

CHAPTER 23
UNIFORM CONSTRUCTION CODE

Authority

N.J.S.A. 52:27D-123.

Source and Effective Date

R.1993 d.106, effective February 3, 1993.
See: 24 N.J.R. 1420(b), 25 N.J.R. 920(a).

Executive Order No. 66(1978) Expiration Date

Chapter 23, Uniform Construction Code, expires on February 3, 1998.

Chapter Historical Note

Chapter 23, Uniform Construction Code, was adopted pursuant to N.J.S.A. 52:27D-119 et seq. 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). The Uniform Construction Code superseded N.J.A.C. 5:16 (Chapter 16, Standard Building Code) and N.J.A.C. 5:20 (Chapter 20, Safety Glazing Materials), which were repealed by R.1978 d.360, effective October 6, 1978.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). The UCC also superseded N.J.A.C. 5:21 (Chapter 21, Uniform Standards Code for Mobile Homes), which was repealed by R.1982 d.7, effective February 1, 1982.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). See, also, respective Chapter Historical Notes.

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 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 Rule R.1985 d.362, effective June 18, 1985 (to expire 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 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. See: Source and Effective Date. 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.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 5:23-1.1 Title; division into subchapters
- 5:23-1.2 Authority
- 5:23-1.3 Intent and purpose
- 5:23-1.4 Definitions
- 5:23-1.5 Effective date
- 5:23-1.6 Grace period
- 5:23-1.7 Validity

SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT; PROCESS

- 5:23-2.1 Title; scope; intent
- 5:23-2.2 Matter covered
- 5:23-2.3 Applicability
- 5:23-2.4 Alterations, replacements and damages
- 5:23-2.5 Concerning increase in size
- 5:23-2.6 Change in use group
- 5:23-2.7 Ordinary repairs
- 5:23-2.8 Installation of equipment
- 5:23-2.9 Variations and exceptions
- 5:23-2.10 Applications for variations
- 5:23-2.11 Review of variation applications
- 5:23-2.12 Final decision on variations
- 5:23-2.13 Authority to grant variations
- 5:23-2.14 Construction permits—when required
- 5:23-2.15 Construction permits—application
- 5:23-2.16 Construction permits—procedure
- 5:23-2.17 Demolition or removal of structures
- 5:23-2.17A Minor work
- 5:23-2.18 Inspections
- 5:23-2.18A Utility load management device installation programs
- 5:23-2.19 Special technical services
- 5:23-2.20 Tests and special inspections
- 5:23-2.21 Construction control
- 5:23-2.22 Premanufactured construction
- 5:23-2.23 Certificate requirements
- 5:23-2.24 Conditions of certificate of occupancy
- 5:23-2.25 Establishment of fees
- 5:23-2.26 Plan review fees
- 5:23-2.27 Refunds
- 5:23-2.28 Volume computation
- 5:23-2.29 Entry
- 5:23-2.30 Violation, notice and orders
- 5:23-2.31 Compliance

- 5:23-2.32 Unsafe structures
- 5:23-2.33 Service of notice
- 5:23-2.34 through 5:23-2.37 (Reserved)
- 5:23-2.38 Departmental appeal

SUBCHAPTER 3. SUBCODES

- 5:23-3.1 Title; scope; intent
- 5:23-3.2 Matters covered; exceptions
- 5:23-3.3 Enforcement
- 5:23-3.4 Responsibility
- 5:23-3.5 Posting structures
- 5:23-3.6 Standards; accepted practice
- 5:23-3.7 Municipal approvals of nonconforming materials
- 5:23-3.8 Departmental approval of nonconforming materials
- 5:23-3.8A Products violating the Code
- 5:23-3.9 Interpretations and opinions
- 5:23-3.10 (Reserved)
- 5:23-3.11 Enforcement activities reserved to the Department
- 5:23-3.11A Enforcement activities reserved to other State agencies
- 5:23-3.11B Underground storage tank systems
- 5:23-3.12 Amended rules
- 5:23-3.13 State-sponsored code change proposals
- 5:23-3.14 Building subcode
- 5:23-3.15 Plumbing subcode
- 5:23-3.16 Electrical subcode
- 5:23-3.17 Fire protection subcode
- 5:23-3.18 Energy Subcode
- 5:23-3.19 Manufactured home subcode
- 5:23-3.20 Mechanical subcode
- 5:23-3.20A Indoor air quality subcode
- 5:23-3.21 One and two family dwelling subcode

SUBCHAPTER 4. ENFORCING AGENCIES; DUTIES; POWERS; PROCEDURES

- 5:23-4.1 Title; scope; intent
- 5:23-4.2 Matter covered; exceptions
- 5:23-4.3 Municipal enforcing agencies—establishment
- 5:23-4.3A Enforcing agency classification
- 5:23-4.4 Municipal enforcing agencies—organization
- 5:23-4.5 Municipal enforcing agencies; administration and enforcement
- 5:23-4.5A Selection of private on-site inspection and plan review agencies
- 5:23-4.6 Interlocal enforcing agencies—establishment
- 5:23-4.7 Interlocal enforcing agencies—organization
- 5:23-4.8 Interlocal enforcing agencies—administration and enforcement
- 5:23-4.9 State enforcing agencies—establishment
- 5:23-4.10 State enforcing agencies—organization
- 5:23-4.11 State enforcing agencies—administration and enforcement
- 5:23-4.12 Private on-site inspection and plan review agencies; establishment
- 5:23-4.13 Private on-site inspection and plan review agencies; organization
- 5:23-4.14 Private on-site inspection and plan review agencies; administration and enforcement
- 5:23-4.15 Suspension and revocation
- 5:23-4.16 (Reserved)
- 5:23-4.17 Municipal enforcing agency fees
- 5:23-4.18 Standards for municipal fees
- 5:23-4.19 State of New Jersey training fees
- 5:23-4.20 Departmental fees
- 5:23-4.21 Private enforcing agency authorization and reauthorization fees
- 5:23-4.22 (Reserved)
- 5:23-4.23 Payment of fees
- 5:23-4.24 Plan review; Department of Community Affairs
- 5:23-4.25 (Reserved)
- 5:23-4.26 Certification of building elements
- 5:23-4.27 through 5:23-4.40 (Reserved)

SUBCHAPTER 4A. INDUSTRIALIZED/MODULAR BUILDINGS AND BUILDING COMPONENTS

- 5:23-4A.1 Purpose
- 5:23-4A.2 Findings; functions of the Commission
- 5:23-4A.3 Scope
- 5:23-4A.4 Definitions
- 5:23-4A.5 Standards
- 5:23-4A.6 Amendments
- 5:23-4A.7 Certification required
- 5:23-4A.8 Product control and identification
- 5:23-4A.9 Compliance assurance documents
- 5:23-4A.10 Uniform Administrative Procedures
- 5:23-4A.11 Appeals
- 5:23-4A.12 Conduct of hearings
- 5:23-4A.13 through 5:23-4A.27 (Reserved)

SUBCHAPTER 4B. MANUFACTURED HOMES AND MANUFACTURED HOME ADD-ON UNITS NOT SUBJECT TO FEDERAL REGULATION

- 5:23-4B.1 Scope
- 5:23-4B.2 Applicability
- 5:23-4B.3 Standards
- 5:23-4B.4 Administration and enforcement
- 5:23-4B.5 Acceptability
- 5:23-4B.6 Approvals of building systems and compliance assurance program
- 5:23-4B.7 Certification
- 5:23-4B.8 Labels; fees
- 5:23-4B.9 Requirements for submission of compliance assurance documents
- 5:23-4B.10 Appeals
- 5:23-4B.11 Conduct of hearings

SUBCHAPTER 4C. ENFORCEMENT OF FEDERAL MANUFACTURED HOME STANDARDS

- 5:23-4C.1 Delegation of authority
- 5:23-4C.2 Relation to Federal law
- 5:23-4C.3 Complaint procedure
- 5:23-4C.4 Hearing and appeal procedures
- 5:23-4C.5 Monitoring inspection fee

SUBCHAPTER 5. LICENSING OF CODE ENFORCEMENT OFFICIALS

- 5:23-5.1 Title; scope; intent
- 5:23-5.2 Unit established; hearings
- 5:23-5.3 Types of licenses
- 5:23-5.4 Licenses required
- 5:23-5.5 General license requirements
- 5:23-5.6 Construction official requirements
- 5:23-5.7 Subcode official requirements
- 5:23-5.8 Building inspector H.H.S. requirements
- 5:23-5.9 Building inspector I.C.S. requirements
- 5:23-5.10 Building inspector R.C.S. requirements
- 5:23-5.11 Electrical inspector H.H.S. requirements
- 5:23-5.12 Electrical inspector I.C.S. requirements
- 5:23-5.13 Fire protection inspector H.H.S. requirements
- 5:23-5.14 Fire protection inspector I.C.S. requirements
- 5:23-5.15 Fire protection inspector R.C.S. requirements
- 5:23-5.16 Plumbing inspector H.H.S. requirements
- 5:23-5.17 Plumbing inspector I.C.S. requirements
- 5:23-5.18 Inplant inspector requirements
- 5:23-5.19 Elevator inspector H.H.S. requirements
- 5:23-5.19A Mechanical inspector requirements
- 5:23-5.20 Standards for educational programs
- 5:23-5.21 Renewal of license
- 5:23-5.22 Fees
- 5:23-5.23 Examination requirements
- 5:23-5.24 Procedure for approving educational programs
- 5:23-5.25 Revocation of licenses and alternative sanctions

SUBCHAPTER 6. TAX EXEMPTIONS

- 5:23-6.1 through 5:23-6.3 (Reserved)
- 5:23-6.4 Automatic fire suppression systems
- 5:23-6.5 (Reserved)

SUBCHAPTER 7. BARRIER FREE SUBCODE

- 5:23-7.1 Accessibility standards
- 5:23-7.2 Recreation
- 5:23-7.3 Recreation: definitions
- 5:23-7.4 Recreation: exceptions
- 5:23-7.5 Recreation: route of travel
- 5:23-7.6 Recreation: pools
- 5:23-7.7 Recreation: swimming and skating areas
- 5:23-7.8 Recreation: boating areas
- 5:23-7.9 Recreation: fishing areas
- 5:23-7.10 Recreation: court games
- 5:23-7.11 Recreation: ice rinks and roller rinks
- 5:23-7.12 Recreation: playing fields
- 5:23-7.13 Recreation: golf facilities
- 5:23-7.14 Recreation: ski lifts, aerial tramways, and conveyors
- 5:23-7.15 Recreation: trails
- 5:23-7.16 Recreation: camping sites
- 5:23-7.17 Recreation: equipment
- 5:23-7.18 Recreation: equestrian facilities

SUBCHAPTER 8. ASBESTOS HAZARD ABATEMENT SUBCODE

- 5:23-8.1 Title; scope; intent
- 5:23-8.2 Definitions
- 5:23-8.3 Enforcement; licensing; special technical services
- 5:23-8.4 Variations
- 5:23-8.5 Construction permit for asbestos abatement
- 5:23-8.6 Coordination with other permits
- 5:23-8.7 Inspections; violations
- 5:23-8.8 Certificate of occupancy; certificate of completion
- 5:23-8.9 Fees
- 5:23-8.10 Asbestos safety technician
- 5:23-8.11 Asbestos safety control monitor
- 5:23-8.12 Application of asbestos
- 5:23-8.13 Pre-project procedures
- 5:23-8.14 Operations and maintenance activities
- 5:23-8.15 Asbestos hazard abatement projects
- 5:23-8.16 Asbestos encapsulation and enclosure
- 5:23-8.17 Limited containment removals
- 5:23-8.18 Demolition
- 5:23-8.19 Abatement in occupied buildings
- 5:23-8.20 Removal of non-friable asbestos-containing material
- 5:23-8.21 Air monitoring methodology
- 5:23-8.22 Disposal of asbestos waste

SUBCHAPTER 9. CODE INTERPRETATIONS

- 5:23-9.1 Interpretation: Application of the Plumbing Subcode to certain mobile homes
- 5:23-9.2 Interpretation: Construction Permit for a single family residence
- 5:23-9.3 Interpretation: Ordinary repairs
- 5:23-9.4 (Reserved)
- 5:23-9.5 Interpretation: Records retention
- 5:23-9.6 Interpretation: Fixed central pedestal seating (stools) in casinos
- 5:23-9.7 Interpretation: Manufacturing, production and process equipment
- 5:23-9.8 Bed and breakfast guest houses, change in use group requirements

SUBCHAPTER 10. RADON HAZARD SUBCODE

- 5:23-10.1 Title; scope; intent
- 5:23-10.2 Definitions
- 5:23-10.3 Enforcement
- 5:23-10.4 Construction techniques

APPENDIX 10-A NEW JERSEY MUNICIPALITIES IN TIER 1**SUBCHAPTER 11. (RESERVED)****SUBCHAPTER 12. ELEVATOR SAFETY SUBCODE**

- 5:23-12.1 Title; scope; intent
- 5:23-12.2 Referenced standards
- 5:23-12.3 Inspection and test schedule
- 5:23-12.4 Registration of elevator devices
- 5:23-12.5 Registration fee
- 5:23-12.6 Test and inspection fees
- 5:23-12.7 Licensing
- 5:23-12.8 Alterations, replacements, damages, increases in size, changes in use group, minor work, ordinary repairs
- 5:23-12.9 Certificate of compliance requirements
- 5:23-12.10 Inspections in seasonal facilities
- 5:23-12.11 Notice concerning accidents
- 5:23-12.12 Special safety equipment

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. "Indoor Air Quality Standards and Procedures for Buildings Occupied by Public Employees" which may be cited throughout the rules as N.J.A.C. 5:23-11 and, when referred to in subchapter 11 of this chapter, may be cited as this subchapter.

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.

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

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).

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).

5:23-1.4 Definitions

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

“Building” means a structure enclosed with exterior walls or fire walls, built, erected and framed of component structural parts, designed for the housing shelter, enclosure and support of individuals, animals or property of any kind. When used herein, building and structure shall be interchangeable except where the context clearly indicates otherwise.

“Building subcode official” means a qualified person appointed by the municipal appointing authority or the commissioner pursuant to the act and the regulations to enforce the provisions of the building subcode within the jurisdiction of the enforcing agency.

“Business day” means any day of the year, exclusive of Saturdays, Sundays, and legal holidays.

“Certificate of approval” means a certificate issued pursuant to N.J.A.C. 5:23-2 upon completion of work that requires a construction permit but not a certificate of occupancy.

“Certificate of compliance” means the certificate provided for in N.J.A.C. 5:23-2 and 12, indicating that potentially hazardous equipment is being maintained in accordance with the Act and this chapter.

“Certificate of continued occupancy” means the certificate provided for in N.J.A.C. 5:23-2, indicating that as a result of a general inspection of the visible parts of the building, no violations of N.J.A.C. 5:23-2.14 have been determined to have occurred and no unsafe conditions violative of N.J.A.C. 5:23-2.32 have been found, and that the existing use of the building has heretofore lawfully existed.

“Certificate of occupancy” means the certificate provided for in N.J.A.C. 5:23-2, indicating that the construction authorized by the construction permit has been completed in accordance with the construction permit, the act and the regulations.

“Class I structure” means a structure not listed in N.J.A.C. 5:23-4.3A(d)1i through v or 2ii through xx.

“Class II structure” means a structure listed in N.J.A.C. 5:23-4.3A(d)2ii through xx.

“Class III structure” means a structure listed in N.J.A.C. 5:23-4.3A(d)1i through v.

“Commissioner” means the Commissioner of the Department of Community Affairs.

“Construction Board of Appeals” means the board provided for in N.J.A.C. 5:23A.

“Construction documents” means and includes all of the written, graphic and pictorial documents prepared or assembled for describing the design, location and physical characteristics of the elements of the project necessary for obtaining a permit. The construction documents shall be drawn to an appropriate scale. When used herein or in the adopted subcodes, the terms “construction documents” and “plans” and/or “specifications” shall be interchangeable, except where the context clearly indicate otherwise.

“Construction official” means a qualified person appointed by the municipal appointing authority or the commissioner pursuant to the act and the regulations to enforce and administer the regulations within the jurisdiction of the enforcing agency.

“Construction permit” means an authorization to begin work subject to the conditions established in subchapter 2 of this chapter.

“Department” means the Department of Community Affairs.

“Effective date” means, in the case of a new rule, amendment or repeal, the date of promulgation in the New Jersey Register. The effective date of a readoption is the date of filing with the Office of Administrative Law.

“Electrical subcode official” means a qualified person appointed by the municipal appointing authority or the commissioner pursuant to the act and the regulations to enforce and provisions of the electrical subcode within the jurisdiction of the enforcing agency.

“Elevator” or “elevator device” means a hoisting and lowering device equipped with a car or platform which moves in guides for the transportation of individuals or freight in a substantially vertical direction through successive floors or levels of a building or structure; or a power driven, inclined, continuous stairway used for raising or lowering passengers; or a type of passenger carrying device on which passengers stand or walk, and in which the passenger carrying surface remains parallel to its direction of motion and is uninterrupted. This includes, but it is not limited to, elevators, escalators, moving walks, dumbwaiters, wheelchair lifts, manlifts, stairway chairlifts and any device within the scope of ASME A17.1 (Safety Code for Elevators and Escalators) or ASME A90.1 (Safety Standards for Belt Manlifts).

“Elevator subcode official” means a qualified person appointed by the municipal appointing authority or the Commissioner, pursuant to the Act and this chapter, to enforce the provisions of any subcode specifically designated for such enforcement in N.J.A.C. 5:23-3, within the jurisdiction of the enforcing agency.

“Enforcing agency” means the municipal or State administrative entity charged with the administration and enforcement of the regulations consisting of the construction official, subcode officials and assistants thereto appointed in accordance with N.J.S.A. 52:27D-126 of the act and the regulations.

“Equipment” means plumbing, heating, electrical, ventilating, air conditioning, refrigerating and fire prevention equipment, and elevators, dumb waiters, escalators, boilers, pressure vessels and other mechanical facilities or installations, which are related to building services and shall not include manufacturing, production or process equipment, but which shall include connections from building service to process equipment.

“Facility” for the purpose of applying for an annual permit means exclusive of a hotel/casino, a building or group of buildings under common ownership or control and whose maintenance work is performed under the direct supervision of a maintenance supervisor.

“Fire protection subcode official” means a qualified person appointed by the appropriate appointing authority or the commissioner pursuant to the act and the regulations to enforce those portions of any subcode, specifically designated for such enforcement in N.J.A.C. 5:23-3, within the jurisdiction of the enforcing agency.

“Health care facility” means the facility or institution, whether public or private, engaged principally in providing services for health maintenance organizations, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, including but not limited to a general hospital, special hospital, mental hospital, public health center, diagnostic center, treatment center, rehabilitation center, extended care facility, skilled nursing home, nursing home, intermediate care facility, tuberculosis hospital, chronic disease hospital, maternity hospital, outpatient clinic, dispensary, home health care agency, home for the sheltered care of adult persons, and bioanalytical laboratory or central services facility serving one or more such institutions, but excluding institutions that provide healing solely by prayer.

1. This definition shall not be deemed to include nurses, doctors, or other staff housing not attached in accordance with minimum fire separation standards in the building subcode; administrative offices not attached in accordance with minimum fire separation standards in the building subcode; parking garages, or other such facilities for which the Federal government does not impose standards as a condition of funding.

“Hearing examiner” means a person appointed by the commissioner to conduct hearings, summarize evidence and make findings of fact.

“Lead abatement” means a process designed either to mitigate or to eliminate permanently lead-based paint hazards on a premises and includes, but is not limited to: the removal of lead-based paint and lead-contaminated dust; the containment or encapsulation of lead-based paint; the replacement of lead-painted surfaces or fixtures; the removal or covering of lead-contaminated soil; and all preparation, cleanup, disposal and post-abatement clearance testing activities associated with such measures. “Lead abatement” shall not include painting, woodworking, structural renovation or other indoor or outdoor contracting services that may result in the disturbance of paint, unless it is evident from the statements and/or actions of a person or persons authorizing or performing such services that an objective of the work is the mitigation or permanent elimination of a lead-based paint hazard.

“Lead evaluation” means a surface-by-surface investigation to determine the presence and condition of lead-based paint and the provision of a report explaining the results of the investigation, including, but not limited to, hazards and recommendations for abatement.

“Maintenance” means the replacement or mending of existing work with equivalent materials or the provision of additional work or material for the purpose of the safety, healthfulness and upkeep of the structure and the adherence to such other standards of upkeep as are required in the interest of public safety, health and welfare.

“Major work” means any construction work for which any prior approvals are required, any construction of a new structure not previously occupied and any construction work other than ordinary repairs otherwise not qualifying as “minor work” or a “small job”.

“Manufactured home” means a structure, transportable in one or more sections, which in the traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein; except that such term shall also include any structure which meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer has voluntarily filed a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under 42 U.S.C. Section 5401 et seq.

“Minor work” means construction work undertaken in existing structures, requiring no prior approvals and no plan review, not altering in any way the structural members of a building and meeting the definition set forth in N.J.A.C. 5:23-2.17A.

“Municipality” means any city, borough, town, township or village.

“Municipal Procedures Manual” means the book established by the Commissioner, effective January 1, 1984, and any subsequent revisions, detailing the steps to be followed in completing, processing and filing the standards forms, logs and reports required for administration and enforcement of the State Uniform Construction Code.

“Operative date” means the date upon which the Department and local enforcing agencies shall enforce, and all parties shall comply with, an effective rule. Unless otherwise provided in the notice of adoption published in the New Jersey Register, the effective date is the operative date.

“Ordinary repair” means restoration or improvement of a routine or usual nature which is done by replacing a part of, or putting together, something that is worn or broken in a building, electrical, plumbing, heating, ventilation or air conditioning system and meeting the definition set forth in N.J.A.C. 5:23-2.7.

“Owner” means the owner or owners in fee of the property or a lesser estate therein, a mortgagee or vendee in possession, an assignee of rents, receiver, executor, trustee, lessee or any other person, firm or corporation, directly or indirectly in control of a building, structure or real property and shall include any subdivision thereof of the State.

“Plumbing subcode official” means a qualified person appointed by the municipal appointing authority or the commissioner pursuant to the act and the regulations to enforce the provisions of the plumbing subcode within the jurisdiction of the enforcing agency.

