

(1) Section R-302.1, Fire-Resistant Construction for Exterior Walls;

(2) Section R-314, Smoke Alarms; and

(3) Sections R-302.1 and R-302.1, Fire-Resistant Construction for Townhouses and Two-Family Dwellings;

iv. The following provisions of the electrical subcode:

(1) Section 240.3, Protection of Equipment Against Overcurrent;

(2) Section 240.4, Protection of Conductors Against Overcurrent;

(3) Section 250.4, General Requirements for Grounding and Bonding;

v. Subchapter 7, the barrier free subcode; and

vi. Any structural deficiency, which is present or likely to occur that has the potential for injury or significant damage to the livability of a home. This shall include any structural member that exceeds the permitted deflection established at N.J.A.C. 5:23-6.5(c)1i through iii.

2. The municipality may retain the services of a professional engineer or registered architect, to be paid at an hourly rate and to work subject to the supervision and control of the construction official, for inspections, review of plans and supporting documents and preparation of reports and documents, in connection with enforcement of (a)1 above provided that the professional retained is independent of both the builder and the homeowner and has no actual or apparent conflict of interest that would call into question his or her ability to carry out these duties impartially. Any person carrying out inspections under such a contract shall be, at a minimum, a licensed engineer or a registered architect or shall have a bachelor's degree from an accredited institution of higher education in engineering or in architecture, or in engineering or architectural technology and shall have not less than five years of experience in the design, construction or rehabilitation of woodframe structures.

Repealed by R.1996 d.236, effective May 20, 1996 (operative January 1, 1997).

See: 27 N.J.R. 4050(a), 28 N.J.R. 2586(a).

Section was "Applicant's right of appeal; procedure".

New Rule, R.2006 d.355, effective October 2, 2006.

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

Amended by R.2008 d.192, effective July 21, 2008.

See: 39 N.J.R. 4985(a), 40 N.J.R. 4314(b).

Section was "Enforcement actions in residential developments after issuance of certificate(s) of occupancy". In (a)1ii(1), substituted "403.14" for "403.12, 406.1, 406.2, 406.3.1, 406.3.2, 406.3.3, 406.3.4, 406.3.5, 406.3.6, 406.3.7, 406.4, 406.5"; in (a)1ii(5), substituted "1009.3.2, 1009.3.3, 1009.10, 1009.11, 1025.11, 1025.13 and 1025.14" for "1003.3.3.3.1, 1003.3.3.3.2, 1003.3.3.11, 1003.3.12, 1008.9, 1009.11, and 1008.12"; in (a)1iii(1), substituted "Section" for "Sections" and "Exterior walls" for "R-302.2 and R-302.3, Required Fire Resistance Ratings"; in (a)1iii(2), substituted "R-313" for "R-317"; and in

(a)1iii(3), substituted "R-317.1" for "R-321.1" and "R-317.2" for "R-321.2"; and in (a)1vi, inserted a comma following "deficiency" and inserted "through iii".

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)1ii(1), substituted "403.2.2" for "403.14"; and rewrote (a)1ii(5), (a)1iii(1), (a)1iii(2) and (a)1iii(3).

5:23-2.36 (Reserved)

Repealed by R.1996 d.236, effective May 20, 1996 (operative January 1, 1997).

See: 27 N.J.R. 4050(a), 28 N.J.R. 2586(a).

Section was "Procedure of the board".

5:23-2.37 (Reserved)

Repealed by R.1996 d.236, effective May 20, 1996 (operative January 1, 1997).

See: 27 N.J.R. 4050(a), 28 N.J.R. 2586(a).

Section was "Decision of the board".

5:23-2.38 Departmental appeal

(a) Whenever the Department shall act as the enforcing agency under the State Uniform Construction Code Act (N.J.S.A. 52:27D-128), an appeal in lieu of the appeal to the county, municipal or joint construction board of appeals may be made to the Hearing Coordinator, Division of Codes and Standards, Department of Community Affairs, PO Box 802, Trenton, NJ 08625.

