

CHAPTER 23

UNIFORM CONSTRUCTION CODE

Authority

N.J.S.A. 52:27D-123, 123a, 123.2, 123.5, 123.8, 124 and 124f.

Source and Effective Date

R.1997 d.409, effective September 9, 1997.

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

Executive Order No. 66(1978) Expiration Date

Chapter 23, Uniform Construction Code,
expires on September 9, 200213

Chapter Historical Note

Chapter 23, Uniform Construction Code, was adopted as R.1976 d.344, d.345, d.346 and d.347, effective January 1, 1977 and codified as Subchapter 1, General Provisions; Subchapter 2, Administration and Enforcement Process; Subchapter 3, Subcodes, and Subchapter 4, Enforcing Agencies: Duties, Powers, Procedures. See: 8 N.J.R. 216(b), 319(a), 370(d), 414(a); 8 N.J.R. 546(a). Chapter 23 superseded N.J.A.C. 5:16, Standard Building Code and N.J.A.C. 5:20, Safety Glazing Materials, which were repealed by R.1978 d.360, effective October 6, 1978. See: 10 N.J.R. 377(a), 10 N.J.R. 470(a). Chapter 23 also superseded N.J.A.C. 5:21, Uniform Standards Code for Mobile Homes, which was repealed by R.1982 d.7, effective February 1, 1982. See: 13 N.J.R. 717(a), 14 N.J.R. 142(a). Subchapter 5, Licensing of Code Enforcement Officials, was adopted as R.1977 d.304, effective October 1, 1977. See: 9 N.J.R. 257(b), 9 N.J.R. 413(b). Subchapter 6, Tax Exemption for Solar Facilities, was adopted as R.1978 d.334, effective September 18, 1978. See: 10 N.J.R. 222(b), 10 N.J.R. 418(a). Pursuant to Executive Order No. 66(1978), Subchapter 6 was readopted as R.1980 d.303, effective July 1, 1980. See: 12 N.J.R. 249(c), 12 N.J.R. 452(c).

Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1983 d.144, effective April 26, 1983. See: 14 N.J.R. 1247(a), 15 N.J.R. 803(c). Subchapter 7, Barrier Free Subcode, was adopted as R.1986 d.448, effective November 3, 1986. See: 18 N.J.R. 757(a), 18 N.J.R. 2194(a). Subchapter 8, Asbestos Hazard Abatement Subcode, was adopted as Emergency New Rules R.1985 d.362, effective June 18, 1985 (expired August 17, 1985). See: 17 N.J.R. 1782(a). The provisions of R.1985 d.362 were readopted as R.1985 d.472, effective August 16, 1985. See: 17 N.J.R. 2249(a).

Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1988 d.168, effective March 22, 1988. N.J.A.C. 5:23-6.1, 6.2 and 6.3, concerning tax exemption for solar facilities, were not readopted and expired on April 1, 1988. See: 20 N.J.R. 223(a), 20 N.J.R. 893(a). Subchapter 9, Code Interpretations, was adopted as R.1988 d.195, effective May 2, 1988. See: 20 N.J.R. 224(a), 20 N.J.R. 977(a). Subchapter 10, Radon Hazard Subcode, was adopted as R.1990 d.226, effective May 7, 1990. See: 21 N.J.R. 3696(a), 22 N.J.R. 1356(a). Subchapter 4A, Industrialized/Modular Buildings and Building Components, was adopted as R.1990 d.313, effective June 18, 1990, (operative July 1, 1990). See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b). Subchapter 11, Indoor Air Quality Standards and Procedures for Buildings Occupied by Public Employees, was adopted as R.1992 d.33, effective January 21, 1992. See: 23 N.J.R. 1730(b), 24 N.J.R. 229(c). Subchapter 12, Elevator Safety Subcode, was adopted as R.1991 d.325, effective July 1, 1991. See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1993 d.106, effective February 3, 1993. See: 24 N.J.R. 1420(b), 25 N.J.R. 920(a). Subchapter 4B, Manufactured Homes and Manufactured Home Add-On Units Not Subject to Federal Regulation, and Subchapter 4C, Enforcement of Federal Manufactured Home Standards, were adopted as R.1994 d.96, effective February 22, 1994. See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a). N.J.A.C. 5:23-7.1 through 7.99 were repealed and 7.100 through 7.116 were recodified as 7.2 through 7.18 by R.1995 d.144, effective March 20, 1995 (operative July

1, 1995). See: 26 N.J.R. 2698(a), 26 N.J.R. 2524(a), 27 N.J.R. 1180(a). Subchapter 11, Indoor Air Quality Standards and Procedures for Buildings Occupied by Public Employees, was repealed by R.1995 d.612, effective December 4, 1995 (operative July 1, 1995). See: 27 N.J.R. 3518(a), 27 N.J.R. 4885(a).

Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1997 d.409, effective September 9, 1997. See: Source and Effective Date. As a part of R.1997 d.409, effective October 6, 1997, Subchapter 6, Tax Exemption, was repealed. See, also, section annotations.

Cross References

Child care center physical facility requirements, see N.J.A.C. 10:122-5.1 et seq.

Children's group home physical facility requirements, see N.J.A.C. 10:128-4.1 et seq.

Children's shelter physical facility requirements, see N.J.A.C. 10:124-5.1 et seq.

Residential child care facility maintenance and sanitation requirements, see N.J.A.C. 10:127-4.4.

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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. 7:14B, which are jointly enforced by this Department and local enforcing agencies pursuant to this chapter.

4. "Enforcing agencies: duties, powers, and procedures" which may be cited throughout the regulations as N.J.A.C. 5:23-4 of this chapter and when referred to in subchapter 4 of this chapter may be cited as this subchapter.

5. "Industrialized/Modular Buildings and Building Components" which may be cited throughout the regulations as N.J.A.C. 5:23-4A and when referred to N.J.A.C. 5:23-4A may be cited as this subchapter.

6. "Manufactured Homes and Manufactured Home Add-On Units Not Subject to Federal Regulations" which

may be cited throughout the regulations as N.J.A.C. 5:23-4B and when referred to in subchapter 4B may be cited as this subchapter.

7. "Enforcement of Federal Manufactured Home Standards" which may be cited throughout the regulations as N.J.A.C. 5:23-4C and when referred to in subchapter 4C may be cited as this subchapter.

8. "Licensing of Code Enforcement Officials" which may be cited throughout the regulations as N.J.A.C. 5:23-5 and when referred to in subchapter 5 of this chapter may be cited as this subchapter.

9. "Tax Exemptions" which may be cited throughout the regulations as N.J.A.C. 5:23-6 and when referred to in subchapter 6 of this chapter may be cited as this subchapter.

10. "Barrier Free Subcode" which may be cited throughout the regulations as N.J.A.C. 5:23-7 and when referred to in subchapter 7 of this chapter may be cited as this subchapter.

11. "Asbestos Hazard Abatement Subcode" which may be cited throughout the regulations as N.J.A.C. 5:23-8 and when referred to in subchapter 8 of this chapter may be cited as this subchapter.

12. "Code Interpretations" which may be cited throughout the regulations as N.J.A.C. 5:23-9 and when referred to in subchapter 9 of this chapter may be cited as this subchapter.

13. "Radon Hazard Subcode" which may be cited throughout the regulations as N.J.A.C. 5:23-10 and when referred to in subchapter 10 of this chapter may be cited as this subchapter.

14. (Reserved)

15. "Elevator Safety Subcode" which may be cited throughout the rules as N.J.A.C. 5:23-12 and when referred to in subchapter 12 of this chapter may be cited as this subchapter.

Amended by R.1978 d.350, eff. October 1, 1978.

See: 10 N.J.R. 378(a), 10 N.J.R. 469(f).

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

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

(b) substantially amended.

Amended by R.1990 d.226, effective May 7, 1990.

See: 21 N.J.R. 3696(a), 22 N.J.R. 1356(a).

Added 9 and 10 to (b).

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

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

Text added at (b)5.

Amended by R.1990 d.562, effective November 19, 1990.

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

Added reference to N.J.A.C. 7:14B.

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

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

Text on elevators added at (b).

Amended by R.1992 d.183, effective April 20, 1992.

See: 24 N.J.R. 167(a), 24 N.J.R. 1475(b).

Reference to Indoor Air Quality Subcode added at (b)12.

Amended by R.1994 d.96, effective February 22, 1994.

See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

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

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

Deleted (b)14.

Case Notes

Councilperson violated local ethics law; project manager for private construction company. *Bleeker v. Local Finance Board*, 94 N.J.A.R.2d (CAF) 122.

5:23-1.2 Authority

These regulations are promulgated by the Commissioner of the Department of Community Affairs pursuant to the authority of the "State Uniform Construction Code Act" (P.L. 1975, c.217, as amended).

5:23-1.3 Intent and purpose

(a) It is the intent and purpose of the regulations:

1. To encourage innovation and economy in construction and to provide requirements for construction and construction materials consistent with nationally recognized standards.

2. To formulate such requirements, to the extent practicable, in terms of performance objectives, so as to make adequate performance for the use intended as the test of acceptability.

3. To permit to the fullest extent feasible the use of modern technical methods, devices and improvements, including premanufactured systems, consistent with reasonable requirements for the health, safety and welfare of occupants or users of buildings and structures.