“Premanufactured system” or “premanufactured construction” means an assembly of materials or products that is intended to comprise all or part of a building or structure and that is assembled off-site by a repetitive process under circumstances intended to insure uniformity of quality and material content. The term shall include, but not be limited to, manufactured homes and industrialized/modular buildings.

“Prior approvals” means the necessary certifications or approvals issued or authorized by any Federal or State agency, or any political subdivision of the State, which are not inconsistent with this chapter and which are conditions precedent to the issuance of a construction permit or a certificate of occupancy or approval, as the case may be, which shall include, but not be limited to, the following:

1. Zoning;
2. Soil erosion and sediment control;
3. Highway curb cuts;
4. Water and sewer treatment works approvals;
5. Coastal areas facilities review;
6. Compliance of underground storage tank systems with N.J.A.C. 7:14B;
 - i. An approval granted by either the Department of Environmental Protection and Energy or the construction official by authority of N.J.A.C. 7:14B shall be deemed to be a prior approval;
7. Pinelands review; and
8. Compliance of abandoned wells with N.J.A.C. 7:9-9.
 - i. Compliance with N.J.A.C. 7:9-9.1 shall be evidenced by a certification issued by a well driller licensed by the Department of Environmental Protection and Energy.

“Private inplant inspection agency”, or “evaluation and inspection agency”, means a business entity authorized pursuant to N.J.A.C. 5:23-4 or 4A to approve premanufactured construction.

“Private on-site inspection and plan review agencies” means a business entity authorized pursuant to N.J.A.C. 5:23-4 to act in lieu of a subcode official.

“Public school facility” means any building or any part thereof where the plans and specifications are submitted to, and approved by, the State Board of Education pursuant to N.J.S.A. 18A:18-2.

“Small job” means construction work requiring no prior approvals and the total cost of which is under \$5,000. A “small job” may involve more than one trade and may require plan review.

“State sponsored code change proposal” means any proposed amendment or code change adopted by the commissioner in accordance with subsection c. of section 6 of the act as amended for the purpose of presenting such proposed amendment or code change at any of the periodic code change hearings held by the National Model Code adoption agencies, the codes of which have been adopted as subcodes under the Act. For purposes of this definition a State sponsored code change proposal may also oppose any code change under consideration by a model code agency.

“Stop construction order” means the order provided for in N.J.S.A. 52:27D-132 of the act and N.J.A.C. 5:23-2.

“Structure” means a combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above, or below the surface of a parcel of land; provided, the word “structure” shall be construed when used herein as though followed by the words “or part or parts thereof and all equipment therein” unless the context clearly requires a different meaning.

“Subcode” means any of the national model codes, parts thereof or other codes as adopted by reference in N.J.A.C. 5:23-3.

As amended, R.1977 d.256, effective August 1, 1977.

See: 9 N.J.R. 164(a), 9 N.J.R. 358(a).

As amended, R.1978 d.162, effective June 1, 1978.

See: 10 N.J.R. 141(a), 10 N.J.R. 225(a).

As amended, R.1981 d.133, effective May 7, 1981.

See: 13 N.J.R. 119(a), 13 N.J.R. 258(c).

“Certificate of continued occupancy” and “prior approvals” recodified.

As amended, R.1982 d.7, effective February 1, 1982.

See: 13 N.J.R. 717(a), 14 N.J.R. 142(a).

“Manufactured home” was “mobile home”, and definition substantially amended. Added “or premanufactured construction” to “premanufactured system”, and added “The terms . . . homes”.

As amended, R.1983 d.611, eff. January 3, 1984.

See: 15 N.J.R. 1789(a), 16 N.J.R. 45(b).

Added definitions of “major work”, “minor work”, “municipal procedures manual”, “ordinary repair” and “small job”.

As amended, R.1984 d.120, effective April 16, 1984.

See: 16 N.J.R. 179(a), 16 N.J.R. 873(a).

"Certificate of occupancy" added "N.J.A.C. 5:23-1.4 have ... been found" to definitions.

Amended by R.1985 d.351, effective July 15, 1985.

See: 17 N.J.R. 1029(a), 17 N.J.R. 1756(b).

Definition for "Facility" added.

Amended by R.1990 d.57, effective February 5, 1990.

See: 21 N.J.R. 3345(b), 22 N.J.R. 350(b).

Reference to compliance with N.J. Underground Storage of Hazardous Substances Act, and deletion of language excluding "public school buildings" from definitions of "building" and "structure".

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 added to definition of premanufactured system.

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

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

Definitions of certificate of approval, elevator and elevator subcode official added.

Amended by R.1992 d.244, effective June 15, 1992.

See: 24 N.J.R. 1147(a), 24 N.J.R. 2243(a).

Definitions added for Class I, II and III structures.

Amended by R.1993 d.420, effective September 7, 1993.

See: 25 N.J.R. 2158(a), 25 N.J.R. 4072(a).

Amended by R.1993 d.580, effective November 15, 1993.

See: 25 N.J.R. 3692(a), 25 N.J.R. 5145(c).

Administrative Correction.

See: 26 N.J.R. 2779(c).

Amended by R.1995 d.381, effective July 17, 1995.

See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a).

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.1996 d.190, effective April 15, 1996.

See: 28 N.J.R. 320(a), 28 N.J.R. 1981(a).

Added "construction documents".

Amended 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).

Amended by R.1996 d.323, effective July 15, 1996 (operative January 1, 1997).

See: 28 N.J.R. 2112(a), 28 N.J.R. 3549(a).

Case Notes

Citation to definitions of construction permit and certificate of occupancy. Home Builders League of South Jersey, Inc. v. Evesham Twp., 174 N.J.Super. 252, 416 A.2d 81 (Law Div.1980).

Citation to mobile home definition in former regulation (similar to present manufactured home definition); mobile homes acceptable form of moderate cost housing. Southern Burlington County N.A.A.C.P. v. Twp. of Mt. Laurel, 161 N.J.Super. 317, 391 A.2d 935 (Law Div.1978) affirmed in part, reversed in part 92 N.J. 158, 456 A.2d 390, on remand 207 N.J.Super 169, 504 A.2d 66.

Applicant for construction permit must provide assurances that necessary prior approvals obtained. Riggins v. Pinelands Commission, 8 N.J.A.R. 441 (1985).

5:23-1.5 Effective date

(a) The provisions of the regulations shall take effect on January 1, 1977. All construction regulations incorporated in any act of the State of New Jersey, or of any municipality presently in effect, or validly promulgated or enacted by any board, department, commission or agency thereof, shall continue in effect until January 1, 1977, and shall thereafter be superseded and of no further force and effect. Any law or regulation addressing areas for which the commissioner shall not have promulgated a subcode may continue in effect until such time as a subcode therefor is adopted.

(b) Exceptions include:

1. This section shall not apply to those aspects of the act which were capable of taking effect on the effective date of the act.

2. This section shall not apply to those parts of N.J.A.C. 5:23-4 which require the adoption of a resolution or other action prior to the effective date. Such section shall take effect upon adoption.

3. This section shall not apply to laws or regulations specifically saved by the act or the regulations.

5:23-1.6 Grace period

(a) For a period of six months following the operative date of a subcode revision, applicants may submit a complete permit application, including all prior approvals, to be reviewed under the code in force immediately preceding the subcode revision. Provided that the application is complete, the construction official and applicable subcode officials shall perform the plan review and issue construction permit(s) based on the code in force immediately prior to the operative date of the subcode revision. This grace period shall apply only to revisions of subcodes.

(b) In the case of a project under review for which a permit has not been issued on the operative date of any subcode revision, review shall continue and permits shall be issued based on the code in force immediately prior to the operative date of the subcode revision.

As amended, R. 1978 d.350, eff. October 1, 1978.

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

As amended, R.1984 d.267, eff. June 14, 1984 to expire August 13, 1984.

See: 16 N.J.R. 1812(a).

New (c) added.

Readoption: R.1984 d.382, eff. August 13, 1984, to expire April 1, 1988.

See: 16 N.J.R. 1812(a), 16 N.J.R. 2356(d).

Administrative Correction to (b): Changed "receive" to "received".

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

Amended by R.1993 d.353, effective July 19, 1993.

See: 25 N.J.R. 1629(a), 25 N.J.R. 3147(a).

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.1997 d.303, effective July 21, 1997.

See: 29 N.J.R. 1437(b), 29 N.J.R. 3247(a).

Amended section name; rewrote (a); and substantially amended (b).

5:23-1.7 Validity

(a) If any provision of the regulations or the application thereof to any person or circumstances is held invalid, the invalidity shall not effect other provisions or applications of the regulations which can be given effect, and to this end the provisions of the regulations are severable.

(b) Nothing contained in the act or the regulations shall be deemed to affect, repeal, or invalidate local zoning ordinances or the regulation or licensing of any trade or profession engaged in construction work.

SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT; PROCESS

5:23-2.1 Title; scope; intent

(a) This part of the regulations, adopted pursuant to authority of the State Uniform Construction Code Act, and entitled "Administration and enforcement; process", shall be known and 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.

(b) Unless otherwise specifically provided, all references to article or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such article, section or provision of this subchapter.

(c) Except as is otherwise specified, these regulations shall control all matters concerning the construction, alteration, addition, repair, removal, demolition, use, location and occupancy of all buildings and structures and their service equipment as herein defined, and shall apply to existing or proposed buildings and structures in the State of New Jersey.

(d) The regulations shall be construed to secure its expressed intent, which is to insure public safety, health and welfare insofar as they are affected by building construction, through structural strength, adequate egress facilities, sanitary equipment, light and ventilation, and fire safety; and, in general, to secure safety to life and property from all hazards incident to the design, erection, repair, removal, demolition or use and occupancy of buildings, structures or premises.

5:23-2.2 Matter covered

(a) The provisions of the regulations shall apply to all buildings and structures and their appurtenant construction, including vaults, area and street projections, and accessory additions; and shall apply with equal force to municipal, county, State and private buildings, except where such buildings are otherwise specifically provided for by the regulations.

(b) A building or structure shall not be constructed, extended, repaired, removed or altered in violation of these provisions, except for ordinary repairs as provided herein, and except further that the raising, lowering or moving of a building or structures on the same lot, as a unit, necessitated by a change in legal grade or widening of a street shall be permitted, provided the building or structure is not otherwise altered or its use or occupancy changed.

1. Any new work, such as foundations or utility connections shall, however, be in accordance with the regulations.

(c) Any requirement essential for structural, fire or sanitary safety of a building or structure, or essential for the

safety of the occupants thereof, and which is not specifically covered by the regulations, shall be determined by the construction official, and appropriate subcode official.

(d) The continuation of occupancy or use of a building or structure, or of a part thereof, contrary to the provisions of the regulations, shall be deemed a violation and subject to the remedies prescribed in this subchapter.

(e) Where provisions herein specify requirements for structural, fire and sanitary safety, no provision of any municipal zoning or other municipal code shall conflict, govern or have effect. Where the provisions herein specify requirements with respect to location, use, permissible area and height, and the municipal zoning code establishes requirements as well, then the more restrictive requirements of this code or the zoning code shall govern.

Amended by 1981 d.134, effective May 7, 1981.

See: 13 N.J.R. 119(a), 13 N.J.R. 258(b).

(e): "other municipal" was "general".
Administrative Correction to (b): Changed "construed" to "constructed".

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

Case Notes

Portable fire extinguishers could not be required to be placed in hotel and motel efficiency units with cooking facilities. *Venuti v. Cape May County Const. Bd. of Appeals*, 231 N.J.Super. 546, 555 A.2d 1175 (A.D.1989).

Construction code official authorized to determine particular fire code prevention requirements of building where building use deviates in any significant respect from building uses "specifically covered" by fire prevention subcode; hearing held by construction board of appeals was procedurally deficient. In the Matter of the "Analysis of Walsh Trucking Occupancy and Sprinkler System," 215 N.J.Super. 22, 2, 521 A.2d 883 (App.Div.1987).

5:23-2.3 Applicability

These regulations shall apply to all construction for which a permit is required to be issued after the effective date of the regulations or any subsequent amendment in accordance with this subchapter.

Case Notes

Forum for seeking double damages under Planned Real Estate Development Full Disclosure Act (PREDFDA) was Superior Court. *Department of Community Affairs, Div. of Housing and Urban Development v. Atrium Palace Syndicate*, 259 N.J.Super. 578, 614 A.2d 1069 (A.D.1992).

Site lighting installations at locations without construction permits were in violation of uniform construction code act. *Public Service Electric and gas company v. Department of Community Affairs*, 94 N.J.A.R.2d (CAF) 13.

5:23-2.4 Alterations, replacements and damages

(a) Except as provided in N.J.A.C. 5:23-2.5, existing structures when altered or repaired shall conform to the following requirements:

1. Alterations exceeding 50 percent: If alterations or repairs are made within any period of 12 months, costing

in excess of 50 percent of the physical value of the structure, requirements for new structures shall apply to the entire structure including those portions not altered or repaired;

2. Damages exceeding 50 percent: If the structure is damaged by fire or any other cause to an extent in excess of 50 percent of the physical value of the structure before the damage was incurred, requirements for new structures shall apply to the entire structure including those portions not damaged;

3. Alterations under 50 percent: If alterations or repairs are made within any period of 12 months, costing between 25 percent and 50 percent of the physical value of the structure, only the altered or repaired portions need conform to the requirements for new structures;

4. Damages under 50 percent: If the structure is damaged by fire or any other cause to an extent between 25 percent and 50 percent of the physical value of the structure before the damage was incurred, the reconstruction of the damaged portions shall comply with the requirements for new structures;

5. Alterations under 25 percent: If alterations or repairs are made within any period of 12 months, costing under 25 percent of the physical value of the structure, the construction official and appropriate subcode officials shall determine to what degree the portions so altered or repaired shall be made to conform to the requirements for new structures;

6. Damages under 25 percent: If the structure is damaged by fire or any other cause to an extent under 25 percent of the physical value of the structure before the damage was incurred, the construction official and appropriate subcode official shall determine to what degree the portion so damaged shall be made to conform to the requirements of the regulations for new structures.

7. Alterations mandated by any property or fire safety maintenance code, or minimum housing standard or regulation, adopted pursuant to law, shall be made to conform only to the requirements of that code, standard or regulation and shall not be required to conform to the subcodes adopted pursuant to this chapter unless the code requiring the alterations so provides.

i. If alterations are undertaken to abate lead hazards pursuant to N.J.A.C. 5:17, windows and doors used for replacement shall comply with all applicable provisions of this chapter except that the size of the opening in which components are replaced shall not be required to be enlarged.

8. Notwithstanding any of the above, the requirements for providing access for the disabled shall be determined in accordance with N.J.A.C. 5:23-7.1(d).

(b) Physical value: In applying the provisions of N.J.A.C. 5:23-2.4 the physical value of the structure shall be determined by the construction official and be based on current replacement costs.

1. Current replacement costs shall be calculated using the latest edition of the "Building Valuation Data Report" as published by BOCA International, Inc., as referenced in N.J.A.C. 5:23-3.

Amended by R.1985 d.16, effective February 4, 1985.

See: 16 N.J.R. 3073(b), 17 N.J.R. 275(a).

(a)7 added.

Amended by R.1995 d.144, effective March 20, 1995 (operative July 1, 1995).

See: 26 N.J.R. 2698(a), 26 N.J.R. 3524(a), 27 N.J.R. 1180(a).

Amended by R.1995 d.381, effective July 17, 1995.

See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a).

5:23-2.5 Concerning increase in size

(a) If the structure is increased in floor area or height, the entire structure shall be made to conform with the requirements of this chapter in respect to means of egress, fire safety, light and ventilation.

1. This requirement shall not apply to increases of less than five percent to the floor area of a building of any use group, unless the construction official and appropriate subcode officials determine in writing that the application of this requirement is necessary in the public interest.

2. This requirement shall not apply to increases of less than 25 percent of the floor area in any detached owner-occupied single family dwelling of Use Group R-3 or R-4; provided, however, that hardwired inter-connected smoke detectors with battery back-up meeting the requirements of NFIPA 74, except as otherwise provided in the building or fire protection subcode, shall be installed and maintained in each story within the dwelling unit, including basements.

3. This requirement shall not apply to existing doors within a dwelling unit.

(b) For the purpose of applying the requirements of this section, the floor area shall be calculated as follows:

1. With respect to smoke detectors in detached owner-occupied single family detached dwellings, the floor area shall be the gross floor area of the largest floor;

2. For buildings erected on or after January 1, 1977, except as provided in (b)1 above, floor area shall be the gross floor area of all floors combined;

3. For buildings erected before January 1, 1977, the floor area shall be the gross floor area of the largest floor;

4. Except as otherwise set forth in (b)1 through 3 above, habitable attics, habitable basements and garages not separated by fire walls shall be included in the gross floor area of the building;

5. Mezzanines and penthouses shall not be included in the gross floor area of the building.

(c) In any event, any new work undertaken in connection with an increase in size shall comply with the requirements of this chapter.

Amended by R.1988 d.389, effective August 15, 1988.

See: 20 N.J.R. 1026(a), 20 N.J.R. 2073(a).

Amended by R.1993 d.61, effective February 1, 1993.

See: 24 N.J.R. 1421(a), 25 N.J.R. 463(c).

Hardwired smoke detectors added.

Amended by R.1994 d.433, effective September 6, 1994 (operative January 1, 1995).

See: 26 N.J.R. 1910(a), 26 N.J.R. 3706(a).

Case Notes

Municipal order under zoning ordinance to remove sleeping trailers and disconnect utilities used by refinery repair crew proper exercise of police power; action not preempted by Occupational Safety and Health Act. *Twp. of Greenwich v. Mobil Oil Corp.*, 504 F.Supp. 1275 (D.N.J. 1981).

Permits required to ensure use of proper materials and construction methods; permit requirements not inconsistent with pollution control laws; sewerage authority obliged to obtain local permits and approval before beginning pumping station construction. *Shupack v. Manasquan River Regional Sewerage Authority*, 194 N.J.Super. 199, 476 A.2d 816 (App.Div.1984).

5:23-2.6 Change in use group

(a) Continuation of existing use: The legal use of any structure existing on the effective date of the regulations may be continued without change, except as may be specifically provided in these regulations or in any property or fire safety maintenance code, or minimum housing standard or regulation, adopted pursuant to law.

1. A certificate of continued occupancy shall be granted upon request, subject to this subchapter.

(b) Change in use: It shall be unlawful to make any change in the use group of any structure which would subject it to any special provision of the rules without the prior application for and issuance of a certificate of occupancy as herein provided.

1. A certificate of occupancy shall be issued provided such structure will meet the intent of the rules for the proposed new use group, and such change does not result in any greater hazard to public safety or welfare.

i. When the proposed new use group for an existing single family dwelling of use group R-3 or R-4 is as a bed and breakfast guest house, the intent of the provisions of the rules shall be met if the requirements of N.J.A.C. 5:23-9.8 are followed.

2. The provisions of N.J.A.C. 5:23-7 shall not apply to a change of use of a building of less than 10,000 square feet total gross enclosed floor area where there is no attendant construction or renovation work being performed.

(c) Part change in use: If a portion of the structure is changed to a new use group, and that portion is separated from the remainder of the structure with the required vertical and horizontal fire separation assemblies complying with the fire resistance rating in the building subcode, then only the construction involved in the change shall be made to conform fully to the requirements for the new use group, while the existing portion shall be made to comply only with the means of egress requirements of the regulations.

Amended by R.1985 d.16, effective February 4, 1985.

See: 16 N.J.R. 3073(b), 17 N.J.R. 275(a).

(a) Added text: "or fire safety" and "or minimum housing standard or regulation".

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.144, effective March 20, 1995 (operative July 1, 1995).

See: 26 N.J.R. 2698(a), 26 N.J.R. 3524(a), 27 N.J.R. 1180(a).

Amended by R.1995 d.611, effective December 4, 1995 (operative April 4, 1996).

See: 27 N.J.R. 3257(a), 27 N.J.R. 4884(a).

Case Notes

Civil rights action challenging township actions regarding use of property as church were not ripe for adjudication until township planning board decided site plan application and any need for variance. *Trinity Resources, Inc. v. Township of Delanco*, D.N.J.1994, 842 F.Supp. 782.

5:23-2.7 Ordinary repairs

(a) Ordinary repairs to structures may be made without application or notice to the construction official.

(b) Such repairs shall not include any of the following:

1. The cutting away of any wall, partition or portion thereof;
2. The removal or cutting of any structural beam or bearing support;
3. The removal or change of any required means of egress, or rearrangement of parts of a structure affecting the exitway requirements;
4. Any work affecting structural or fire safety;
5. Any work that will increase the nonconformity of any existing building or structure with the requirements of the regulations;
6. Addition to, or alteration, replacement or relocation of:
 - i. Any standpipe;
 - ii. Water supply, sewer, drainage, gas, soil, waste, vent or similar piping;
 - iii. Electrical wiring, other than wiring for a low voltage communication system in a one- or two-family dwelling; or
 - iv. Mechanical or other work affecting public health or general safety; or

7. Any work undertaken for the purpose of lead abatement.

Amended by R.1993 d.487, effective October 4, 1993.
See: 25 N.J.R. 2159(a), 25 N.J.R. 4592(a).
Amended by R.1993 d.580, effective November 15, 1993.
See: 25 N.J.R. 3692(a), 25 N.J.R. 5145(c).
Amended by R.1995 d.381, effective July 17, 1995.
See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a).

Case Notes

Municipal order under zoning ordinance to remove sleeping trailers and disconnect utilities used by a refinery repair crew proper exercise of police power; action not preempted by Occupational Safety and Health Act. *Twp. of Greenwich v. Mobil Oil Corp.*, 504 F.Supp. 1275 (D.N.J. 1981).

5:23-2.8 Installation of equipment

When the installation, extension or alteration of mechanical equipment, refrigeration, air conditioning or ventilating apparatus, plumbing, gas piping, electric wiring, heating system or any other equipment is specifically controlled by the provisions of this chapter, it shall be unlawful to use such equipment until a certificate of occupancy or certificate of approval, as the case may be, has been issued therefor by the construction official having jurisdiction. Use of elevator devices shall be subject to N.J.A.C. 5:23-12.9.

Amended by R.1991 d.509, effective October 7, 1991.
See: 23 N.J.R. 2236(a), 23 N.J.R. 3001(a).
Stylistic changes.
Amended by R.1996 d.323, effective July 15, 1996, (operative January 1, 1997).
See: 28 N.J.R. 2112(a), 28 N.J.R. 3549(a).