1. The case shall be adjudicated before the Office of Administrative Law and the final decision shall be issued by the Commissioner.

2. Such hearings shall be governed by the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and the time provisions applicable to construction boards of appeal.

(b) Any party in interest aggrieved by any decision made by a facility manager or owner or administering agency with respect to compliance with either the Barrier Free Recreation Standards (N.J.A.C. 5:23-7.15 through 7.31) or the Playground Safety Subcode (N.J.A.C. 5:23-11) shall have the right to appeal the decision to the Department.

1. The Department shall forward a copy of the complaint to the facility manager and to the facility owner or agency responsible for administration of the facility and shall request a response from the facility manager.

2. The facility manager shall respond in writing within 45 days of receipt of the request.

3. The Department shall review the response and shall determine whether the complaint is justified and what corrective measures shall be required to be taken by the facility owner or administering agency. The Department shall make such determination and issue any necessary orders within 60 days.

4. In the event that the owner or administering agency of a facility appeals any such order and the Department determines that a contested case exists, it shall forward such case for adjudication in an administrative hearing before the Office of Administrative Law and the final decision shall be issued by the Commissioner. Hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1).

5. A "party in interest" may be either the owner, or authorized representative of the owner, of the premises that is the subject of the decision or an occupant, user or prospective occupant or user, of the premises, or a group representative of such occupants, users or prospective occupants or users; provided, however, that an occupant, user or representative group shall only be deemed to be a party in interest if notice of such interest has been given to the Department by the party prior to the issuance of the Department's determination.

iv. The covering of the structure is of a material that conforms to NFPA 701.

v. If a temporary greenhouse contains any device subject to the electrical subcode or any mechanical equipment subject to the mechanical subcode, a permit shall be required for the device, system or fixture only. If the temporary greenhouse is connected to a potable water system, a permit shall be required for the backflow prevention devices only.

5. A three-sided turn-out shed used to shelter livestock shall be exempt from the permit requirements of the Uniform Construction Code provided there is no permanent foundation or floor and provided the structure is 250 square feet or less in area and 14 feet or less in height and has no utility (water, gas, oil, sewer or electric) connections.

i. The structure shall be of sufficient weight to remain in place or shall be anchored to the ground. Concrete shall not be required for anchoring.

6. Garden-type utility sheds and similar structures shall be exempt from the permit requirements of the Uniform Construction Code provided the structure is 200 square feet or less in area, 10 feet or less in height, has no utility (water, gas, oil, sewer or electric) connections and the shed is dimensionally stable without the foundation system. A shed shall be considered dimensionally stable if it is provided with a floor system that is tied to the walls of the structure such that it reacts to loads as a unit.

i. The structure shall be of sufficient weight to remain in place or shall be anchored to the ground. Concrete shall not be required for anchoring.

7. The type and amount of materials or supplies stored in a commercial farm building, including hay, straw, and livestock bedding materials, shall not be subject to limitation. However, other hazardous materials within spaces of commercial farm buildings occupied by more than 10 persons shall not exceed the allowable exempt amounts shown in Tables 307.1(1) and 307.1(2) of the building subcode unless separated from the occupied area by appropriate fire resistance rated construction as prescribed in the building subcode.

8. A commercial farm building may be used as a place of public assembly for not more than 15 days in a calendar year. For the purposes of enforcing this requirement, a public assembly shall be a gathering of 50 or more people. A permit shall be obtained from the local fire official pursuant to the Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et seq., and the fee for issuing the permit shall not exceed \$75.00 per event.

i. A commercial farm building that is used as a place of public assembly for not more than 15 days in a calendar year and that is provided with electricity shall comply with section 1006 of the building subcode.

ii. The use of a commercial farm building as a "special amusement building," as defined in the building subcode, shall be permitted only if a permit specific to special amusement buildings is issued by the local fire official pursuant to the Uniform Fire Safety Act, N.J.S.A. 52:27D-192 et seq. or if the building or portion thereof complies with N.J.A.C. 5:23-6.31(a)5vii.