4. To eliminate restrictive, obsolete, conflicting and unnecessary construction regulations that tend to unnecessarily increase construction costs or retard the use of new materials, products or methods of construction, or provide preferential treatment to types or classes of materials or products or methods of construction.

5. To insure adequate maintenance of buildings and structures throughout the State and to adequately protect the health, safety and welfare of the people.

6. To eliminate unnecessary duplication of effort and fees in the review of construction plans and the inspection of construction.

Case Notes

Intent is elimination of construction regulations by local government units. *Home Builders League of South Jersey, Inc. v. Evesham Twp.*, 174 N.J.Super. 252, 416 A.2d 81 (Law Div.1980).

Uniform Construction Code codified in regulations. *Bureau of Construction Code Enforcement v. Hasbrouck Heights*, 4 N.J.A.R. 282 (1983).

(h) Any person who enters into an agreement, other than a hiring as a bona fide municipal employee, to serve as a municipal subcode official shall be required to be first authorized by the department as an on-site inspection and plan review agency.

1. In order to be deemed a bona fide municipal employee for purposes of this subsection, such person shall receive no compensation for his service other than a fixed salary or hourly wage, which shall be subject to F.I.C.A. and Federal and State income tax withholding, and shall have minimum fixed working hours.

2. A person shall not be deemed to be a bona fide municipal employee if he holds two or more jobs which are determined by the department to be incompatible by reason of conflicting time requirements.

As amended, R.1984 d.481, eff. November 5, 1984.

See: 16 N.J.R. 2031(a), 16 N.J.R. 3006(a).

Amended (a)4iii and (b)4iii.

As amended, R.1984 d.523, eff. November 19, 1984.

See: 16 N.J.R. 2321(a), 16 N.J.R. 3197(a).

(c) added.

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

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

Text of (b), on private inplant inspection agencies, deleted; (c) recodified to (b).

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.

5:23-4.13 Private on-site inspection and plan review agencies; organization

(a) An on-site inspection agency may be an individual, partnership, corporation, or other business entity organized for the purpose of enforcing and administering any one or more subcodes under the regulations, in place of a local

subcode official, in one or more municipalities within the State of New Jersey.

(b) Each on-site inspection agency authorized by the Department shall organize its operations to effectively fulfill the requirements of this chapter and to provide any municipality with which it contracts all the services that would otherwise be provided by a municipal subcode official under this chapter. All officers, inspectors and plan reviewers of the "on-site inspection agency" shall be certified by the Department in the appropriate subcode prior to employment thereafter.

(c) Each on-site inspection agency shall designate in its contractual agreement with the municipality the name of the employee who shall serve as the responsible official and representative(s) of the "on-site inspection agency" authorized to review and approve all documents related to the administration of the designated subcode.

(d) The on-site inspection agency shall report to the municipal construction official through their designated responsible official and shall be subject to the orders and directives of the municipal construction official and the Department in matters relating to the enforcement of the regulations.

(e) An on-site agency acting in place of an elevator subcode official in any municipality shall answer to the local construction official, who shall be responsible to the Department for supervising the activities of the elevator subcode official.

(f) Each on-site inspection agency shall maintain an adequate number of offices for the purposes of meeting with the public and shall maintain records as follows:

1. The on-site inspection agency shall provide the municipal construction official with a schedule stating when these offices will be open during normal business hours and when the designated responsible official will be in that office.

2. All inspections must take place between 9:00 A.M. and 5:00 P.M. or in case of emergency or with permission or when work is actually being conducted.

(g) Each on-site inspection agency shall employ a sufficient number of certified personnel to perform all administrative, plan review, inspection and reinspection functions required by the regulations.

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

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

Text of (b), on private inplant inspection agencies, deleted.

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

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

Chain of responsibility specified at (e).

5:23-4.14 Private on-site inspection and plan review agencies; administration and enforcement

(a) Records shall be maintained by the "on-site inspection agency" of all inspections, applications and plans reviewed and any other information that may be required by the municipal construction official or the Department. These records shall be open to Department audit and shall not be destroyed or removed from the offices of the on-site inspection agency without the permission of the Department.