5:23-2.9 Variations and exceptions

(a) No variations or exceptions from the requirements of any subcode of these regulations may be made, except upon the following findings:

1. That strict compliance with any specific subcode provision, if required, would result in practical difficulty to such owner; and
2. That the exception, if granted, will not jeopardize the health, safety and welfare of intended occupants and the public generally.

(b) Except as may be otherwise specified in this chapter, no variations shall be granted from any of the requirements of N.J.A.C. 5:23-2, 4 or 5.

Amended 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).
Added (b).

5:23-2.10 Applications for variations

(a) An application for a variation pursuant to this section shall be filed in writing with the construction official and shall state specifically:

1. A statement of the requirements of the subcode from which a variation is sought;
2. A statement of the manner by which strict compliance with said provisions would result in practical difficulties;
3. A statement of the nature and extent of such practical difficulties; and
4. A statement of feasible alternatives to the requirements of the subcode which would adequately protect the health, safety and welfare of the occupants or intended occupants and the public generally.

Administrative Correction to (a): Changed "set" to "state".
See: 22 N.J.R. 2503(b).

5:23-2.11 Review of variation applications

Within 20 business days next succeeding the receipt by the construction official of the application, it shall be denied or granted by written order stating the reasons therefor. The application shall be deemed denied for purposes of appeal if no decision is forthcoming within such 20-day period. Records of all applications for variation, and actions taken thereon shall be available for public inspection at the enforcing agency during normal business hours.

5:23-2.12 Final decision on variations

The appropriate subcode official(s) shall make the final determination with respect to matters within their jurisdiction. The construction official shall notify the applicant of that determination. Whenever an application for a variation shall result in contradictory or inconsistent determinations by different subcode officials having jurisdiction pursuant to N.J.A.C. 5:23-3, the construction official shall rule as to which subcode official's determination shall be final, and shall notify the applicant of that ruling. Whenever the construction official shall be certified in a particular subcode, he may modify the determination of the subcode official.

5:23-2.13 Authority to grant variations

The enforcing agency with plan review responsibility shall have the sole authority to grant variations.

5:23-2.14 Construction permits—when required

(a) It shall be unlawful to construct, enlarge, alter or demolish a structure, or change the occupancy of a building or structure requiring greater strength, exitway or sanitary provision, or to change to a different use group, to install or alter any equipment for which provision is made or the installation of which is regulated by this chapter, or to undertake a project involving lead abatement in accordance with N.J.A.C. 5:17, without first filing an application with the construction official, or the appropriate subcode official where the construction involves only one trade or subcode, in writing and obtaining the required permit therefor.

Construction permit application and fee requirements under former N.J.A.C. 5:23-2.5; municipal requirement for payment of property taxes before issuance of permit invalid as preempted by legislation. *Home Builders League of South Jersey, Inc. v. Evesham Twp.*, 174 N.J.Super. 252, 416 A.2d 81 (Law Div.1980).

Construction permit applicant must provide assurances that prior approvals obtained. *Riggins v. Pinelands Commission*, 8 N.J.A.R. 441 (1985).

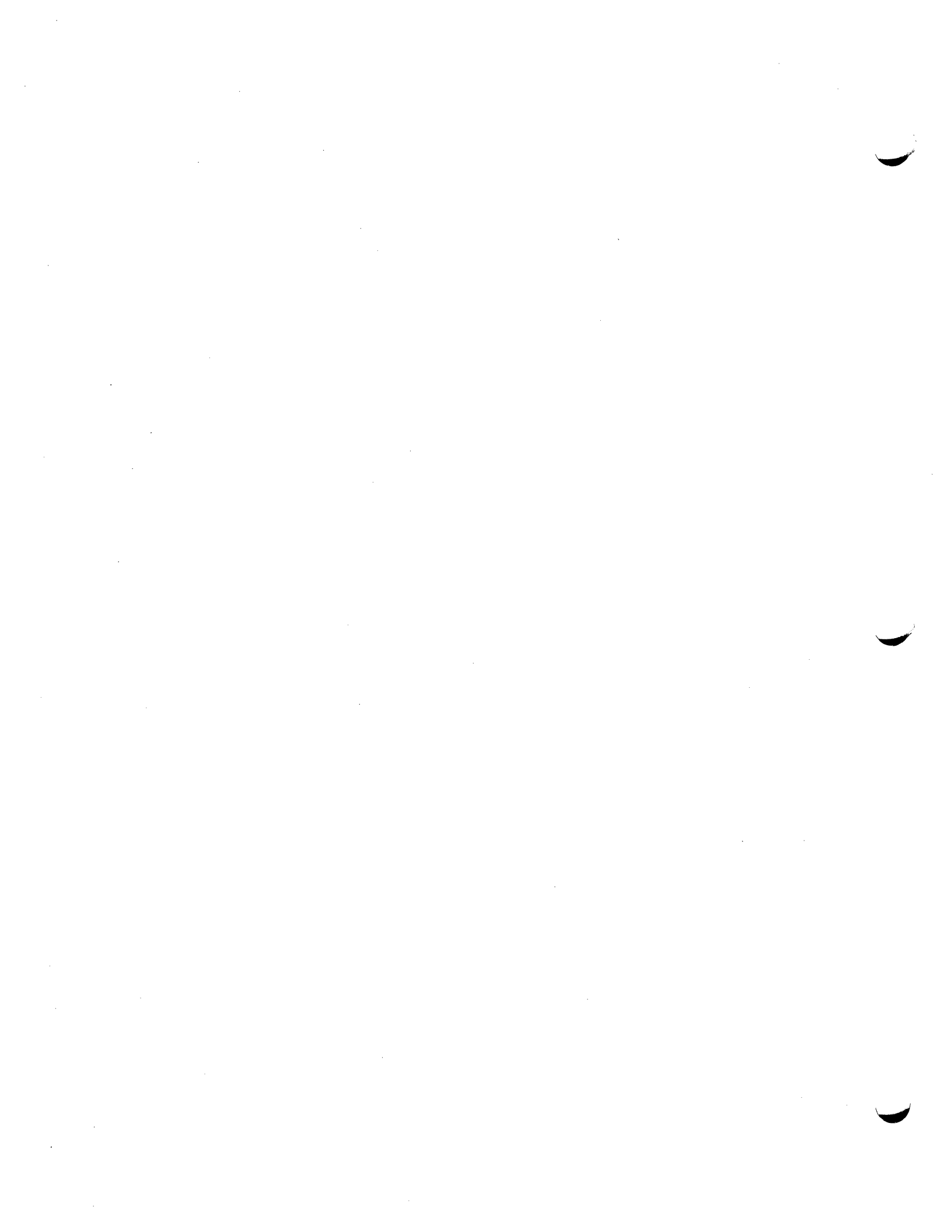
5:23-2.16 Construction permits—procedure

(a) Action on application: The construction official or the appropriate subcode official in the case of construction involving only one trade or subcode, shall examine or cause to be examined all applications for permits and amendments thereto, and approve or deny in whole or in part the application, within 20 business days. If the application is denied in whole or in part, the enforcing agency shall set forth the reasons therefor in writing. If an enforcing agency

fails to grant, in whole or in part, or deny an application within 20 business days, such failure shall be deemed a denial of the application for purposes of an appeal to the Construction Board of Appeals, unless such period of time has been extended with the consent of the applicant.

1. Exception: The construction official shall issue a permit for prototype plans for which a "prototype or master plan" permit has been previously issued in the same municipality, within three business days from application.

(b) Suspension of permit: Any permit issued shall become invalid if the authorized work is not commenced within 12 months after issuance of the permit, or if the authorized work is suspended or abandoned for a period of six months after the time of commencing the work.



(c) Previous approvals: The rules shall not require changes in the plans, construction or designated use of a building for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which shall have been actively prosecuted within six months after the operative date of the rules and completed with dispatch. This six months provision shall also apply to subsequent amendments.

(d) Signature to permit: The construction official shall attach his signature to every permit; or he may authorize a subordinate to affix such signature thereto. By doing so he shall certify that each responsible subcode official shall have reviewed and approved the application for permit.

(e) Approved plans: The construction official shall stamp or endorse in writing both sets of corrected plans approved, and one set of such approved plans shall be retained by him and the other set shall be kept at the building site, open to inspection of the construction official or his authorized representative at all reasonable times.

(f) Revocation of permits: The construction official may revoke a permit or approval issued under the provisions of this code in case of any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based.

(g) Approval of part: The construction official shall issue a permit for the construction of foundations or any other part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted, provided adequate information and detailed statements have been filed complying with all the pertinent requirements of this code. The holder of such permit for the foundations or other part of a building or structure shall proceed at his own risk with the building operation and without assurance that a permit for the entire structure will be granted.

(h) Posting of permit: A true copy of the construction permit shall be kept on the site of operations open to inspection during the entire time of prosecution of the work and until the completion of the same.

(i) Notice of start: At least 24 hours notice of start of work under a construction permit shall be given to the construction official.

(j) Conditions of permit: The issuance of the construction permit shall be conditioned upon the following:

1. The payment of appropriate fees;
2. That work will conform to the approved application, plans and specifications for which the permit has been issued including prior approvals and any approved amendments thereto;
3. That the permit is a license to proceed with the work and shall not be construed as authority to violate,

cancel or set aside any of the provisions of the regulations;

4. That the owner, his agent, contractor or other employees will assist the enforcing agency in its inspection work, if requested.

(k) Notice regarding wells: In the event that an application is made for a certificate of occupancy or certificate of approval for connection to a public water supply for a property either currently or previously served by a well not certified by a licensed well driller as having been sealed in accordance with N.J.A.C. 7:9-9, the construction official shall not issue the certificate until the certification by the licensed well driller or an irrigation well permit from the Bureau of Water Allocation has been submitted. In the event that no such certification or permit is submitted to the construction official within 15 days following either application for the certificate of occupancy or approval or connection to the public water supply, whichever comes first, the construction official shall give notice of the absence of a certification or permit to the Bureau of Water Allocation, New Jersey Department of Environmental Protection and Energy, CN 029, Trenton, NJ 08625.

1. Notice shall also be given by the construction official to the Bureau of Water Allocation in the event of any demolition activity found to have been undertaken without a permit at a building or premises currently or previously served by a well and in any other case in which no permit application for demolition has been made but the construction official becomes aware that a well has been, or is about to be, abandoned without having been sealed by a licensed well driller.

(l) Upon request of the local health department, the construction official shall supply copies of permits issued for lead abatement work.

Amended by R.1993 d.420, effective September 7, 1993.
See: 25 N.J.R. 2158(a), 25 N.J.R. 4072(a).
Amended by R.1995 d.381, effective July 17, 1995.
See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a).
Amended by R.1995 d.544, effective October 16, 1995.
See: 27 N.J.R. 2827(a), 27 N.J.R. 3933(a).

Case Notes

Construction permit could be voided by developer suspending construction for period of more than six months. *Palatine I v. Planning Bd. of Tp. of Montville*, 133 N.J. 546, 628 A.2d 321 (1993).

5:23-2.17 Demolition or removal of structures

(a) Service connections: Before a structure can be demolished or removed, the owner or agent shall notify all utilities having service connections within the structure, such as water, electric, gas, sewer and other connections. A permit to demolish or remove a structure shall not be issued until releases are obtained from all utilities that provided service to the property, stating that their respective service connections and appurtenant equipment, such as meters and

regulators, have been removed or sealed or plugged in a safe manner.

1. In the event that there is a well on the property that has been abandoned, or that will be abandoned in conjunction with the proposed demolition, a permit to demolish or remove a structure on that property shall not be issued until a certification has been obtained from a well driller licensed by the Department of Environmental Protection and Energy indicating that the well has been sealed in accordance with N.J.A.C. 7:9-9. If such certification is not presented within 15 days of the application for the permit, the construction official shall give notice of the absence of such certification to the Bureau of Water Allocation.

(b) Notice to adjoining owners: Only when written notice has been given by the applicant to the owners of adjoining lots and to the owners of wired or other facilities, of which the temporary removal may be necessitated by the proposed work, shall a permit be granted for the demolition or removal of a building or structure.

(c) Lot regulation: Whenever a structure is demolished or removed, the premises shall be maintained free from all unsafe or hazardous conditions by the proper regulation of the lot, restoration of established grades and the erection of the necessary retaining walls and fences in accordance with the provisions of the appropriate subcodes.

(d) Asbestos abatement: Before a structure can be demolished or removed, the owner or agent shall document that the requirements of USEPA 40 CFR 61 subpart M have been or shall be met. A permit to demolish or remove the structure shall not be issued until the owner or agent notifies the enforcing agency that all friable asbestos or asbestos-containing material that will become friable during demolition or removal has been or will be properly abated prior to demolition.

Amended by R.1993 d.198, effective June 7, 1993.
See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).
Amended by R.1993 d.420, effective September 7, 1993.
See: 25 N.J.R. 2158(a), 25 N.J.R. 4072(a).

5:23-2.17A Minor work

(a) The issuance of a permit shall not be required before minor work may proceed. The owner, or an architect or contractor acting on behalf of the owner, shall, however, provide notice of the work to the enforcing agency before work begins.

(b) Notice of work; application:

1. Notice of minor work shall be a personal or telephoned oral notice before work commences. This oral notice shall be provided to the enforcing agency between 9:00 A.M. and 5:00 P.M., Monday through Friday, except holidays. In those cases where the local enforcing agency is not open and available to receive notice at those times then notice shall be provided to the municipal clerk;

2. In addition to oral notice, the owner or his agent shall be required to file an application. The completed application with the fee shall be delivered in person or by mail to the enforcing agency, within five business days from the date of the oral notice.

(c) Minor work:

1. Minor work shall mean and include the construction or total replacement of any porch or stoop which does not provide structural support for any roof or portion of a building; the construction or alteration of any rooms within an existing one or two family dwelling, provided that no structural members are altered in any way; the removal and replacement of more than 25 percent of the exterior siding of a one or two-family dwelling;

2. Minor work shall also mean and include the replacement of any existing plumbing piping work with new and approved material of like capacity; the installation of drinking fountains and condensate drains in existing structures; the replacement of existing low pressure hot water heaters with new ones of like capacity; and the new installation of lavatories, water closets, tubs, showers, washers or dishwashers, and garbage disposers in existing space of one and two-family dwellings where the new installation of additional fixtures can be accommodated with no increase in the size of the water distribution system, water service or house drain;

3. Minor work shall also mean and include new electrical work incidental to the installation of air conditioning, equipment, clothes dryers, and ranges or ovens in one and two-family dwellings; the installation of five or less 110 or 220 volt receptacles or fixtures where existing circuits and/or available space circuits and service are adequate to support the load; the replacement of existing wiring with new wiring of the same capacity provided that the new wiring shall be of a type approved for the use by the code;

4. Minor work shall also mean and include the installation of any fire detection or suppression device in any one- or two-family dwelling; installation of a radon mitigation system in an existing detached one or two-family dwelling; the installation of a burglar alarm or security system in any structure and the installation of a low voltage communication system in any structure other than a one- or two-family dwelling;

5. Minor work shall not include lead abatement.

6. Minor work on elevator devices shall also mean and include work as outlined below and not involving any structural alteration to a building and as scoped within the applicable sections of Part XII of ASME A17.1 referenced in the building subcode:

i. Alteration to hoistway enclosures (ASME A17.1 Part XII, Rule 1201.1a, 1203.1a);

2. Notice of unsafe structure: If an unsafe or unsanitary condition is found in a building or structure, the construction official shall serve a written notice describing the building or structure deemed unsafe and specifying the required repairs or improvements to be made to render the building or structure safe and secure, or requiring the unsafe building or structure or portion thereof to be vacated or demolished within a stipulated time. Such notice shall require the person thus notified to immediately declare to the construction official his or her acceptance or rejection of the terms of the order. Such person may seek review before the Construction Board of Appeals within 15 days of receipt of the notice.

3. Restoration of unsafe structure: A building or structure condemned by the construction official may be restored to safe condition provided change of use or occupancy is not contemplated or compelled by reason of such reconstruction or restoration; except that if the damage or cost of reconstruction or restoration is in excess of 50 percent of its physical value, as defined and computed in accordance with this subchapter, exclusive of foundations, such structure shall be made to comply in all respects with the requirements for new construction. A certificate of occupancy shall be obtained prior to reoccupancy of the building or structure.

4. Posting notice of unsafe structure: If the person addressed with a notice of unsafe structure cannot be found within the municipality after diligent search, then such notice shall be sent by registered or certified mail to the last known address of such person, as on file with the office of the tax collector, and a copy of the notice of unsafe structure shall be posted in a conspicuous place on the premises; and such procedures shall be deemed the equivalent of personal notice.

5. Upon refusal or neglect of the person served with a notice of unsafe structure to comply with the requirements of the order to abate the unsafe condition, the construction official shall, in addition to any other remedies herein provided, forward the matter to the legal counsel of the jurisdiction for an action to compel compliance.

(b) Emergency measures:

1. When, in the opinion of the construction official and appropriate subcode officials, there is actual and immediate danger of failure or collapse of a building or structure or any part thereof which would endanger life, or when any structure or part of a structure has fallen and life is endangered by the occupation of the building or structure, the construction official is hereby authorized and empowered to order and require the occupants to vacate the same forthwith. He shall cause to be posted at each entrance to such building a notice reading as follows: This structure is unsafe and its use or occupancy has been prohibited by the construction official, and it shall be unlawful for any person to enter such building or struc-

ture except for the purpose of making the required repairs or of demolishing the same.

2. Temporary safeguards: When, in the opinion of the construction official, there is actual and immediate danger of collapse or failure of a building or structure or any part thereof which would endanger life, he shall cause the necessary work to be done to render such building or structure or part thereof temporarily safe, whether or not the legal procedure herein described has been instituted.

3. Closing streets: When necessary for the public safety, the construction official may temporarily close sidewalks, streets, buildings and structures and places adjacent to such unsafe structure, and prohibit the same from being used.

4. Emergency repairs: For the purposes of this section, the construction official shall employ the necessary labor and materials to perform the required work as expeditiously as possible.

5. Costs of emergency repairs: Costs incurred in the performance of emergency work shall be paid from the treasury of the jurisdiction on certificate of the construction official; and the legal authority of the jurisdiction shall institute appropriate action against the owner of the premises for the recovery of such costs.

Amended by R.1991 d.509, effective October 7, 1991.

See: 23 N.J.R. 2236(a), 23 N.J.R. 3001(a).

C.O. required prior to reoccupancy.

Amended 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).

Law Review and Journal Commentaries

Tort Claims Act—Landlords. P.R. Chenoweth, 138 N.J.L.J. No. 2, 77 (1994).

Case Notes

Civil rights action challenging township actions regarding use of property as church were not ripe for adjudication until township planning board decided site plan application and any need for variance. *Trinity Resources, Inc. v. Township of Delanco*, D.N.J.1994, 842 F.Supp. 782.

Mobile park owner that leased space to mobile home owners could not require residents to convert from oil heat to gas heat as condition of approving prospective purchases. *Garden Park Mobile Home Owners Ass'n v. Garden Park Associates*, 292 N.J.Super. 442, 678 A.2d 1191 (L.1996).

City, as landowner, did not have immunity from claim it negligently maintained buildings in dangerous condition, resulting in spread of fire to surrounding buildings. *Saldana v. DiMedio*, 275 N.J.Super. 488, 646 A.2d 522 (A.D.1994).

If activities of building inspector and public works director required discretionary decisions and were subject to qualified immunity, standard of liability would be whether decisions were palpably unreasonable or whether they merely failed to follow mandates of higher-up decisions. *Saldana v. DiMedio*, 275 N.J.Super. 488, 646 A.2d 522 (A.D.1994).

"Dangerous condition" for tort liability was satisfied with respect to surrounding buildings damaged by fire which spread from buildings on city-owned lots. *Saldana v. DiMedio*, 275 N.J.Super. 488, 646 A.2d 522 (A.D.1994).

Loss of housing which occurred when premises was evacuated for safety of tenants upon broken water main was a natural disaster that precluded payment of relocation benefits. *Union Gardens' v. Township of Montclair*, 95 N.J.A.R.2d (CAF) 85.

5:23-2.33 Service of notice

Except as is specifically provided for by the act with respect to stop construction orders, service of notices and orders pursuant to this section shall be upon the owner or the person specified as agent for receipt of same in the application for a permit or the person responsible for the work or in the case of unsafe structures upon any agent or person in control of the building. Service may be made by personal delivery or by leaving a copy at the dwelling house or usual place of abode of such person, with a competent member of his household of the age of 14 years or older than residing therein, or by any other method or upon any other person approved pursuant to Rules 4:4-4 and 4:4-5 of the New Jersey Supreme Court, or which is otherwise consistent with due process.

5:23-2.34 (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 board of appeals".

5:23-2.35 (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 "Applicant's right of appeal; procedure".

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 section 10 of the State Uniform Construction Code Act, an appeal in lieu of the appeal to the county, municipal or joint construction board of appeals may be made to the Division of Housing. The case shall be adjudicated before the Office of Administrative Law and the final decision shall be issued by the Commissioner. Such hearings shall be governed by the provisions of the Administrative Procedure Act (See N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. as implemented by N.J.A.C. 1:1), and the time provisions applicable to county or municipal boards.

(b) Any party in interest aggrieved by any decision made by a facility manager with respect to compliance with the Barrier Free Recreational Standards (N.J.A.C. 5:23-7.100 through 7.116) 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.

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

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

Added appeals to be made to the Division of Housing, cases to be heard by the OAL with final decision by the Commissioner. Also added APA cite.

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

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

Added (b).

Amended by R.1991 d.428, effective August 19, 1991.

See: 23 N.J.R. 1730(a), 23 N.J.R. 2500(d).

In (b), added codification 1 through 5. In (b)3, added "what corrective measures shall be required by owner or agency".

SUBCHAPTER 3. SUBCODES

5:23-3.1 Title; scope; intent

(a) This section of the regulations, adopted pursuant to authority of the State Uniform Construction Code Act and entitled "Subcodes," shall be known and may be cited throughout the regulations as "N.J.A.C. 5:23-3," and when referred to in this subchapter may be cited as "this subchapter."

(b) When used alone, the term "subchapter," "section," and so forth, refers to that portion of the regulations. When used in conjunction with the term "building subcode," "plumbing subcode" or "electrical subcode," and so forth, the term "article" or "section," and so forth, refers to that subcode.