9. Buildings containing any of the following uses are not included in the definition of a commercial farm building:

i. Residential structures;

ii. High hazard facilities, such as grain elevators or grain storage silos used to store products which are neither used nor produced on the farm itself;

iii. Processing facilities that include specialized machinery to perform functions other than the washing, cleaning, hydrocooling, vacuum cooling, grading, sizing and packing of agricultural or horticultural products, unless the exempted functions are only the first step in a sequence of processing to be performed on the farm;

iv. Mercantile structures, such as farm retail markets or nursery greenhouse retail sales areas;

v. Offices with either 11 or more occupants, or floor area of greater than 1,200 square feet; and

vi. Buildings that contain any use not included in the definition of commercial farm building, except incidental offices as provided in (d)12vii below.

10. A commercial farm building may include a use that does not meet the definition of a "commercial farm building," provided that the space that does not meet the commercial farm building definition is separate from the remainder of the building with the required fire separation assemblies and meets all applicable requirements of the building subcode.

11. Construction type, height and allowable area requirements for commercial farm buildings and structures shall be as specified in the building subcode and shall not exceed the area or height limitations of Table 503 for the type of construction used, except as follows:

i. The height and area of a one-story commercial farm building of any type of construction shall not be limited if the building has a fire separation distance of 50 feet. In that case, a sprinkler system shall not be required.

ii. The height and area of a two-story commercial farm building of any type of construction shall not be limited if the building is provided with an approved automatic fire suppression system throughout, conforming to the Uniform Construction Code and has a fire separation distance of 50 feet.

iii. Two or more commercial farm buildings excepted under (d)11i and ii above may be constructed on the same lot, or on an owner's contiguous lots without meeting the fire separation distance of 50 feet. However, the fire separation distance specified in Table 602 of the building subcode must be maintained between a commercial farm building and any building not eligible for the commercial farm building exemption.

12. Commercial farm buildings exempted under (d)11i above shall meet the following requirements in lieu of those requirements specified in the subsections of Chapter 10, Means of Egress, of the building subcode:

i. In lieu of the requirements of Section 1016, the maximum distance of travel from any point in the building to an exit shall not exceed 150 feet;

ii. In lieu of the requirements of Sections 1019.1 and 1019.2, one exit is required for each 15,000 square feet of floor area and fraction thereof;

iii. In lieu of the requirements of Section 1011, exit signs must be posted. Exit signs are not required to be illuminated;

iv. The provisions of Section 1003.2.11 shall apply in commercial farm buildings where the owner has determined to provide electricity. Where electricity is provided, any electric light provided in the commercial farm building shall be deemed to meet the means of egress lighting requirements and a back up power source shall not be required unless the commercial farm building will be used as a place of public assembly in accordance with (d)7 above.

v. In lieu of the requirements of Section 1004, occupancy is limited to 30 people;

vi. Lightning protection of the type required for the structure by NFPA 780, fire extinguishers and "no smoking" signs shall be provided;

vii. Offices with 10 or fewer occupants and a floor area not in excess of 1,200 square feet shall be considered incidental to the structure, if direct exit to the exterior is provided.

13. Site plans signed and sealed by a registered architect or a licensed engineer, pursuant to N.J.A.C. 5:23-2.15(f)1ix, shall not be required, provided that a sketch plan of the site is submitted to the construction official.

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.448, effective November 3, 1986.

See: 18 N.J.R. 757(a), 18 N.J.R. 2194(a).

Deleted (b)1 and 4; recodified (b)2 and 3 to (b)1 and 2.

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

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

(b)1: model subcode revisions.

Amended by R.1988 d.144, effective April 4, 1988.

See: 19 N.J.R. 1778(a), 20 N.J.R. 783(a).

Changed (b)2 to (c) and (d).