(b) The on-site inspection agency shall provide the Department with the following:

1. A copy of each executed contract and all amendments thereto, including any attachments containing any terms of the agreement, to be submitted at least 10 days prior to their effective date. Any subsequent amendments shall also be submitted;

2. A list of the municipalities served, and a current list of names, addresses and telephone numbers of the agency's designated representatives actually serving as subcode officials in each municipality, who may be contacted in connection with routine matters during normal working hours and, in the event of emergency, during other than normal working hours;

3. A list of names, certification numbers, addresses and telephone numbers of all technical personnel employed; and

4. Monthly reports, due on the 15th of every month covering the period of the previous month, setting forth the following:

i. The number of inspections performed under each subcode in each municipality and the number of inspections performed under each subcode in each municipality more than 72 hours after the receipt of an inspection request by the construction official or the subcode official, whichever occurs first.

ii. The total number of inspections, broken down by subcode discipline, performed by the private agency during the reporting period and the total number of subcode officials and inspectors available during the reporting period, expressed as full-time equivalent (FTE). For purposes of this report, one FTE shall be the total number of subcode official and inspector hours worked during the reporting period divided by eight, divided by the number of working days in the reporting period. All days other than Saturdays, Sundays and official holidays shall be considered working days;

iii. The total payments received from each municipality during the reporting period; and

iv. The total amount billed to each municipality during the reporting period.

(c) Except as stated in the regulations, an executed contract in accordance with "Local Public Contracts Law" shall be required between the on-site inspection agency and a municipality prior to the enforcement of any subcode in that municipality by the on-site inspection agency.

(d) The on-site inspection agency shall not collect fees from the property owner, his designated agent or anyone in his employ. The municipal construction official shall be the sole agent for the collection of all fees and penalties.

(e) Each on-site inspection agency shall have the following responsibilities:

1. To maintain an adequate number of certified staff to review all plans and specifications for all classes and types of construction not reserved to the State.

2. To act in place of the municipal subcode official and to perform the duties of a subcode official as defined in these rules, except all notices of violation and all stop work orders will be issued through the construction official's office.

3. To report to the municipal construction official and to be subject to his rulings, directives and orders.

4. To provide adequate supervision, so that its employees are prompt and diligent in discharging their duties.

5. To carry general liability insurance, at least in the amount of \$1,000,000 for each person and each occurrence, to satisfy claims or judgments for property damage and/or personal injury.

6. To process and return all documents, plans, specifications, and applications within the time frame specified by the rules or the contract with the municipality, whichever is the lesser.

7. To provide technical assistance to applicants in the preparation of a construction permit application, if requested by the construction official.

8. To perform all required inspections and reinspections.

9. To perform nondestructive tests, if required by the rules.

10. To give testimony at hearings or in court, if required by the construction official.

11. To prepare all reports to the Department as are required by the regulations or as may be required from time to time.

12. To meet its obligations under its contract with the municipal enforcing agency.

13. To issue documentation and certification, such as cut-in cards, to utilities and or public agencies if required by the rules.

14. To ensure the attendance of all technical and supervisory employees at required training and orientation programs.

15. To carry to full completion and receive all fees on all projects initiated prior to the termination of their contract with the municipality by reason of non-renewal, unsuccessful bidding, Department authorization disapproval or other reason except suspension or revocation.

(f) Except as otherwise provided in this subsection, no person employed by or associated with an on-site inspection agency as an employee, proprietor, officer, director, partner or manager shall engage in, or otherwise be connected directly or indirectly, for purposes of economic gain with, any business or employment furnishing labor, materials, products or services for the construction, alteration or demolition of buildings within the State. Nor shall any such proprietor, officer, director, partner, manager or employee engage in any other work that conflicts with his or her or the agency's official duties, including, without limitation, employment to testify or appear before any construction board of appeals, or to be involved in any court proceeding within the State, as a paid expert witness against any construction official, subcode official, inspector or enforcing agency, or in any other compensated capacity except on behalf of an enforcing agency, or as a court-appointed witness.

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

2. This subsection 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. Any business or employment which is not subject to the regulations.

3. An on-site inspection agency may employ municipal subcode officials and inspectors on a part-time basis. This employment, however, shall be subject to the following conditions:

i. The on-site inspection agency can only employ municipal subcode officials and inspectors. A municipal construction official shall not be employed by an agency in any capacity.

ii. The written approval of the construction official supervising a municipal subcode official or inspector shall be obtained by the on-site inspection agency prior to hiring such municipal subcode official or inspector.

iii. An on-site inspection agency that hires a municipal subcode official or inspector shall thereupon waive the right to bid or contract in the employed subcode official or inspector municipality or municipalities.

iv. No person employed by, or associated with, an on-site inspection agency as an employee, proprietor, officer, director, partner or manager shall be permitted to retain such employment or association if he or she accepts employment with a municipality as a subcode official or inspector enforcing a subcode that was the subject of a contract or proposed contract for which the on-site agency was an unsuccessful bidder at any time during the previous 24-month period.

v. If an agency employee terminates employment with the agency and accepts employment in a municipality which was under contract with the agency, the agency shall waive the right to contract with that municipality for a period of two years.