(c) This subchapter shall control matters relating to:

1. The adoption of subcodes of the Uniform Construction Code.
2. Modifications to the subcodes adopted.
3. The organization of enforcement responsibilities.
4. The use of standards of accepted practice.
5. Approvals and interrelations.
6. The division of plan review responsibilities and State reserved activities; and
7. Procedures for adoption of future subcode amendments.

(d) This subchapter provides a uniform system of construction standards throughout the State through the adoption of model codes applicable throughout the State. Modifications made to the subcodes are for the purpose of providing a uniform, harmonious system of construction code interface and administration, and to resolve conflicts with preempting Federal and State legislation.

(e) Provisions concerning underground storage tanks, jointly enforced by the Department of Environmental Protection (DEP), are in N.J.A.C. 5:23-3.11B and in the DEP's rules at N.J.A.C. 7:14B.

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.

5:23-3.2 Matters covered; exceptions

(a) Except as is otherwise provided in (b), (c) and (d) below, the provisions of this subchapter shall apply uniformly throughout the State. Any standards other than those provided herein are void and of no effect.

(b) Rules concerning exceptions in health care facilities are as follows:

1. Construction and alteration of health care facilities shall be in accordance with this code and the standards imposed by the State Department of Health. The Department specifically adopts the "Guidelines for Construction and Equipment of Hospital and Medical Facilities" 1992-93 edition or current edition (American Institute of Architects Committee on Architecture for Health), as amended by N.J.A.C. 8:43G, as the uniform code of the State in all matters regulated by sections specified herein. In order to avoid conflict, section 503.3 of the building

subcode of the New Jersey Uniform Construction Code shall not govern with respect to health care facilities.

2. The Department of Health may adopt licensing standards for the physical plant and environment of health care facilities that supplement this code and the "Guidelines for Construction and Equipment of Hospital and Medical Facilities," although these standards may not be in conflict with these codes.

3. The publication "Guidelines for Construction and Equipment of Hospital and Medical Facilities" is available from The American Institute of Architects Press, 1735 New York Ave., N.W., Washington, D.C. 20006.

(c) Individual on-site water supply and sewage disposal systems shall be in accordance with N.J.S.A. 58:11-23 et seq., and N.J.A.C. 7:10-3.1 et seq. and N.J.A.C. 7:9-2.1 et seq.

(d) Rules concerning commercial farm buildings are as follows:

1. A commercial farm building means any building located on a commercial farm which produces not less than \$2,500 worth of agricultural or horticultural products annually which building's main use or intended use is related to the production of agricultural or horticultural products produced on that farm.

2. Buildings constructed in accordance with the provisions of this section and meeting the requirements of (d)1 above shall be classified as commercial farm buildings. For those provisions not covered by this section, commercial farm buildings shall comply with the construction code provisions applicable to Use Group S-2. Commercial farm buildings shall include, but not be limited to, the following: stall barns, milking parlors, poultry houses, horse arenas, packing houses for agricultural or horticultural commodities, farrowing houses, greenhouses, and buildings used for the storage of agricultural or horticultural products, farm machinery and farm equipment, or farm materials and supplies that are produced or used on the farm.

3. Pre-engineered grain bins, silos, manure handling equipment and impoundments used on a farm for the storage of agricultural commodities or by-products which are produced by or used on the farm shall not require a construction permit. However, all on-site construction work such as foundations and plumbing and electrical connections shall be subject to all requirements and inspections of any applicable subcode(s).

4. 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 307.8(1) and 307.8(2) of the

building subcode unless separated from the occupied area by appropriate fire resistance rated construction as prescribed in the building subcode.

5. 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 1024 of the BOCA National Building Code.

6. 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)9vii below.

7. 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.

8. 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 meets the fire resistance rating and fire separation distance as specified in section 507.2 of the building subcode.

ii. The height and area of a two story commercial farm building of any type of construction shall not be limited if the building meets the fire resistance rating and fire separation distance as specified in section 507.2 of the building subcode and is provided with an approved automatic fire suppression system throughout, conforming to the Uniform Construction Code.

iii. Two or more commercial farm buildings excepted under (d)8i and ii above may be constructed on the same lot, or on an owner's contiguous lots without meeting the fire separation distance between them specified in section 507.2 of the building subcode. However, the fire separation distance specified in section 507.2 of the building subcode must be maintained between a commercial farm building and any building not eligible for this exemption.

9. Commercial farm buildings exempted under (d)8i above shall meet the following requirements in lieu of those requirements specified in the subsections of Chapter 10, Means of Egress, of the BOCA National Building Code:

i. In lieu of the requirements of Section 1006.0, 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 Section 1010.0, one exit is required for each 15,000 square feet of floor area and fraction thereof;

iii. In lieu of the requirements of Section 1023.0, exit signs must be posted. Exit signs are not required to be illuminated;

iv. The provisions of section 1024.0 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)5 above.

v. In lieu of the requirements of section 1008.0, 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.

10. Site plans signed and sealed by a registered architect or a licensed engineer, pursuant to N.J.A.C. 5:23-2.15(e)1vii, 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).

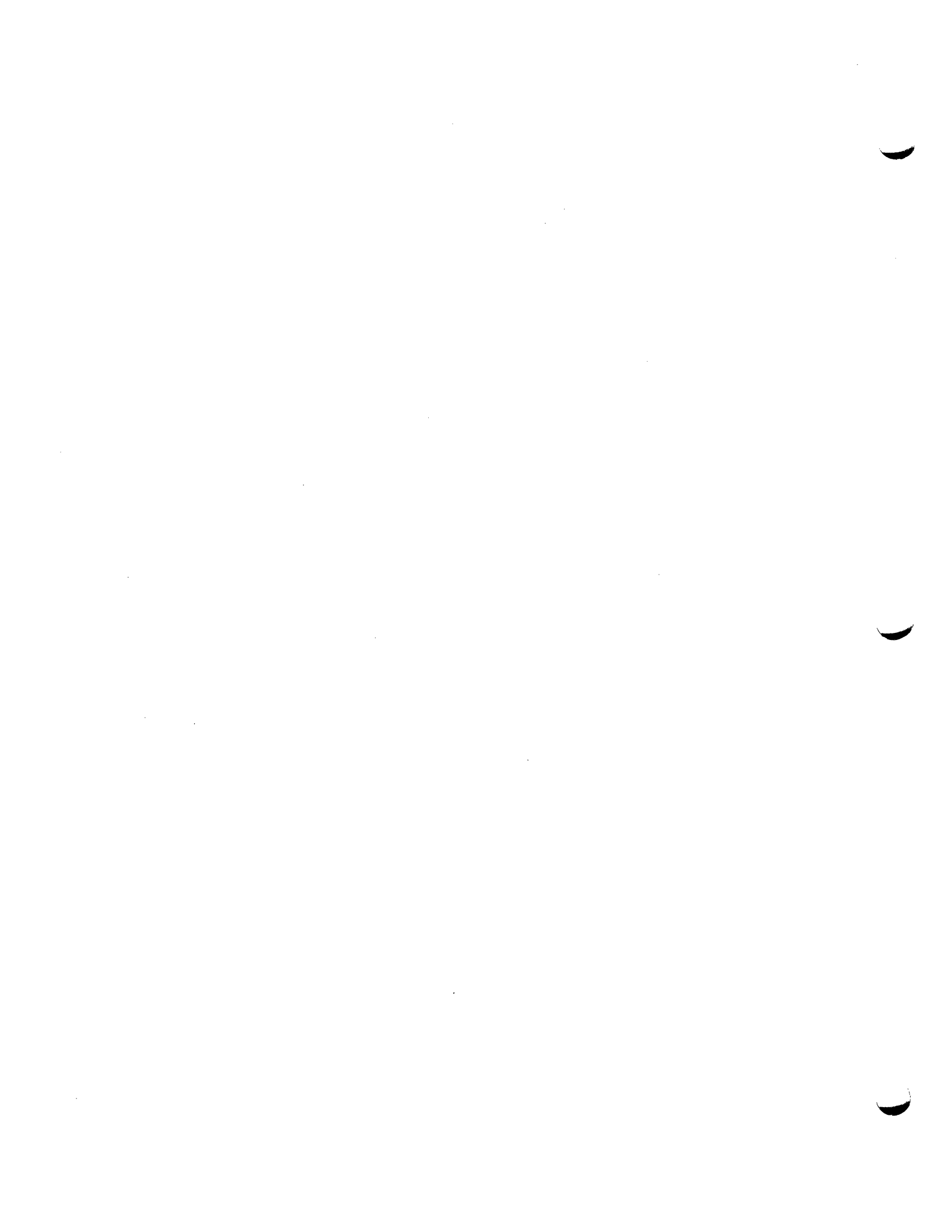
Inserted (d)5i; in (d)6vi, amended N.J.A.C. reference; in (d)8, inserted reference to construction type and inserted “, except as follows.”; deleted (d)8i; recodified former (d)8i(1) through (3) as (d)8i through iii; inserted new (d)9iv; recodified former (d)9iv through vi as (d)9v through vii; and recodified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

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 and other State agencies, 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 used in the erection, addition to, alteration, repair, removal, demolition, installation of service equipment, and the location, use and occupancy of all buildings and structures except as may be otherwise specifically provided for in the regulations, including but not limited to:

1. Applications, certificates and permits: Such official(s) shall review applications for permits for the erection and alteration of buildings and structures; indicate approval or denial to the construction official; and inspect the premises for which such permits have been issued and enforce compliance with the provisions of the regulations.

2. Notices and orders: Such official(s) shall issue all necessary notices or orders to remove illegal or unsafe conditions; to require the necessary safeguards during construction; and to insure compliance with all requirements for the safety, health and general welfare of the public.



3. Inspections: Such official(s) shall make all the required inspections, and all reports of such inspections shall be in writing and certified by them or they may engage such expert opinion as he may deem necessary to report upon unusual technical issues that may arise, subject to the approval of the construction official and appointing authority.

4. Enforcing agency records: Such official(s) shall assist in the keeping of official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued as may be required by the construction official.

5:23-3.4 Responsibility

(a) Responsibility for the enforcement of specific provisions of the building subcode shall be as follows:

1. Plan review functions of sections 402.0 through 406.0, 408.0 through 420.0; Chapters 7, 8, and 10; sections 1506.0, 1511.0, 2603.0; section 2114.0, and Chapter 28; sections 3006.0 through 3011.0 for elevator devices not accessible to the general public in structures classified as Use Groups R-3, R-4, or in R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public, and 3103.0, 3104.0, 3106.0, 3305.0 and 3406.0 shall be enforced jointly by the building subcode official and the fire protection subcode official.

i. Plan review functions of sections 3006.0 through 3011.0 for elevator devices in any Use Group other than R-3, R-4, or in R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public, and for elevator devices that are accessible to the general public in structures classified as Use Groups R-2, R-3 or R-4, shall be enforced jointly by the building, elevator, and fire protection subcode officials.

2. Plan review functions of sections 407.0 and 421.0 shall be enforced exclusively by the building subcode official.

3. Plan review sections of Chapter 9 shall be enforced exclusively by the fire protection subcode official.

4. Construction inspection functions of sections 402.0 through 402.9, 402.14 through 402.15.1, 402.15.3 through 421.0; Chapters 7, 8, and 10; and sections 1506.0, 1511.0, 2114.0, 2603.0, 3007.1, 3007.2, 3007.4 through 3007.7, 3008.0, 3010.1 through 3010.2.1, 3010.2.3, 3010.4, 3011.1, 3011.2, 3103.0 and 3104.0 shall be enforced exclusively by the building subcode official.

5. Construction inspection functions of sections 402.10 through 402.13 and section 402.15.2, Chapter 9 and Chapter 28; and sections 3007.3, 3010.2.2, 3011.2.1, 3011.2.2 and 3305.0 shall be enforced exclusively by the fire protection subcode official.

6. Construction inspection functions of sections 3006.0, 3009.0, 3010.3 and 3010.5 shall be enforced exclusively by the elevator subcode official.

7. Section 3004.2 shall be enforced exclusively by the elevator subcode official.

8. In the event of conflicting or inconsistent interpretation or application of this subcode between the two officials, the construction official shall rule as to which interpretation or application shall be followed.

9. All remaining articles and sections of the building subcode shall be enforced exclusively by the building subcode official.

(b) Responsibility for enforcement of the plumbing subcode shall be the exclusive province of the plumbing subcode official.

(c) Responsibility for the enforcement of specific provisions of the electrical subcode shall be as follows:

1. Plan review functions of article 300-21; article 450, part C; chapter 5; and article 760 shall be enforced jointly by the electrical subcode official and the fire protection subcode official.

2. Plan review functions of article 620 for elevator devices not accessible to the general public in structures classified as Use Group R-3, R-4, or in R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public, shall be enforced by the electrical subcode official.

i. Plan review functions of article 620 for elevator devices in any Use Group other than R-3, R-4, or in R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public, and for elevator devices that are accessible to the general public in structures classified as Use Groups R-2, R-3 or R-4, shall be enforced jointly by the elevator and electrical subcode officials.

3. Construction inspection functions of article 300-21; article 450, part C; chapter 5; and article 760 shall be enforced exclusively by the electrical subcode official.

4. Construction inspection functions of article 620 for entire parts A, B, E and H, and of part C (except section 620-22), part D (except section 620-38), section 620-51(b) of Part F, part J (except section 620-85), and part K (except section 620-101(b), for elevator devices in any Use Group other than R-3, R-4, or in R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public shall be enforced exclusively by the elevator subcode official.

i. For elevator devices not accessible to the general public in structures classified as Use Group R-3, R-4, or in R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public, construction inspection functions of arti-

cle 620 in its entirety shall be the sole responsibility of the electrical subcode official.

5. Construction inspection functions of sections 620-22, 620-38 (for electrical equipment and materials only), sections 620-51 and 620-51(a) of part F, entire part G, Section 620-85 and section 620-101(b), shall be enforced exclusively by the electrical subcode official.

6. In the event of conflicting or inconsistent interpretations or application of this subcode between the two officials, the construction official shall rule as to which interpretation or application shall be final.

7. All remaining chapters and articles of the electrical subcode shall be enforced exclusively by the electrical subcode official.

(d) Responsibility for enforcement of the fire protection subcode shall be the exclusive province of the fire protection subcode official except as is otherwise provided in (a), (c) and (f).

(e) Responsibility for enforcement of specific provisions of the energy subcode shall be as follows:

1. Chapters 3 and 4 of the BOCA National Energy Conservation Code and Sections 8, 9, 10, and 13 of ASHRAE/IES 90.1-1989 shall be enforced exclusively by the building subcode official.

2. Chapter 5 of the BOCA National Energy Conservation Code and Section 11 of ASHRAE/IES 90.1-1989 shall be enforced exclusively by the plumbing subcode official.

3. Chapter 6 of the BOCA National Energy Conservation Code standard LEM-1 and Sections 5, 6, 7, and 12, of ASHRAE/IES 90.1-1989 shall be enforced exclusively by the electrical subcode official.

4. Plan review and construction inspection functions for structures submitted under Chapter 7 shall be reserved to the respective subcode officials as delineated above.

5. The construction official shall coordinate the plan review and construction inspection functions of the subcode officials.

(f) Responsibility for enforcement of specific provisions of the mechanical subcode shall be as follows:

1. Chapters 3, 12 and 14 and sections M-901.0, M-903.3, M-905.1, M-905.3, M-905.4, M-908.0 and M-910.0: Plan review functions shall be enforced jointly by the building and fire protection subcode officials. Construction inspection functions shall be enforced exclusively by the Building subcode official.

2. Chapters 4, 5, and 10: Plan review and construction inspection functions shall be enforced exclusively by the fire protection subcode official.

3. Chapters 6, 7, 8 and 13 and sections M-903.1, M-903.2, M-903.4 through M-903.9, M-904.0, M-905.2, M-906.0, M-909.0, M-911.0 and M-912.0: Plan review and construction inspection functions shall be enforced exclusively by the plumbing subcode official.

4. Chapter 11: Plan review functions shall be enforced jointly by the building and fire protection subcode officials; construction inspection functions shall be enforced exclusively by the fire protection subcode official.

5. Chapter 15: Plan review functions shall be enforced by the Department of Community Affairs, and construction inspection functions shall be enforced by the fire protection subcode official.

6. Chapter 16: Plan review and construction inspection functions shall be enforced exclusively by the building subcode official.

7. Chapter 18: Plan review functions shall be enforced jointly by the building and plumbing subcode officials; construction inspection functions shall be enforced by the plumbing subcode official.

(g) Responsibility for enforcement of the indoor air quality subcode shall be the exclusive province of the building subcode official, except as otherwise specified in N.J.A.C. 5:23-3.11(h).

(h) Responsibility for enforcement of specific provisions of the radon hazard subcode shall be as set forth at N.J.A.C. 5:23-10.3.

(i) Enforcement of the elevator safety subcode shall be the sole responsibility of the elevator subcode official, unless otherwise specified in N.J.A.C. 5:23-12.

(j) A mechanical inspector employed by the Department or by a municipality, and so assigned by the construction official, shall have responsibility for enforcement of all 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 Use Group R-3 or R-4 structures.

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).

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 article 2 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) Periodic inspections: The building subcode official or fire protection subcode official may periodically inspect all existing buildings and structures, except one and two-family dwellings, for compliance with the regulations in respect to posting; or they may accept the report of such inspection from an authorized licensed professional engineer or architect; and such inspection and report shall specify any violation of the requirements of the regulations in respect to the posting of floor load, occupancy load and use group of the building.

(e) Identification: Any building official or fire protection official making periodic inspections, shall present personal identification as provided by the municipality.

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.

5:23-3.6 Standards; accepted practice

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

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.

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 nonconforming materials

(a) Approvals: Except as otherwise provided in N.J.A.C. 5:23-3.8, the appropriate subcode official may approve the use of fixtures, appurtenance, materials and methods of a type not conforming with the requirements of, nor expressly prohibited by, the regulations after determination that such fixture, appurtenance, material or method is of such design or quality, or both, as to appear to be suitable and safe for the use for which it is intended. A record of such approvals shall be maintained and shall be available to the public.

1. Any person desiring to install or use a fixture, appurtenance, material or method of a type not conforming with the requirements of, nor expressly prohibited by, the regulations shall, prior to such installation or use, submit to the appropriate subcode official such proof as may be required to determine whether such fixture, appurtenance, material or method is of such design or quality, or both, as to appear to be suitable and safe for the use for which it is intended.

(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 pro-

posed 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.

5:23-3.8 Departmental approval of nonconforming materials

(a) Approval: Whenever the commissioner shall approve any fixture, appurtenance, material or method, such shall be binding and accepted in each municipality.

(b) Notice: Notice of intention to approve any such fixture, appurtenance, material or method shall be published in the New Jersey Register at least 45 calendar days prior to its final approval. Thereafter, notice of final approval, stating operative date, shall be published in the New Jersey Register.

(c) Prospective effect: Any approval issued pursuant to this section shall be prospective in nature and shall not alter the ruling of a subcode official already rendered in a specific instance relating to a specific permit or structure.

(d) The Department shall have exclusive authority to approve systems for indirect apportionment of heating costs in multiple dwellings.

Amended by R.1992 d.390, effective October 5, 1992.
See: 24 N.J.R. 1844(a), 24 N.J.R. 3515(b).
Exception added at (d).
Amended by R.1995 d.544, effective October 16, 1995.
See: 27 N.J.R. 2827(a), 27 N.J.R. 3933(a).

5:23-3.8A 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 Electric Code (sections 90-6, 110-2, 110-3, and 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), or Factory Mutual (FM), etc.

3. Plumbing materials/supplies:

i. All purpose solvent cement;

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.

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)1i 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).

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. 5:29.

(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 reference 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).

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) The Department of Community Affairs shall be the sole plan review agency for the following structures:

1. Electrical generating stations and substations, including nuclear;
2. Incineration plants;
3. Solid waste disposal plants;
4. Class I and Class II structures where required in accordance with N.J.A.C. 5:23-4.3A and N.J.A.C. 5:23-4.24(a)2ii;
5. Casino hotels;
6. Public mausoleums, vaults, crypts and other structures intended to hold or contain human remains; and
7. All premanufactured systems for Class I and Class II structures, other than those authorized to be approved by an inplant inspection agency licensed to perform Class I and Class II plan review as provided in N.J.A.C. 5:23-4A.10, and all on-site installation of Class I and Class II premanufactured construction within the jurisdiction of a local enforcing agency that is not a Class I or Class II agency, as the case may be.

(b) The Department of Community Affairs shall be the sole plan review agency for elevators, escalators, and moving walks in Use Groups other than R-3, R-4, or R-2 structures 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 approved plans.

(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 department 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- 7.2 through 7.18). 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.

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).

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 Enforcement activities reserved to other State agencies

(a) The Department of Health shall be the sole plan review agency for all health care facilities as defined herein:

1. A permit shall not be issued until the required plans for the building or structure have been stamped or signed and released by the appropriate official of the Department of Health. The Department of Health shall insure that the municipal enforcing agency receives a copy of the approved plans;

2. The Department of Health shall 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 projects for which the municipality has granted a permit;

3. Whenever the Department of Health shall determine that there exists a violation of these regulations, or of the regulations of the Federal government pertaining to health care facilities, it shall take appropriate action under these regulations or the regulations of the Federal government and shall provide the municipality with copies of all notices, orders and other applicable information. Whenever the municipality shall determine that there exists a violation of the regulations pertaining to health care facilities, it shall take appropriate action under the regulations and shall provide the Department of Health with copies of all notices, orders and other applicable information. The Department of Health and any municipality may consolidate and take steps to expedite any matter of which they jointly complain, but in no event shall a health care facility be sanctioned twice for the same violation;

4. In any case where the Department of Health shall notify a municipality that a violation exists, no certificate of occupancy may issue until the Department of Health shall notify the municipality that the violation has been abated.

(b) The Department of Labor shall be the sole enforcing agency for the following work:

1. Amusement rides;

2. Ski lifts;
3. High pressure boilers;
4. Refrigeration systems;
5. Pressure vessels;
6. Liquefied petroleum gas installations, except one and two-family residential (building subcode use group R-3) which jurisdiction is retained by the municipal enforcing agency.

