, devices and materials the regular and intended use of which would violate any provision of the State Uniform Construction Code. A list of such items is set forth in (d) below.

(b) Upon determining that any manufacturer or distributor in the State is selling or offering for retail sale any product on the list which does not have a regular and intended use that does not violate the Code, or any product which may have one or more such non-violative regular and intended use but which is being advertised or promoted for a use that does violate the Code, the Department or any enforcing agency having jurisdiction shall give written notice of the violation of N.J.S.A. 52:27D-138a(5) to such seller. Such notice shall

forbid the further sale or offering for retail sale of such product within the State and shall specify a date and time by which such product shall be removed from display to customers.

(c) Any person who, having received a notice of violation pursuant to this section, continues to sell or offer for retail sale products specified in such notice, shall be deemed to be knowingly selling or offering the product for sale in violation of the Code and shall be subject to penalty as provided by statute, in accordance with the procedures set forth in N.J.A.C. 5:23-2.31.

(d) The Commissioner has determined that the following materials and supplies are not in conformance with the State Uniform Construction Code:

1. Building materials and supplies:

i. Wood paneling being used as an interior finish not in conformance with section 803.2 of the building subcode. This section specifies that finish shall be classified in accordance with ASTM E84;

ii. Carpeting used as an interior floor finish material not in conformance with section 805.2 of the building subcode. This section specifies that interior floor finish shall be classified in accordance with ASTM E648; and

2. Electrical materials/supplies:

i. As stated in the National Electrical Code (sections 90.7, 110.2, and 110.3 and Article 100), only products listed, labeled, approved, and identified are acceptable. Approval is to be based on tests and listings of testing laboratories such as Underwriters Laboratories Inc. (UL), Factory Mutual (FM), or Canadian Standards Association (CSA), etc. Markings applied to products by such testing laboratories shall indicate the approval is based on applicable US standards.

3. Plumbing materials/supplies:

i. All purpose solvent cement, except transition glues permitted in the plumbing subcode;

ii. Clear PB piping;

iii. Flexible traps and tailpieces;

iv. Sheet and tubular copper and brass trap and tailpiece fittings less than B & S 17 gauge (.045 in.);

v. Water closets requiring in excess of an average of 1.6 gallons per flush, that either have a manufacturer's date stamp of July 1, 1991 or later or were not purchased by the distributor prior to July 1, 1991;

vi. Plumbing fixtures that do not meet the standards listed in the plumbing subcode.

4. Miscellaneous materials and supplies:

i. Portable unvented natural gas, liquified petroleum gas and kerosene heaters when offered for sale for use in buildings for human occupancy, unless they are tested, listed, labeled and certified by a nationally recognized testing laboratory such as the American Gas Association Laboratories (AGA), Underwriters Laboratories, Inc. (UL) or Factory Mutual (FM);

ii. Urea formaldehyde foam insulation, unless offered for sale for use elsewhere than in buildings.

R.1983 d.296, effective August 1, 1983.

See: 15 N.J.R. 587(a), 15 N.J.R. 1247(a).

Amended by R.1985 d.38, effective February 19, 1985.

See: 16 N.J.R. 3074(a), 17 N.J.R. 421(a).

(d) added.

Amended by R.1987 d.374, effective September 21, 1987.

See: 19 N.J.R. 1024(a), 19 N.J.R. 1720(b).

(d)li and ii: 904.2 was 1404.2; 904.3 was 1404.3.

Amended by R.1990 d.507, effective October 15, 1990.

See: 22 N.J.R. 2208(a), 22 N.J.R. 3214(a).

Text conformed to BOCA National Code/1990.

Amended by R.1992 d.47, effective February 3, 1992.

See: 23 N.J.R. 3602(a), 24 N.J.R. 405(a).

Low volume water closet exception added at (d)4iii.

Amended by R.1993 d.662, effective December 20, 1993.

See: 25 N.J.R. 3891(a), 25 N.J.R. 5918(a).

Amended by R.1997 d.508, effective December 1, 1997.

See: 29 N.J.R. 3762(a), 29 N.J.R. 5062(a).

In (d)2i, added reference to CSA/NRTL standards; in (d)3i, added the exception for transition glues; and inserted (d)3vi. Recodified from N.J.A.C. 5:23-3.8A by R.2003 d.384, effective October 6, 2003.

See: 35 N.J.R. 2422(a), 35 N.J.R. 4712(a).

Former N.J.A.C. 5:23-3.8, Department approval of nonconforming materials, repealed.

Amended by R.2007 d.310, effective October 1, 2007.

See: 39 N.J.R. 135(a), 39 N.J.R. 4113(b).

In (d)2i, updated the National Electrical Code references, deleted "Nationally Recognized Testing Laboratory" following "Canadian Standards Association" and "NRTL" following "CSA", and inserted the last sentence.

5:23-3.9 Interpretations and opinions

(a) Whenever the Commissioner shall, in accordance with applicable provisions of the Administrative Procedure Act, make any rule constituting an interpretation of any provision of the regulations, such shall be binding provided, however, that such interpretations shall be prospective in nature. Such interpretations shall not alter the ruling of a subcode official already rendered in a specific instance relating to a specific permit or structure. Requests for interpretations shall be in the form, and submitted in accordance with the procedure, set forth in N.J.A.C. 5:2-2.

(b) In response to a written inquiry or request setting forth a specific factual situation, or upon its own initiative, the Construction Code Element may issue a formal technical opinion to clarify provisions of the adopted subcodes. Such formal technical opinion shall be signed by the Assistant Director of the Element and shall be binding upon the Element and upon other code enforcement agencies and licensed officials. Formal technical opinions shall be prospective in nature, shall be based upon adopted subcodes or upon authoritative test results or standards incorporated by refer-

ence into an adopted subcode and shall not alter the ruling of a licensed official already rendered in a specific instance relating to a specific permit or structure, except that any such formal technical opinion may be considered in the context of an appeal from any such ruling.

(c) The Construction Code Element may issue bulletins to provide advice to code enforcing agencies, builders, and designers. Bulletins may be issued when the Element finds that an issue that is in need of clarification is adequately dealt with by existing rules and that rulemaking is therefore not appropriate or necessary. Consultation with the Code Advisory Board shall be required prior to the issuance of any bulletin.

(d) In response to a written or oral inquiry or request setting forth a specific factual situation, a staff member of the Construction Code Element may issue an informal opinion as to the proper application of the regulations if the issue is one with which he has authority to deal. Such informal opinion shall only be in writing if it is issued in response to a written inquiry or request and shall not be binding upon the Element or any other party.

Amended by R.1981 d.454, effective December 7, 1981.

See: 13 N.J.R. 561(a), 13 N.J.R. 886(a).

Section substantially amended.

Administrative Correction: Name change.

See: 22 N.J.R. 2503(b).

Amended by R.1995 d.340, effective June 19, 1995.

See: 27 N.J.R. 1512(a), 27 N.J.R. 2388(a).

Redesignated (c) as (d) and added a new (c).

Administrative correction.

See: 31 N.J.R. 4259(a).

5:23-3.10 (Reserved)

Amended by R.1987 d.509, effective December 7, 1987.

See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

Substantially amended.

Amended by R.1990 d.507, effective October 15, 1990.

See: 22 N.J.R. 2208(a), 22 N.J.R. 3214(a).

Text conformed to BOCA National Code/1990.

Recodified to 5:23-4.3A by R.1992 d.272, effective July 6, 1992.

See: 24 N.J.R. 1446(a), 24 N.J.R. 2424(a).

Section was "Enforcing agency classification".

5:23-3.11 Enforcement activities reserved to the Department

(a) Except as otherwise provided in N.J.A.C. 5:23-3.11A(b), the Department of Community Affairs shall be the sole plan review agency for the following structures, plans and equipment:

1. Electrical generating stations and substations, including nuclear;
2. Incineration plants;
3. Solid waste disposal plants;
4. Class 1 and Class 2 structures where required in accordance with N.J.A.C. 5:23-4.3A and 4.24(b)2;
5. Casino hotels;

6. Public mausoleums, vaults, crypts and other structures intended to hold or contain human remains;

7. All premanufactured systems for Class 1 and Class 2 structures, other than those authorized to be approved by an inplant inspection agency licensed to perform Class 1 and Class 2 plan review as provided in N.J.A.C. 5:23-4A.10, and all on-site installation of Class 1 and Class 2 premanufactured construction within the jurisdiction of a local enforcing agency that is not a Class 1 or Class 2 agency, as the case may be.

8. Health care facilities, as defined in N.J.A.C. 5:23-1.4;

9. Public school facilities, as defined in N.J.A.C. 5:23-1.4;

10. Prototype plans intended for use in more than one municipality;

11. High level alarm systems in terminals, as defined in N.J.S.A. 52:27D-214; and

12. Stadiums, arenas and theaters with an occupant load of 5,000 or greater.

(b) The Department of Community Affairs shall be the sole plan review agency for elevators, escalators, and moving walks in structures of Groups other than R-2, R-3, R-4, or R-5 in which the elevator devices are wholly within dwelling units and not accessible to the general public, in all buildings and structures other than those that:

1. Are in a municipality that has an elevator subcode official; and

2. Are otherwise within the plan review jurisdiction of the local enforcing agency.

(c) A permit shall not be issued until the required plans for the building or structure have been released by the department. The Department shall insure that the municipal enforcing agency receives a copy of the released plans.

1. Exception: In the case of a permit application based upon prototype plans released by the Department, it shall be the responsibility of the applicant to submit the items listed at N.J.A.C. 5:23-2.15(f)2ii, including a reference set of plans, the prototype file identification number, the plan number and date of the released prototype plan, to the municipal enforcing agency.

(d) The department may perform field inspections for any of the above projects when it deems such activity appropriate. However, such action shall not relieve the municipality of the obligation to perform field inspections for any project for which the municipality has granted a permit.

(e) Whenever the department shall determine that there exists a violation of these regulations, it shall take appropriate action and shall provide the municipality with copies of all notices, orders, and other applicable information. The depart-

ment and any municipality may consolidate or take other steps to expedite any matter of which they jointly complain, but in no event shall the owner of any building subject to the act be sanctioned twice for the same violations.

(f) In any case where the department shall notify a municipality that a violation exists, no certificate of occupancy may issue until the department notifies the municipality that the violation has been abated.

(g) The Department of Community Affairs shall be the sole agency for the enforcement of the Barrier Free Recreation Standards (N.J.A.C. 5:23-7.15 through 7.31). Any complaint of noncompliance with these rules shall be forwarded to the Department.

(h) The Department of Community Affairs shall be the sole agency having authority to grant variations from the requirements of the Asbestos Hazard Abatement Subcode, pursuant to N.J.A.C. 5:23-8.4.

(i) The Department of Community Affairs shall be the sole agency for the enforcement of the Playground Safety Subcode (N.J.A.C. 5:23-11) with regard to all matters not within the scope of a construction permit issued by a local enforcing agency; provided, however, that this subsection shall not be construed as prohibiting the Department of Education from including review of compliance with applicable playground requirements in its ongoing district monitoring process.

(j) The Department shall be the sole enforcing agency for the following work:

1. Amusement rides and any portable generator and associated portable distribution wiring that serves portable amusement rides, portable concessions, portable ticket booths, and other portable structures that are ancillary in nature at carnivals and fairs;

2. Ski lifts;

3. Billboards located on land owned or controlled by any State, county or local department, agency, board, commission, authority, or instrumentality; and

4. Liquefied petroleum gas installations, except vapor delivery installations utilizing containers with an aggregate water capacity of 2,000 gallons or less, which jurisdiction is retained by the municipal enforcing agency.

Amended by R.1981 d.455, effective December 7, 1981.

See: 13 N.J.R. 561(b), 13 N.J.R. 886(b).

Correction: Codification error and (a)6 was missing.

See: 16 N.J.R. 1621(a).

Administrative Change: This section has been divided into 3.11 and 3.11A administratively.

See: 18 N.J.R. 1842(a).

Amended by R.1988 d.352, effective August 1, 1988.

See: 19 N.J.R. 1270(a), 20 N.J.R. 1873(b).

Added (f).

Amended by R.1990 d.313, effective June 18, 1990.

See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).

Industrialized/modular buildings requirements added to (a)7.

Amended by R.1990 d.507, effective October 15, 1990.
See: 22 N.J.R. 2208(a), 22 N.J.R. 3214(a).

Text conformed to BOCA National Code/1990.
Amended by R.1991 d.325, effective July 1, 1991.
See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Enforcement of elevator, moving walk and escalator requirements for other than R-3 and R-4 reserved to Department.

Amended by R.1992 d.147, effective April 6, 1992.
See: 24 N.J.R. 170(a), 24 N.J.R. 1397(a).

Elevators wholly within R-2 residences exempt.
Amended by R.1992 d.183, effective April 20, 1992.
See: 24 N.J.R. 167(a), 24 N.J.R. 1475(b).

Enforcement of public employees' indoor air quality subcode assigned to DCA.

Amended by R.1994 d.28, effective January 18, 1994.
See: 25 N.J.R. 4546(b), 26 N.J.R. 352(a).
Amended by R.1994 d.96, effective February 22, 1994.
See: 26 N.J.R. 1073(a).

Amended by R.1997 d.377, effective September 15, 1997.
See: 29 N.J.R. 2741(b), 29 N.J.R. 4102(b).

In (g), amended N.J.A.C. references; deleted (g)1; and substantially amended (h).

Amended by R.1997 d.417, effective October 6, 1997.
See: 29 N.J.R. 3387(a), 29 N.J.R. 4285(a).

In (a), inserted "Except as otherwise provided ... and (d)."; added (a)8 and 9; and in (g), amended N.J.A.C. references.

Amended by R.1999 d.351, effective October 18, 1999.
See: 31 N.J.R. 1838(a), 31 N.J.R. 3082(a).

Added (i).

Amended by R.2000 d.166, effective April 17, 2000.
See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).

In (a), changed N.J.A.C. reference; and added (j).
Amended by R.2001 d.127, effective April 16, 2001.
See: 33 N.J.R. 392(a), 33 N.J.R. 1195(a).

In (g), amended the N.J.A.C. reference.

Amended by R.2001 d.141, effective May 7, 2001.
See: 32 N.J.R. 3917(a), 33 N.J.R. 746(a), 33 N.J.R. 1399(d).

In (j)6, inserted "or vapor delivery installations utilizing containers with an aggregate water capacity of 2,000 gallons or less," following "(building subcode Use Group R-3/R-4)".

Amended by R.2004 d.67, effective February 17, 2004.
See: 35 N.J.R. 4627(a), 36 N.J.R. 949(b).

In (b), substituted "moving walks in structures of Groups other than R-2, R-3, R-4, or R-5" for "moving walks in Use Groups R-3, R-4, or R-2 structures" preceding "in which the elevator devices are wholly within dwelling units".

Amended by R.2004 d.144, effective April 5, 2004.
See: 35 N.J.R. 4944(a), 36 N.J.R. 1753(a).

Added (a)10; in (c), substituted "released" for "approved" following "enforcing agency receives a copy of the" and added 1.

Administrative correction.

See: 36 N.J.R. 1757(a).

Amended by R.2004 d.260, effective July 6, 2004.
See: 35 N.J.R. 3474(b), 36 N.J.R. 3274(a).

In (j), rewrote 3, deleted former 4 and 5, and recodified former 6 as 4.
Amended by R.2004 d.291, effective August 2, 2004.

See: 36 N.J.R. 1858(a), 36 N.J.R. 3525(b).

In j(4), deleted, "one- and two-family residential (building subcode Use Groups R-3 and R-5) or" preceding "vapor delivery".

Amended by R.2005 d.446, effective December 19, 2005.
See: 37 N.J.R. 2747(a), 37 N.J.R. 4907(a).

In (a), added " , plans and equipment" to the introductory paragraph and added (a)11.

Administrative correction.

See: 38 N.J.R. 3024(a).