(g) The amount charged to a municipality by a private agency for work subject to a minimum fee under N.J.A.C. 5:23-4.20(c)2 or for certificates of occupancy, certificates of approval and certificates of continued occupancy shall be the percentage set forth in a contract entered into in accordance with N.J.A.C. 5:23-4.5A, times the amount of the minimum fee or fee for a certificate of occupancy or certificate of approval, times the amount determined in accordance with this subsection.

1. In the case of work requiring inspections by four subcode officials or their designees, the allocation of the fee revenue shall be as follows:

i. Building subcode: 40 percent;

ii. Fire protection subcode: 20 percent;

iii. Plumbing subcode: 20 percent; and

iv. Electrical subcode: 20 percent.

2. In the case of work requiring inspections by fewer than four subcode officials or their designees, the allocation shall be among or between the subcodes involved in the proportions set forth in (g)1 above. (Thus, for example, in work involving only the building and plumbing subcodes, two-thirds of the fee ($\frac{40}{60}$) would be allocated to the building subcode and one-third of the fee ($\frac{20}{60}$) to the plumbing subcode.)

(h) Where plan review is performed more than one month before the construction permit is issued, or where a project does not go forward after a private on-site agency has performed plan review, then the municipality shall pay to the private agency 20 percent of the amount that would otherwise be due, which amount shall be determined by multiplying the relevant fee set forth in N.J.A.C. 5:23-4.20 by the percentage set forth in the contract between the municipality and the private agency entered into in accordance with N.J.A.C. 5:23-4.5A.

(i) Private on-site agencies shall bill for their services at least once monthly. Each bill shall specify the billing period and the amount currently due, amounts already paid, and any remaining balances, identified by permit number and totalled for the billing period.

(j) The private agency shall be paid for work performed even if the municipality receives no inspection fee for such work.

(k) Private enforcing agencies shall charge no fees other than the fees set forth in N.J.A.C. 5:23-4.20 multiplied by the percentage set forth in the contract between the private agency and the municipality. Private enforcing agencies shall furnish no services other than subcode enforcement services to municipalities and shall not receive any payments from municipalities for any other goods or services whatsoever.

Amended by R.1983 d.642, effective January 17, 1984.

See: 15 N.J.R. 1406(a), 16 N.J.R. 129(a).

Use of municipal subcode officials and inspectors further delineated.

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

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

Text of (b), on private inplant inspection agencies, deleted.

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 provisions added.

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.1996 d.273, effective June 17, 1996 (operative October 1, 1996).

See: 28 N.J.R. 1586(c), 28 N.J.R. 3120(a).

5:23-4.15 Suspension and revocation

(a) General:

1. In addition to any other remedies provided by the regulations, the Department may suspend or revoke its authorization of any private on-site agency if the Department determines that the authorization or reauthorization

was based on the submission of fraudulent or materially inaccurate information, or that the authorization or reauthorization was issued in violation of the regulations, or that a change of facts or circumstances make it unlikely that the inspection agency can continue to discharge its responsibilities under the regulations in a satisfactory manner, or that the inspection agency has violated the regulations.

2. During the period of suspension the affected agency shall not be authorized to discharge any of its responsibilities under the regulations unless otherwise specified in the notice of suspension or order of the department.

(b) Notice:

1. The department shall notify such agency of its suspension or revocation in writing. Copies of the notice of suspension shall be forwarded by the department to all manufacturers or municipalities with implementing contracts with the affected inspection agency.

2. The suspension shall be effective on the date the affected inspection agency receives the notice of suspension or on any later date that may be designated in the notice of suspension.

(c) Revocation without suspension:

1. The Department may revoke its approval of any inspection agency without previously suspending its authorization. In such event, the Department shall send a written notice to the affected inspection agency of its intention to consider revocation of its authorization, stating the grounds therefor, and establishing a time and a place for a hearing on the question. The notice shall be sent to the affected inspection agency and to all manufacturers or municipalities having contracts with the affected inspection agency.

2. No such agency shall reapply for approval as an on-site agency until the expiration of one year from the date of the order of revocation.

(d) Termination of contract: Upon the suspension or revocation of approval of any inspection agency, any municipality or any manufacturer with an implementing contract with the inspection agency shall have the right to terminate its contract with such inspection agency and be free of all obligations thereon and to enter with such inspection agency and be free of all obligations thereon and to enter into an implementing contract with any other inspection agency.