(c) The Department of Education shall ensure that the following types of projects comply with the Department of Education, Bureau of Facility Planning Services' rules at N.J.A.C. 6:22 and that the projects meet the standards for educational adequacy therein:

1. New school buildings;
2. Additions to existing school buildings;
3. Alterations changing the total number of units, size or type of any instructional space;
4. Alterations changing office space that require alterations to instructional space;
5. Alterations to locker, weight or game rooms, or to field houses with locker facilities;
6. Alteration of athletic fields or tracks and field areas;
7. Installations of mobile units; or
8. Any site or building change or alteration for the purpose of making the site and school barrier-free pursuant to N.J.A.C. 5:23-7 and accessible to the handicapped pursuant to section 504 of the Federal Rehabilitation Act of 1973.

(d) In lieu of obtaining construction code plan review approval from the State Department of Education, a school district, upon notice to the State Department of Education, may secure construction code plan review approval from any 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.
2. When a review for educational adequacy is necessary, review and approval shall be obtained from the State Department of Education prior to obtaining a construction code plan review, whether this review is performed by the State Department of Education or by a municipal code enforcing agency.
3. The municipal code enforcing agency performing the construction code plan review may require the payment of any municipal plan review fees.

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

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

6. Amendments to approved plans and specifications for reasons other than educational adequacy shall be submitted for review and approval to the State Department of Education or the municipal code enforcing agency, whichever originally approved the plans.

7. Release of the plans by the State Department of Education or the municipal code enforcing agency, as the case may be, shall not preclude the enforcing agency doing the inspection from requiring subsequent correction of any errors in the plans or from issuing a stop-work order in the event of a violation of the code. In any such case, the enforcing agency doing the inspection shall notify the agency that approved the plans and the Department of Community Affairs.

(e) The State Department of Education, or the municipal code enforcing agency providing construction code plan approval, shall be responsible for enforcing the following Uniform Construction Code enhancements in public school buildings:

1. All doors equipped with latching devices in buildings of use group E or portions of buildings used for assembly for educational purposes and which serve rooms or spaces with an occupant load greater than 50 shall be equipped with approved panic hardware.
2. Guardrails along stair runs and landings shall be at 42 inches above the tread nosing without exception.
3. All heating appliances intended to supply domestic hot water or hot water/steam for space heating shall not be located in any instructional room in use group E, as designated in the Building Officials Code Administrators National Code (BOCA) except for industrial arts and vocational education shops and laboratories.
4. An electric solenoid key-operated gas shut-off switch shall be installed in all gas supply lines to all instructional rooms, laboratories, shops or other spaces in use group E where gas is used by students.
5. An automatic fire detection system shall be installed in all new buildings of use group E (educational), as designated in the BOCA National Building Code/93 Section 917.4.1 and in accordance with applicable National Fire Protection Association standards. The system shall utilize:

i. Combination fixed-temperature and Rate of Rise devices in classrooms and other spaces not covered in (e)5ii below;

ii. Devices to detect abnormal visible smoke densities or gaseous products of combustion are required in corridors and exit stairs;

iii. An automatic fire suppression system and, in areas where suppression is deleted, automatic detection devices; or

iv. A combination of the above three types of detection devices except that a fixed-temperature detector shall be permitted in approved locations, such as in a boiler room or incinerator.

6. Manual fire alarm boxes, in addition to BOCA/93 Section 917.5 requirements as amended, shall be provided in the natural path of escape from fire, near each exterior door from the corridor, kitchen, heater room and other exterior exits that are required to serve 50 or more persons. Additional fire alarm boxes shall be located in the main office, stage, at each stairway entrance from a corridor or place of assembly and near one exterior exit in each section of a place of assembly. It shall not be necessary to traverse more than 200 feet of unobstructed horizontal distance on the same floor in order to reach a fire alarm box.

7. 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 two 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.

8. 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 BOCA Basic National Mechanical Code as amended.

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).

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 nonresidential building;

3. Tanks with a capacity of 2,000 gallons or less 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).

5:23-3.12 Amended rules

(a) Whenever the commissioner shall make any modification to the regulations, notice of same shall be published in the New Jersey Register.

(b) Whenever a model code organization, the code of which has been adopted by the commissioner as a subcode, shall issue a new edition of such code, the commissioner shall make such new edition operative as soon as is practicable and consistent with its availability from the model code organization.

1. The commissioner shall take such steps as are necessary and appropriate to inform the public that such editions have been adopted by the model code organization, and of the date upon which they become operative in New Jersey. Notice shall include publication of a notice in the New Jersey Register and mailing a copy of such notice by regular mail to each enforcing agency and board of appeals. The notice and the mailing to the enforcing agency shall state that such editions have been adopted by the model code organization and give notice as to where copies of the full text can be obtained.

Amended by R.1995 d.544, effective October 16, 1995.
See: 27 N.J.R. 2827(a), 27 N.J.R. 3933(a).

5:23-3.13 State-sponsored code change proposals

(a) Any municipality, other political subdivision, or agency of the State seeking to submit a "State-sponsored code change proposal" shall do so not less than 90 days prior to the code change meeting of the model code adoption agency for which the amendment is proposed.

(b) 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 official proposing the code change, the agency or political subdivision represented, the text of the amendment suggested and an explanation of the amendment together with any technical justification deemed necessary by the proponents.

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

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

(e) Whenever a model code change hearing is scheduled so as not to permit 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.

5:23-3.14 Building subcode

(a) Rules concerning the building subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c.217, the Commissioner hereby adopts the model code of the Building Officials and Code Administrators International, Inc., known as the "BOCA National Building Code/1993," including all subsequent revisions and amendments thereto. This code is hereby adopted by reference as the building subcode for New Jersey subject to the modifications stated in (b) below.

i. Copies of this code may be obtained from the sponsor at: BOCA, International, 4051 W. Flossmoor Road, Country Club Hills, Illinois 60478-5795.

ii. "The BOCA National Building Code/1993," including all subsequent revisions and amendments thereto, may be known and cited as the "building subcode."

2. Any references to the mechanical code, plumbing code, CABO One and Two Family Dwelling Code, CABO A117.1 standard (including reference to chapter 11) or NFPA 70 (including reference to Chapter 27) listed in Chapter 35 shall be considered a reference to the appropriate adopted mechanical, plumbing, one and two family dwelling or electrical subcode referenced in N.J.A.C. 5:23-3 or to the barrier-free subcode, N.J.A.C. 5:23-7, as appropriate.

(b) The following chapters of the building subcode are modified as follows:

1. Chapter 1 of the building subcode, entitled "Administration," is deleted in its entirety.

2. The following amendments are made to Chapter 2 of the building subcode, entitled "Definitions," section 202.0 general definitions:

i. The term and definition of "Additions" is deleted;

ii. The definition of the term "Approved" is amended to delete the phrase "or other authority";

iii. The phrase and definition of "Approved material, equipment and methods" is deleted;

iv. The term and definition of "Approved rules" is deleted;

v. The following term and definition are added: "Attic, habitable: A habitable attic is an attic which has a stairway as a means of access and egress and in which the ceiling area at a height of 7½ feet (2235 mm.) above the attic floor is not more than one-third the area of the next floor below.";

vi. The definition of the term "Building" is deleted and replaced by the definition at N.J.A.C. 5:23-1.4;

vii. The term and definition of "Building, existing" is deleted;

viii. The term and definition of "Building line" is deleted;

ix. The term and definition of "Building service equipment" is deleted and replaced by the term and definition of "equipment" at N.J.A.C. 5:23-1.4;

x. The definition of the term "Code official" is deleted and is redefined herein and throughout the subcode as the "building subcode official" as defined in N.J.A.C. 5:23-1.4 unless indicated otherwise;

xi. The term and definition of "Equipment, existing" is deleted;

xii. The term and definition of "Facility" is deleted;

xiii. The terms and definitions of "hereafter" and "heretofore" are deleted;

xiv. The term and definition of "Jurisdiction" is deleted;

xv. The term and definition of "Occupancy, change of" is deleted;

xvi. The definition of "Owner" is deleted and replaced by the definition at N.J.A.C. 5:23-1.4;

xvii. The term and definition of "Permit" is deleted;

xviii. The term and definition of "Person" is deleted;

xix. The definition of "Physically Disabled Person" is deleted and replaced with the definition of "Physically Handicapped" at N.J.A.C. 5:23-6;

xx. The term and definition of "Repair" is deleted;

xxi. The term and reference for "Site" is deleted;

xxii. The definition of the term "Structure" is replaced by the definition at N.J.A.C. 5:23-1.4;

xxiii. The term and definition "Structure, existing" is deleted;

xxiv. The term and reference for "Technically Infeasible" is deleted;

xxv. The term and definition of "Writing" is deleted;

xxvi. The term and definition of "Zoning" is deleted.

3. The following amendment is made to Chapter 3 of the building subcode entitled "Use or Occupancy."

i. Section 310.6 is amended to delete the phrase "not more than three stories in height."

4. The following amendments are made to Chapter 4 of the building subcode, entitled "Special Use and Occupancy":

i. Section 415.1 is amended to replace the phrase "authority having jurisdiction" with the term "construction official";

ii. Section 416.11 is deleted;

iii. Section 420.0 is amended to replace the terms "Mobile Units," "Unit" and "Units" with the terms "Manufactured Homes," "Home" and "Homes" respectively;

iv. Sections 420.1 and 420.2 are deleted in their entirety;

v. Section 421.3 is amended to replace the term "code official" with the term "construction official";

vi. Section 421.6 is amended to end with the phrase "in accordance with the plumbing subcode";

vii. Section 421.6.1 is deleted;

viii. Section 421.6.2 is amended to end with the phrase "in accordance with the plumbing subcode";

ix. Section 421.9.3 is amended to replace the term "governing body" with the term "construction official."

5. The following amendment is made to Chapter 8 of the building subcode, entitled "Interior Finishes":

i. Sections 805.2.1 and 807.2.2 are amended to replace the term "code official" with the term "fire protection subcode official."

6. The following amendments are made to Chapter 9 of the building subcode, entitled "Fire Protection Systems":

i. References to the term "code official" shall be replaced with the term "fire protection subcode official."

ii. Section 901.4 is deleted in its entirety;

iii. Section 903.1 is amended to replace the term "department" with the phrase "enforcement agency responsible for plan review," and in the note, to replace the word "Since" with the term "If";

11. Parts VI and VII pertaining to Electrical and Energy Conservation are deleted. Requirements for electrical and energy conservation shall be provided in accordance with the respective subcodes, Electrical per N.J.A.C. 5:23-3.16, and Energy per N.J.A.C. 5:23-3.18.

New Rule, R.1985 d.324, effective July 1, 1985.

See: 17 N.J.R. 861(c), 17 N.J.R. 1646(a).

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

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

Model subcode revisions.

Amended by R.1988 d.388, effective August 1, 1988.

See: 20 N.J.R. 1130(a), 20 N.J.R. 2073(b).

Added (c).

Amended by R.1990 d.253, effective May 21, 1990.

See: 22 N.J.R. 909(b), 22 N.J.R. 1554(a).

References to 1989 Supplement added; (b)1ii(5), 2, 4, 8 and 9

amended; (b)5, 6 and 7 added; (c) deleted; Table R-201.2 added.

Amended by R.1991 d.571, effective November 18, 1991.

See: 23 N.J.R. 2619(a), 23 N.J.R. 3444(b).

Added new (c).

Amended by R.1992 d.208, effective May 18, 1992.

See: 24 N.J.R. 680(a), 24 N.J.R. 1879(a).

Code provisions applicable to flood hazard zones clarified.

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

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

SUBCHAPTER 4. ENFORCING AGENCIES; DUTIES; POWERS; PROCEDURES

5:23-4.1 Title; scope; intent

(a) This subchapter, adopted pursuant to authority of the State Uniform Construction Code Act and entitled "Enforcing agencies; duties; powers; procedures", shall be known and may be cited through the regulation as N.J.A.C. 5:23-4," and when referred to in this part of the regulations, may be cited as "this subchapter".

(b) Unless otherwise specifically provided, all references to article or section numbers or to provisions not specifically identified by number, shall be construed to refer to such article, section or provision of this subchapter.

(c) This subchapter and N.J.A.C. 5:23-4A, 4B, 4C shall control matters related to: the structure, organization, and procedures of municipal, State, and interlocal enforcing agencies; their interrelationships; the structure, organization, and procedures of boards of appeal; the approval of premanufactured construction; private enforcing agencies; and the establishment of fees.

(d) This subchapter seeks to provide an efficient administrative structure for enforcing agencies and boards of appeal, through which delay in the construction process can be reduced, uniformity of systems and procedures encouraged, and the public health and safety protected. Such intent shall be given full effect in the construction of any specific provision of this subchapter.

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 to (c).

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

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

Law Review and Journal Commentaries

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

Case Notes

Citation to former N.J.A.C. 5:23-2.9 on enforcement. Newark Health Welfare Dept. v. Rogers, 179 N.J.Super. 389, 432 A.2d 135 (Ch.Div.1981).

City must proceed against property through its own ordinances rather than seek common law public nuisance injunction where no local board of health established and nuisance not proven. Newark Health & Welfare Dept. v. Rogers, 179 N.J.Super. 389, 432 A.2d 135 (Ch.Div. 1981).

5:23-4.2 Matter covered; exceptions

(a) Except as otherwise provided in subsection (b) below, the provisions of this subchapter shall apply to all agencies with an enforcement responsibility under the act and regulations.

(b) Rules concerning exceptions are:

1. Interstate agencies: This subchapter shall not apply to agencies created by Interstate Compact. Such agencies shall administer and enforce the subcodes, under such rules and regulations as they may develop, pursuant to authority of the State Uniform Construction Code Act, and any other applicable law of this State.

2. Department of Education:

i. When final plans for the construction or alteration of a public school facility have been submitted to the Department of Education, and approved under the standards for facility adequacy set forth at N.J.A.C. 6:22, and have been submitted for review to, and released by, a construction official of an enforcing agency, such plans shall also be filed with the enforcing agency of the municipality in which the public school is located.

ii. The enforcing agency shall have the right to inspect any construction or alteration of a public school facility for the purpose of advising the board of education of the school district in which the public school facility is being constructed and the Commissioner of Education of any violations of the standards for facility adequacy set forth at N.J.A.C. 6:22; the educational enhancements requirements set forth at N.J.A.C. 5:23-3.11A(d); or any other provision of the State Uniform Construction Code. The advice of the enforcing agency shall be binding upon the district board of education, except that an appeal to the Department of Education shall be available to the district board of education.

(c) Rules concerning matters not specifically provided for are:

1. Any type or class of enforcing agency or board of appeals, the procedures of which are developed in this subchapter, may individually adopt further rules for their internal governance, not inconsistent with any specific provision of this subchapter, or with its stated intent.

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; reference to N.J.A.C. 6:22 added.

5:23-4.3 Municipal enforcing agencies—establishment

(a) Notice of intention to establish:

1. Any municipality seeking to establish and operate an enforcing agency, pursuant to the act and the regulations, shall first notify the department of its intent to establish such an agency by registered and certified mail, return receipt requested, not later than one month prior to the effective date of the regulations. Such notice, in the form of a resolution of the governing body, shall state that enforcement will be carried out either by the municipal enforcing agency or by interlocal agreement. The resolution shall also state the extent to which the municipality anticipates that private on-site agencies will be utilized. The resolution shall state the address of the enforcing agency and the board of appeals, if different. Such resolution shall additionally state whether a board of appeals will be appointed within the municipality, whether an intermunicipal joint board of appeals will be established or whether appeals will be left to the jurisdiction of the county.

2. Any municipality which shall not choose to establish and operate an enforcing agency pursuant to the act and the regulations shall notify the department of this intent by registered or certified mail, return receipt requested, not later than one month prior to the effective date of the regulations. Such notice, in the form of a resolution of the governing body, shall state that the governing body requests that the department assume the task of administration and enforcement.

3. A municipality may, by resolution, provide for the employment of an elevator subcode official, licensed in accordance with N.J.A.C. 5:23-5, to perform inspections and witness tests within its jurisdiction. If a municipality fails to employ such an official by July 1, 1992, the Department shall have exclusive jurisdiction to review plans and witness tests for, and inspect elevators within, the municipality. Thereafter, a municipality may acquire such jurisdiction by enacting the necessary resolution and employing an elevator subcode official, but the transfer of jurisdiction to the municipality shall not be effective until 120 calendar days after a certified copy of the resolution is received by the Department.

(b) Remedies:

1. Whenever the department shall not have received the notice as described in (a)1 of this section, at least one month prior to the effective date of the regulations, it shall forward by certified or registered mail, return receipt requested, to the governing body of any such municipality, a notice of failure to comply with these regulations, a statement detailing the implications of such failure, and a statement of intention to seek the order of a court of competent jurisdiction requiring that the municipality declare its intention with respect to enforcement pursuant to (a)1 of this section or in the alternative that the department be established as the enforcing agency in such municipality.

2. The department may seek an order pursuant to this subsection after the expiration of 10 days from the mailing of such notice.

(c) Term; transfer:

1. Whenever a municipality pursuant to (c)2 below, having relinquished its jurisdiction for the administration and enforcement of the code to the department, shall seek to reestablish such jurisdiction, it may do so upon the passage of an ordinance establishing an enforcement agency in accordance with the regulations; provided however, that such ordinance shall not take effect until the expiration of 120 calendar days from the date of certified copy of the ordinance is received by the department in order to give the department sufficient time to reallocate staff assignments.

2. Whenever a municipality having accepted responsibility for administration and enforcement of the regulations shall seek to relinquish such authority to the department, it may do so upon the passage of an ordinance repealing the functions and duties of the enforcing agency and transferring same to the department; provided however, that such ordinance shall not take effect until the expiration of 120 calendar days from the date a certified copy of the ordinance is received by the department, in order to give the department sufficient time to hire any necessary staff and to integrate the municipality's enforcing agency functions within its overall inspection program; provided further that whenever the commissioner shall determine that the interest of public health, safety and welfare cannot be accommodated within this period, the commissioner may notify the municipality that the department will not accept jurisdiction for an additional period to be specified. During this period the municipality shall continue to enforce the regulations.

i. Whenever the commissioner shall seek to delay acceptance of jurisdiction pursuant to this section beyond 120 days, such shall be upon notice and opportunity to be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14.B-1 et seq.;

ii. In any transfer of authority, the department shall succeed to any and all records and files of the enforcing agency, or copies of such records and files, if the municipal enforcing agency so provides, which the department may transport to a location of its choice after the effective date of the repealing ordinance;

iii. The department shall be free to phase its procedures and operation in during the interim between the adoption of any repealing ordinance and its effective date;

iv. The department's fee schedules, hearing provisions, and any other requirements which pertain when the department acts in its capacity as the enforcing agency, shall come into operation on the effective date of the repealing ordinance. To the extent feasible, the department shall treat the holder of an outstanding construction permit in the same manner as he would have been treated under the municipal enforcing agency;

v. Whenever a county board of appeals shall have acted for such municipality, the commissioner shall notify the county board of the transfer and the termination of its jurisdiction.

3. Except as otherwise provided in (a)3 above with regard to enforcement of the elevator safety subcode, the Department shall not assume partial responsibility for the enforcement of the regulations pursuant to this section. Whenever the Department is constituted as the local enforcing agency by the municipality, it shall act as the exclusive enforcing agency with respect to all subcodes and all areas of the regulations within the limits of such municipality.

(d) Establishment by ordinance:

1. Any municipality which shall have complied with (a)1 above shall thereafter, but prior to the effective date of the regulations, adopt an ordinance constituting its enforcing agency.

2. Such ordinance shall establish the construction official as the chief administrator of the enforcing agency. It shall establish as many subcode official positions as the Commissioner shall issue types of licenses for subcode officials. Any person who holds more than one subcode official position shall be qualified for each position pursuant to N.J.A.C. 5:23-5. Staffing procedures shall not result in an inadequate municipal inspection force.

3. Such ordinance need not require that the construction official or each of the subcode officials, or any of their assistant and staff, work exclusively for the enforcing agency, or that they be located in one office or building within the municipality. But such ordinance shall specify that for purposes of the regulations and its enforcement,

any such dispersed personnel are subject to the procedures and policies of the enforcing agency and are primarily responsible to the construction official. Further, such ordinance shall indicate that irrespective of any dispersal of personnel, the public shall have the right, unless in the case of emergency, unforeseen or unavoidable circumstance, to do business at one enforcing agency center. Any reorganization necessary to provide for the coordination of dispersed personnel so as to enable the enforcing agency to act within the various time limits established by the act and the regulations shall be provided in such ordinance or may be delegated to the appointing authority.

4. Such ordinance shall, if the municipality has so chosen, establish a construction board of appeals in accordance with N.J.A.C. 5:23A. The municipality may permit the board to hire new staff or to utilize existing municipal staff in addition to such staff as is provided for in N.J.A.C. 5:23A as it may deem appropriate.

5. Such ordinance shall establish a system of fees in accordance with N.J.A.C. 5:23-4.17.

6. Such ordinance, including any amendments thereto whenever made, shall be forwarded to the department upon adoption.

(e) Personnel:

1. Personnel hired or transferred on a full or part-time basis, for purposes of the administration of the act and the regulations, may be hired or transferred by resolution of the governing body, or by such other procedure as is provided by law in the municipality for such purposes.

2. Not later than 30 days after the effective date of the regulations and whenever changed thereafter, the municipality shall file with the department a list containing the names and certification numbers of the construction official and each subcode official.