Administrative correction.

See: 39 N.J.R. 4571(a).

Amended by R.2010 d.291, effective December 20, 2010.
See: 42 N.J.R. 1943(a), 42 N.J.R. 3053(a).

In (a)10, deleted "and" from the end; in (a)11, substituted "; and" for a period at the end; and added (a)12.

Amended by R.2012 d.179, effective November 5, 2012.
See: 44 N.J.R. 1679(a), 44 N.J.R. 2557(a).

Rewrote (j)1.

Amended by R.2013 d.081, effective June 3, 2013.

See: 44 N.J.R. 1303(a), 45 N.J.R. 1393(a).

In (a)4 and (a)7, substituted "Class I" for "Class I" and "Class 2" for "Class II" throughout; and in (a)4, deleted "N.J.A.C. 5:23-" preceding "4.24(b)2".

Case Notes

Delaware River Port Authority was not subject to Construction Code or anti-discrimination laws. *Eastern Paralyzed Veterans Ass'n, Inc. v. City of Camden*, 111 N.J. 389, 545 A.2d 127 (1988).

5:23-3.11A Public school facility plan review and inspections; Uniform Construction Code enhancements in public school facilities

(a) Plan review shall be performed by the Department of Community Affairs. A Department of Education approval shall be submitted prior to the release of plans for projects subject to the Department of Education review pursuant to N.J.A.C. 6A:26-3.

(b) In lieu of obtaining construction code plan review and release from the Department of Community Affairs, a school district, upon notice to and approval by the Department, may secure construction code plan review and release from a municipal code enforcing agency, pursuant to P.L. 1990, c.23.

1. The municipal code enforcing agency providing construction code plan approval must agree to perform the review and must be appropriately classified for the proposed project in accordance with this chapter.

i. The municipal code enforcing agency in the municipality where the proposed project is to take place shall be given the right of first refusal to review the plans provided that the agency is appropriately classified for the proposed project in accordance with this chapter.

2. The municipal code enforcing agency performing the construction code plan review may require the payment of any municipal plan review fees.

3. No construction permit shall be issued for a public school facility unless and until the final plans and specifications have been released by the Department or an appropriately classified municipal code enforcing agency.

4. The municipal code enforcing agency within the jurisdiction in which the facility is located shall be responsible for construction permit issuance, construction inspection and certificate of occupancy issuance.

5. Amendments to released plans and specifications for reasons other than educational adequacy shall be submitted for review and release to the Department or the municipal code enforcing agency, whichever originally released the plans.

6. Release of the plans by the Department or the municipal code enforcing agency, as the case may be, shall not preclude the enforcing agency doing the inspection from issuing a stop work order in the event of a violation of the code. The enforcing agency doing the inspection shall not,

however, issue a stop work order based on its disagreement with the released plans unless the agency that released the plans, be it the Department or another local enforcing agency, agrees that the issuance of such an order is appropriate. In the event that the enforcing agency doing the inspection believes there to be an error in the plans, that enforcing agency shall give prompt notice of the error that is believed to exist to the Department or the municipal agency that reviewed the plans, as the case may be.

(c) The Department or the municipal code enforcing agency providing construction code plan release or inspection shall be responsible for enforcing the following Uniform Construction Code enhancements in public school facilities:

1. Each instructional space and room of assembly which is illuminated with the use of high intensity discharge (HID) sources, such as mercury vapor, high pressure sodium and metal halide lamps, shall also be provided with a second source of illumination to provide illumination instantly upon activation of the circuit. All high intensity discharge (HID) lamps shall be of the fail-safe type which will permanently extinguish within 15 minutes after the outer glass of the bulb is broken. All lamps shall be provided with a glass or plastic lens to protect the bulb.

2. All school buildings shall be equipped with a mechanical air supply and exhaust ventilation system which will provide, during periods of occupancy, standard tempered outdoor air supply and mechanical exhaust at the minimum rates set forth in the mechanical subcode.

(d) Pursuant to Reorganization Plan No. 114-1996, the Department or the municipal code enforcing agency shall have authority to enforce and cite violations of N.J.A.C. 6A:26-6.3, 6.4, and 8.1.

Amended by R.1986 d.142, effective May 5, 1986.

See: 17 N.J.R. 1169(a), 18 N.J.R. 945(a).

New (a)7; old (a)7 through 9 renumbered (a)8.-10.

Administrative Change: This section was originally part of N.J.A.C. 5:23-3.11.

See: 18 N.J.R. 1842(a).

Amended by R.1988 d.155, effective April 4, 1988.

See: 20 N.J.R. 824(d).

Added (d). This was amended by the rule adoption of the Department of Education published in the New Jersey Register at 20 N.J.R. 824(d). Administrative Correction to (c).

See: 22 N.J.R. 2503(b).

Amended by R.1990 d.507, effective October 15, 1990.

See: 22 N.J.R. 2208(a), 22 N.J.R. 3214(a).

Text conformed to P.L. 1990 c.23, qualified agencies may perform plan review of public school structures.

Amended by R.1991 d.309, effective June 17, 1991.

See: 23 N.J.R. 1084(a), 23 N.J.R. 1922(a).

Rule conformed to P.L. 1990 c.23; text at (c) revised to specify type of project covered; BOCA cites updated; reference to N.J.A.C. 6:22 added.

Amended by R.1993 d.662, effective December 20, 1993.

See: 25 N.J.R. 3891(a), 25 N.J.R. 5918(a).

Amended by R.1997 d.417, effective October 6, 1997.

See: 29 N.J.R. 3387(a), 29 N.J.R. 4285(a).

Deleted (a); recodified former (b) through (e) as (a) through (d); in (b), Inserted "Prior to the release ... of projects,"; in (b)1 and 2, inserted "public" preceding "school buildings"; in (c)7, deleted option of in-

specting agency requiring subsequent correction of any errors in the plans, inserted second sentence, and in third sentence amended notice provisions.

Amended by R.1998 d.332, effective July 6, 1998.

See: 30 N.J.R. 1377(a), 30 N.J.R. 2421(b).

In (d), substituted "alarm" for "detection", changed BOCA reference and substituted a reference to (d)5ii for a reference to (e)5ii in 5, and changed BOCA in 6.

Amended by R.2000 d.166, effective April 17, 2000.

See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).

Rewrote the section.

Amended by R.2001 d.127, effective April 16, 2001.

See: 33 N.J.R. 392(a), 33 N.J.R. 1195(a).

In (a)3, substituted "instructional spaces, the size of any such spaces" for "units" and substituted "such" for "instructional".

Administrative change.

See: 33 N.J.R. 4101(a).

Amended by R.2004 d.68, effective February 17, 2004.

See: 35 N.J.R. 4630(a), 36 N.J.R. 952(a).

In (b), inserted "and approval by" following "upon notice to" and substituted "a" for "any" preceding "municipal code" in the introductory paragraph and added 1i; in (c), rewrote the introductory paragraph of 1, substituted a reference to the building subcode for a reference to BOCA/96 section 918.5 in 2 and substituted a reference to the mechanical subcode for a reference to the BOCA National Mechanical Code in 4.

Administrative correction.

See: 41 N.J.R. 2648(a).

Amended by R.2013 d.081, effective June 3, 2013.

See: 44 N.J.R. 1303(a), 45 N.J.R. 1393(a).

Rewrote the introductory paragraph of (a); deleted (a)1 through (a)5; deleted (c)1 through (c)2; recodified former (c)3 and (c)4 as (c)1 and (c)2; and in (d), substituted "6.3, 6.4, and 8.1" for "6.2".

5:23-3.11B Underground storage tank systems

(a) The installation, repair (other than "minor repair," as defined in N.J.A.C. 7:14B-10.5), and closure (or "demolition") of underground storage tank systems, as defined in N.J.A.C. 7:14B-10.1, shall be controlled by the State Uniform Construction Code and by N.J.A.C. 7:14B-1 through 15.

(b) A DEP permit for the installation, repair or closure of an underground storage tank system that requires a DEP approval, or any part thereof, or an emergency permit granted pursuant to N.J.A.C. 7:14B, shall be a prior approval for any permit application submitted pursuant to the State Uniform Construction Code Act and these rules. Applicants installing secondarily contained systems for which no prior DEP approval is necessary shall be required to submit engineering drawings of the secondarily contained systems and to certify that the underground storage tank system meets all requirements of N.J.A.C. 7:14B.

(c) Construction code officials shall retain all penalty powers, as set forth in these rules, with respect to the installation, usage or closure (demolition) of underground storage tank systems and parts thereof in violation of the State Uniform Construction Code Act or these rules.

(d) The following types of underground storage tank systems requiring a construction permit are exempt from the requirements of N.J.A.C. 7:14B:

1. Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

2. Tanks with a capacity of 2,000 gallons or less used to store heating oil for onsite consumption in a non-residential building;

3. Tanks used to store heating oil for onsite consumption in a residential building;

4. Septic tanks installed in compliance with rules adopted by DEP pursuant to P.L. 1954, c.199 (N.J.S.A. 58:11-23 et seq.);

5. Tanks situated in an underground area, including, but not limited to, basements, cellars, mines, drift shafts, or tunnels, if the storage tank is situated upon or above the surface of the floor;

6. Tanks situated in an underground area, including, but not limited to, basements, cellars, mines, drift shafts, or tunnels, if the storage tank is equipped with secondary containment and is uncovered so as to allow visual inspection of the exterior of the tank;

7. Wastewater treatment tanks;

8. Electrical equipment;

9. Hydraulic lift tanks; and

10. Any pipes, lines, fixtures, or other equipment connected to any tank exempted from the provisions of N.J.A.C. 7:14B as set forth in (b)1 to 9 above.

New Rule, R.1990 d.562, effective November 19, 1990.

See: 22 N.J.R. 2629(c), 22 N.J.R. 3482(d).

Amended by R.1997 d.409, effective October 6, 1997.

See: 29 N.J.R. 2736(a), 29 N.J.R. 4281(a).

In (d)3, deleted maximum capacity for tanks of 2000 gallons.

Amended by R.1998 d.332, effective July 6, 1998.

See: 30 N.J.R. 1377(a), 30 N.J.R. 2421(b).

In (d)3, deleted "with a capacity of 2000 gallons or less" following "Tanks".

5:23-3.12 Amended rules

Whenever the Commissioner shall make any modifications to the rules, notice of same shall be published in the New Jersey Register.

Amended by R.1995 d.544, effective October 16, 1995.

See: 27 N.J.R. 2827(a), 27 N.J.R. 3933(a).

Amended by R.2000 d.413, effective October 16, 2000.

See: 32 N.J.R. 2278(a), 32 N.J.R. 3783(a).

Rewrote the section.

5:23-3.13 Code change proposals

(a) The following apply to State-sponsored model code change proposals:

1. Any private party, municipality, other political subdivision, or agency of the State seeking to submit a State-sponsored model code change proposal shall do so not less

than 240 days prior to the code change meeting of the model code adoption agency for which the amendment is being proposed.

2. Such proposal shall be on a form provided by the model code organization where one is available. If none is available, such proposal shall state the name and address of the party or official proposing the model code change, the company, agency, or political subdivision represented, if applicable, the text of the amendment suggested and an explanation of the amendment together with any technical justification deemed necessary by the proponents.

3. A hearing shall thereafter be held in accordance with N.J.S.A. 52:27D-124 of the Act.

4. Copies of the submitted applications for model code change proposals, transcripts of hearings on such applications, and State-sponsored model code change proposals, as adopted, shall be available from the Department at a fee of \$.50 per page.

5. Whenever a model code change hearing is scheduled so as not to allow adequate time to meet the procedures set forth in this section and in N.J.S.A. 52:27D-124 of the Act, the Commissioner may hold a hearing and require the advice of the Code Advisory Board within a lesser time period, as the situation dictates.

(b) The following apply to rehabilitation subcode code change proposals:

1. Proposals for code changes to the rehabilitation subcode (N.J.A.C. 5:23-6) may be submitted to the Department at any time. Those rehabilitation subcode code change proposals submitted by January 31 shall be considered with the changes received during the previous calendar year.

2. A rehabilitation subcode code change proposal shall include the following information:

i. The name, organization, mailing address, telephone number, facsimile number, and e-mail address of the proponent of the proposed code change;

ii. The primary section of the rehabilitation subcode proposed for change and any other section(s) where corresponding changes are required. Language proposed for deletion shall be presented in brackets and language proposed for addition shall be underlined; and

iii. A description and supporting statement for the proposed code change.

3. Rehabilitation subcode code change proposals may be submitted on the form provided in subchapter Appendix 3-A, incorporated herein by reference.

xii. Ensure that all final inspections have been completed prior to the issuance of a certificate of occupancy.

(1) Ensure that all inspection required for the purpose, has been completed prior to the issuance of temporary certificate of occupancy;

xiii. Issue the certificate of occupancy, upon receiving the approval of all appropriate subcode officials.

(1) Issue the temporary certificate of occupancy, upon receiving the approval of all appropriate subcode officials;

xiv. Ensure, in the case of a change of use, or upon a request for a certificate of continued occupancy, that each subcode official gives an approval based on an inspection and the review of all submitted data before issuing a certificate of continued occupancy;

xv. Prepare and obtain reports required in the regulations;

xvi. Attend meetings and hearings as required by the regulations;

xvii. Carry out such other functions as are necessary and appropriate to the position of construction official;

xviii. Coordinate the activities of the subcode officials in enforcement of the energy radon hazard, elevator safety and mechanical subcodes;

xix. Reply within three business days to any request from the municipal search officer for information concerning construction permits or certificates of occupancy;

xx. Within 10 business days of issuance, provide written notice to the fire official for the municipality appointed pursuant to N.J.S.A. 52:27D-203 of all permits issued for installations of roof-mounted photovoltaic systems;

xxi. Comply with any local procedures which may be established by the governing body to provide the municipal search officer with information concerning construction permits and certificates of occupancy;

xxii. File with the Department a notice of the execution of each contract with a private on-site inspection agency, which notice shall specify the subcode(s) covered by the contract, within 10 days after the effective date of the contract;

xxiii. Take or initiate appropriate disciplinary action in the case of any subcode official or inspector failing to properly enforce the UCC. If the action includes suspension or dismissal, the construction official shall report this action to the Office of Regulatory Affairs via mail: Department of Community Affairs, Office of Regulatory Affairs, 101 S. Broad Street, PO Box 818, Trenton, NJ 08625;

xxiv. Issue a notice of violation pursuant to N.J.A.C. 5:23-2.35 for any violation of the provisions of the Code in effect at the time of permit application that comes to his or her attention. Pursuant to N.J.S.A. 2A:14-1.1, no notice of violation may be issued to the developer or to any contractor more than 10 years after issuance of the certificate of occupancy;

xxv. Ensure that all units within a residential development, other than Group R-1, that might have similar violations are inspected for such violations and that any such violations found are cited and abated if violations of the provisions of the Code in effect at the time of permit application listed at N.J.A.C. 5:23-2.35(a)1 are found in a residential structure in the development subsequent to the issuance of a certificate of occupancy. The construction official shall supervise the work of any professional engineer or registered architect hired by the municipality for this purpose; and

xxvi. Report the name of the developer and the nature of the code violation(s) to the Department by sending this information in writing to the Office of Regulatory Affairs, 101 S. Broad Street, PO Box 818, Trenton, NJ 08625 whenever:

(1) It is necessary to take development-wide action for code violations discovered after issuance of certificate(s) of occupancy pursuant to N.J.A.C. 5:23-2.35(a)1;

(2) The municipal engineer advises the construction official that the municipality has had to call a bond posted pursuant to N.J.S.A. 40:55D-53 due to failure of the developer to complete site improvements satisfactorily; or

(3) The developer fails to maintain funds in the escrow account required pursuant to N.J.A.C. 5:23-4.17 unless the charges to the escrow account are under appeal.