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.603, effective November 20, 1995 (operative March 20, 1996).

See: 27 N.J.R. 2655(a), 27 N.J.R. 4699(a).

Amended by R.1997 d.269, effective July 7, 1997.

See: 29 N.J.R. 968(a), 29 N.J.R. 2817(a).

Inserted (d)5i; in (d)6vi, amended N.J.A.C. reference; in (d)8, inserted reference to construction type and inserted "except as follows:"; deleted (d)8i; recodified former (d)8i(1) through (3) as (d)8i through iii; inserted new (d)9iv; recodified former (d)9iv through vi as (d)9v through vii; and recodified former (e) as (d)10.

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

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

Substantially amended (b)1.

Amended by R.1999 d.424, effective December 6, 1999.

See: 31 N.J.R. 2428(a), 31 N.J.R. 4001(c).

In (a)1, substituted a reference to rehabilitation for a reference to alteration, and changed guideline reference.

Administrative correction.

See: 33 N.J.R. 3735(a).

Amended by R.2003 d.157, effective April 21, 2003.

See: 34 N.J.R. 4247(a), 35 N.J.R. 1663(b).

In (d)5, added ii.

Administrative correction.

See: 35 N.J.R. 5062(a).

Amended by R.2003 d.425, effective November 3, 2003.

See: 35 N.J.R. 2424(a), 35 N.J.R. 5062(b).

Rewrote (d).

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

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

In (d)3, inserted the first sentence.

Amended by R.2004 d.423, effective November 15, 2004.

See: 36 N.J.R. 3004(a), 36 N.J.R. 5090(a).

In (d)5, rewrote ii.

Amended by R.2006 d.157, effective May 1, 2006.

See: 37 N.J.R. 3108(a), 38 N.J.R. 1824(a).

In (d)(3), deleted "A temporary greenhouse shall not require a construction permit if it meets the criteria stated in N.J.A.C. 5:23-3.14, the building subcode"; added new (d)(4); recodified (d)(4) through (d)(10) as (d)(5) through (d)(11); in (d)7.iv, substituted "10vii" for "9vii".

Administrative correction.

See: 39 N.J.R. 3509(a).

Administrative correction.

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

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 introductory paragraph of (d)4, substituted "(d)4i" for "(d)3i"; in (d)5, substituted "307.1(1) and 307.1(2)" for "307.7(1) and 307.7(2)"; in (d)6i, substituted "1006" for "1003.2.11"; in (d)6ii, updated the N.J.A.C. reference; in (d)9i, substituted "one-story" for "one story"; in (d)9i and (d)9ii, deleted "meets the exterior wall fire resistance rating as specified in section 507.2 of the building subcode," following "if the building"; in (d)9ii, substituted "two-story" for "two story"; in (d)10i, substituted "1016" for "1004.2.4"; in (d)10ii, substituted "1019.1 and 1019.2" for "1005.2.1 and 1005.2.2"; in (d)10iii, substituted "1011" for "1003.2.10"; in (d)10iv, substituted "1006" for "1003.2.11" and "(d)6" for "(d)5"; and in (d)10v, substituted "1004" for "1003.2".

Amended by R.2009 d.126, effective April 20, 2009.

See: 41 N.J.R. 16(a), 41 N.J.R. 1725(a).

Added new (d)5 and (d)6; recodified former (d)5 through (d)11 as (d)7 through (d)13; in (d)9vi, substituted "(d)12vii" for "(d)10vii"; in (d)11iii, substituted "(d)11i and ii" for "(d)9i and ii"; in the introductory paragraph of (d)12, substituted "(d)11i" for "(d)9i"; and in (d)12iv, substituted "(d)7" for "(d)5".

5:23-3.3 Enforcement

(a) In accordance with the delineation of responsibility for enforcement specified herein, subject to specific reservations by the Department to itself, the appropriate official(s) shall enforce the subcode and shall act on any question relative to the mode or manner of construction, and the materials to be