(f) Departmental intervention:

1. Except as otherwise provided in (f)2 below, whenever the Department shall have reasonable cause to believe that a local enforcing agency is not carrying out its functions as intended by the Act and regulations, it shall forward by certified or registered mail, return receipt requested, to the governing body, to the construction official, and to the municipal manager or administrator, if any, having jurisdiction over the local enforcing agency, a notice stating the nature of the alleged failure of the local enforcing agency to perform, the implications of such failure, and a statement setting forth the corrective action required to be taken by the local enforcing agency.

i. In the case of a local enforcing agency which the Department finds to have repeatedly or habitually failed to enforce the provisions of the State Uniform Construction Code Act, the Department shall issue an order, in the manner, and subject to the requirements, set forth in (f)1 above, to dissolve the local enforcing agency and replace it by the Department.

ii. No local enforcing agency shall be dissolved and replaced by the Department for repeated or habitual failure to enforce the regulations except upon its failure, or the failure of the governing body or official having jurisdiction over it, to comply with a notice issued by the Department setting forth corrective action required to be taken in order to ensure proper administration of the local enforcing agency and enforcement of the Code.

iii. Prior to the issuance of an order for the dissolution of any local enforcing agency and its replacement by the Department, or as an alternative to any such order, the Department shall place the local enforcing agency under the temporary supervision of an administrator employed by the Department. For the first 60 days of any period in which a local enforcing agency is under the temporary supervision of a Department administrator, the local enforcing agency shall retain fee revenue and be responsible for the payment of employee salaries and other expenses, other than the expenses of the administrator, in the same manner as if the local enforcing agency were not under the supervision of a Department administrator. In the event the period of temporary supervision extends beyond 60 days and the Department has assigned its own personnel to serve as officials and/or inspectors, fee revenue after the sixtieth day shall be paid to the Department and used by the Department to pay the costs of the local enforcing agency.

iv. In the event that any municipality having jurisdiction over a local enforcing agency subject to any notice or order issued pursuant to this paragraph is aggrieved by such notice or order, the municipality shall be entitled to an administrative hearing conducted in accordance with 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. A request for any such hearing must be mailed, within 15 days after receipt of the notice or order being appealed, to the Hearing Coordinator, Division of Housing and Development, CN 802, Trenton, NJ 08625-0802. The right to a hearing under this paragraph shall also extend to any licensed code enforcement official or inspector who would be adversely affected by any Departmental order.

2. In any case in which it may find it necessary to do so, the Department may supplant or replace a local enforcing agency for a specific project.

(g) The commissioner may, upon written application by the governing body of a municipality, temporarily waive any administrative requirement of the regulations which because of special circumstances impedes a municipality in the enforcement of the code. Any municipality seeking such a temporary waiver, shall in its written request state the nature of the problem, the relief sought and alternative measures, if any, which might meet the intent of the requirement for which such temporary waiver is sought. The commissioner may grant a hearing pursuant to the Administrative Procedures Act, if a more complete record of the case is deemed necessary.

Amended by R.1989 d.435, effective August 21, 1989.

See: 20 N.J.R. 1764(a), 21 N.J.R. 2474(a).

Deleted (e), which was "Interim Procedures" and recodified (f) "Personnel" as new (e), with no change in text. Deleted (g) "Failure to perform" and reserved subsection as (f). Recodified old (h) as (g). Amended by R.1989 d.551, effective November 6, 1989.

See: 21 N.J.R. 2436(a), 21 N.J.R. 3460(b).

New subsection (f) added regarding departmental intervention. Administrative Correction to (d)4.

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).

Elevator plan review provisions added at (a)3.

Amended by R.1992 d.245, effective June 15, 1992.

See: 24 N.J.R. 1148(a), 24 N.J.R. 2244(a).

Exception for elevator safety subcode added to (a)3.

Administrative Change.

See: 26 N.J.R. 5007(a).

Amended 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).

Case Notes

Township of Edison v. Coleman, 239 N.J.Super. 301, 571 A.2d 312 (A.D.1990).

Citation to former N.J.A.C. 5:23-4.3 for construction official's duties; Township manager without authority over matters of code enforcement and official discipline due to State legislative preemption. J.P. Properties, Inc. v. Macy, 183 N.J.Super. 572, 444 A.2d 1131 (Law Div.1982).

Regulation required for Commissioner to order refund by municipal enforcement agencies of charges in excess of operating costs; no refund without regulation adoption. Bureau of Construction Code Enforcement v. Hasbrouck Heights, 4 N.J.A.R. 282 (1983).

Regulations govern municipal enforcement agencies. Bureau of Construction Code Enforcement v. Hasbrouck Heights, 4 N.J.A.R. 282 (1983).

5:23-4.3A Enforcing agency classification

(a) Local enforcing agencies shall be classified as RCS (specialty in residential and small commercial structures), ICS (specialty in industrial and commercial structures) or HHS (specialty in high-rise/hazardous structures). The classification of the enforcing agency shall be determined by the highest class of structures for which the construction official and each subcode official in a municipality is licensed to do plan review.

(b) The classification of an enforcing agency is determined by the lowest level of inspector license held by any of the subcode officials appointed to establish such agency and by the highest level of inspector license held by the appointed construction official. In the case of subcode officials, the

inspector license used to determine the classification of the agency must be in the subcode area for which that individual is appointed. Enforcing agencies shall be classified as follows:



1. Class 1 agency: The lowest level of inspector license held in accordance with N.J.A.C. 5:23-5 by the construction official or any of the subcode officials appointed to constitute the enforcing agency is an HHS inspector license.

2. Class 2 agency: The lowest level of inspector license held in accordance with N.J.A.C. 5:23-5 by the construction official or any of the subcode officials appointed to constitute the enforcing agency is an ICS inspector license.

3. Class 3 agency: The lowest level of inspector license held in accordance with N.J.A.C. 5:23-5 by the construction official or any of the subcode officials appointed to constitute the enforcing agency is an RCS inspector license.

(c) Any change in the classification of an enforcing agency shall be effective immediately upon a change in the level of licensure of any of the officials appointed to constitute the enforcement agency as described in (a) above. The ability of a municipality to accept an application for plan review shall be determined by the classification of that municipality as of the date of application. Nothing contained herein, however, shall be construed to permit any enforcement agency to continue to review plans submitted if the classification of the agency has changed so as to render the agency no longer eligible to review the plans in question.

(d) Enforcing agencies shall be permitted to perform plan review activities in accordance with the agency classification for the use groups listed in the following schedule (keyed to section 302.1 of the building subcode):

1. Class 3 agencies:

- i. Use group B less than 7,200 square feet, two stories, 30 feet high;
- ii. Use group M less than 4,800 square feet, one story, 20 feet high;
- iii. Use group S-1 less than 4,200 square feet, one story, 20 feet high;
- iv. Use group S-2 less than 7,200 square feet, two stories, 30 feet high;
- v. Use group R-3 as permitted in the building subcode and including accessory private garages (section 407.0), radio and television antennae (section 3108.0) and swimming pools (section 421.0).

2. Class 2 agencies:

- i. All plan review activities permitted to class 3 officials;
- ii. Use group A-1 less than 4,800 square feet, one story, 20 feet high;
- iii. Use group A-2 less than 2,400 square feet, one story, 20 feet high;

iv. Use group A-3 less than 8,400 square feet, two story, 30 feet high;

v. Use group A-4 less than 14,400 square feet, two story, 30 feet high;

vi. Use group A-5 less than 5,000 square feet, one story, 30 feet high;

vii. Use group B less than 34,200 square feet, six story, 75 feet high;

viii. Use group E less than 14,400 square feet, two story, 30 feet high;

ix. Use group F-1 less than 22,800 square feet, six story, 75 feet high;

x. Use group F-2 less than 34,200 square feet, six story, 75 feet high;

xi. Use group H (paint spray booths, section 419.2.1 only);

xii. Use group I-1 less than 8,400 square feet, three story, 40 feet high;

xiii. Use group I-2 less than 7,200 square feet, one story, 20 feet high;

xiv. Use group I-3 less than 6,000 square feet, one story, 20 feet high;

xv. Use group M less than 22,800 square feet, six story, 75 feet high;

xvi. Use group R-1 less than 9,600 square feet, three story, 40 feet high;

xvii. Use group R-2 less than 9,600 square feet, three story, 40 feet high;

xviii. Use group S-1 less than 19,950 square feet, five story, 65 feet high;

xix. Use group S-2 less than 34,200 square feet, six story, 75 feet high;

xx. Use group U as permitted by the building subcode.

3. Class 1 agencies:

- i. All plan review activities permitted to class 2 and class 3 officials;
- ii. All remaining use groups and categories not reserved to the State.

4. Square foot area listed in (c)1, 2 and 3 are per floor.

(e) Departmental plan review shall not be required for class 3 work. Departmental plan reviews prior to the issuance of a permit shall be required for class 2 work after January 1, 1981, unless the construction official and each subcode official in the municipal enforcing agency is certified at, at least the class 2 level of certification. Depart-

mental plan review prior to the issuance of a permit shall be required for class 1 work as of the effective date of the regulations and until the construction official and each subcode official in the municipal enforcing agency is certified at the class 1 level of certification. Alterations, replacements, repairs, damages and additions to class 1 buildings shall require a department plan review when:

1. The alterations, replacements, repairs or damages exceed 50 percent of the physical value of the building, provided that any alterations, replacements, repairs or damages exceeding 25 percent of the physical value of the building shall be forwarded by the enforcing agency to the department, which may in its discretion review such plans, or may return such plans to the municipality for review.

2. The addition would cause a building not previously classified as class 1 to be classified as class 1.

(f) The Department shall issue a roster of enforcing agencies and their classification upon request. Copies may be obtained by contacting the Licensing Section, Bureau of Technical Services, CN 816, Trenton, New Jersey 08625-0816.

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

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

Text on enforcing agency classification recodified from 3.10; new (a) added.

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

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

5:23-4.4 Municipal enforcing agencies—organization

(a) The municipality shall organize its enforcing agency in accordance with the ordinance adopted pursuant to N.J.A.C. 5:23-4.3 and to meet the following additional requirements:

1. Construction official: The construction official shall serve as the chief administrator of the enforcing agency. He shall establish the day to day operating routines of the agency and shall coordinate the activities of the subcode officials. He shall be qualified in accordance with subchapter 5 of this chapter in at least one subcode.

2. Subcode officials: Subcode officials shall enforce the provisions of those subcodes for which they are responsible in accordance with N.J.A.C. 5:23-3 and qualified in accordance with N.J.A.C. 5:23-5 and for which they have been appointed by the appointing authority. Each subcode official shall be responsible for the administration and enforcement of the appropriate subcode, subject to the procedures of the enforcing agency as administered by the construction official. However, each subcode official shall have exclusive decision-making authority with respect to the technical provisions of the subcode for which he has been appointed the official.

3. Interface: Nothing shall prevent one person from serving in more than one position for which he is certified and qualified. However, more than one person shall not be appointed concurrently to the same position.

4. Assistants: The appointing authority may establish positions other than those provided in N.J.A.C. 5:23-5 as is deemed necessary. The commissioner reserves the right to establish categories of certification for such positions. The construction official or appropriate subcode official shall be responsible for the supervision of any such personnel.

5. Whenever the municipality contracts with private on-site inspection agencies for all subcodes, it shall as a minimum appoint a construction official to coordinate activities.

6. Acting appointments: A municipality shall appoint an acting construction official or subcode official any time the absence of such official would impede orderly administration of the Uniform Construction Code and other duties mandated by the municipality. Acting appointments shall be accomplished by any mechanism acceptable to the municipality; providing, however, that a written record shall be kept. Notice to the Department shall be provided within seven days any time an appointment is made for more than 30 days. Acting appointments may not be made for longer than 60 days, nor may they be extended or renewed beyond 60 days unless specific authority to do so is granted in writing by the Department.

i. Only an individual licensed as a construction official may be appointed as an acting construction official and only an individual licensed as a subcode official in a particular subcode may be appointed as an acting subcode official for that subcode. The technical license level of an acting construction or subcode official shall be superior or parallel to the enforcing agency classification of the municipality or such municipal classification shall be downgraded to the technical license level of the acting official for the period of time in the position. Employees of private on-site inspection agencies shall not serve as acting construction officials. Employees of private on-site inspection agencies may serve as acting subcode officials, provided that notice of any such appointment shall be given to the Department by the construction official within seven days of the making of the appointment and that such notice shall contain information as to the form and amount of the payment being made to the agency for the services of the acting subcode officials.

ii. Acting appointments shall not constitute the statutory four-year term for construction and subcode officials or any portion thereof.

iii. Conflict of interest provisions set forth in this subchapter shall apply to acting officials.

iv. Nothing in (b) of this section shall be interpreted as prohibiting licensed officials from serving in more than one municipality in regular or acting appointments.

2. The speed with which the agency can perform, or has performed, plan reviews upon assignment by the construction official;

3. The technical qualifications and capabilities of agency staff;

4. The thoroughness with which the agency can carry out, or has carried out, its inspection and enforcement work in other jurisdictions;

5. The adequacy of the arrangements the agency is prepared to make to provide emergency inspection services, including response time;

6. The ability of the agency to ensure, through its organizational structure, and the qualifications of its management staff, positive control and direction of its field and office staff.

(f) After the governing body, having consulted with the construction official, determines whether each private agency that has submitted a bid and qualification statement would be able to effectively enforce the subcode(s) for which subcode official services are required in the municipality, in accordance with the performance standards of the local enforcing agency, it shall, in accordance with the procedure generally followed when bids are received by the municipality, unseal and receive the bids of the private agencies that have been found to be able to effectively enforce such subcodes in accordance with the performance standards of the local enforcing agency and shall accept the bid among such bids that sets forth the lowest percentage of the fees charged by the Department.

(g) The governing body shall accept the successful low bid, or reject all bids, within 30 days of the bid opening and shall enter into a contract with any successful bidder not less than 30 days prior to the beginning of the contract period.

(h) The municipality shall have the option of entering into a contract for one year, two years or three years.

(i) The contract shall set forth the specific amounts to be paid by the municipality to the private enforcing agency for each subcode official service. Such amounts shall, in all cases, be the amounts set forth in N.J.A.C. 5:23-4.20, as of the date of the opening of the bids, times the percentage bid by the private agency. Such amounts shall continue in effect, without any change, for the duration of the contract.

(j) The contract shall provide that amounts due to the private agency shall be paid as follows, if applicable, and shall be billed within 30 days of coming due and paid within 30 days of billing:

1. Twenty percent due upon issuance of the construction permit;
2. Sixty percent due 30 days thereafter;

3. Twenty percent due upon completion, as evidenced by issuance of inspection sticker approval for the subcode;

4. Certificate of occupancy or certificate of approval charges due on issuance of the certificate; and

5. Elevator inspection charges due on issuance of certificate of compliance or notice of unsafe structure.

(k) An on-site inspection agency that is aggrieved either by the terms of a bid solicitation by a municipality or by the awarding of a contract by a municipality to another on-site inspection agency shall be entitled to an administrative hearing in order to determine if the bid solicitation or contract award was done in a manner that was consistent with this chapter and was not arbitrary, capricious or unreasonable. Any such hearing shall be conducted in accordance with 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. A request for any such hearing must be mailed within 15 days after receipt by the aggrieved agency of notice of the bid solicitation, or of the award of the contract to the other agency, as the case may be, to the Hearing Coordinator, Department of Community Affairs, CN 802, Trenton, NJ 08625-0802. Notice of the request for a hearing shall also be given by the aggrieved agency to the other agency, or agencies, and to the municipality, both, or all, of which shall be entitled to participate in the hearing as parties. The final decision shall be issued by the Commissioner and shall be enforceable by the Department. The Department shall serve as the forum for the hearing and shall not be deemed to be a party.

R.1984 d.260, eff. July 2, 1984.

See: 16 N.J.R. 3(a), 16 N.J.R. 1714(c).

Amended by R.1985 d.232, effective May 20, 1985.

See: 17 N.J.R. 340(a), 17 N.J.R. 1257(b).

(f) Ixix and xx 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).

Added (k).

Case Notes

Adoption of regulation requiring open bidding when municipality engages private agencies to review construction plans and make code or subcode building inspections substantially complied with Administrative Procedure Act. Middle Dept. Inspection Agency, Inc. v. New Jersey Dept. of Community Affairs, Div. of Housing and Development, 278 N.J.Super. 573, 651 A.2d 1060 (A.D.1995), certification denied 140 N.J. 329, 658 A.2d 728.

Promulgation of regulation imposing open-bidding or setting fees when municipality engaged private agencies to review construction plans to make code or subcode building inspections was not in excess of statutory authority. Middle Dept. Inspection Agency, Inc. v. New Jersey Dept. of Community Affairs, Div. of Housing and Development, 278 N.J.Super. 573, 651 A.2d 1060 (A.D.1995), certification denied 140 N.J. 329, 658 A.2d 728.

5:23-4.6 Interlocal enforcing agencies—establishment

(a) Parties: Any two or more municipalities may, by ordinance, join to administer and enforce the regulations and any subcode under the regulations. Any municipalities party to an agreement establishing one enforcing agency consisting of all subcodes may further provide for the establishment of a joint board of appeals.

(b) Agreement: Except as the section may add or substitute requirements, the procedures for the execution of any agreement pursuant to this section, shall be governed by the Interlocal Services Act (N.J.S.A. 40:8A-1 et seq.).

1. Upon the final adoption of an ordinance pursuant to the Interlocal Services Act, a copy of such ordinance, the contract, and any other pertinent information shall be forwarded to the department;

2. The term of any contract entered into pursuant to this section shall be four years.

3. The contract shall stipulate that the term of office of any construction or subcode official shall, except for good cause, be four years.

4. Such contract shall provide a mechanism for administration and enforcement within each of the contracting municipalities by one or more of the contracting municipalities, on an interim or emergency basis, should such agreement be invalidated by a court of competent jurisdiction or prove otherwise unenforceable.

5. The contract shall additionally stipulate the information contained in N.J.A.C. 5:23-4.7(b) and 4.8(a).

5:23-4.7 Interlocal enforcing agencies—organization

(a) General: Except as is provided in this section, enforcing agencies organized pursuant to this section shall, insofar as is practicable, be organized in the same manner as are municipal enforcing agencies.

(b) Exception: Nothing contained in N.J.A.C. 5:23-4.3, with respect to offices, shall require that only one central office be established pursuant to this section. Whenever municipalities join pursuant to this section, they shall establish offices which are reasonably accessible in terms of distance, location and function.

5:23-4.8 Interlocal enforcing agencies—administration and enforcement

(a) General: Enforcing agencies organized pursuant to this article shall administer and enforce the regulations in the same manner as municipal enforcing agencies.

(b) *The provisions of N.J.A.C. 5:23-4.3 regarding conflict of interest shall be applicable to interlocal enforcing agencies, including all municipalities party to the interlocal agreement, to the extent that the agreement covers specific subcode activities.*

5:23-4.9 State enforcing agencies—establishment

(a) Department of Community Affairs:

1. The Construction Code Element of the Division of Housing and Development is constituted as the enforcing agency for the purpose of administering and enforcing the regulations in those municipalities which have decided, pursuant to N.J.A.C. 5:23-3, not to enforce the regulations.

i. This shall not affect any other functions, outside the scope of the Uniform Construction Code, of the Bureau of Construction Code Enforcement pursuant to any other law.

(b) Division of Building and Construction, Department of the Treasury:

1. The Division of Building and Construction is constituted as the enforcing agency for the purpose of administering and enforcing the regulation with respect to buildings owned by the State, and any of its departments, divisions, bureaus, boards, councils, authorities or other agencies.

(c) Department of Health:

1. Pursuant to section 6 and section 13 of the act, the Department of Health is constituted as the sole plan review agency for the administration and enforcement of Federal and State standards applicable to the construction, alteration, demolition or maintenance of hospital and health care facilities as defined herein.

(d) Department of Labor:

1. Pursuant to section 6 and section 13 of the act, the Department of Labor is constituted as the sole enforcing agency for the administration and enforcement of the regulations for amusement rides, ski lifts, high pressure boilers, refrigeration systems, pressure vessels, and liquified petroleum gas installations (except one and two-family residential-use group R-3 of the building subcode).

Administrative Correction to (a)1.
See: 22 N.J.R. 2503(b).

5:23-4.10 State enforcing agencies—organization

(a) Department of Community Affairs: The Construction Code Element shall be organized, insofar as is practicable, in the same manner as are municipal enforcing agencies.

1. The Element shall employ persons **qualified and certified** in accordance with N.J.A.C. 5:23-5.

(b) Division of Building and Construction, Department of the Treasury; Department of Health; Department of Labor; The Division of Building and Construction, Department of Health, or Department of Labor may be organized as the division or department may deem appropriate, but not inconsistent with the intent of this subchapter.

1. The division or department shall employ persons qualified and certified in accordance with N.J.A.C. 5:23-5.

Administrative Corrections to (a) and (a)1.
See: 22 N.J.R. 2503(b).

5:23-4.11 State enforcing agencies—administration and enforcement

(a) Department of Community Affairs: The Construction Code Element shall administer and enforce the regulations insofar as is practicable, in the same manner as a municipal enforcing agency.

1. The conflict of interest provisions contained in N.J.A.C. 5:23-4.5 shall be applicable only to bureau personnel responsible for the administration and enforcement of the rules and shall not extend to persons otherwise employed by the bureau.

(b) Division of Building and Construction, Department of the Treasury: The Division of Building and Construction may administer and enforce the rules as the Division may deem appropriate, but not inconsistent with the intent of this subchapter.

1. The conflict of interest provisions contained in N.J.A.C. 5:23-4.5 shall apply to personnel involved in the administration and enforcement of the rules.

(c) Department of Health:

1. The Department of Health may administer and enforce the rules as the Department may deem appropriate, but not inconsistent with the intent of this subchapter.

i. The conflict of interest provisions contained in N.J.A.C. 5:23-4.5 shall apply to personnel involved in the administration and enforcement of the rules.

2. The Department of Health shall, when it deems appropriate, undertake inspection of all or any part of such facilities. This shall not limit the obligation of the local enforcing agency to issue all permits and certificates and to perform field inspections as required by the rules.

(d) Department of Labor: The Department of Labor may administer and enforce the rules as the department may deem appropriate, but not inconsistent with the intent of this subchapter.

1. The conflict of interest provisions contained in N.J.A.C. 5:23-4.5 shall apply to personnel involved in the administration and enforcement of the rules.

Amended by R.1992 d.243, effective July 6, 1992.
See: 24 N.J.R. 678(a), 24 N.J.R. 2422(a).

Change made to reflect Department organizational changes.

5:23-4.12 Private on-site inspection and plan review agencies; establishment

(a) The Department shall authorize the establishment of private on-site inspection and plan review agencies, herein-

after called "on-site inspection agencies," for the purpose of contracting with municipalities in order to act in the place of a subcode official for specified subcodes.

1. No person shall undertake the services herein described or enter into any contract pursuant to this chapter without first receiving the authorization of the Department.

i. Except that, applicants who have received notice from the department that their application is complete and suitable for processing may begin to promote or otherwise make their anticipated availability known to municipalities, provided that the applicant discloses in writing at the time of undertaking any such activity, that he has not yet been authorized by the department.

(b) Applicants for authorization as an on-site inspection agency shall submit an application, the required fee, and any additional information the department may require.