2. Nothing contained herein shall prevent the construction official from overruling a decision of a subcode official if he is qualified and certified in that subcode pursuant to subchapter 5 of this chapter.

(i) Duties of subcode officials:

1. The subcode official shall enforce the regulations and:

i. Review those aspects of the application, plans and specifications appropriate to his subcode for approval and release to the construction official for issuance of the permit;

ii. Receive and review directly from the applicant applications involving only one trade or subcode and minor or emergency work for approval and release to the construction official for issuance of the permit;

iii. Collect fees for permit applications involving only trade or subcode and minor or emergency work and forward same to the construction official for proper accounting;

iv. Comply with the time limitations for review as determined by the construction official;

v. Review requests for variations as necessary;

vi. Perform all required inspections within three business days of the time for which inspection has been requested;

vii. Issue in the name of the enforcing agency notices of violation and notify the construction official of same. The subcode official may issue verbal orders at the job-site and shall record such orders in his inspection report;

viii. Complete reports of all inspections performed;

ix. Issue stop construction orders in the name of the enforcing agency and notify the construction official of same or, in the case of a development-wide stop construction order, make a recommendation to the construction official for issuance of the order;

x. Perform final inspection and notify construction official of approval in order that the construction official may issue certificate of occupancy;

xi. Make inspection, review submitted data and notify construction official of approval in the case of a change of use, or a request for a certificate of continued occupancy;

xii. Assist the construction official in the preparation of all reports required in the regulations;

xiii. Attend meetings and hearings as required by the regulations;

xiv. Issue documentation and certification, such as cut-in cards to utilities and/or public agencies if required by the regulations;

xv. Carry out such other functions as are necessary and appropriate to the position of subcode official.

2. In the course of enforcing the regulations, the fire protection subcode official shall cooperate, to the greatest extent possible, with the local fire service, which is the local fire department or district having jurisdiction.

i. The fire protection subcode official shall, upon request of the local fire service, allow a designated representative of the local fire service reasonable access to, and opportunity to review, plans submitted to the fire protection subcode official for his approval.

ii. The fire protection subcode official shall consult with the local fire service prior to granting any variations from the requirements of the fire protection subcode. If the fire protection subcode official is not himself a

member of the local fire service, he shall, upon receipt of an application for a variation, forward a copy thereof to the local fire service and shall not grant a variation until he has received the comments of the local fire service or until 10 business days have passed, whichever comes first.

iii. The participation of the local fire service in the code enforcement process shall in no way be construed as reducing the responsibility of the fire protection subcode official for the proper enforcement of the fire protection subcode. Advice rendered by the local fire service shall in no way be binding upon the subcode official.

(j) Conflict of interest:

1. No person employed by an enforcing agency as a construction or subcode official or as an inspector shall knowingly carry out any inspection or enforcement procedure with respect to any property or business in which he or she, or any close relative or household member, or his or her superior within the enforcing agency, or any close relative or household member of such superior, or any other public official or employee having any direct or indirect control over the funding or operations of the enforcing agency, or any household member of any such public official or employee, has an economic interest. For purposes of this paragraph, "close relative" shall mean and include a spouse, sibling, ancestor or descendant, or the spouse of any of them.

i. Where an inspection or enforcement procedure is necessary or required in any such property or business, and there is no other person employed by the enforcing agency who is qualified, pursuant to this chapter, to perform the inspection or enforcement procedure and who is not a subordinate of the person with the direct or indirect economic interest in such property or business, the official or inspector shall arrange for the inspection or enforcement to be carried out either by another local enforcing agency or by the Department.

ii. A separate log shall be maintained by the enforcing agency of all inspections and enforcement procedures performed, when permitted in accordance with (j)1i above, with regard to any properties or businesses in which any persons employed by the enforcing agency have a direct or indirect economic interest.

2. No person employed by an enforcing agency as a construction or subcode official, assistant to the construction or subcode official, trainee, inspector or plan reviewer, shall, whether directly or indirectly, be engaged in ownership of, or employment by, or contracting to provide goods or services to, any business furnishing labor, materials, products or services for the construction, alteration or demolition of buildings or structures, or for the maintenance of any equipment or building component the maintenance of which is regulated pursuant to this chapter, that is engaged in any such activity within any municipality in

which he is so employed by an enforcing agency, or in any municipality adjacent to any municipality in which he is thus employed. For purposes of the prohibition set forth in this paragraph, it shall be immaterial whether the employment by the business, or the providing of goods and services to the business, occurred within the employing municipality or an adjacent municipality or occurred elsewhere.

3. Persons subject to this subsection shall annually report any income or benefits received from any business or property subject to the Code, or from any business furnishing materials, products, labor or services for types of work subject to the Uniform Construction Code regulations, to the municipal governing body. This report shall include a list of all sources of income, but need not list the amount.

4. No person employed by a municipal enforcing agency as a construction official, subcode official or inspector shall be employed to appear before any construction board of appeals, or be involved in any court proceeding within the State, as a paid expert witness, or in any other compensated capacity in any proceeding involving the enforcement of the Uniform Construction Code except on behalf of another enforcing agency, or as a court-appointed witness.

i. This prohibition shall not apply to any litigation not involving enforcement of the Code, or to an appearance as a fact witness; nor shall it apply to any activities unrelated to an action for, or an appeal of, enforcement of the Code.

5. This section shall not apply to:

i. The ownership of stock or other investment instrument in any corporation listed on any national stock exchange.

ii. Any such business or employment outside the State;

iii. Dual employment by two or more enforcing agencies;

iv. Any business or employment which is not subject to the regulations.

v. Service as an instructor in a code enforcement training program.

6. Nothing herein shall prohibit a municipality from establishing by ordinance more restrictive provisions covering conflict of interest.

(k) No person employed by an enforcing agency as a construction official, subcode official or inspector shall accept, or continue to hold, employment in one or more other municipalities as a construction official, subcode official or inspector unless the resulting combined workload is such that it can be discharged in a manner consistent with the requirements of this chapter.

Amended by R.1983 d.611, eff. January 3, 1984.
See: 15 N.J.R. 1789(a), 16 N.J.R. 45(b).

Deleted old (b)2.-3. and (c) and added new (b)2, (c), (d) and (e). Renumbered old (d)-(f) as new (f)-(h).

Amended by R.1984 d.303, effective July 16, 1984.
See: 16 N.J.R. 950(a), 16 N.J.R. 1968(b).

Added (g)2.

Amended by R.1990 d.61, effective February 5, 1990.
See: 21 N.J.R. 3346(b), 22 N.J.R. 351(b).

Form numbers updated, new (d)2. added and reference made to reports and fees being submitted quarterly.

Amended by R.1990 d.226, effective May 7, 1990.
See: 21 N.J.R. 3696(a), 22 N.J.R. 1356(a).

Radon mitigation added to (f)1xviii.

Amended by R.1991 d.325, effective July 1, 1991.

See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Elevator safety added at (f)1xviii; conflict of interest provision added at (h).

Amended by R.1992 d.47, effective February 3, 1992.

See: 23 N.J.R. 3440(a), 24 N.J.R. 405(a).

Electronic monthly reporting added at (d)2.-4.

Amended by R.1992 d.230, effective June 1, 1992.

See: 24 N.J.R. 168(a), 24 N.J.R. 2052(a).

Form numbers changed in (b).

Amended by R.1992 d.243, effective July 6, 1992.

See: 24 N.J.R. 678(a), 24 N.J.R. 2422(a).

Conflict of interest and exception provisions added.

Amended by R.1992 d.392, effective October 5, 1992.

See: 24 N.J.R. 2657(a), 24 N.J.R. 3521(b).

Report form number changed at (e).

Amended by R.1993 d.581, effective November 15, 1993.

See: 25 N.J.R. 3693(a), 25 N.J.R. 5146(a).

Amended by R.1994 d.323, effective July 5, 1994 (operative January 1, 1995).

See: 25 N.J.R. 2162(a), 26 N.J.R. 2780(a).

Amended by R.1995 d.249, effective June 5, 1995, (operative October 1, 1995).

See: 27 N.J.R. 619(a), 27 N.J.R. 2187(a).

In (b)2 added Form No. F-370.

Amended by R.1996 d.512, effective November 4, 1996.

See: 28 N.J.R. 3697(a), 28 N.J.R. 4782(a).

Amended by R.1997 d.64, effective February 18, 1997 (operative May 19, 1997).

See: 28 N.J.R. 4695(a), 29 N.J.R. 550(a).

In (b)2, amended form references.

Amended by R.1997 d.378, effective September 15, 1997.

See: 29 N.J.R. 2742(a), 29 N.J.R. 4103(a).

In (b)2 and (c)1, amended form designations and in (b)2 deleted form F-330A and F-340A.

Amended by R.1997 d.419, effective October 6, 1997.

See: 29 N.J.R. 3406(a), 29 N.J.R. 4287(a).

In (j)1, inserted " , or his or her superior within ... any such superior,"; in (j)1i inserted " , and there is no other person ... property or business,"; and added (j)1ii.

Amended by R.2000 d.166, effective April 17, 2000.

See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).

In (b)2, inserted a reference to Form No. F380.

Amended by R.2000 d.413, effective October 16, 2000.

See: 32 N.J.R. 2278(a), 32 N.J.R. 3783(a).

In (j)1, substituted references to close relatives or household members for references to members of the immediate family, and added the second sentence; and deleted former (j)7.

Amended by R.2003 d.363, effective September 15, 2003.

See: 35 N.J.R. 2426(a), 35 N.J.R. 4281(a).

In (b), added forms F211, F212, F241, F242 and deleted form F240; deleted the revision dates of the referenced forms throughout.

Amended by R.2003 d.385, effective October 6, 2003.

See: 35 N.J.R. 2423(a), 35 N.J.R. 4713(a).

In (h), added 3.

Amended by R.2005 d.446, effective December 19, 2005.

See: 37 N.J.R. 2747(a), 37 N.J.R. 4907(a).

Added (h)1xxii.

Amended by R.2006 d.75, effective February 21, 2006.

See: 37 N.J.R. 3110(a), 38 N.J.R. 1183(a).

In (b)2, added Form F390, Framing Checklist.

Administrative correction.

See: 38 N.J.R. 1827(b).

In (h)1xxii, substituted "818" for "817" to correct PO Box number.

Amended by R.2006 d.355, effective October 2, 2006.

See: 38 N.J.R. 1789(a), 38 N.J.R. 4175(a).

In the table in (b)2, added entries for forms "F101", "F213", and "F214"; in (h)1xxi, deleted "and" from the end; in (h)1xxii, substituted a semicolon for a period at the end; added (h)1xxiii through xxv; and deleted (h)3.

Amended by R.2007 d.46, effective February 5, 2007.

See: 38 N.J.R. 872(a), 39 N.J.R. 370(b).

Rewrote (h)1xi and (i)lix.

Administrative correction.

See: 39 N.J.R. 1249(a).

Amended by R.2007 d.143, effective May 7, 2007.

See: 39 N.J.R. 7(a), 39 N.J.R. 1672(a).

In (j)1, inserted " , or any other public official or employee having any direct or indirect control over the funding or operations of the enforcing agency or any close relative or household member of any such public official or employee,".

Administrative correction.

See: 39 N.J.R. 3296(a).

Amended by R.2007 d.310, effective October 1, 2007.

See: 39 N.J.R. 135(a), 39 N.J.R. 4113(b).

Added (k).

Administrative correction.

See: 40 N.J.R. 113(a).

Amended by R.2008 d.273, effective September 15, 2008.

See: 40 N.J.R. 2630(a), 40 N.J.R. 5195(c).

In the introductory paragraph of (j)1, inserted "a" preceding "construction", inserted "knowingly" and inserted a comma following "agency" twice, and deleted "close relative or" preceding the third occurrence of "household member"; and rewrote (j)2.

Amended by R.2010 d.291, effective December 20, 2010.

See: 42 N.J.R. 1943(a), 42 N.J.R. 3053(a).

In (b)2, (b)3, (c)1, (d)1 and (f), updated the tables; in (b)5, deleted "they" preceding "may purchase", and deleted "A" following "F-110", "F-120", "F-130", "F-140" and "F-310"; and in (j)2, inserted " , or for the maintenance of any equipment or building component the maintenance of which is regulated pursuant to this chapter,".

Amended by R.2011 d.269, effective November 7, 2011.

See: 43 N.J.R. 904(a), 43 N.J.R. 3008(a).

In entry F-370 of (b)2, substituted "Verification" for "Certification".

Amended by R.2012 d.139, effective July 16, 2012.

See: 44 N.J.R. 8(a), 44 N.J.R. 1969(a).

In (b)1, substituted "application forms" for "forms and applications"; in the table in (b)2, inserted entries "F391" and "F392"; in (b)5, inserted "to be used in the office and application forms to be used by the public"; added new (h)1xx; and recodified former (h)1xx through (h)1xxv as (h)1xxi through (h)1xxvi.

Administrative correction.

See: 44 N.J.R. 3061(a).

Case Notes

Former N.J.A.C. 5:23-4.3 regarding conflict of interest valid. *New Jersey State Plumbing Inspectors Assn., Inc. v. Sheehan*, 163 N.J.Super. 398, 394 A.2d 1244 (App.Div.1978), certiorari denied 79 N.J. 484, 401 A.2d 239 (1979).

Adopting Initial Decision's conclusion that 60-day suspension of license, rather than revocation, was sufficient punishment for infractions where there was no evidence that the municipal building code official intended to receive an economic benefit, within the meaning of N.J.A.C. 5:23-4.5(j), on the transfer of stocks of the official's former plumbing business (adopting 2007 N.J. AGEN LEXIS 763 as modified). *Mazzer v. Office of Regulatory Affairs*, OAL Dkt. No. CAF 07898-07 (On Remand), 2008 N.J. AGEN LEXIS 12, Final Decision (January 10, 2008).

Construction official violated N.J.A.C. 5:23-4.5(j)(2), where the official performed architectural services on an ongoing basis for a builder undertaking construction in the municipality in which the official was employed, as well as in the adjoining municipality. *Easse v. Dep't of Community Affairs*, Office of Regulatory Affairs, OAL Dkt. No. CAF 03043-07, 2007 N.J. AGEN LEXIS 842, Final Decision (July 24, 2007).

Location of the projects for which an official receives compensation for services from a builder is not relevant to the analysis of whether N.J.A.C. 5:23-4.5(j)(2) was violated; an official may not perform services for a builder anywhere, once that builder undertakes construction in the municipality in which the official is employed or an adjoining municipality. *Easse v. Dep't of Community Affairs*, Office of Regulatory Affairs, OAL Dkt. No. CAF 03043-07, 2007 N.J. AGEN LEXIS 842, Final Decision (July 24, 2007).

Code official does not have to commit a criminal offense in order to be in violation of N.J.A.C. 5:23-4.5(j)2. A code official is in violation of N.J.A.C. 5:23-4.5(j)2 if he or she enters into, or maintains, any involvement with any person or business entity that is involved in construction under circumstances where such involvement might reasonably be perceived as compromising the objectivity of the official and, thus, the integrity of the code enforcement system. *Easse v. Dep't of Community Affairs*, Office of Regulatory Affairs, OAL Dkt. No. CAF 03043-07, 2007 N.J. AGEN LEXIS 842, Final Decision (July 24, 2007).

Willfulness is not an element of violation of the Uniform Construction Code rules. *Easse v. Dep't of Community Affairs*, Office of Regulatory Affairs, OAL Dkt. No. CAF 03043-07, 2007 N.J. AGEN LEXIS 842, Final Decision (July 24, 2007).

Code official's issuance of permits to a builder during the same period of time in which the official was providing compensated architectural services to the builder violated not only N.J.A.C. 5:23-5.25(a)5, but also N.J.A.C. 5:23-4.5(j)2. *Easse v. Dep't of Community Affairs*, Office of Regulatory Affairs, OAL Dkt. No. CAF 03043-07, 2007 N.J. AGEN LEXIS 842, Final Decision (July 24, 2007).