(e) In the case of the suspension or revocation of any on-site inspection agency, the department shall, upon the request of any municipality with an implementing contract with the suspended or revoked inspection agency, consult with such municipality to establish a temporary arrangement by which the municipality can continue to enforce the regulations until the suspension or revocation is lifted or an implementing contract entered into with another on-site

inspection agency. For these purposes, the department may, at its discretion, discharge some or all of the responsibilities of an on-site inspection agency. The department may also approve any other temporary arrangement which the department determines would best promote the purposes of the act and these regulations under the circumstances.

(f) The department shall provide any person aggrieved by any action of the department pursuant to this section with a hearing in accordance with the applicable provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1. The case shall be adjudicated before the Office of Administrative Law and the final decision shall be issued by the Commissioner.

Amended by R.1982 d.436, effective December 20, 1982.

See: 14 N.J.R. 734(a), 14 N.J.R. 1449(a).

Added cases to be heard by the OAL with final decision by the Commissioner.

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

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

Text on inplant inspection agencies and temporary arrangements deleted.

Notice of Petition to amend section.

See: 27 N.J.R. 3232(a).

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

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

5:23-4.16 (Reserved)

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

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

Section was "Fire limits".

5:23-4.17 Municipal enforcing agency fees

(a) Ordinance: The municipality shall set enforcing agency fees by ordinance for the following activities: plan review, construction permit, certificate of occupancy, certificates of continued occupancy, demolition permit, elevator permit and sign permit.

1. The municipality shall include in any such ordinance all fees pertaining to the operations of the enforcing agency, including those for which the department has not set standards, such as fees for reinstatement of lapsed permit. All minimum fees shall be stipulated. Fees may be rounded to nearest dollar amount if the municipality's ordinance so provides.

(b) On or before February 10 of each year, in a municipality that budgets according to the calendar year (January 1 to December 31), or on or before August 10 of each year, in a municipality that budgets according to the State fiscal year (July 1 to June 30), the construction official shall, with the advice of the subcode officials and in consultation with the municipal finance officer, prepare and submit to the governing body a report detailing the receipts and expenditures of the enforcing agency and indicating his recommendations for a fee schedule, based on the operating expense of the agency.

1. The report shall be structured in accordance with (c) below and with such guidelines as shall be issued from time-to-time by the Commissioner so as to accurately portray true enforcing agency expenses in general and for structures of different use groups. This report shall serve as the basis for the ordinance to be enacted by the municipality, as it may deem appropriate, establishing the fee schedule.

2. A copy of the construction official's report recommending a fee schedule and setting forth enforcing agency revenues and expenses shall be filed with the Department when prepared and a copy of the ordinance, together with the fee schedule, shall be filed with the Department when enacted or amended.

3. The appropriation and expenditure of construction code fee revenues generated from the fee schedule established pursuant to (b)1 above shall be audited annually by an independent auditor acceptable to the Department and a copy of the auditor's report shall be provided to the Department when it is issued to the municipality. Submission of a copy of the annual municipal audit required to be submitted to the Division of Local Government Services at the time that it is required to be submitted to that Division shall constitute compliance with this requirement provided, however, that the annual municipal audit tests and contains an opinion that all expenditures of construction code fees have been made for purposes herein permitted.

(c) Costs: The fee schedule shall be calculated to reasonably cover the municipal costs of enforcing the regulations.

1. It is the purpose and intent of this subsection to facilitate the accumulation by municipalities of the funds necessary to offset future construction code enforcement expenses, to ensure that construction code revenue is used only for construction code enforcement purposes, and to provide a means of making such revenue readily available for such purposes from year to year.

2. All fees collected pursuant to the fee schedule established in accordance with (b)1 above shall be appropriated in accordance with the requirements of the Uniform Construction Code Act and the Local Budget Law to be applied solely to meet the municipal costs of enforcing the regulations, which costs shall be defined as including only the following:

i. Salaries and employee benefits for licensed code enforcement officials and inspectors and clerical personnel assigned to the enforcing agency, in an amount proportionate to the time spent in performing work for the enforcing agency provided, however, that detailed time records are kept where employees divide their time between Uniform Construction Code and Non-Uniform Construction Code duties;

Amended by R.1984 d.260, effective July 2, 1984.
See: 16 N.J.R. 3(a), 16 N.J.R. 1714(e).

Section substantially amended.

Amended by R.1985 d.353, effective July 15, 1985.
See: 17 N.J.R. 1032(a), 17 N.J.R. 1758(b).

(b)1: substantially amended.

Public Notice: Notice of Petition to amend section.
See: 17 N.J.R. 2688(a).

Amended by R.1990 d.313, effective June 18, 1990.
See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).

Text on inplant inspection agencies deleted.

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), authorization fee increased from \$2,000 to \$2,600. In (b), reauthorization fee increased from \$1,000 to \$1,300.

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.