(c) Following a determination by the department that an application is complete and suitable for processing, the department shall review and evaluate the information contained in the application and such other information as the department shall deem necessary to enable it to make an accurate and informed determination of approval or disapproval. Within 90 days following the receipt of a completed application, the department shall make its determination as to whether authorization as an on-site inspection agency shall be granted or denied, and shall notify the applicant. In the event of denial, the department shall provide the applicant with a written explanation of the reasons therefor.

(d) The application shall contain information relating to:

1. The financial integrity of the applicant and any of its principal officers.

2. The qualifications of the management and technical personnel of the applicant, including a statement that all technical personnel are certified by the commissioner in accordance with N.J.A.C. 5:23-5.

3. The range of salaries and other compensation of all of the inspectors and other technical personnel of the applicant.

4. The policies and procedures of the applicant for the hiring, training and supervision of all technical personnel, including education and training.

5. The prior experience of the applicant in performing similar or related functions.

6. The capability of the applicant to review plans and specifications and to inspect construction to insure that the completed work is in compliance with the appropriate subcode.

7. A statement that the applicant is not affiliated with, influenced or controlled by any producer, manufacturers,

supplier or vendor of products, supplies or equipment used in construction, components or assemblies.

(e) Authorization shall be valid for a period of one year.

(f) Applications for reauthorization shall be filed with the Department at least 60 days prior to the scheduled expiration for the current authorization from the Department. The on-site inspection agency shall make current the information previously submitted to the Department. The on-site inspection agency shall provide such additional information as the Department may request. The application shall be accompanied by the fee established by this chapter. The Department may conduct such additional investigations of the applicant as it may deem necessary.

1. Within 30 days following receipt by the Department of an application for reauthorization, the Department shall make its determination as to whether the on-site inspection agency continues to meet the requirements of this chapter. In the event of disapproval, the Department shall provide the on-site inspection agency with a written explanation of the reasons for such disapproval. Each reauthorization shall expire one year from the date of the current authorization from the Department.

2. The department may, on its own motion or at the request of any on-site inspection agency, grant a temporary reauthorization of such agency for a period not to exceed 60 days.

(g) Existing private electrical inspection authorities, licensed by the Board of Public Utilities pursuant to N.J.A.C. 14:5-7, may continue to operate as inspection authorities for a period of one year from the effective date of this chapter. Thereafter, they shall continue in operation only if authorized in accordance with this chapter, and shall become known as "on-site inspection agencies-electrical".

1. Electrical inspection authorities may continue to operate pursuant to N.J.A.C. 14:5-7 until such time as the municipality contracts directly with an on-site inspection agency-electrical for exclusive services in the municipality or appoints an electrical subcode official. In no case shall existing electrical inspection authorities continue after January 1, 1978, except in conformity with this section.

(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:

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 ($\frac{40}{100}\%$) would be allocated to the building subcode and one-third of the fee ($\frac{20}{100}\%$) 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 growth therefore, 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 with implementing 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).

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;

ii. Cost of motor vehicles in an amount proportionate to their use by or for the enforcing agency. Payments for this purpose may be in the form of mileage reimbursement paid to employees for use of their own motor vehicles, cost of purchase of motor vehicles by the municipality for the exclusive use of the enforcing agency (which cost may not be amortized), depreciation and operating expenses of motor vehicles made available to the enforcing agency by another municipal agency, and cost of rental of motor vehicles for use by the enforcing agency;

iii. Direct costs in support of the agency such as equipment, supplies, furniture, office equipment maintenance, standardized forms, printing, and safety equipment that are supplied directly to the enforcing agency for its sole use;

iv. Professional expenses of enforcing agency personnel that are directly related to the enforcement of the regulations, including publications, membership dues, license fees, and authorized travel to conferences, meetings and seminars;

v. Fees for services performed under contract by private on-site inspection agencies;

vi. Documented charges for legal services required in connection with construction code enforcement litigation;

vii. Fees for the annual audit of the dedicated fund by an independent auditor; and

viii. Subject to the limitations set forth in (c)3 below, indirect, overhead, and other expenses of the municipality in support of the enforcing agency, including:

- (1) Legislative and Executive expenses;
- (2) Administration, including personnel, payroll, and general training services provided to the agency in common with all other municipal offices;
- (3) Central services shared jointly with other municipal offices, such as telephone, reproduction, centralized computer services, etc.;
- (4) Insurance except for group insurance premiums included under employer fringe benefits;
- (5) General building maintenance expenses;
- (6) Finance, including bookkeeping, purchasing, and auditing;
- (7) Office space expenses, including rent or interest and debt service on municipal capital facilities; and
- (8) Such other expenses as may be properly allocated to construction code enforcement.

3. Indirect and overhead expenses charged to the construction code fee revenues shall not exceed 12 percent of all other costs of the enforcing agency unless the indirect and overhead expenses of the municipality exceed 12 percent of the entire municipal budget, in which case indirect and overhead expense may be charged to construction code fee revenues in proportion to the general municipal overhead and expense ratio. A detailed written justification for any charge for indirect and overhead expenses in excess of 12 percent shall be prepared and made available for inspection both by the Department and by the public.

4. This subsection shall not be construed as precluding the use of money from the general fund of the municipality to pay costs of code enforcement when the construction code fee revenues generated from the fee schedule established pursuant to (b)1 above are insufficient for that purpose or when necessary to compensate the enforcing agency for work done without fee pursuant to statute or ordinance.

(d) Interlocal enforcement: When two or more municipalities or a county and one or more municipalities enter into an agreement to administer and enforce this chapter pursuant to N.J.A.C. 5:23-4.4(a)2 and the Interlocal Service Act (N.J.S.A. 40:8A-1 et seq.), there shall be one uniform fee schedule which shall be applied by all parties to the agreement. Said fee shall be collected by the interlocal enforcing agency performing the administration and enforcement of the regulations. No additional fee shall be required to be paid or be paid by an applicant to any municipality or county for any Uniform Construction Code enforcement service. The enforcing agency shall maintain financial records showing for each municipality the amounts of money collected and expended in the enforcement of this chapter.

Amended by R.1982 d.401, effective November 15, 1982.

See: 14 N.J.R. 495(a), 14 N.J.R. 1300(a).

Added (d). Prior to recodification of N.J.A.C. 5:23, this section was codified at 5:23-4.8.

Amended by R.1982 d.402, effective November 15, 1982.

See: 14 N.J.R. 943(a), 14 N.J.R. 1300(b).

Added to (b)2 that copy of report . . . must be filed every two years. Emergency amendment, R.1989 d.405, effective July 3, 1989 (expires September 1, 1989).

See: 21 N.J.R. 2127(b).

In (a): added "certificates of continued occupancy, certificate of approval" and deleted "moving of building permit . . .".

In (a)1: added language regarding rounding of dollar amounts in fees.

Adopted concurrent proposal, R.1989 d.512, effective September 1, 1989.

See: 21 N.J.R. 2127(a), 21 N.J.R. 3086(a).

Provisions of emergency amendment R.1989 d.405 readopted without change.

Amended by R.1990 d.115, effective February 5, 1990 (operative March 1, 1990).

See: 21 N.J.R. 3348(a), 22 N.J.R. 352(a).

Requirements added at (c) for the establishment of a mechanism (dedication by rider) to ensure construction fees are used for no other purpose than to fund annual costs for the operation of enforcing agencies.

Amended by R.1990 d.489, effective October 1, 1990.

See: 22 N.J.R. 1871(a), 22 N.J.R. 3147(a).

Amended to state that appropriation of municipal construction code fees may be done by rider or by estimates in advance, in accordance with the Local Budget Law, N.J.S.A. 40A:4-1 et seq.

Amended by R.1992 d.148, effective April 6, 1992.

See: 24 N.J.R. 169(a), 24 N.J.R. 1399(a).

Construction official may report based on the municipality's fiscal year.

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).

Case Notes

Fee schedules must be calculated to reasonably cover municipal code enforcement costs. Bureau of Construction Code Enforcement v. Hasbrouck Heights, 4 N.J.A.R. 282 (1983).

5:23-4.18 Standards for municipal fees

(a) General:

1. The fee for plan review, computed as a percentage of the fee for a construction permit, shall be paid at the time of submission of an application for a permit. The amount of this fee shall then be deducted from the amount of the fee due for a construction permit, when the permit is issued; provided however, that the municipality may provide by ordinance that the plan review fee be paid at the time of granting the permit. Plan review fees are not refundable.

2. The fee to be charged for a construction permit will be the sum of the basic construction fee computed in accordance with (c) below herein plus any applicable special fees, such as elevator or sign fees. This fee shall be paid before a permit is issued.

3. The fee to be charged for a certificate of occupancy shall be paid before a certificate is issued. This fee shall be in addition to the construction permit fee;

4. The fee to be charged for an annual construction permit shall be charged annually. This fee shall be a flat fee based upon the number of maintenance workers employed by the facility and who are primarily engaged in work that is governed by a subcode. Managers, engineers and clericals shall not be considered maintenance workers for the purposes of establishing the annual construction permit fee. Annual permits may be issued for building/fire protection, electrical and plumbing. Annual permit fees shall be non-refundable.

5. Prior to the issuance of the annual permit, a training registration fee of \$140.00 per subcode and a list of at least one, but not more than three, individuals to be trained per subcode shall be submitted by the applicant to the municipal construction official, who shall forward the fee and list to the Department of Community Affairs, Bureau of Technical Assistance, Training Section along with a copy of the construction permit (Form F-170C). Checks shall be made payable to "Treasurer, State of New Jersey." The Department shall register these individuals and notify them of the courses being offered.

(b) Plan review fees:

1. Plan review fees shall be computed as a percentage of the fee to be charged for the construction permit. This percentage shall, to the extent possible, approximate the actual costs incurred in plan review activities, but in any case shall be not less than five percent nor more than 25 percent of the amount that would be charged for the construction permit. For projects which do not require plan review for all subcodes, the fee shall be the appropriate percentage of the subcode fee which is applicable.

2. N.J.A.C. 5:23-2.26 requires the designation of 20 percent of the construction permit fee as the plan review fee for the purpose of providing for plan review by the department or waiver of plan review.

3. If a municipality has not established a plan review fee by ordinance, 20 percent of the construction permit fee shall be designated as the plan review fee for prototype plans, in accordance with N.J.A.C. 5:23-2.26.

(c) Basic construction fee: The basic construction fee shall be computed on the basis of the volume of the building or in the case of alterations, the estimated construction cost, and the number and type of plumbing, electrical and fire protection fixtures or devices as herein provided.

1. Value or cost: Fees for new construction or alterations shall be as follows:

i. Fees for renovations, alterations, reroofing, repairs, and site construction associated with pre-engineered systems of commercial farm buildings, pre-manufactured construction, and the external utility connections for premanufactured construction, shall be based upon the estimated cost of the work. The fee shall be computed as a unit rate per \$1,000 of estimated cost.

ii. Fees for renovations, alterations, and repairs shall be based upon the estimated cost of the work. The fee shall be computed as a unit rate per \$1,000 of estimated cost.

iii. Fees for additions shall be computed on the same basis as for new construction for the added portion;

iv. Fees for combination renovations and additions shall be computed as the sum of the fees for the addition and alteration computed separately in accordance with (b) and (c) above;

v. The unit rates may vary for different occupancy groups or structures of different sizes within the same occupancy group, but this shall be clearly indicated in the ordinance and schedule;

vi. Temporary structures and all structures for which volume cannot be computed, such as swimming pools and open structural towers, shall be charged a flat rate;

vii. Fees for minor construction work shall be based upon the estimated cost of the work. The fee shall be computed as a unit rate per \$1,000 of estimated cost or fraction thereof.

2. Plumbing fixtures and stacks: Fees shall be based upon the number of plumbing fixtures, devices, plumbing stacks and utility service connections to be installed. Utility service connections include sewer connections and water service connections. The fee shall be a unit rate per fixture, stack, and utility service connection. The unit rate may vary for different types of fixtures and utility service pipes, but this shall be clearly indicated in the ordinance and schedule. There shall be no inspection fee charged for gas service entrances.

3. Electrical fixtures and devices: Fees shall be based upon the number of electrical fixtures and devices to be installed. The fee shall be a unit rate per fixture and device. The unit rate may vary for different types of fixtures, but this shall be clearly indicated in the ordinance and schedule.

4. Fees shall be based upon the number of sprinkler heads, standpipes, and detectors (smoke and heat) and shall be reasonable unit charges. Fees may also be charged for the inspection of premanufactured fire suppression systems, for gas and oil fired appliances not connected to the plumbing system, for kitchen exhaust systems and for incinerators and crematoriums. The municipal ordinance shall clearly set forth what fees are to be charged for what devices.

5. The municipality shall set a flat fee for a mechanical inspection in a Use Group R-3 or R-4 structure by a mechanical inspector. No separate fee shall be charged for gas, fuel oil, or water piping connections associated with the mechanical equipment inspected.

(d) Demolition permit fees: Permit fees for demolition of a building or structure shall be a flat fee. This fee may vary according to type of structure or whether there has been a condemnation, but this shall be clearly indicated in the ordinance and schedule.

(e) Sign permit fees: The fee for a permit to construct a sign shall be either based upon the square foot area of the surface of the sign, computed on one side only for double-faced signs, or a flat fee per sign.

(f) Certificate fees:

1. The fee for a certificate of occupancy for new construction shall be computed as a percentage of the fee to be charged for the construction permit. This percentage shall be an amount sufficient to cover the actual costs for processing the certificate of occupancy. The municipality may, in the alternative, establish a flat fee for the certificate of occupancy.

2. The municipality shall establish a flat fee for certificate of continued occupancy, for certificate of occupancy granted pursuant to a change of use, for multiple certificates of occupancy (as for a shopping center), and similar conditions.

3. There shall be no fee charged for a certificate of approval issued pursuant to N.J.A.C. 5:23-2.23(j).

4. There shall be no fee for a certificate of compliance.

(g) Elevator, backflow preventer and cross connection fees are as follows:

1. The fee for a permit to install an elevator device shall be a flat fee. The fee may vary for different types of inspections, tests and elevator devices.

2. The fees for inspections and witnessing of tests for an elevator, escalator, moving walk, dumbwaiter or other elevator device shall be flat fees. These fees may vary for different required inspections and tests, but any variation shall be set forth in the ordinance and the schedule.

3. The categories of municipal elevator fees shall be identical to the categories of elevator fees listed at N.J.A.C. 5:23-12.6(a) and (b).

4. For cross-connections and backflow preventers that are subject to testing and require reinspection, the fee shall be a flat fee.

(h) No special fee shall be established for any class or type of work which is undertaken as a part of work authorized by a construction permit, except elevator and sign permits as herein provided. Other special fees may be established for work regulated by the code but not undertaken as a part of the new construction project. Such special fees shall be flat fees.

(i) Whenever a permit is received based on an approved prototype plan, the permit fee shall be reduced by the amount of the plan review fee.

(j) Rules concerning the appeal of fees are:

1. Whenever any person shall believe that the fees established by a municipality, pursuant to this subsection, fail to meet the standards of this section for establishing fees, that person shall be entitled to petition the commissioner for a review of the fee schedule in question.

i. Any such petition shall state the name, place of residence and the manner in which the fee schedule affects the petitioner. It shall further state the manner in which the petitioner believes the fees established to be inconsistent with the standards established herein.

ii. If, upon investigation, the commissioner determines that there is reason to believe that the fees in question do not meet the standards established herein, then the commissioner shall set a time and the place for

a hearing. The purpose of the hearing shall be to determine the facts.

iii. No such hearing shall be called except upon 30 days notice to the municipality and the petitioner. The municipality shall be required to furnish such information concerning construction volume, construction activity, and local enforcing agency costs as the commissioner may require in order that a determination may be made.

iv. As soon as practical after the conclusion of such a hearing, the commissioner shall make a finding and determination as to whether the fee schedule in question, as a whole or in any of its parts, conforms or fails to conform to the standards established in this section.

2. In addition to any other actions that he may take upon determining that the fees established by a municipality fail to meet the standards of this section, the commissioner may order the repayment of the excess amount of such fees to the persons who have paid them.

(k) Fees to be charged by municipalities where private on-site inspection and plan review agencies carry out sub-code official responsibilities shall not exceed the amounts to be paid to those private agencies for those services, pursuant to the contract between the private agency and the municipality, by more than 15 percent.

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

Section substantially amended.

Amended by R.1985 d.351, effective July 15, 1985.
See: 17 N.J.R. 1029(a), 17 N.J.R. 1756(b).

Old (a)4 deleted and new text substituted.

Amended by R.1986 d.213, effective June 16, 1986.
See: 17 N.J.R. 2490(a), 18 N.J.R. 1266(a).

Added text to (a)4 "annual permit-fees shall be non-refundable" and (a)5 "Prior to the issuance of the annual permit" and "Bureau of Construction Code Enforcement."

Emergency amendment, R.1989 d.405, effective July 3, 1989 (expires September 1, 1989).

See: 21 N.J.R. 2127(b).

Minor technical changes made throughout section.

Adopted concurrent proposal, R.1989 d.512, effective September 1, 1989 (operative January 1, 1990 for 4.18(c)-(e)).

See: 21 N.J.R. 2127(a), 21 N.J.R. 3086(a).

Provisions of emergency amendment R.1989 d.405 readopted with change.

Added sections (c)4; (k)iv and v.

Deleted sections (e), "Removal permit fees"; (l)ii, "Fire subcode"; and (l)4, "Elevator fees . . .", with renumbering and recodification.
Amended by R.1991 d.325, effective July 1, 1991.

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

Uniform flat fees for elevators to be set forth in ordinance and schedule.

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 (a)5.

Amended by R.1992 d.313, effective August 3, 1992.

See: 24 N.J.R. 1846(a), 24 N.J.R. 2712(b).

No inspection fee for gas service entrances.

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

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

Added (c)5.

Amended by R.1993 d.353, effective July 19, 1993.

See: 25 N.J.R. 1629(a), 25 N.J.R. 3147(a).

Amended by R.1993 d.665, effective December 20, 1993.

See: 25 N.J.R. 4548(a), 25 N.J.R. 5928(a).

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.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.381, effective July 17, 1995.

See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a).

Amended by R.1995 d.475, effective September 5, 1995 (operative January 1, 1996).

See: 27 N.J.R. 1716(a), 27 N.J.R. 3325(a).

In (a)5 added individuals to be trained and registered.

Amended by R.1995 d.476, effective September 5, 1995 (operative January 1, 1996).

See: 27 N.J.R. 1846(a), 27 N.J.R. 3325(b).

Rewrote (f) and (g).

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).

Case Notes

Owner was not entitled to hearing before administrative law judge to review adverse determination of Department of Community Affairs regarding its challenge to permit fees charged in connection with construction of new building absent evidence that township's permit fee revenues exceeded its expenditures, in violation of governing law. *Toys R Us, Inc. v. Township of Mount Olive*, 300 N.J.Super. 585, 693 A.2d 539 (A.D.1997).

Fee standards violation. Bureau of Construction Code Enforcement v. Hasbrouck Heights, 4 N.J.A.R. 282 (1983).

5:23-4.19 State of New Jersey training fees

(a) In order to provide for the training and certification and technical support programs required by the Act, an enforcing agency, including the Department when acting as the local agency, shall collect a surcharge fee to be based upon the volume of new construction within the municipality. Said fee shall be accounted for and forwarded to the Bureau of Regulatory Affairs in the manner herein provided.

(b) Amount: This fee shall be in the amount of \$0.0016 per cubic foot volume of new buildings and additions. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. The fee for all other construction shall be \$0.80 per \$1,000 of value of construction.

1. No fee shall be collected for preengineered systems of commercial farm buildings.

2. No fee shall be collected for permits to perform asbestos abatement or lead abatement.

(c) Remitting and reporting:

1. The municipality shall remit fees to the Bureau on a quarterly basis, in conjunction with report number R-840B State Training Fee Report in accordance with N.J.A.C. 5:23-4.5(e). Fees remitted shall be for the quarter. Checks shall be made payable to "Treasurer, State of New Jersey."

Amended by R.1982 d.220, effective July 19, 1982.

See: 14 N.J.R. 456(a), 14 N.J.R. 755(b).

In (c)3i deleted "state fiscal" and "third and fourth quarter" and added "quarters of the calendar" year. In (c)3ii deleted reporting on an annual basis and added quarterly report. Also added iii and (1). Prior to recodification of N.J.A.C. 5:23, this section was codified at 5:23-4.8(c).

Amended by R.1983 d.611, effective January 3, 1984.

See: 15 N.J.R. 1789(a), 16 N.J.R. 45(b).

In (c), deleted old 1.-3. and added new 1.

Emergency adoption, R.1989 d.405, effective July 3, 1989 (expires September 1, 1989).

See: 21 N.J.R. 2127(b).

In (b): changed "will" to "shall" and changed "\$0.0006" to "\$0.0014" per cubic foot.

Adopted concurrent proposal, R.1989 d.512, effective September 1, 1989.

See: 21 N.J.R. 2127(a), 21 N.J.R. 3086(a).

Provisions of emergency amendment R.1989 d.405 readopted without change.

Amended by R.1990 d.61, effective February 5, 1990.

See: 21 N.J.R. 3346(b), 22 N.J.R. 351(b).

At (c)1, monthly reporting and fee submissions changed to quarterly.

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

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

In (b) increased fee amount from \$0.0014 to \$0.0016 per cubic foot.

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

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

Fees to be paid to Regulatory Affairs.

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

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

Fee amount amended at (b).

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).

Administrative Correction.

See: 28 N.J.R. 1981(b).

Amended by R.1997 d.303, effective July 21, 1997.

See: 29 N.J.R. 1437(b), 29 N.J.R. 3247(a).

Subdivided (b); in (b), deleted reference to preengineered systems of commercial farm buildings; and added (b)2.

5:23-4.20 Departmental fees

(a) General:

1. The fee for plan review, computed as a percentage of the fee for a construction permit, shall be paid at the time of application for a permit. The amount of this fee shall then be deducted from the amount of the fee due for a construction permit, when the permit is issued. Plan review fees are not refundable.

2. The fee to be charged for a construction permit will be the sum of the basic construction fee plus all applicable special fees, such as elevator or sign fees. This fee shall be paid before a permit is issued.

3. The fee to be charged for a certificate of occupancy shall be paid before a certificate is issued. This fee shall be in addition to the construction permit fee.