Multiple incidents involving conflicts of interest under N.J.A.C. 5:23-4.5(j)2 warranted revocation of all of the official's Uniform Construction Code licenses, and a previously "unblemished" record did not overcome the seriousness of the violation. *Easse v. Dep't of Community Affairs*, Office of Regulatory Affairs, OAL Dkt. No. CAF 03043-07, 2007 N.J. AGEN LEXIS 842, Final Decision (July 24, 2007).

Monetary penalty against builder for code violations was not reduced for financial hardship, but was reduced by half to secure prompt compliance. *Bureau of Housing Inspection v. Regency Village Apartments*, 95 N.J.A.R.2d (CAF) 37.

Fraud and deceit while practicing as a licensed code enforcement official or inspector warranted license revocation. *Regulatory Affairs v. Zieniuk*, 95 N.J.A.R.2d (CAF) 15.

Conflict of interest precluded employment as elevator inspector. *Kunz v. Department of Community Affairs*, 94 N.J.A.R.2d (CAF) 32.

5:23-4.5A (Reserved)

Repealed by R.2006 d.128, effective April 3, 2006.

See: 37 N.J.R. 4106(a), 38 N.J.R. 1573(a).

Section was "Selection of private on-site inspection and plan review agencies".

5:23-4.6 Interlocal enforcing agencies—establishment

(a) Parties: Any two or more municipalities may, by resolution, join to administer and enforce this chapter and any adopted subcode. Any municipalities that are party to an agreement establishing one enforcing agency having jurisdiction for all subcodes may further provide for the establishment of a joint board of appeals.

(b) Agreement: Except as this section may add or substitute requirements, the procedures for the execution of any agreement pursuant to this section shall be governed by the Uniform Shared Services and Consolidation Act (N.J.S.A. 40A:65-1 et seq.).

Amended by R.1991 d.325, effective July 1, 1991.
 See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).
 Reference to Subchapter 12 added.
 Amended by R.1992 d.272, effective July 6, 1992.
 See: 24 N.J.R. 1446(a), 24 N.J.R. 2424(a).
 Stylistic changes.

Law Review and Journal Commentaries

Municipal employees—Construction Code Officials. Judith Nallin, 135 N.J.L.J. No. 14, 50 (1993).

Case Notes

Legislature sought to establish uniform statewide construction standards. *Voges v. Borough of Tinton Falls*, 268 N.J.Super. 279, 633 A.2d 566 (A.D.1993), certification denied 135 N.J. 466, 640 A.2d 848.

Uniform Construction Code Act preempted field of code enforcement. *Voges v. Borough of Tinton Falls*, 268 N.J.Super. 279, 633 A.2d 566 (A.D.1993), certification denied 135 N.J. 466, 640 A.2d 848.

5:23-5.2 Licensing unit; hearings

(a) There is hereby established in the Bureau of Code Services, Division of Codes and Standards, a Licensing Unit. The unit shall enforce this subchapter.

(b) The unit shall have the following responsibilities in addition to all others provided in this subchapter:

1. To issue such licenses as may be called for herein when warranted;
2. To keep accurate records of all applications for a license and any official action thereon and to make such records available for inspection by the public at all reasonable times;
3. To suspend or revoke a license provided for herein upon the establishment of good cause.

(c) Any person aggrieved by any notice, action, ruling or order of the Commissioner, with respect to this subchapter, shall have a right to a hearing before the Office of Administrative Law. The final decision in any such case shall be issued by the Commissioner.

1. The aggrieved person must request a hearing in writing. The request must be filed within 15 days after receipt of the notice, order, action or ruling being appealed.
2. The request shall be filed with the Hearing Coordinator, Division of Codes and Standards, PO Box 802, Trenton, NJ 08625-0802.
3. The request for hearing shall set forth all issues that will be raised at the hearing.

As amended, R.1980 d.316, eff. July 17, 1980.
 See: 12 N.J.R. 303(b), 12 N.J.R. 452(d).
 As amended, R.1981 d.134, eff. May 7, 1981.
 See: 13 N.J.R. 119(a), 13 N.J.R. 258(c).

(b)2 concerning licensure advisory board deleted and (b)3 renumbered as (b)2.

As amended, R.1982 d.436, eff. December 20, 1982.
 See: 14 N.J.R. 734(a), 14 N.J.R. 1449(a).

Added to (b)1 that cases to be heard by the OAL with final decision by the Commissioner. Deleted old text concerning hearings.

Amended by R.1987 d.509, effective December 7, 1987.
 See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

Deleted text in (b)2i "Responsibility to request ...".
 Administrative Corrections to section heading, (a), (a)1, (b)2i.
 See: 22 N.J.R. 2503(b).

Amended by R.1992 d.272, effective July 6, 1992.
 See: 24 N.J.R. 1446(a), 24 N.J.R. 2424(a).

Stylistic changes.
 Amended by R.1997 d.409, effective October 6, 1997.
 See: 29 N.J.R. 2736(a), 29 N.J.R. 4281(a).

Substantially amended section.

Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 561) adopted, which ordered a 60-day suspension of petitioner's Building Subcode Official and Building Inspector H.H.S. licenses for violations of N.J.A.C. 5:23-2.18(b) and 5:23-2.24(a); petitioner approved framing inspections and issued a certificate of occupancy on the subject project that did not meet the conditions of the approved plans and specification, approved alternate material in lieu of the architect's specified material resulting in an overspanning of the joists, and overlooked a required flush girder beam creating an excessive deflection, which caused the second and third floors of the home to sag. *Anstiss v. Office of Regulatory Affairs*, OAL Dkt. No. CAF 11448-06, 2007 N.J. AGEN LEXIS 547, Final Decision (August 17, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 561) adopted, which concluded that a building inspector's license as a Fire Protection Subcode Official should not be placed in jeopardy where there were no specific allegations regarding fire safety. *Anstiss v. Office of Regulatory Affairs*, OAL Dkt. No. CAF 11448-06, 2007 N.J. AGEN LEXIS 547, Final Decision (August 17, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 561) adopted, which ordered revocation of petitioner's Construction Official license where petitioner failed to make sure that the proper reports and inspections were in the file prior to the issuance of temporary certificates of occupancy and petitioner previously had been cited for violations concerning the same project; petitioner's responsibility toward the properties did not cease because a subordinate signed the certificates, and petitioner failed to provide the necessary documentation even after it was requested by the Department investigator. *Anstiss v. Office of Regulatory Affairs*, OAL Dkt. No. CAF 11448-06, 2007 N.J. AGEN LEXIS 547, Final Decision (August 17, 2007).

5:23-5.3 Types of licenses

(a) Rules concerning code enforcement licensure categories are:

1. Technical licenses: Subject to the requirements of this subchapter, persons may apply for and may be licensed in the following specialties:

i. Building inspector: Building inspectors are authorized to carry out field inspection and plan review work pursuant to the regulations subject to the limitations specified herein.

(1) Building inspector with a specialty in high-rise and hazardous structures (H.H.S.): Building inspectors H.H.S. are authorized to review plans and carry out field inspection activities for structures in classes 1, 2, and 3.

(2) Building inspector with a specialty in industrial and commercial structures (I.C.S.): Building inspectors I.C.S. are authorized to review plans for structures in classes 2 and 3, and to carry out field

inspection activities for structures in classes 1, 2, and 3.

(3) Building inspector with a specialty in residential and small commercial structures (R.C.S.): Building inspectors R.C.S. are authorized to review plans for structures in class 3 and to carry out field inspection activities for structures in classes 1, 2, and 3.

ii. Electrical inspector: Electrical inspectors are authorized to carry out field inspection and plan review work pursuant to the regulations subject to the limitations specified herein.

(1) Electrical inspector with a specialty in high-rise and hazardous structures (H.H.S.): Electrical inspectors H.H.S. are authorized to review plans and carry out field inspection activities for structures in classes 1, 2, and 3.

(2) Electrical inspector with a specialty in industrial and commercial structures (I.C.S.): Electrical inspectors I.C.S. are authorized to review plans for structures in classes 2 and 3, and to carry out field inspection activities for structures in classes 1, 2, and 3.

iii. Fire protection inspector: Fire protection inspectors are authorized to carry out field inspection and plan review work pursuant to the regulations subject to the limitations specified herein.

(1) Fire protection inspector with a specialty in high-rise and hazardous structures (H.H.S.): Fire protection inspectors H.H.S. are authorized to review plans and carry out field inspection activities for structures in classes 1, 2, and 3.

(2) Fire protection inspector with a specialty in industrial and commercial structures (I.C.S.): Fire protection inspectors I.C.S. are authorized to review plans for structures in classes 2 and 3, and to carry out field inspection activities for structures in classes 1, 2, and 3.

(3) Fire protection inspector with a specialty in residential and small commercial structures (R.C.S.): Fire protection inspectors R.C.S. are authorized to review plans for structures in class 3 and to carry out field inspection activities for structures in classes 1, 2, and 3. This license will no longer be available after July 31, 1991, and all licenses issued on or before that date shall cease to be valid after July 31, 1993.

iv. Plumbing inspector: Plumbing inspectors are authorized to carry out field inspection and plan review work pursuant to the regulations subject to the limitations specified herein.

(1) Plumbing inspector with a specialty in high-rise and hazardous structures (H.H.S.): Plumbing inspectors H.H.S. are authorized to review plans and

carry out field inspection for structures in classes 1, 2, and 3.

(2) Plumbing inspector with a specialty in industrial and commercial structures (I.C.S.): Plumbing inspectors I.C.S. are authorized to review plans for structures in classes 2 and 3, and to carry out field inspection activities for structures in classes 1, 2, and 3.

v. Inplant inspector: Inplant inspectors are authorized to carry out field inspections and plan review work of premanufactured components pursuant to this subchapter.

vi. Elevator inspector with a specialty in high-rise and hazardous structures (H.H.S.): Elevator inspectors H.H.S. are authorized to review plans and carry out the elevator device inspections, or to witness tests required by this chapter in all structures.

vii. Mechanical inspector: Mechanical inspectors are authorized to carry out field inspection and plan review work for all work under the mechanical subcode in structures of Group R-3 or R-5. Only a person already holding a valid inspector's license may apply for a mechanical inspector's license.

2. Administrative licenses: In addition to the basic required technical licenses specified in N.J.A.C. 5:23-5.3(b)1, a person may apply for the administrative licenses specified herein.

i. Construction official: A construction official is authorized to act as the chief administrator of the enforcing agency as required by N.J.A.C. 5:23-4.4.

ii. Building subcode official: A building subcode official is authorized to act as the administrator of the building subcode as required by N.J.A.C. 5:23-4.4.

iii. Electrical subcode official: An electrical subcode official is authorized to act as the administrator of the electrical subcode as required by N.J.A.C. 5:23-4.4.

iv. Fire protection subcode official: A fire protection subcode official is authorized to act as the administrator of the fire protection subcode as required by N.J.A.C. 5:23-4.4.

v. Plumbing subcode official: A plumbing subcode official is authorized to act as the administrator of the plumbing subcode as required by N.J.A.C. 5:23-4.4.

vi. Elevator subcode official: An elevator subcode official is authorized to act as the administrator of the elevator safety subcode, as required by N.J.A.C. 5:23-4.4.

3. State-jurisdiction licenses: Subject to the requirements of this subchapter, persons may apply for and may be licensed in the following specialties:

i. Amusement rides subcode official: An amusement rides subcode official is authorized to act as an administrator in the enforcement by the Department of the amusement rides subcode;

ii. Amusement ride inspector H.H.S.: An amusement ride inspector H.H.S. is authorized to carry out field inspection, accident investigation and plan review work in the enforcement by the Department of the amusement rides subcode;

iii. Amusement ride inspector I.C.S.: An amusement ride inspector I.C.S. is authorized to carry out field inspection and plan review work in the enforcement by the Department of the amusement rides subcode;

iv. Boiler, pressure vessel and refrigeration subcode official: A boiler, pressure vessel and refrigeration subcode official is authorized to act as an administrator in the enforcement by the Department of the boiler, pressure vessel and refrigeration subcode;

v. Boiler, pressure vessel and refrigeration inspector H.H.S.: A boiler, pressure vessel and refrigeration inspector H.H.S. is authorized to carry out field inspections and shop inspections and plan review work in the enforcement by the Department of the boiler, pressure vessel and refrigeration subcode;

vi. Boiler, pressure vessel and refrigeration inspector I.C.S.: A boiler, pressure vessel and refrigeration inspector I.C.S. is authorized to carry out field inspections and plan review work in the enforcement by the Department of the boiler, pressure vessel and refrigeration subcode;

vii. Boiler, pressure vessel and refrigeration inspector R.C.S.: A boiler, pressure vessel and refrigeration inspector R.C.S. is authorized to carry out field inspections and plan review work in the enforcement by the Department of the boiler, pressure vessel and refrigeration subcode.

4. Special inspector certifications: Subject to the requirements of this subchapter, persons may apply for and may be certified in the following specialties:

i. Structural welding special inspector: Structural welding special inspectors are authorized to carry out field inspections pursuant to section 1704.3.1 of the building subcode.

ii. Structural steel and bolting special inspector: Structural steel and bolting special inspectors are authorized to carry out field inspections pursuant to sections 1704.3.2 and 1704.3.3 of the building subcode.

iii. Concrete placement special inspector: Concrete placement special inspectors are authorized to carry out field inspections pursuant to section 1704.4, section 1704.9 and Table 1704.4, rows 3, 4, 5, 6, 7, 8, 10, 11, and 12 of the building subcode.

iv. Reinforced concrete special inspector: Reinforced concrete special inspectors are authorized to carry

out field inspections pursuant to section 1704.4, section 1704.9 and Table 1704.4, rows 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, and 12 of the building subcode.

v. Prestressed concrete special inspector: Prestressed concrete special inspectors are authorized to carry out field inspections pursuant to section 1704.4 and Table 1704.4, rows 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of the building subcode.

vi. Structural masonry special inspector: Structural masonry special inspectors are authorized to carry out field inspections pursuant to section 1704.5 and section 1704.11 of the building subcode.

vii. Spray-applied fireproofing special inspector: Spray-applied fireproofing special inspectors are authorized to carry out field inspections pursuant to section 1704.10 of the building subcode.

viii. Exterior insulation finish system (EIFS) special inspector: EIFS special inspectors are authorized to carry out field inspections pursuant to section 1704.12 of the building subcode.

Amended by R.1977 d.435, effective December 15, 1977.

See: 9 N.J.R. 456(c), 9 N.J.R. 558(b).

Amended by R.1981 d.462, effective December 7, 1981.

See: 13 N.J.R. 390(a), 13 N.J.R. 885(d).

(b): Renumbering; (b)4 and 4i added.

Amended by R.1991 d.308, effective June 17, 1991.

See: 23 N.J.R. 1085(a), 23 N.J.R. 1923(a).

RCS license to be phased out, effective July 31, 1993.

Amended by R.1991 d.325, effective July 1, 1991.

See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Elevator inspector classification and authority added at (b).

Amended by R.1992 d.272, effective July 6, 1992.

See: 24 N.J.R. 1446(a), 24 N.J.R. 2424(a).

Text deleted at (a); (b) recodified.

Amended by R.1993 d.187, effective May 3, 1993.

See: 25 N.J.R. 624(a), 25 N.J.R. 1875(a).

Added (b)lvii.

Amended by R.2001 d.303, effective September 4, 2001.

See: 33 N.J.R. 1991(a), 33 N.J.R. 2989(a).

Added (a)3.

Amended by R.2004 d.67, effective February 17, 2004.

See: 35 N.J.R. 4627(a), 36 N.J.R. 949(b).

In (a)lvii, substituted "subcode in structures of Group R-3 or R-5" for "subcode in Use Group R-3 or R-4 structures".

Amended by R.2006 d.381, effective November 6, 2006.