5:23-4.22 (Reserved)

Amended by R.1984 d.481, effective November 5, 1984.

See: 16 N.J.R. 2031(a), 16 N.J.R. 3006(a).

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

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

Substantially amended.

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

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

Modular unit fee of \$100.00 deleted; title changed.

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) and (b), insignia fee increased from \$50.00 to \$65.00.

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.

Repealed by R.1994 d.96, effective February 22, 1994.

See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

Section was "Building element and manufactured home add-on unit insignia of certification fees".

5:23-4.23 Payment of fees

(a) All fees paid to the Department under the regulations shall be nonrefundable except as otherwise specifically set forth in the regulations. All fees shall be paid by check or money order, payable to the "Treasurer, State of New Jersey".

5:23-4.24 Plan review by the Department of Community Affairs

(a) There is established in the Department of Community Affairs, Division of Codes and Standards, a Bureau of Construction Projects Review, hereinafter "the plan review bureau." The plan review bureau shall review plans, applications and specifications submitted to the Department in its enforcing agency capacity, and as further required or permitted by this section.

(b) Plan review:

1. Plan review shall be required for all uses except as may be otherwise provided in the regulations whenever the department acts as an enforcing agency in any municipality.

2. Special or hazardous uses and types of construction:

i N.J.A.C. 5:23-3 divides all construction into three classes according to its 'complexity and potential hazard to the public health and safety. N.J.A.C. 5:23-5 provides for three levels of subcode official certification which correspond to the three classes in N.J.A.C. 5:23-5.

ii For class 1, department plan review and release shall be required on the effective date of the regulations prior to the issuance of a construction permit unless the construction official and each appropriate subcode official in the municipal enforcing agency is certified by the commissioner as a class one construction official or subcode official.

iii For class two, department plan review and release shall be required after January 1, 1981, prior to the issuance of a construction permit unless the construction official and each appropriate subcode official in the municipal enforcing agency is certified by the commissioner as a class one or class two construction official or subcode official.

iv For class three, departmental plan review shall not be required except when the department acts as the enforcing agency.

v Installations of elevators, escalators, and moving walks, except devices in structures of Use Groups R-3, R-4 and those devices in R-2 structures that are otherwise exempted in N.J.A.C. 5:23-3.11(b), shall require Departmental plan review and release.

3. Premanufactured construction: Department plan review and release shall be required for all modular construction other than those authorized to be approved by an inplant inspection agency as provided in N.J.A.C. 5:23-4A.10.

(c) The plan review bureau shall review all applications, plans and specifications for conformance to the regulations.

(d) Plans reviewed by the Department that are judged to be in conformance with the regulations shall be stamped with the word "released" and signed and dated by the reviewing official of the Department.

(e) All plans submitted, and any amendments thereto, accompanied by the required fee, shall be numbered, docketed, and examined promptly after their submission for compliance with the regulations. In the case of plans submitted by an architect or engineer bearing his or her signature, registration number, and seal, plan examination may, except for compliance with exit requirements, be limited to a supervisory check.

(f) If the Department judges a plan not to be in conformance with the regulations, it shall notify the applicant in writing of the reason for rejection.

(g) The Department shall provide such technical assistance to the applicant as may be appropriate pursuant to the regulations.

(h) The municipal enforcing agency shall perform all field inspections required by the regulations, except that the Department shall have the right to perform partial or complete field inspection services for any project for which it has released plans.

Amended by R.1986 d.142, effective May 5, 1986.
See: 17 N.J.R. 1169(a), 18 N.J.R. 945(a).

(a)iii added.

Amended by R.1990 d.313, effective June 18, 1990.
See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).

Reference to subchapter 4A added at (a)2iii.

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

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

Text added at (a)2i(5).

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.1994 d.96, effective February 22, 1994.

See: 26 N.J.R. 1073(a).

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

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

Deleted (a) and (b); recodified (a)1 as (a), (a)2 as (b), and (b)1 through 6 as (c) through (h); in (a), amended agencies referenced, in (a) through (h), deleted titling of subsections; and in (h), substituted "Department shall have the right" for "department deserves the right".

5:23-4.25 (Reserved)

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

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

Subsections (b) and (r) recodified as 4.26 through 4.38.

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

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

5:23-4.26 Certification of building elements

(a) Building elements shall be certified in accordance with the following provisions:

1. Building elements, such as trusses, fire walls, fire separation walls, wall panels, pre-stressed/prefabricated floor or roof panels and pre-engineered structural frames, built in accordance with the New Jersey Uniform Construction Code, may be approved by any of the following options:

i. Approval for both design and construction by a nationally recognized laboratory or a product certification agency. The local municipal subcode official has the authority to accept such approvals based on the evidence, test and/or documentation presented to him or her.

ii. Approval for both design and construction by a professional engineer licensed either in the State of New Jersey or in the state of manufacture. The local municipal subcode official has the authority to accept such approvals based on the evidence, of test and/or documentation presented to him or her.