See: 38 N.J.R. 35(a), 38 N.J.R. 4691(a).

Added (a)4.

Amended by R.2008 d.337, effective November 3, 2008.

See: 40 N.J.R. 4269(a), 40 N.J.R. 6437(b).

In (a)4i, deleted "steel and" following "Structural" twice and substituted "1704.3.1" for "1704.3"; added new (a)4ii, (a)4iv and (a)4v; recodified former (a)4ii as (a)4iii and former (a)4iii through (a)4v as (a)4vi through (a)4viii; rewrote (a)4iii; and in (a)4vii, substituted "1704.10" for "1704.11".

Amended by R.2011 d.269, effective November 7, 2011.

See: 43 N.J.R. 904(a), 43 N.J.R. 3008(a).

In (a)4iii and (a)4iv, inserted ", section 1704.9"; and in (a)4vi, inserted "and section 1704.11".

Amended by R.2013 d.081, effective June 3, 2013.

See: 44 N.J.R. 1303(a), 45 N.J.R. 1393(a).

In (a)1, substituted "1, 2, and 3" for "I, II and III", "2 and 3" for "II and III", and "3" for "III" throughout; in (a)4iii, substituted "7, 8, 10, 11, and 12" for "7, 9, 10 and 11"; in (a)4iv, substituted "7, 8, 10, 11, and 12" for "7, 9 and 11"; and in (a)4v, substituted "10, 11, and 12" for "10 and 11".

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 216) adopted, which concluded, based on credibility assessments and a review of the entire record, that applicant was properly denied a Fire Protection Inspector license, as he failed to prove that he had the required 5 years of experience or, alternatively, the pertinent degrees or registrations/licenses. The failure of applicant and other employees to comply with the requirements, in effect, prevented the Department of Community Affairs from exercising its regulatory oversight, notwithstanding any lack of intent of the individuals involved in this case. *Feola v. Bureau of Code Services*, Dep't of Community Affairs, OAL Dkt. No. CAF 11307-05, 2008 N.J. AGEN LEXIS 566, Final Decision (April 21, 2008).

5:23-5.4 Licenses required

(a) No person shall be appointed to, or shall hold, the position of construction official or subcode official unless that person has received a license required for that position pursuant to these regulations.

(b) No person shall be appointed to, or shall hold, a technical inspector position in an enforcing agency for which a license requirement has been established by this chapter unless that person has received the license required by these rules for that position.

(c) No person shall act to enforce any special technical provision or article of the rules for which the Commissioner shall have established in N.J.A.C. 5:23-5.3 a requirement for an additional special technical license, unless such person shall have received the required special technical license within one year following the effective date of the requirement for such license.

(d) Enforcing agencies may establish code enforcement trainee positions subject to the following rules:

1. Persons applying for a trainee position with an enforcing agency must be officially registered with the Department of Community Affairs on the form provided by the Licensing Unit of the Bureau of Code Services prior to being hired as a trainee.

i. Trainees shall renew their registration yearly and shall notify the Department of Community Affairs, Bureau of Code Services, Licensing Unit, of any change in employment status or address within one month of the change.

ii. A nonrefundable processing fee of \$20.00 is required for the initial Trainee Registration Request and for each subsequent renewal request.

2. Persons meeting the following experience requirements shall be eligible to register as trainees:

i. Fire protection inspector trainee—a minimum of one year of experience in the fire service (other than as an apprentice or person in training) with fire prevention, fire protection or firefighting responsibilities, or with one year experience in building construction as a journeyman, contractor, or design draftsman relative to the fire protection subcode.

ii. Building inspector trainee—a minimum of one year of experience in building construction as a journeyman, inspector, contractor or design draftsman relative to the building subcode.

iii. Plumbing inspector trainee—a minimum of one year of experience as a journeyman plumber, contractor or design draftsman relative to the plumbing subcode.

iv. Electrical inspector trainee—a minimum of one year of experience as a journeyman electrician, contractor or design draftsman relative to the electrical subcode.

v. Persons who have graduated from an accredited institution of higher education with a bachelor's degree in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction, or who possess an associate's degree in code enforcement, or have a current New Jersey registration/license as an architect or engineer shall be exempt from the experience requirement for trainee employment.

3. Trainees shall be evaluated by their supervisors on a quarterly basis. This evaluation shall include a brief description of the trainee's code enforcement activities and an assessment of the trainee's performance in these activities. Trainees who receive satisfactory evaluation ratings by their supervisors and who occupy enforcing agency trainee positions while registered with the Department may use the trainee experience toward satisfying the experience requirement for licensure in accordance with this subchapter. The effective date of the trainee experience begins at the time the person is hired as a registered trainee by an authorized agency.

4. The following conditions apply to work performed by a trainee:

i. Trainees may perform inspections required by N.J.A.C. 5:23-2.18 only under the direct supervision of an official or inspector licensed in the subcode area in which the trainee position has been approved. The licensed supervisor must be on site with the trainee during the performance of all required inspections.

ii. Trainees may perform an inspection of a singular specific point on a project, or a repetitive singular specific point on one or more projects, if directed to do so by a licensed supervisor where no code interpretation is required. In any such case, the inspection report shall be completed and signed by the trainee and reviewed and countersigned by the licensed supervisor.

iii. Trainees shall not act as subcode or construction officials or sign any permits, stickers, approved plans or inspection reports except as otherwise permitted by (d)5i and ii above.

5. The supervisor of the trainee shall possess a valid code enforcement license in the same subcode as the registered trainee working under his or her direct supervision.

i. A qualified licensed inspector shall not supervise more than one trainee.

ii. Failure of a supervisor to properly oversee a registered trainee in accordance with the provisions of the rules may result in disciplinary action against the supervisor.

6. To remain employed by an enforcing agency, a trainee must enroll in, and successfully complete, the appropriate approved course within two years of the effective date of his or her employment. Trainees who fail to successfully complete the appropriate course within two years of the effective date of their employment shall not be permitted to renew their registration until successful completion is achieved.

7. To remain employed by an enforcing agency, a trainee must pass the appropriate modules of the National

Certification Test in his specific code area within two years of the effective date of employment.

(e) Enforcing agencies may establish code enforcement intern positions subject to the following:

1. Persons applying for an intern position with an enforcing agency must be officially registered in accordance with this subchapter with the Department of Community Affairs on the form provided by the Licensing Unit of the Bureau of Code Services prior to being hired as an intern.

i. Interns shall renew their registration yearly and shall notify the Department of Community Affairs, Bureau of Code Services, Licensing Unit within one month of any change in employment status prior to accepting any new position and of any change of address.

ii. A nonrefundable processing fee of \$20.00 is required for the initial Intern Registration Request and for each subsequent renewal request.

2. Persons meeting the following requirements shall be eligible to be employed as interns:

i. Fire protection inspector intern: possession of an associate degree in code enforcement with a major in the fire protection subcode;

ii. Building inspector intern: possession of an associate degree in code enforcement with a major in the building subcode area;

iii. Plumbing inspector intern: possession of an associate degree in code enforcement with a major in the plumbing subcode area; and

iv. Electrical inspector intern: possession of an associate degree in code enforcement with a major in the electrical subcode area.

3. Interns shall be evaluated by their supervisors on a quarterly basis.

i. The evaluation must include a brief description of the intern's code enforcement activities and an assessment of the intern's performance in these activities.

ii. Interns who receive satisfactory evaluation ratings from their supervisors and who occupy enforcing agency intern positions while registered with the Department may use the intern experience toward satisfying the experience requirement for licensure.

iii. The period of intern experience begins at the time a person is hired as a registered intern by an authorized agency.

4. The following conditions apply to work performed by interns:

i. Interns may perform all inspections allowed for a trainee as described in (d)5i and ii above.

ii. In addition, with the written approval of an intern's supervisor, the intern may perform the following types of inspections without the supervisor being present during the inspection:

(1) Reinspections of previously failed documented inspections for one and two family dwellings;

(2) Footing inspections as described in N.J.A.C. 5:23-2.18(b)1i(1) for one and two family dwellings (building inspector interns with written approval of their supervisors only).

iii. An intern shall not act as a subcode or construction official nor sign any permits, stickers, approved plans or inspection reports, except as permitted in (e)4i and ii above.

5. The supervisor of the intern must possess a valid code enforcement license in the same subcode as the registered intern working under his or her supervision.

i. A qualified licensed inspector shall not supervise more than one intern.

ii. Failure of a supervisor to properly oversee a registered intern in accordance with the provisions of this subsection may result in disciplinary action against the supervisor.

iii. The supervisor must complete the quarterly reports and keep a written file on the progress of the intern. This file must include written authorization to perform inspections as listed in N.J.A.C. 5:23-5.4(e)4. At the end of one year of full time internship, the supervisor shall forward notice to the Department of Community Affairs, Bureau of Code Services, Licensing Unit of successful completion of the internship. If the internship is not for a full year, or is part time, that time may also be documented.

6. To remain employed by an enforcing agency, an intern must pass the appropriate module(s) of the National Certification Test in his or her specific code area within one year of the effective date of employment.

(f) Effective November 6, 2008, special inspectors shall be certified in accordance with the administrative provisions of the Uniform Construction Code. No person shall act as a special inspector to enforce any provision of the building subcode for which this chapter has established a certification requirement unless that person has received the certification required by these rules for that specialty.

(g) Violations:

1. It shall be a violation of these regulations for any construction or subcode official or technical inspector to represent himself or herself to be qualified for a position that the person does not currently hold, or to use a title or otherwise represent himself to be qualified for a position that the person does not currently hold, or to use a title or otherwise represent himself as licensed or authorized to act under the code if that person does not possess the required license. In addition to any other remedy available under law, such shall be deemed a violation of this section subject to penalty of not more than \$500.00 for each offense.

2. It shall be a violation of these rules for any person to hold or perform the duties of an office for which a license is required herein, or for any person to represent himself or herself as qualified for such position, or to use any title or otherwise represent himself or herself as licensed or authorized to act under the code if the person does not possess that license. In addition to any other remedy available under law, such action shall be deemed a violation of this section and subject to a penalty of not more than \$500.00 for each offense.

3. It shall be a violation of these rules in the case of construction and subcode officials and technical inspectors for any enforcing agency, including private on-site inspection and plan review agencies, to offer employment to or to retain for employment any person who is not licensed in accordance with these rules if such person has not been

previously and continuously employed by such agency. Further, it shall be a violation of these rules for an enforcing agency to continue an individual in employment in a position for which a license is required pursuant to these rules, or to hire an individual for such a position, if such person is not licensed in accordance with this subchapter. Violation of this section shall be deemed a failure to perform within the meaning of N.J.A.C. 5:23-4.3(f), and the Department may exercise the remedies provided therein.

4. It shall be a violation of the State Uniform Construction Code Act for any agency of the State of New Jersey, which is charged with enforcing agency responsibilities pursuant to the act or these rules, to fail to comply with paragraphs 1, 2 and 3 of this subsection.

Amended by R.1984 d.494, effective November 5, 1984.

See: 16 N.J.R. 1643(a), 16 N.J.R. 3007(a).

(d) substantially amended.

Amended by R.1985 d.85, effective March 4, 1985.

See: 16 N.J.R. 3372(a), 17 N.J.R. 579(a).

(d) amended.

Amended by R.1985 d.231, effective May 20, 1985.

See: 17 N.J.R. 341(a), 17 N.J.R. 1258(a).

(d)li added.

Amended by R.1985 d.353, effective July 15, 1985.

See: 17 N.J.R. 1032(a), 17 N.J.R. 1758(b).

Subsection (d) substantially amended.

Amended by R.1985 d.612, effective January 6, 1986.

See: 17 N.J.R. 1821(a), 18 N.J.R. 80(a).

(d)3 substantially amended.

Amended by R.1987 d.509, effective December 7, 1987.

See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

Substantially amended.

Administrative Corrections to (c), (d)2 and (d)2ii.

See: 22 N.J.R. 2503(b).

Amended by R.1992 d.272, effective July 6, 1992.

See: 24 N.J.R. 1446(a), 24 N.J.R. 2424(a).

Trainee registration required; processing fee raised to \$20.00; "directly" broadened to "significant".

Amended by R.1992 d.292, effective July 20, 1992.

See: 24 N.J.R. 1669(b), 24 N.J.R. 2557(a).

Provision to license interns added.

Amended by R.1993 d.105, effective March 1, 1993.

See: 24 N.J.R. 4309(a), 25 N.J.R. 920(b).

Added subsection (g).

Amended by R.1997 d.409, effective October 6, 1997.

See: 29 N.J.R. 2736(a), 29 N.J.R. 4281(a).

Amended internal citations throughout; in (a) and (b), deleted October 1, 1978 trigger date; in (f)3, inserted "; or to hire an individual for such a position,"; and deleted (g), relating to interim rules.

Amended by R.2006 d.381, effective November 6, 2006.

See: 38 N.J.R. 35(a), 38 N.J.R. 4691(a).

Added new (f); and recodified former (f) as (g).

Emergency amendment, R.2007 d.362, effective October 25, 2007 (to expire December 24, 2007).

See: 39 N.J.R. 4958(a).

In (f), substituted "2008" for "2007".

Concurrent adopted amendment, R.2008 d.27, effective December 21, 2007.

See: 39 N.J.R. 4958(a), 40 N.J.R. 614(a).

Provisions of R.2007 d.362 adopted without change.

5.22. The application shall include such information and documentation as the Commissioner may require pursuant to this subchapter.

(b) After receipt of the required nonrefundable fee, the Department shall determine, by examination of the application and review of the supporting documents, including substantial evidence of acceptable experience, successful test results, training and/or education submitted, whether an applicant is qualified for a license of the type and specialty for which the application has been made. If the application is satisfactory, the Commissioner shall issue a license to the applicant. This license will show that the person has met the established requirements and is eligible to be employed in this State in accordance with the provisions of this chapter.

1. The Commissioner may deny or refuse to issue a license to an applicant if the application is incomplete or upon proof that there has been any act or omission which would constitute grounds for revocation under this subchapter, or if an application was denied within the prior three years by reason of any act or omission that would constitute grounds for revocation.

2. Upon receipt of an incomplete application, the non-refundable application fee shall be collected and a letter of acknowledgment forwarded to the applicant setting forth the manner in which the application is incomplete.

3. The applicant shall submit a complete application within 18 months of receipt of the letter of acknowledgment. If a complete application is not submitted within the 18 month period, the application shall be deemed abandoned, no further action shall be taken on it by the Department and a new application and non-refundable fee shall be required if the applicant desires to reapply.

4. Only test results for test modules passed within three years prior to, or at the time of, application shall be accepted toward fulfilling the requirement for the license sought.

5. Only those approved courses completed within a five-year period immediately preceding the time of application for a license shall be considered acceptable toward fulfilling the requirements for the technical or administrative license sought.

i. Persons who have completed an approved course shall be eligible for tuition reimbursement when funds for such reimbursement are available; provided, however, that persons who repeat a course for any reason, and have previously received tuition reimbursement for the course, shall not again be eligible for reimbursement for that course.

6. No credit shall be given by the Department for any experience not involving the construction or alteration of buildings, or its equivalent, as determined by the Department.

5:23-5.5 General license requirements

(a) A candidate for a license of any type issued pursuant to this subchapter shall submit an application to the Licensing Unit, Bureau of Code Services, accompanied by the required nonrefundable application fee established in N.J.A.C. 5:23-

7. No credit shall be given by the Department for any journeyman experience unless documentation of the completion of a formal or informal apprenticeship program, or its equivalent, as determined by the Department, is provided. In general, the Department makes reference to the U.S. Department of Labor's National Apprenticeship Program for assigning the length of time required to complete an apprenticeship program in a given trade.

8. Credit for part-time work experience shall be given by the Department on a proportional basis. The Department has established a 35-hour work-week as the standard full time equivalent. No additional credit will be given for hours in excess of 35 per week, regardless of any amount of overtime which an applicant claims to have worked.

(c) A person licensed by the Department on the basis of having had a license, tenure or permanent civil service status prior to January 1, 1978 who subsequently loses his or her license as a result of revocation or of failure to renew within three years of lapsing must reapply for licensure under the requirements in effect at the time of reapplication.

(d) Special provisions:

1. An applicant who is licensed as a building inspector, electrical inspector, fire protection inspector or plumbing inspector shall be eligible for licensure as an inspector at the same level or lower in any other subcode, other than the elevator safety subcode or a State-jurisdiction subcode, upon satisfactory completion of the approved educational program, if applicable, and the examination for licensure as an inspector in that other subcode, provided that the applicant has at least the number of years experience required for that other subcode inspector's license.

2. An applicant licensed as an inspector may apply for a mechanical inspector's license to perform mechanical inspections in structures of Group R-3 or R-5.

3. An applicant who is licensed as an elevator inspector H.H.S. and who holds valid certification by the National Association of Amusement Ride Safety Officials (NAARSO) as a Level I (Basic) Inspector shall be eligible to be licensed as an amusement ride inspector I.C.S.

i. Licensed elevator inspectors H.H.S. may, however, perform operational inspections of amusement rides pursuant to N.J.A.C. 5:14A without having the NAARSO certification.

4. Amusement rides subcode officials licensed pursuant to this subchapter may perform routine six-month inspections of elevator devices, as specified in N.J.A.C. 5:23-12, provided that they have successfully completed the approved educational program for the elevator inspector H.H.S. license as detailed at N.J.A.C. 5:23-5.20(n).

Amended by R.1981 d.462, effective December 7, 1981.
See: 13 N.J.R. 390(a), 13 N.J.R. 885(d).

(b)9 through 9ii added.

Amended by R.1981 d.463, effective December 7, 1981.
See: 13 N.J.R. 635(a), 13 N.J.R. 886(c).

(c) added "no credit shall be given ... building".

Amended by R.1982 d.8, effective February 1, 1982.

See: 13 N.J.R. 799(b), 14 N.J.R. 143(a).

(b)liii and v: "such" added after "provided that"; "24" was "12"; and deleted "and further provided that's"; (b)5iii(3) deleted.

Amended by R.1982 d.19, effective February 1, 1982.

See: 13 N.J.R. 801(a), 14 N.J.R. 143(b).

(b) Substantially amended.

(c) "and" added between "application" and "review"; "alternative" deleted before "experience"; "pursuant to ... N.J.A.C. 5:23-5.9" deleted.

Amended by R.1982 d.56, effective March 1, 1982.

See: 14 N.J.R. 8(a), 14 N.J.R. 237(a).

(b)li: added "provided ... 52:27D-126(b);".

Amended by R.1983 d.641, effective January 17, 1984.

See: 15 N.J.R. 1911(a), 16 N.J.R. 129(b).

Substantially amended.

Amended by R.1984 d.425, effective October 1, 1984.

See: 16 N.J.R. 1644(a), 16 N.J.R. 2520(b).

Section substantially amended.

Amended by R.1985 d. 612, effective January 6, 1986.

See: 17 N.J.R. 1821(a), 18 N.J.R. 80(a).

Substantially amended.

Amended by R.1986 d.255, effective July 7, 1986.

See: 18 N.J.R. 594(a), 18 N.J.R. 1373(a).

Deleted "satisfies the experience requirements for licensure" and substituted "is licensed" in (d)5.

Amended by R.1987 d.509, effective December 7, 1987.

See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

Substantially amended.

Administrative Correction to (a).

See: 22 N.J.R. 2503(b).

Amended by R.1991 d.325, effective July 1, 1991.

See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Test result and licensure requirements specified further at (b)4 and (c)3.

Amended by R.1992 d.272, effective July 6, 1992.

See: 24 N.J.R. 1446(a), 24 N.J.R. 2424(a).

Work week set at 35 hours; (d)1-4 deleted.

Amended by R.1993 d.105, effective March 1, 1993.

See: 24 N.J.R. 4309(a), 25 N.J.R. 920(b).

Persons serving as elevator inspectors when licensing rules proposed have an opportunity to qualify for licenses.

Amended by R.1993 d.187, effective May 3, 1993.

See: 25 N.J.R. 624(a), 25 N.J.R. 1875(a).

Added (d)2.

Administrative correction.

See: 26 N.J.R. 1495(a).

Amended by R.1996 d.53, effective February 5, 1996.

See: 27 N.J.R. 4056(a), 28 N.J.R. 815(b).

Amended by R.1996 d.544, effective December 2, 1996 (operative February 1, 1997).

See: 28 N.J.R. 3996(a), 28 N.J.R. 5071(a).

Amended by R.1997 d.409, effective October 6, 1997.

See: 29 N.J.R. 2736(a), 29 N.J.R. 4281(a).

In (b)4, deleted exception for tests taken prior to July 1, 1991; and substantially amended (c).

Amended by R.2001 d.303, effective September 4, 2001.

See: 33 N.J.R. 1991(a), 33 N.J.R. 2989(a).

In (d)1, inserted "or a State-jurisdiction subcode" following "safety subcode"; added (d)3.

Amended by R.2004 d.67, effective February 17, 2004.

See: 35 N.J.R. 4627(a), 36 N.J.R. 949(b).

In (d)2, substituted "mechanical inspections in structures of Group R-3 or R-5" for "mechanical inspections of Use Group R-3 or R-4 structures".

Amended by R.2007, d.384, effective December 17, 2007.

See: 39 N.J.R. 2684(a), 39 N.J.R. 5211(a).

In (b)1, inserted ", or if an application was denied within the prior three years by reason of any act or omission that would constitute grounds for revocation".

Amended by R.2013 d.087, effective June 17, 2013.

See: 44 N.J.R. 1311(a), 45 N.J.R. 1509(a).

In (d)3, inserted "H.H.S."; and added (d)3i and (d)4.

Case Notes

Under N.J.A.C. 5:23-5.5 and 5:23-5.21, after a revocation or for any loss of license or lapse of licensure for more than three years, an applicant shall be treated as a new applicant and cannot rely on courses more than five years old or on tests more than three years from the application. *Bureau of Code Services v. Gitto*, OAL Dkt. No. CAF 83-08, 2008 N.J. AGEN LEXIS 281, Initial Decision (April 8, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 764) adopted, which affirmed denial of a building inspector license because the applicant made false and misleading statements on the application; the applicant answered criminal history questions in the negative although the applicant had a criminal history and was on probation. *Bureau of Code Services v. Guerriero*, OAL Dkt. No. CAF 09580-07, 2008 N.J. AGEN LEXIS 38, Final Decision (January 3, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 109) adopted, which found that petitioner's second application for licensure as an elevator operator was properly denied where it was filed 10 months after his first application was denied for dishonesty after lying about his criminal background, a violation of N.J.A.C. 5:23-5.25 and this section. Although

previously requested to do so, petitioner failed to provide sufficient information to determine whether he had been rehabilitated. *LaBarca v. Bureau of Code Services*, OAL Dkt. No. CAF 8445-06, 2007 N.J. AGEN LEXIS 342, Final Decision (May 22, 2007).

5:23-5.6 Construction official requirements

(a) A candidate for a license as a construction official shall meet the following qualifications:

1. Possession of the qualifications established for at least one of the following subcode official licenses: building, fire protection, electrical, plumbing or elevator; provided, however, that any person qualified as a fire protection subcode official must also have experience for the applicable period of time specified by N.J.S.A. 52:27D-126b; and

(1) Area I, Administration: Construction code administration's background, purpose, place in local government structure and relation to construction code administration programs at other levels of government. Personnel management including required personnel, records, budgeting. Basic principles of supervision and management. Local enforcement agency administration including records, reports, equipment, personnel procedures and regulations of the Federal, State and local government. Preparation of agency's budget, record keeping requirements under the State Uniform Construction Code including permit and certificate of occupancy records, variation application records and violation files and records. Major forms of manual and electronic methods of data processing. Method of establishing and maintaining proper review and approval procedures for permit applications to ensure compliance with the construction code and applicable laws and ordinances.

(2) Area 2, Legal methods of code enforcement: Purpose and fundamentals of stop orders, notices of penalties and court action. Powers and procedures available to deal with hazardous conditions and emergency situations including emergency work orders and bids and quotations process. Procedures for processing cases involving condemnations and other violations of the subcode from initiation through final compliance. Preparation of case records. Situations requiring a search warrant and the process of obtaining and issuing the warrant. The administrative hearing process under the State Construction Code Act. Legal aspects of the operations of the building and housing inspection agencies, including legal processes and rules of evidence. Legal responsibilities of inspection personnel. Appeals and process before boards of appeal.

(3) Area 3, Related legislation: Legal rights of landlords and tenants under Federal, State and local laws. Relocation laws and their relationship to code enforcement. Relationship of housing maintenance provisions State and local.

(4) Area 4, Subcodes: Housing code provisions including occupancy loads, minimum utilities and facilities. Building subcode provisions including structural requirements, durability and weatherability requirements, and light, air and ventilation requirements. Electrical subcode provisions including minimum service and appliances and basic circuits. Fire prevention code provisions including special permits required, storage and handling of goods and materials, maintenance of exit facilities and maintenance of fire protection equipment. Fire Protection subcode provisions including height and area requirements, fire resistance, flame spread and combustibility requirements; and fire alarm, detection and suppression systems. Plumbing subcode provisions including sanitary

waste disposal, water supply, venting and required facilities.

Amended by R.1985 d.612, effective January 6, 1986.

See: 17 N.J.R. 1821(a), 18 N.J.R. 80(a).

Was 5:23-5.6.

Amended by R.1987 d.509, effective December 7, 1987.

See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

This section was "Facility fire protection supervisor requirements" which was repealed and 5.21 was recodified.

Administrative Correction to (a), (b)2 and (b)5.

See: 22 N.J.R. 2503(b).

Amended by R.1991 d.308, effective June 17, 1991.

See: 23 N.J.R. 1085(a), 23 N.J.R. 1923(a).

Midterm and final exams required at (b); RCS program increased to 60 contact hours; BOCA Building, Mechanical, Plumbing, Energy Conservation, Barrier-Free and CABO codes required in all courses, fire protection inspector subject requirements specified in greater detail.

Amended by R.1991 d.325, effective July 1, 1991.

See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Added elevator inspector standards at (d)11.

Amended by R.1997 d.409, effective October 6, 1997.

See: 29 N.J.R. 2736(a), 29 N.J.R. 4281(a).

Subdivided (b)2 and substantially amended (b)2i.

Amended by R.2002 d.240, effective August 5, 2002.

See: 33 N.J.R. 4178(a), 34 N.J.R. 2784(a).

Rewrote the section.

Amended by R.2009 d.48, effective February 2, 2009.

See: 40 N.J.R. 5319(a), 41 N.J.R. 733(b).

In (h)2i, substituted "chapter 3" for "article 4".

Amended by R.2013 d.081, effective June 3, 2013.

See: 44 N.J.R. 1303(a), 45 N.J.R. 1393(a).

Substituted "1" for "I", "2" for "II", and "3" for "III" throughout; in the introductory paragraph of (e), substituted "all structures" for "class I and II buildings"; and in (g)1ii, substituted "at N.J.A.C. 5:23-3" for "in subchapter 3 of these regulations".

5:23-5.21 Renewal of license or certification

(a) The Department may issue the appropriate license following submission of an application, payment of the required nonrefundable fee, and verification by the Licensing Unit of the Bureau of Code Services that the applicant meets the requirements for renewal of the license established herein.

(b) Every three years, any license already issued shall be renewed upon submission of an application, payment of the required nonrefundable fee, and verification by the Licensing Unit of the Bureau of Code Services that the applicant has met such continuing educational requirements as may be established by the Commissioner.

1. The Department shall renew the license previously issued for a term of three years; provided, however, that it may renew any such license for a shorter period of time if so requested by the licensee. The renewal period shall begin 90 days prior to the expiration dates, which shall be July 31 or January 31.

(c) The Department shall issue, upon application, a duplicate license wallet card of the appropriate type and specialty, upon a finding that the license has been issued, and that the applicant is entitled to such license wallet card to replace one that has been lost, destroyed, or mutilated. Payment of a fee of \$15.00 shall be required.

(d) Continuing education requirements are as follows:

1. The following continuing education requirements are based upon the type(s) of license(s) held, and not upon employment positions held. Continuing Education Units (CEUs) will be subject to approval by the Bureau of Code Services. One CEU equals 10 contact hours. CEUs will be awarded both for technical and for administrative licenses.

i. Inspector license only—1.5 CEUs (technical) except an amusement ride technical license, in which case the requirement is 5.0 CEUs (technical);

ii. Inspector and subcode official licenses—2.0 CEUs (1.5 technical and 0.5 administrative) except an amusement ride subcode official license, in which case the requirement is 5.5 CEUs (5.0 technical and 0.5 administrative);

iii. Inspector, subcode official and construction official licenses—2.5 CEU's (1.5 technical and 1.0 administrative).

iv. Special inspector certifications — .5 CEU Technical

(1) No CEUs are required for certification renewal of special inspectors that are in possession of a current New Jersey license as an engineer.

2. If an individual adds an inspector license in a new subcode area to an existing license, there will be no additional continuing education requirement for the new licenses during that licensure period.

3. If an individual adds administrative licenses to an existing license, there will be no additional continuing education requirement for the new administrative license during that licensing period.

4. To maintain a mechanical inspector's license, 1.5 CEU (technical) shall be completed, as required by this section, in addition to any other CEU requirements for other licenses held.

5. The Department may determine that attendance at specific seminar(s) is mandatory for individual inspectors, subcode officials, or construction officials.

i. The Barrier Free Subcode seminar shall be a mandatory seminar. Each licensed building subcode official or building inspector shall have completed this course for license renewal on or after July 1, 1998. Barrier Free Subcode seminars completed after July 1, 1995 shall be counted toward meeting this requirement.

ii. The framing inspection seminar, which shall provide instruction in inspection methods and procedures, shall be a mandatory seminar. For licenses renewed on or after January 1, 2002, each licensed building inspector shall have completed the framing inspection seminar in order to renew his or her building inspector license(s). Beginning in the fall semester of 2001, the framing inspection seminar delivered through the Department's continuing education program shall be

the only framing inspection seminar deemed to satisfy this requirement.

iii. If the Department establishes mandatory seminar(s), the seminar(s) will be offered in sufficient numbers and locations so as to facilitate compliance.

iv. For those code officials who do not complete the mandatory seminar(s), the Department shall offer either a special seminar or video seminar so the code official may be in compliance. The Department shall charge a fee of \$50.00 per person to attend any video seminar or special seminar.

6. CEU credit for a given course shall be allowed with respect to all licenses held by a licensee to which the course may be applicable.

(e) Lapsed license renewal requirements are as follows:

1. Where the holder of a license has allowed the license to lapse by failing to renew the license as provided for in (b) above, a new application and license shall be required. If such application is made within three years of the license having lapsed, then application may be made in the same manner as a renewal application.

2. The late renewal application shall be accompanied by the appropriate renewal fee and an additional late fee of \$91.00 per year or fraction thereof.

3. Additionally, the licensee must make up or meet the annual continuing education training requirement for each active and expired year as specified herein.

4. Where a license has lapsed for a period exceeding three years, a new application shall be required in accordance with N.J.A.C. 5:23-5.5, and the applicant must meet all current licensure requirements.

(f) After revocation of a license upon any of the grounds set forth in these rules, the Licensing Unit may not renew or reinstate such license; however, a person may file a new application for a license with the Department.