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

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

Recodified from 4.25(b) and substantially amended.

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

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

Text at (a), (a)1, (a)2, (b) and (c) deleted; stylistic revisions.

Amended by R.1994 d.96, effective February 22, 1994.

See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

5:23-4.27 (Reserved)

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

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

Recodified from 4.25(c) and substantially amended.

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

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

5:23-4.28 (Reserved)

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

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

Recodified from 4.25(d) and substantially amended.

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

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

5:23-4.29 (Reserved)

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

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

Recodified from 4.25(e) and substantially amended.

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

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

Text at (a)1, 2, 3, 5, (b)1, and (c) through (g) deleted; references to premanufactured system deleted and references to manufactured home add-on units and building elements added.

Repealed by R.1994 d.96, effective February 22, 1994.

See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

Section was "Approval of premanufactured systems documentation".

5:23-4.30 (Reserved)

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

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

Recodified from 4.25(h)-(j) and substantially amended.

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

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

5:23-4.31 (Reserved)

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

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

Recodified from 4.25(k) and substantially amended.

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

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

Text at (a) through (e) and (f)1, 2 and 4 deleted.

Repealed by R.1994 d.96, effective February 22, 1994.

See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

Section was "Insignia of certification for manufactured home add-on unit and building element".

5:23-4.32 (Reserved)

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

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

Recodified from 4.25(l) and substantially amended.

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

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

5:23-4.33 (Reserved)

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

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

Recodified from 4.25(m) and substantially amended.

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

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

5:23-4.34 (Reserved)

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

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

Recodified from 4.25(n) and substantially amended.

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

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

5:23-4.35 (Reserved)

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

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

Recodified from 4.25(o) and substantially amended.

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

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

5:23-4.36 (Reserved)

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

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

Recodified from 4.25(p).

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

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

5:23-4.37 (Reserved)

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

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

Recodified from 4.25(q).

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

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

5:23-4.38 (Reserved)

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

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

Recodified from 4.25(r).

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

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

5:23-4.39 (Reserved)

R.1982 d.42, effective March 1, 1982.

See: 13 N.J.R. 717(a), 14 N.J.R. 233(a).

As amended, R.1982, d.232, effective August 2, 1982.

See: 14 N.J.R. 496(a), 14 N.J.R. 834(e).

Added Federal citation to (e). Prior to recodification of N.J.A.C.

5:23, this section was codified at 5:25-4.10A.

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

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

Recodified from 4.25A.

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

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

Address changed in (a); (l) added.

Repealed by R.1994 d.96, effective February 22, 1994.

See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

Section was "Enforcement of Federal manufactured home standards".

5:23-4.40 (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 "Construction boards of appeal".

SUBCHAPTER 4A. INDUSTRIALIZED/MODULAR BUILDINGS AND BUILDING COMPONENTS

5:23-4A.1 Purpose

(a) The purpose of this subchapter is to implement P.L. 1991, c.457, which made New Jersey a party to the Interstate Compact on Industrialized/Modular Buildings. The adoption of this subchapter, which is identical in content to implementing rules adopted by the other states participating in the compact, will result in uniformity in state compliance requirements, thereby promoting the use of new technologies, techniques, and materials and increasing the availability of safe, decent and affordable construction, both for housing and non-housing uses.

(b) No approval, ruling, action, order or notice issued in accordance with rules in effect prior to the effective date of the adoption of this subchapter shall be rendered invalid or unenforceable by reason of the adoption of this subchapter or the repeal of rules superseded by this subchapter. Any approval issued in accordance with rules in effect prior to the effective date of the adoption of this subchapter shall continue in effect for the period for which it was granted, but any subsequent approval shall be in accordance with this subchapter.

Amended by R.1994 d.96, effective February 22, 1994.

See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

5:23-4A.2 Findings; functions of the Commission

(a) The Department, as the administrative agency for the State of New Jersey under the Interstate Compact on Industrialized/Modular Buildings, finds that:

1. Industrialized/modular buildings are constructed in factories in various states and are a growing segment of the nation's affordable housing and commercial building stock.

2. The regulation of industrialized/modular buildings varies from state to state and from locality to locality. This creates confusion and burdens state and local building officials and the industrialized/modular buildings industry.

3. Regulation by multiple jurisdictions imposes additional costs, which are ultimately borne by the owners and users of industrialized/modular buildings and which restrict market access and discourage the development and incorporation of new technologies.