(g) The Department shall not issue a new license to an applicant whose license was previously revoked unless and until the following conditions are met:

1. At least three years shall have passed since the effective date of the revocation of the previous license;

2. If the applicant was convicted of a crime related in any way to code enforcement, the Department shall have determined in light of the factors set forth in N.J.S.A. 2A:168A-2, that the applicant has been fully rehabilitated and that licensing the applicant would not be detrimental to the public welfare;

3. The applicant shall have made full restitution to any person who sustained a loss as a result of the act or omission for which the previous license was revoked; and

4. All conditions imposed by the order of revocation shall have been complied with.

Amended by R.1982 d.8, effective February 1, 1982.

See: 13 N.J.R. 799(b), 14 N.J.R. 143(a).

(b): Deleted "prior to July 31 in the second year" and added "The renewal ... January 31".

(c): Deleted "equal to ... license" and substituted "as may be ... Commissioner" therefor.

(d): Subsection was "reserved"; test added through (d)liii.

(e): Added "in accordance with N.J.A.C. 5:23-5.5".

Amended by R.1985 d.352, effective July 15, 1985.

See: 17 N.J.R. 1031(a), 17 N.J.R. 1758(a).

Expiration date changed from "45 days" to "90 days".

(e) substantially amended.

Amended by R.1985 d.528, effective October 21, 1985.

See: 17 N.J.R. 1705(a), 17 N.J.R. 2535(b).

Deleted text in (f) "When it can ... a new license."; (g) added.

Amended by R.1985 d.612, effective January 6, 1986.

See: 17 N.J.R. 1821(a), 18 N.J.R. 80(a).

Was 5:23-5.7.

Amended by R.1987 d.509, effective December 7, 1987.

See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

Added (d)2 and recodified from 5.22.

Administrative Correction to (d), (d)li and (f).

See: 22 N.J.R. 2503(b).

Amended by R.1991 d.181, effective April 1, 1991.

See: 23 N.J.R. 257(b), 23 N.J.R. 1029(a).

In (e)2, fee increased from \$30.00 to \$40.00.

Amended by R.1992 d.272, effective July 6, 1992.

See: 24 N.J.R. 1446(a), 24 N.J.R. 2424(a).

Fee non-refundable; renewal process begins 90 days before expiration.

Amended by R.1992 d.392, effective October 5, 1992.

See: 24 N.J.R. 2657(a), 24 N.J.R. 3521(b).

Fees increased.

Amended by R.1993 d.187, effective May 3, 1993.

See: 25 N.J.R. 624(a), 25 N.J.R. 1875(a).

Added (d)4.

Amended by R.1996 d.53, effective February 5, 1996.

See: 27 N.J.R. 4056(a), 28 N.J.R. 815(b).

Amended by R.1996 d.545, effective December 2, 1996.

See: 28 N.J.R. 3997(a), 28 N.J.R. 5071(b).

Amended by R.1997 d.304, effective July 21, 1997.

See: 29 N.J.R. 2204(a), 29 N.J.R. 3248(a).

In (d), substituted "Bureau of Code Services" for "Bureau of Technical Services"; and added (d)5ii(1).

Amended by R.1997 d.409, effective October 6, 1997.

See: 29 N.J.R. 2736(a), 29 N.J.R. 4281(a).

Amended by R.1998 d.256, effective May 18, 1998.

See: 30 N.J.R. 758(a), 30 N.J.R. 1777(b).

In (d), rewrote 5; deleted former 5i and ii; recodified former 5ii(1) as 5i, and recodified former 5iii and iv as ii and iii.

Amended by R.2002 d.23, effective January 22, 2002.

See: 33 N.J.R. 2935(a), 33 N.J.R. 3883(a), 34 N.J.R. 523(a).

In (d)5, added new ii, and recodified existing ii through iii as iii through iv.

Amended by R.2006 d.381, effective November 6, 2006.

See: 38 N.J.R. 35(a), 38 N.J.R. 4691(a).

Section was "Renewal of license". Added (d)liv.

Amended by R.2009 d.77, effective March 2, 2009.

See: 40 N.J.R. 5895(a), 41 N.J.R. 1009(b).

In (c), substituted "\$13.00" for "\$10.00"; and in (e)2, substituted "\$82.00" for "\$65.00".

Amended by R.2011 d.269, effective November 7, 2011.

See: 43 N.J.R. 904(a), 43 N.J.R. 3008(a).

In (d)li, substituted "CEUs" for "CEU", and inserted "except an amusement ride technical license, in which case the requirement is 5.0 CEUs (technical)"; and in (d)lii, substituted "CEUs" for "CEU's", and inserted "except an amusement ride subcode official license, in which case the requirement is 5.5 CEUs (5.0 technical and 0.5 administrative)".

Amended by R.2014 d.149, effective October 6, 2014.

See: 46 N.J.R. 898(a), 46 N.J.R. 2024(a).

In (c), substituted "\$15.00" for "\$13.00"; and in (e)2, substituted "\$91.00" for "\$82.00".

Case Notes

Denial of relicensure upheld for formerly licensed electrical subcode official who pled guilty to disorderly persons offense (based upon former licensee's misconduct while performing public responsibilities authorized by license). *Bevacqua v. Renna*, 213 N.J.Super. 554, 517 A.2d 1215 (App.Div.1986).

Examination of educational standards at former N.J.A.C. 5:23-5.6. *Twp. of Burlington v. Middle Department Inspection Agency, Inc.*, 175 N.J.Super. 624, 421 A.2d 616 (Law Div.1980).

Under N.J.A.C. 5:23-5.5 and 5:23-5.21, after a revocation or for any loss of license or lapse of licensure for more than three years, an applicant shall be treated as a new applicant and cannot rely on courses more than five years old or on tests more than three years from the application. *Bureau of Code Services v. Gitto*, OAL Dkt. No. CAF 83-08, 2008 N.J. AGEN LEXIS 281, Initial Decision (April 8, 2008).

5:23-5.22 Fees

(a) No application for a license shall be acted upon unless said application is accompanied by a non-refundable fee as specified in this subsection.

1. A non-refundable application fee of \$91.00 shall be charged in each of the following instances:

i. Application for any one given technical license specialty, or for the Inplant Inspector or Mechanical Inspector license.

ii. Application for any one given technical license specialty plus the related Subcode Official license, if both are applied for at the same time.

iii. Application for any one given technical license specialty plus the related Subcode Official license, as well as the Construction Official license, if all three are applied for at the same time.

iv. Application for special inspector certification.

2. A non-refundable application fee of \$49.00 shall be charged for each administrative license applied for separately from a technical license.

3. Persons rejected for one or more licenses, and who subsequently reapply, are subject to the fee schedule as defined in (a)li, ii and iii above.

4. Renewal fee: The three-year renewal application fee shall be \$91.00.

5. Persons who have become ineligible to retain their administrative license by reason of failure to remove the provisional status of such license within the prescribed two-year period must submit a non-refundable application fee of \$49.00 in order to reapply for said administrative license without recourse to any further provisional status privilege.

6. Registration and examination fees for the certification of construction code officials: The fee schedule shall be as submitted by the administrative agency of the examination program to the Department.

Amended by R.1983 d.548, effective December 5, 1983.

See: 15 N.J.R. 1406(a), 15 N.J.R. 2033(b).

In (a)1, added i-iii. In (a) 2 and 3, deleted old and added new text. In (a)4, increased fee from \$20.00 to \$30.00. Also added 5 and 6.

Amended by R.1985 d.612, effective January 6, 1986.

See: 17 N.J.R. 1821(a), 18 N.J.R. 80(a).

Was 5:23-5.12.

Amended by R.1987 d.509, effective December 7, 1987.

See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

Recodified from 5.23.

Administrative Correction to (a)3.

See: 22 N.J.R. 2503(b).

Amended by R.1991 d.181, effective April 1, 1991.

See: 23 N.J.R. 257(b), 23 N.J.R. 1029(a).

In (a)1, fee increased from \$30.00 to \$40.00.

In (a)2, fee increased from \$10.00 to \$20.00.

In (a)4, fee increased from \$30.00 to \$40.00.

In (a)5, fee increased from \$10.00 to \$20.00.

Amended by R.1992 d.272, effective July 6, 1992.

See: 24 N.J.R. 1446(a), 24 N.J.R. 2424(a).

Fee non-refundable; fee as charged to Dept. by administering agency.

Amended by R.1993 d.187, effective May 3, 1993.

See: 25 N.J.R. 624(a), 25 N.J.R. 1875(a).

Mechanical inspector added to (a)li.

Amended by R.1996 d.53, effective February 5, 1996.

See: 27 N.J.R. 4056(a), 28 N.J.R. 815(b).

Amended by R.2006 d.381, effective November 6, 2006.

See: 38 N.J.R. 35(a), 38 N.J.R. 4691(a).

Added (a)liv.

Amended by R.2009 d.77, effective March 2, 2009.

See: 40 N.J.R. 5895(a), 41 N.J.R. 1009(b).

In (a)1 and (a)4, substituted "\$82.00" for "\$65.00"; and in (a)2 and (a)5, substituted "\$44.00" for "\$35.00".

Amended by R.2014 d.149, effective October 6, 2014.

See: 46 N.J.R. 898(a), 46 N.J.R. 2024(a).

Updated the fee amounts throughout; in the introductory paragraph of (a), substituted "in this subsection" for "herein"; and in (a)4, substituted "three-year" for "three year".

5:23-5.23 Examination requirements

(a) Examinations shall be held to determine minimum competency in the following license disciplines:

1. Building inspector R.C.S., building inspector I.C.S., building inspector H.H.S.;
2. Electrical inspector I.C.S., electrical inspector H.H.S.;
3. Fire protection inspector I.C.S., fire protection inspector H.H.S.;
4. Plumbing inspector I.C.S., plumbing inspector H.H.S.;
5. Elevator inspector H.H.S.;
6. Mechanical inspector H.H.S.; and
7. Implant inspector.

(b) In instances where more than one license level within a given subcode area requires the successful completion of one or more examination modules, award of the higher level license specialty will be dependent upon successful completion of the educational program in accordance with N.J.A.C. 5:23-5.20 and the examination module(s) required for the lower level license, or possession of the applicable lower level license.

(c) Applicants for the licenses listed above shall demonstrate minimum competence by the successful completion of the applicable examination modules of any national testing program for construction code inspectors program approved by the Department.

(d) Requirements for specific licenses shall be as follows:

1. Examination requirements for building inspector R.C.S. shall be the successful completion of the following examination modules: building, one-and two-family dwelling, and mechanical, one-and two-family dwelling.

2. Examination requirements for building inspector I.C.S. shall be the successful completion of the following examination modules: building, general and mechanical, general.

3. Examination requirements for building inspector H.H.S. shall be the successful completion of the following examination module: building, plan review.

4. Examination requirements for electrical inspector I.C.S. shall be the successful completion of the following examination modules: electrical, one-and two-family dwelling, and electrical, general.

5. Examination requirements for electrical inspector H.H.S. shall be the successful completion of the following examination module: electrical, plan review.

6. Examination requirements for fire protection inspector I.C.S. shall be the successful completion of the following examination modules: fire protection, general, and mechanical, one and two-family dwelling.

7. Examination requirements for fire protection inspector H.H.S. shall be the successful completion of the following examination module: fire protection, plan review.

8. Examination requirements for plumbing inspector I.C.S. shall be the successful completion of the following examination modules: plumbing, general, and mechanical, general.

9. Examination requirements for plumbing inspector H.H.S. shall be the successful completion of the following examination module: plumbing, plan review.

10. Examination requirements for implant inspector shall be the successful completion of the following examination modules: building, one and two-family dwelling; electrical, one and two-family dwelling; mechanical, one and two-family dwelling; and plumbing, one and two-family dwelling.

11. Examination requirements for elevator inspector shall be the successful completion of the following examination module: elevator, general.

12. Examination requirements for mechanical inspector licensure shall be the successful completion of the following examination modules: mechanical, one and two-family dwelling; and mechanical, general.

(e) Information regarding the scheduling of examinations shall be available from the Licensing Unit and any testing agency approved by the Department to administer the examinations.

(f) Examinations shall be conducted in accordance with the rules and procedures established by any testing agency approved by the Department to develop or administer the examinations.

(g) After an examination has been completed and scored, applicants shall be notified of their final rating.

(h) The following records pertaining to every examination shall be preserved for a period of three years:

1. The resulting list of grades;

2. Such other records of information in the custody of the Department as may be pertinent.

Amended by R.1982 d.10, effective February 1, 1982.

See: 13 N.J.R. 801(a), 14 N.J.R. 143(b).

(a) substantially amended.

Amended by R.1982 d.436, effective December 20, 1982.

See: 14 N.J.R. 734(a), 14 N.J.R. 1449(a).

Increased examinations from once to twice annually. Added the National Certification Program Construction Code Inspector Tests by E.T.S. Deleted old text in (i) concerning rules for the conduct of examinations and added present text. Revised (m) concerning the preservation of examination records by deleting description of tests and applicant test papers.

Amended by R.1983 d.641, effective January 17, 1984.

See: 15 N.J.R. 1911(a), 16 N.J.R. 129(b).

Substantially amended.

Amended by R.1985 d.612, effective January 6, 1986.

See: 17 N.J.R. 1821(a), 18 N.J.R. 80(a).

Was 5:23-5.9.

Amended by R.1987 d.509, effective December 7, 1987.

See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

Recodified from 5.24 and deleted (f) and (g).

Administrative Correction to (a).

See: 22 N.J.R. 2503(b).

Amended by R.1991 d.308, effective June 17, 1991.

See: 23 N.J.R. 1085(a), 23 N.J.R. 1923(a).

Exam modules 4A-Mechanical and 1 and 2 Family added to fire protection inspector ICS exam requirements.

Amended by R.1991 d.325, effective July 1, 1991.

See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Stylistic changes.

Amended by R.1992 d.272, effective July 6, 1992.

See: 24 N.J.R. 1446(a), 24 N.J.R. 2424(a).

Stylistic changes.

Amended by R.1993 d.187, effective May 3, 1993.

See: 25 N.J.R. 624(a), 25 N.J.R. 1875(a).

Added (d)12.

Amended by R.2002 d.240, effective August 5, 2002.

See: 33 N.J.R. 4178(a), 34 N.J.R. 2784(a).

Rewrote the section.

5:23-5.23A Examination requirements for State-jurisdiction subcode technical licensure

(a) Applicants for licensure as amusement ride inspector I.C.S. and amusement ride inspector H.H.S. shall demonstrate competence by successful completion of the relevant examinations of the National Association of Ride Safety Officials (NAARSO). Requirements for specific licenses are as follows:

1. Examination requirement for amusement ride inspector I.C.S.:

i. Successful completion of the Level I (Basic) Inspector examination;

2. Examination requirement for amusement ride inspector H.H.S.:

i. Successful completion of the Level II (Advanced) Inspector examination.

(b) Applicants for licensure as boiler, pressure vessel and refrigeration inspector R.C.S., boiler, pressure vessel and refrigeration inspector I.C.S. and boiler, pressure vessel and refrigeration inspector H.H.S. shall demonstrate competence by successful completion of the following examinations:

1. Examination requirements for boiler, pressure vessel and refrigeration inspector R.C.S.:

i. Successful completion of the examination for a Certificate of Competency administered by the Division of Codes and Standards;

2. Examination requirements for boiler, pressure vessel and refrigeration inspector I.C.S.:

i. Successful completion of the Basic examination of the National Board Commission.

3. Examination requirements for boiler, pressure vessel and refrigeration inspector H.H.S.:

i. Successful completion of the Basic, Level A (Shop) and Level B (Supervisory) examinations of the National Board Commission.

New Rule, R.2001 d.303, effective September 4, 2001.

See: 33 N.J.R. 1991(a), 33 N.J.R. 2989(a).

5:23-5.23B Examination requirements for special inspectors

(a) Applicants for certification as special inspectors shall demonstrate competence by successful completion of the relevant examinations. Requirements for specific certifications are as follows:

1. Examination requirements for reinforced concrete special inspector: Successful completion of the reinforced concrete special inspector examination of the International Code Council or equivalent as determined by the Department of Community Affairs.

2. Examination requirements for prestressed concrete special inspector: Successful completion of the prestressed concrete special inspector examination of the International Code Council or equivalent as determined by the Department of Community Affairs.

3. Examination requirements for concrete placement special inspector: Successful completion of the Concrete Field Testing Technician Grade One Certification of the American Concrete Institute (ACI), or successful completion of the reinforced concrete special inspectors examination of the International Code Council, or successful completion of the prestressed concrete special inspectors certification of the International Code Council or equivalent as determined by the Department of Community Affairs.

4. Examination requirements for structural masonry special inspector: Successful completion of structural masonry special inspector examination of the International Code Council or equivalent as determined by the Department of Community Affairs.

5. Examination requirements for structural welding special inspector: Successful completion of structural welding special inspector examination of the International Code Council, or successful completion of the Certified Welding Inspector examination of the American Welding Society or equivalent as determined by the Department of Community Affairs.

6. Examination requirements for structural steel and bolting special inspector: Successful completion of struc-

tural steel and bolting special inspector examination of the International Code Council or equivalent as determined by the Department of Community Affairs.

7. Examination requirements for spray-applied fireproofing special inspector: Successful completion of spray-applied fireproofing special inspector examination of the International Code Council or equivalent as determined by the Department of Community Affairs.

8. Examination requirements for Exterior Insulation Finish System special inspector: Certification in the EIFS Inspection Program of the Association of the Wall and Ceiling Industries (AWCI) or a Certified EIFS Inspector by the Exterior Design Institute or equivalent as determined by the Department of Community Affairs.

New Rule, R.2006 d.381, effective November 6, 2006.

See: 38 N.J.R. 35(a), 38 N.J.R. 4691(a).

Amended by R.2008 d.337, effective November 3, 2008.

See: 40 N.J.R. 4269(a), 40 N.J.R. 6437(b).

Rewrote the section.

5:23-5.24 Procedure for approving educational programs

(a) Any licensed institution of higher education may submit any credit or noncredit course for approval as a component of the educational programs required by N.J.A.C. 5:23-5.20 herein. The application should be in letter form, be submitted at least 60 days prior to the first class session of the course, and contain all the information specified herein.

(b) Each application should be submitted in the name of the institution by a person authorized to do so. It should contain the following minimum information:

1. The name of the course or program;
2. A description of the length of each session, the frequency of the sessions and the total number of sessions;
3. An outline showing the course or program content broken down by session. Any laboratory or practical work should be identified as such;
4. A description of any texts or materials to be used. The description should identify whether the text or materials will be mandatory or suggested;
5. A description of the institution's standard for faculty members who will be employed to instruct the course or program;
6. An estimate of the program's duration (that is, the number of times it will be offered);
7. A statement that the institution will notify the department if the program is withdrawn or changed at any time;
8. A statement that the institution will conduct the course or program in accordance with N.J.A.C. 5:23-5.20

herein and will maintain such records as are therein required;

9. A statement of such charges as the institution has established for the course or program.

(c) The Department reserves the right to undertake such reviews as may be necessary to verify the accuracy of an application or conformity with these regulations. The institution, by submitting an application, expressly agrees to cooperate in such reviews.

(d) An institution may conduct a program which satisfies only a portion of the requirements established in N.J.A.C. 5:23-5.20 or may establish a series of courses designed to fulfill all the requirements for the educational program of that article.

(e) Upon verification that the program or course will satisfy some or all of the educational program requirements, the department will:

1. Issue a letter of approval to the institution which letter shall contain any terms or conditions of such approval;

2. Place the name of the institution and the course on the Department's list of approved courses. That list will be made available to the public.

i. Any approval shall be limited in that it is effective only as long as the course conforms to the application submitted and approved.

(f) Whenever a course or program has been approved by the department, the institution offering the course may include the statement "This course is approved for credit toward a license issued by the Department of Community Affairs pursuant to the State Uniform Construction Code Act" in any catalog, bulletin or informational circulars. Whenever such a statement is included, however, the catalog, bulletin or circular shall also contain a statement describing precisely the nature and extent of the approval.

(g) The Department may revoke its approval, after notice and the opportunity to be heard, whenever it ascertains that a course has lapsed or is no longer in conformity with the requirements of these regulations, and/or the terms of the department's approval. Whenever approval has been revoked or a course has been withdrawn by an institution, a new application and approval shall be required before the course may again be offered as providing credit toward a license.

Amended by R.1985 d.612, effective January 6, 1986.

See: 17 N.J.R. 1821(a), 18 N.J.R. 80(a).

Was 5:23-5.10.

Amended by R.1987 d.509, effective December 7, 1987.

See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

Recodified from section 25.

Administrative Correction to (a), (b)8 and (d).

See: 22 N.J.R. 2503(b).

5:23-5.25 Revocation of licenses and alternative sanctions

(a) The Department may revoke or suspend a license, and/or assess a civil penalty in accordance with N.J.A.C. 5:23-2.31, if the Department determines that the person involved, at any time during the preceding 10-year period:

1. Has violated the provisions of the Uniform Construction Code regulations;
2. Has obtained a license by fraud or misrepresentation, or the person named in the licensed has obtained it by fraud or misrepresentation;
3. Has aided or abetted in practice as a licensed code enforcement official any person not authorized to practice as a licensed code enforcement official under the provisions of these regulations;
4. Has fraudulently or deceitfully practiced as a licensed code enforcement official;
5. Has been grossly negligent or has engaged in misconduct in the performance of any of his duties;
6. Has failed, over a period of time, to maintain a minimally acceptable level of competence;
7. Has been found to have failed to report an offer or bribe or other favor in a proceeding under this act or other appropriate law of this or any other state or jurisdiction;
8. Has failed to comply with any order issued by the department;
9. Has made a false or misleading written statement, or has made a material omission in any submission to the department;
10. Has engaged in any conduct which demonstrates incompetency or dishonesty; or
11. Has failed to enforce the Uniform Construction Code Act or regulations.

(b) The Department, in addition or as an alternative, as the case may be, to revoking or suspending a license, or assessing a penalty, may issue a letter of warning, reprimand, or censure with regard to any conduct which, in the judgment of the Department, warrants a letter of warning, reprimand or censure. Such letters, in addition to any other filing of requirements, shall be made a part of the licensing file of the individual.

(c) Conviction of a crime, or conviction of an offense in connection with one's performance as a licensed code enforcement official or inspector, or a determination by the Department that a licensee has engaged in conduct constituting a conflict of interest under N.J.A.C. 5:23-4.5(j)2 or 4.14(f), shall constitute grounds for revocation of a license.

(d) The Commissioner shall appoint review committees to advise the Department concerning the appropriateness of

sanctions that the Department proposes to take against persons licensed under the respective subcodes who are alleged to have done any act or omission proscribed by (a) above. The Department shall provide necessary staff for the review committees.

1. Each review committee shall consist of three persons who are licensed as subcode officials in the subcode, and are currently employed by municipalities as subcode officials in the subcode and/or as construction officials. To be eligible for appointment to a review committee, a construction official shall have had experience as a subcode official employed by a municipality in that subcode. Of the persons appointed, at least two shall also be licensed as construction officials and at least one shall be employed by at least one enforcing agency for a total of not more than 20 hours per week.

2. Members of the review committees shall be appointed by the Commissioner and shall serve for terms of three years, and until their successors shall have been appointed; except that, of those members first appointed, one shall serve for one year, one shall serve for two years, and one shall serve for three years.

3. The Commissioner shall also appoint two alternate members of each committee, who shall be persons licensed as subcode officials in the subcode and currently employed by municipalities as subcode officials in the subcode and/or as construction officials. To be eligible for appointment as an alternate member of a review committee, a construction official shall have had experience as a subcode official employed by a municipality in that subcode. The Commissioner shall designate each alternate as either a first or a second alternate. Alternates shall serve for two years, and until their successors shall have been appointed, except that, of the alternates first appointed to each review committee, one shall serve for two years and one shall serve for one year.

4. The Commissioner shall give the State organizations of officials and inspectors in each subcode an opportunity to comment on persons proposed to serve as members or alternate members of each review committee prior to their appointment.

5. No review committee shall hear any case or issue any recommendation without three members, who may be either regular or alternate members, being present.

6. In any case in which the Department makes a preliminary finding that a licensee has done any act or omission proscribed under (a) above, it shall have the case reviewed by the appropriate review committee prior to the issuance of any order revoking or suspending the license or assessing a civil penalty.

7. The Department shall present whatever evidence it may have to the review committee. The licensee shall be given notice of the meeting of the review committee and may appear before the review committee to present his or

her position, but there shall be no cross-examination of either the licensee or any representative of the Department. Nothing said by the licensee or by any other persons at the meeting of the review committee shall be used in any way, nor shall any member of a review committee be required to testify concerning proceedings before the review committee, in any subsequent proceeding.

8. The review committee shall submit its recommendations as to the sanctions, if any, that ought to be imposed, to the Assistant Director for Construction Code Enforcement within 20 business days following the meeting. No sanctions shall then be imposed without the express approval of the Assistant Director for Construction Code Enforcement. Failure of a review committee to submit a timely recommendation shall be deemed to be concurrence with the action proposed to be taken by the Department. Notice of the review committee's recommendation, or failure to issue a recommendation, shall be given to the licensee.

9. A meeting of the review committee shall not be deemed to be a hearing or an adversarial proceeding and the findings of the advisory committee shall be deemed to be only a recommendation that is not binding on the Department.

10. A licensee shall be entitled to contest any order imposing sanctions in an administrative hearing, pursuant to N.J.A.C. 5:23-5.2, regardless of whether he or she has exercised the option of appearing before a review committee.

(e) If a mechanical inspector loses any licensure, through any circumstances, mechanical licensure shall be terminated at the same time, whether or not the loss of the other licensure is in any way related to the performance of mechanical inspection duties.

As amended, R.1978 d.350, effective October 1, 1978.
See: 10 N.J.R. 378(a), 10 N.J.R. 469(f).

As amended, R.1981 d.134, effective April 10, 1981.
See: 13 N.J.R. 119(a), 13 N.J.R. 258(b).

(b) added, and old (b) renumbered as (c).
As amended, R.1982 d.8, effective February 1, 1982.
See: 13 N.J.R. 799(b), 14 N.J.R. 143(a).

Catchline: added "and alternative sanctions".
(a): added "or assess ... \$500.00"; (a)8-10 added.
(b): added "or assessing a penalty"; deleted "does not warrant ... suspension"; added "warrants ... censure"; deleted "of warning ... censure".

As amended, R.1982 d.436, effective December 20, 1982.
See: 14 N.J.R. 734(a), 14 N.J.R. 1449(a).

Added "of a crime, or conviction of an offense" and "shall constitute" to (c).

Amended by R.1985 d.528, effective October 21, 1985.
See: 17 N.J.R. 1705(a), 17 N.J.R. 2535(b).

Added test in (a) "suspend a license for not more than 60 days and".
Amended by R.1985 d.612, effective January 6, 1986.

See: 17 N.J.R. 1821(a), 18 N.J.R. 80(a).

Was 5:23-5.11.
Amended by R.1986 d.173, effective May 19, 1986.
See: 18 N.J.R. 16(b), 18 N.J.R. 1099(b).

(a)10 added; old (a)10 renumbered (a)11. This amendment was proposed under the old citation 5:23-5.11.

Amended by R.1987 d.509, effective December 7, 1987.

See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

This section recodified from section 26.

Amended by R.1992 d.68, effective February 3, 1992.

See: 23 N.J.R. 3441(a), 24 N.J.R. 406(a).

Text on review committees added at (d).

Amended by R.1992 d.272, effective July 6, 1992.

See: 24 N.J.R. 1446(a), 24 N.J.R. 2424(a).

Stylistic changes.

Amended by R.1993 d.187, effective May 3, 1993.

See: 25 N.J.R. 624(a), 25 N.J.R. 1875(a).

Added (e).

Amended by R.1996 d.545, effective December 2, 1996.

See: 28 N.J.R. 3997(a), 28 N.J.R. 5071(b).

Amended by R.2004 d.365, effective October 4, 2004.

See: 36 N.J.R. 2605(a), 36 N.J.R. 4441(a).

In (a), substituted "in accordance with N.J.A.C. 5:23-2.31" for "of not more than \$500.00" in the introductory paragraph.

Amended by R.2004 d.366, effective October 4, 2004.

See: 36 N.J.R. 2606(a), 36 N.J.R. 4442(a).

In (d)2, deleted the second sentence.

Amended by R.2008 d.273, effective September 15, 2008.

See: 40 N.J.R. 2630(a), 40 N.J.R. 5195(c).

In (c), inserted "or a determination by the Department that a licensee has engaged in conduct constituting a conflict of interest under N.J.A.C. 5:23-4.5(j)2," and deleted "or suspension" following "revocation".

Amended by R.2008 d.332, effective November 3, 2008.

See: 40 N.J.R. 4270(a), 40 N.J.R. 6439(a).

In the introductory paragraph of (a), inserted "or suspend" and ", at any time during the preceding 10-year period", and deleted "suspend a license for not more than 60 days," following "a license,".

Amended by R.2010 d.291, effective December 20, 2010.

See: 42 N.J.R. 1943(a), 42 N.J.R. 3053(a).

In (c), inserted "or 4.14(f)".

Case Notes

Where petitioner knew that the Uniform Construction Code required a licensed Building Subcode Official in order to approve building permits, yet allowed his department to operate for years without one, his construction official license was properly revoked; however, petitioner did not misuse his building inspector license, and no action should have been taken with regard to that technical license (adopting, as modified, 2010 N.J. AGEN LEXIS 4). *Ditzel v. Office of Regulatory Affairs*, OAL Dkt. No. CAF 03602-09, 2010 N.J. AGEN LEXIS 838, Final Decision (February 25, 2010).

N.J.A.C. 5:23-5.25(d) applies only when the Department of Community Affairs is sanctioning a licensee with suspension, revocation and/or a penalty; a private on-site inspection agency was not "licensee" of the DCA and, therefore, was not entitled to a committee review prior to the issuance of a Notice of Violation and Order to Pay Penalty (adopting with modification 2009 N.J. AGEN LEXIS 700). *Office of Regulatory Affairs v. EIC Inspection Agency Corp.*, OAL Dkt. No. CAF 01069-09, 2009 N.J. AGEN LEXIS 1022, Final Decision (November 12, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 764) adopted, which affirmed denial of a building inspector license because the applicant made false and misleading statements on the application; the applicant answered criminal history questions in the negative although the applicant had a criminal history and was on probation. *Bureau of Code Services v. Guerriero*, OAL Dkt. No. CAF 09580-07, 2008 N.J. AGEN LEXIS 38, Final Decision (January 3, 2008).

Code official's issuance of permits to a builder during the same period of time in which the official was providing compensated architectural services to the builder violated not only N.J.A.C. 5:23-5.25(a)5, but also N.J.A.C. 5:23-4.5(j)2. *Easse v. Dep't of Community Affairs*, Office of Regulatory Affairs, OAL Dkt. No. CAF 03043-07, 2007 N.J. AGEN LEXIS 842, Final Decision (July 24, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 109) adopted, which found that petitioner's second application for licensure as an elevator operator was properly denied where it was filed 10 months after his first

application was denied for dishonesty after lying about his criminal background, a violation of this section and N.J.A.C. 5:23-5.5. Although previously requested to do so, petitioner failed to provide sufficient information to determine whether he had been rehabilitated. *LaBarca v. Bureau of Code Services*, OAL Dkt. No. CAF 8445-06, 2007 N.J. AGEN LEXIS 342, Final Decision (May 22, 2007).

Where a building inspector accepted bribes relating to inspections and attempted to negotiate a bribe larger than originally offered, the dishonesty demonstrated by the inspector's admitted misconduct necessitated the revocation of all of his construction code licenses, including