4. Where the Department, pursuant to N.J.A.C. 5:23-4.24, is designated as the plan review agency, or when the Department has been requested to provide plan review services by a municipality pursuant to N.J.A.C. 5:23-4.24, or when the Department is designated as the local enforcing agency pursuant to N.J.A.C. 5:23-4.3, the following schedule of fees shall pertain.

5. Newly constructed residential units that are to be legally restricted to occupancy by households of low or moderate income shall be exempted from the fees set forth in (b) and (c) below and otherwise payable to the Department.

(b) Departmental plan review fee: The fees listed in (c) below shall be in addition to a Departmental plan review surcharge in the amount of 40 percent of each listed fee. Where the Department performs plan review only, the plan review fee shall be in the amount of 25 percent of the new construction permit fee which would be charged by the Department pursuant to these rules.

(c) Departmental (enforcing agency) fees shall be as follows:

1. Plan review fee: The fee for plan review shall be 20 percent of the amount to be charged for a new construction permit, except that elevator device plan review shall be as in (c)6 and 7 below.

2. The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and devices and the number of sprinklers, standpipes, and detectors (smoke and heat) at the unit rates provided herein plus any special fees.

i. Building volume or cost: The fees for new construction or alteration are as follows:

(1) Fees for new construction shall be based upon the volume of the structure. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. The new construction fee shall be in the amount of \$0.027 per cubic foot of volume for buildings and structures of all use groups and types of construction as classified and defined in articles 3 and 4 of the building subcode; except that the fee shall be \$0.015 per cubic foot of volume for use groups A-1, A-2, A-3, A-4, F-1, F-2, S-1 and S-2, and the fee shall be \$0.0008 per cubic foot for structures on farms, including commercial farm buildings under N.J.A.C. 5:23-3.2(d), with the maximum fee for such structures on farms not to exceed \$1,145.00.

(2) Fees for renovations, alterations and repairs or site construction associated with pre-engineered systems of commercial farm buildings, premanufactured construction, and the external utility connection for premanufactured construction shall be based upon

the estimated cost of work. The fee shall be in the amount of \$24.00 per \$1,000. From \$50,001 to and including \$100,000, the additional fee shall be in the amount of \$18.00 per \$1,000 of estimated cost above \$50,000. Above \$100,000, the additional fee shall be in the amount of \$15.00 per \$1,000 of estimated cost above \$100,000. For the purpose of determining estimated cost, the applicant shall submit to the Department such cost data as may be available produced by the architect or engineer of record, or by a recognized estimating firm, or by the contractor. A bona fide contractor's bid, if available, shall be submitted. The Department shall make the final decision regarding estimated cost.

(3) Fees for additions shall be computed on the same basis as for new construction for the added portion.

(4) Fees for combination renovations and additions shall be computed as the sum of the fees computed separately in accordance with items (2) and (3) above.

(5) The fee for tents, in excess of 900 square feet or more than 30 feet in any dimension, shall be \$92.00.

(6) The fee for roofing and siding work completed on structure in use group R-3 and R-4 shall be \$46.00.

ii. Plumbing fixtures and equipment: The fees shall be as follows:

(1) The fee shall be in the amount of \$10.00 per fixture, piece of equipment or appliance connected to the plumbing system, and for each appliance connected to the gas piping or oil piping system, except as indicated in (c)2ii(2) below.

(2) The fee shall be \$65.00 per special device for the following: grease traps, oil separators, refrigeration units, utility service connections, backflow preventers equipped with test ports (double check valve assembly, reduced pressure zone and pressure vacuum breaker backflow preventers), steam boilers, hot water boilers (excluding those for domestic water heating), active solar systems, sewer pumps and interceptors. There shall be no inspection fee charged for gas service entrances.

iii. Electrical fixtures and devices: The fees shall be as follows:

(1) For from one to 50 receptacles or fixtures, the fee shall be in the amount of \$36.00; for each 25 receptacles or fixtures in addition to this, the fee shall be in the amount of \$6.00; for the purpose of computing this fee, receptacles or fixtures shall include lighting outlets, wall switches, fluorescent fixtures, convenience receptacle, smoke and heat detec-

tors, or similar fixture, and motors or devices of less than or equal to one horsepower or one kilowatt.

(2) For each motor or electrical device greater than one horsepower and less than or equal to 10 horsepower; and for transformers and generators greater than one kilowatt and less than or equal to 10 kilowatts, the fees shall be \$10.00.

(3) For each motor or electrical device greater than 10 horsepower and less than or equal to 50 horsepower; for each service panel, service entrance, or sub-panel less than or equal to 200 amperes; for each transformers and generators greater than 10 kilowatts and less than or equal to 45 kilowatts; and for each utility load management device, the fee shall be \$46.00.

(4) For each motor or electrical device greater than 50 horsepower and less than or equal to 100 horsepower; for each service panel, service entrance or sub panel greater than 200 amperes and less than or equal to 1,000 amperes; and for transformers and generators greater than 45 kilowatts and less than or equal to 112.5 kilowatts, the fee shall be \$92.00.

(5) For each motor or electrical device greater than 100 horsepower; for each service panel, service entrance or sub panel greater than 1,000 amperes; and for each transformer or generator greater than 112.5 kilowatts, the fee shall be \$457.00.

(6) For the purpose of computing these fees, all motors except those in plug-in appliances shall be counted, including control equipment, generators, transformers and all heating, cooking or other devices consuming or generating electrical current.

iv. Fire protection and other hazardous equipment: sprinklers, standpipes, detectors (smoke and heat), pre-engineered suppression systems, gas and oil fired appliances not connected to the plumbing system, kitchen exhaust systems, incinerators and crematoriums:

(1) The fee for 20 or fewer heads shall be \$65.00; for 21 to and including 100 heads, the fee shall be \$120.00; for 101 to and including 200 heads, the fee shall be \$229.00; for 201 to and including 400 heads, the fee shall be \$594.00; for 401 to and including 1,000 heads, the fee shall be \$822.00; for over 1,000 heads, the fee shall be \$1,050.

(2) The fee for one to 12 detectors shall be \$36.00; for each 25 detectors in addition to this, the fee shall be in the amount of \$12.00.

(3) The fee for each standpipe shall be \$229.00.

(4) The fee for each independent pre-engineered system shall be \$92.00.

(5) The fee for each gas or oil fired appliance that is not connected to the plumbing system shall be \$46.00.

(6) The fee for each kitchen exhaust system shall be \$46.00.

(7) The fee for each incinerator shall be \$365.00.

(8) The fee for each crematorium shall be \$365.00.

3. Fees for certificates and other permits are as follows:

i. The fee for a demolition or removal permit shall be \$65.00 for a structure of less than 5,000 square feet in area and less than 30 feet in height, for one or two-family residences (use group R-3 of the building code), and structures on farms, including commercial farm buildings under N.J.A.C. 5:23-3.2(d), and \$120.00 for all other use groups.

ii. The fee for a permit to construct a sign shall be in the amount of \$1.20 per square foot surface area of the sign, computed on one side only for double-faced signs. The minimum fee shall be \$46.00.

iii. The fee for a certificate of occupancy shall be \$28.00.

iv. The fee for a certificate of occupancy granted pursuant to a change of use group shall be \$120.00.

v. The fee for a certificate of continued occupancy issued under N.J.A.C. 5:23-2.23(c) shall be \$120.00.

vi. The fee for plan review of a building for compliance under the alternate systems and non-depletable energy source provisions of the energy subcode shall be \$274.00 for one and two-family homes (use group R-3 of the building subcode), and for light commercial structures having the indoor temperature controlled from a single point, and \$1,369.00 for all other structures.

vii. The fee for an application for a variation in accordance with N.J.A.C. 5:23-2.10 shall be \$594.00 for class I structures and \$120.00 for class II and class III structures. The fee for resubmission of an application for a variation shall be \$229.00 for class I structures and \$65.00 for class II and class III structures.

viii. The fee for a permit for lead hazard abatement work shall be \$140.00. The fee for a lead abatement clearance certificate shall be \$28.00.

4. For cross connections and backflow preventers that are subject to testing, requiring reinspection annually, the fee shall be \$46.00 for each device when they are tested.

5. Annual permit requirements are as follows:

i. The fee to be charged for an annual construction permit shall be charged annually. This fee shall be a flat fee based upon the number of maintenance workers who are employed by the facility, and who are primarily engaged in work that is governed by a subcode. Managers, engineers and clericals shall not be considered maintenance workers for the purpose of establishing the annual construction permit fee. Annual permits may be issued for building/fire protection, electrical and plumbing.

ii. Fees for annual permits shall be as follows:

(1) One to 25 workers (including foremen) \$667.00/worker; each additional worker over 25, \$232.00/worker.

(2) Prior to the issuance of the annual permit, a training registration fee of \$140.00 per subcode and a list of at least one, but not more than three, individuals to be trained per subcode shall be submitted by the applicant to the Department of Community Affairs, Bureau of Technical Assistance, Training Section along with a copy of the construction permit (Form F-170C). Checks shall be made payable to "Treasurer, State of New Jersey." The Department shall register these individuals and notify them of the courses being offered.

6. The fee for plan review for elevator devices in structures in Use Groups R-3, R-4 and for elevator devices wholly within dwelling units in R-2 structures shall be \$50.00 for each device.

7. The fee for plan review for elevator devices in structures in Use Groups other than R-3, R-4 and devices in R-2s exempted by (c)6 above shall be \$260.00 for each device.

8. The fees for elevator device inspections and tests shall be as set forth in N.J.A.C. 5:23-12.

9. The fee for a mechanical inspection in a Use Group R-3 or R-4 structure by a mechanical inspector shall be \$43.00 for the first device and \$10.00 for each additional device. No separate fee shall be charged for gas, fuel oil, or water piping connections associated with the mechanical equipment inspected.

(d) The fee for an application by a manufacturer, distributor, owner or any other person for approval of any fixture, appurtenance, material or method, pursuant to N.J.A.C. 5:23-3.8, shall be an amount equal to the cost incurred, or to be incurred, by the Department for such tests as the Department may require, plus an administrative surcharge in the amount of 10 percent of such cost.

Amended by R.1982 d.402, effective November 15, 1982.
See: 14 N.J.R. 943(a), 14 N.J.R. 1300(b).

Text substantially amended. Department fees increased approximately 50 percent.
Amended by R.1982 d.463, effective January 3, 1983.
See: 14 N.J.R. 1129(a), 14 N.J.R. 1449(a).

Added (c)10, periodic reinspection fees.
Amended by R.1983 d.548, effective December 5, 1983.
See: 15 N.J.R. 1406(a), 15 N.J.R. 2033(b).

In (c)2., added "mechanical systems and equipment" and "the number of sprinklers and standpipes". Also added iv.-v.
Amended by R.1983 d.641, effective January 17, 1984.
See: 15 N.J.R. 1911(a), 16 N.J.R. 129(b).

Substantial changes in section.
Correction: 16 N.J.R. 2267(a).
Amended by R.1985 d.351, effective July 15, 1985.
See: 17 N.J.R. 1029(a), 17 N.J.R. 1756(b).

(c)11 and 12 added.
Amended by R.1986 d.213, effective June 16, 1986.
See: 17 N.J.R. 2490(a), 18 N.J.R. 1266(a).

Added text to (a)12 "Prior to the issuance of the annual permit" and "Bureau of Construction Code Enforcement".
Amended by R.1987 d.490, effective November 16, 1987.
See: 19 N.J.R. 1684(a), 19 N.J.R. 2134(a).

Fees raised.
Emergency amendment, R.1989 d.405, effective July 3, 1989 (expires September 1, 1989).
See: 21 N.J.R. 2127(b).

Amended extensively based on an overall increase of approximately 30 percent in fees for code enforcement and planned real estate development, and an increase in the State training fee per cubic foot volume of new construction. Changed fee amounts throughout.
Adopted concurrent proposal, R.1989 d.512, effective September 1, 1989.

See: 21 N.J.R. 2127(a), 21 N.J.R. 3086(a).

Provisions of emergency amendment R.1989 d.405 readopted with change.

Restructured section.

In (a): added new 5.

In (c): deleted (c)2i(5) regarding minor construction work fees.

In (c)2ii(2): added text to specify equipment fees and deleted (c)2ii(3) regarding fixtures.

In (c)2iii: deleted (3)-(5) and added new (3)-(6).

Deleted (c)3-6 regarding fees, and added (c)2iv, with new (3)-(7) on new fee structure.

Added (c)3 and 4 and renumbered (c)7-12 as (c)3-6ii.

Amended by R.1990 d.61, effective February 5, 1990.

See: 21 N.J.R. 3346(b), 22 N.J.R. 351(b).

Technical change of Form number in (c)6ii.

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

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

In (b), plan review surcharge increased from 30 to 40 percent; plan review only increased from 20 to 25 percent; minimum fee increased from \$33.00 to \$43.00.

In (c)2, basic construction fee permit increased from \$33.00 to \$43.00.

In (c)2i(1), new construction fee increased from \$0.019 to \$0.025; for use groups A-1, A-2, A-3, A-4, F-1, F-2, S-1, S-2 increased from \$0.011 to \$0.014; farm structures increased from \$0.0005 to \$0.0007; maximum farm structures fee increased from \$815.00 to \$1,060.

In (c)2i(2), fees increased from \$17.00 to \$22.00; from \$13.00 to \$17.00 above \$50,000; from \$11.00 to \$14.00 above \$100,000.

In (c)2ii(1), fee increased from \$7.00 to \$9.00 per fixture.

In (c)2ii(2), fee increased from \$46.00 to \$60.00 per special device.

In (c)2iii(1), fee increased from \$25.00 to \$33.00 for one to 50 receptacles or fixtures; each 25 additional increased from \$4.00 to \$5.00.

In (c)2iii(2), fee increased from \$7.00 to \$9.00.

In (c)2iii(3), fee increased from \$33.00 to \$43.00.

In (c)2iii(4), fee increased from \$65.00 to \$85.00.

In (c)2iii(5), fee increased from \$325.00 to \$423.00.

In (c)2iv(1), fee increased from \$46.00 to \$60.00 for 20 or fewer heads; from \$85.00 to \$111.00 for 21 to 100 heads; from \$163.00 to \$212.00 for 101 to 200 heads; from \$423.00 to \$550.00 for 201 to 400 heads; from \$585.00 to \$761.00 for 401 to 1,000 heads; from \$748.00 to \$972.00 for over 1,000 heads.

In (c)2iv(2), fee increased from \$163.00 to \$212.00.

In (c)2iv(3), fee increased from \$65.00 to \$85.00.

In (c)2iv(4) and (5), fee increased from \$33.00 to \$43.00.

In (c)2iv(6) and (7), fee increased from \$260.00 to \$338.00.

In (c)4i, demolition and removal permit increased from \$46.00 to \$60.00 and for form structure removal from \$85.00 to \$111.00.

In (c)4ii, fee for permit to construct a sign increased from \$0.85 to \$1.11 per square foot; minimum fee increased from \$33.00 to \$43.00

In (c)4iii, certificate of occupancy fee increased from \$85.00 to \$111.00; minimum fee for form structures increased from \$46.00 to \$60.00.

In (c)4iv, fee increased from \$124.00 to \$161.00.

In (c)4v, fee increased from \$85.00 to \$111.00.

In (c)4vii, fee increased from \$20.00 to \$26.00.

In (c)4viii, fees increased from \$195.00 to \$254.00 for one and two-family homes and from \$975.00 to \$41,268 for light commercial structures.

In (c)4ix, fees increased from \$423.00 to \$550.00 for class I structures and from \$85.00 to \$111.00 for class II and III structures. Resubmission of applications increased from \$163.00 to \$212.00 for class I structures and from \$46.00 to \$60.00 for class II and III structures.

In (c)5iii, fees increased from \$33.00 to \$43.00 for thrice annual testing and from \$85.00 to \$111.00 for annual testing.

In (c)6ii(1), fees increased from \$475.00 to \$618.00 for one to 25 workers and from \$165.00 to \$215.00 per worker over 25.

In (c)6ii(2), fee increased from \$100.00 to \$130.00.

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

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

Departmental fees set at (c).

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.

Notice of correction, effective May 18, 1992.

See: 24 N.J.R. 1879(b).

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 (c).

Amended by R.1992 d.313, effective August 3, 1992.

See: 24 N.J.R. 1846(a), 24 N.J.R. 2712(b).

No inspection fee for gas service entrances.

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

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

Fee for indirect apportionment systems set at (d).

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 throughout.

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

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

Added (c)9.

Amended by R.1994 d.28, effective January 18, 1994.

See: 25 N.J.R. 4546(b), 26 N.J.R. 352(a).

Administrative Correction.

See: 26 N.J.R. 796(a).

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.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.1994 d.434, effective September 6, 1994 (operative January 1, 1995).

See: 26 N.J.R. 1911(a), 26 N.J.R. 3706(b).

Amended by R.1995 d.381, effective July 17, 1995.

See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a).

Amended by R.1995 d.475, effective September 5, 1995 (operative January 1, 1996).

See: 27 N.J.R. 1716(a), 27 N.J.R. 3325(a).

In (c)5ii(2) added individuals to be trained and registered.

Amended by R.1995 d.476, effective September 5, 1995 (operative January 1, 1996).

See: 27 N.J.R. 1846(a), 27 N.J.R. 3325(b).

Eliminated minimum fee in (b) and rewrote (c).

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.1995 d.647, effective December 18, 1995 (operative March 18, 1996).

See: 27 N.J.R. 3517(a), 27 N.J.R. 5012(a).

5:23-4.21 Private enforcing agency authorization and reauthorization fees

(a) Authorization fee: Any onsite inspection agency submitting an application to the Department under N.J.A.C. 5:23-4.12 for approval as an inspection agency shall pay a fee of \$2,800 for each subcode for which authorization is sought.

(b) Reauthorization fee: Any onsite inspection agency submitting an application to the Department under N.J.A.C. 5:23-4.12 for reapproval as an inspection agency shall pay a fee of \$1,400 for each subcode for which authorization is sought plus an amount equal to five percent of the gross revenue earned from State Uniform Construction Code enforcement activities during the previous 12-month period. This fee shall be paid to the Department in 12 equal installments, beginning with the month immediately following the end of the 12 month period from which the fee is calculated. Payment shall be made prior to the last business day of each month.

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; Department of Community Affairs

(a) Rules concerning establishment are:

1. Plan review section: There is established in the Department of Community Affairs, Bureau of Construction Code Enforcement, a section on plan review, hereinafter "the plan review section". The plan review section shall review plans, applications and specifications submitted to the department acting in its enforcing agency capacity, and as further required or permitted by this section.

2. Plan review:

i. 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.

ii. Special or hazardous uses and types of construction:

(1) 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.

(2) 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.

(3) 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.

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

(5) 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.

iii. 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.

(b) Rules concerning administration and enforcement are:

1. Duties: The plan review section shall review all applications, plans and specifications for conformance to the regulations.

2. Release: 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.

3. Examination of plans: 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 signature, registration number, and seal, plan examination may, except for compliance with exit requirements, be limited to a supervisory check.

4. Rejection: If the department judges a plan not to be in conformance with the regulations, it shall notify the applicant in writing of the reason therefor.

5. Technical assistance: The department shall provide technical assistance to the applicant pursuant to the regulations.

6. Field inspection: The municipal enforcing agency shall perform all field inspections required by the regulations except that the department reserves 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).

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), 18 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), 18 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), 18 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".

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:

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

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.



- (3) Load calculations for service and feeders;
- (4) Sizes of branch circuit conductors;
- (5) The size, rating and location of main disconnect and overcurrent protective devices;
- (6) The location of outlets, junction boxes, fixtures and appliances; and
- (7) A single line diagram of the entire electrical installation (not required for one and two family dwellings).

(b) The compliance assurance program is a system employed by the manufacturer to assure conformance with the approved building systems documents. The compliance assurance manual shall be comprehensively indexed and shall treat the material listed below in detail. The program shall consist of the following:

1. Organizational requirements, as follows:

- i. The manufacturer's name and corporate office address and the address of each manufacturing facility shall be indicated in the compliance assurance manual;
- ii. The compliance assurance manual shall have a table of contents with the evaluation agency's dated stamp of approval on the cover sheet and any revised pages;
- iii. An organizational mechanism for implementing and maintaining the compliance assurance program and its functional relationship to other elements of the organizational structure of the manufacturer shall be indicated. This mechanism shall not be a part of the production department. Employees in charge of the compliance assurance program must be identified and their training and qualifications specified;
- iv. There shall be a uniform system of monitoring and evaluation to ensure program effectiveness;
- v. There shall be a serial numbering system of monitoring and evaluation to ensure program effectiveness;
- vi. There shall be requirements for issuance, possession of, attachment of and accounting for all certification labels to assure that certification labels are attached only to buildings or building components manufactured pursuant to an approved building system and inspected pursuant to an approved compliance assurance program; and
- vii. There shall be a system to document production changes in accordance with other provisions of this subchapter.

2. Materials control, as follows:

- i. There shall be procedures for inspection of materials, supplies and other items at the point of receipt;

- ii. There shall be a method of protection of materials, supplies and other items at the point of receipt; and

- iii. Provision shall be made for disposal of rejected materials, supplies and other items.

3. Production control, as follows:

- i. There shall be procedures for timely remedial and preventive measures to assure product quality;
- ii. There shall be procedures for provision, maintenance and use of testing and inspection equipment to assure compliance with the approved building system;
- iii. There shall be procedures regarding frequency of sampling inspections;
- iv. Provision shall be made to establish necessary authority to reject defective work and carry out compliance assurance functions, notwithstanding any conflict with production department goals and needs;
- v. There shall be a description of the manufacturing process showing the inspection and check points for mandatory inspection characteristics;
- vi. Inspection and test procedures, including accept and reject criteria and mandatory inspection characteristics, shall be indicated; and
- vii. Provision shall be made for disposition of rejects.

4. Finished product control, as follows:

- i. Procedures for handling and storing all finished industrialized/modular buildings or building components at the manufacturing plant or other storage point shall be indicated;
- ii. Procedures for packing, packaging and shipping operations and related inspections shall be indicated.

(c) The on-site installation instructions consist of specific installation procedures provided by the manufacturer that specify the materials and procedures required to install the building in conformance with the code and applicable standards. The specific installation procedure provided by the manufacturer shall include:

- 1. Connection details of industrialized/modular buildings or building components to the foundation;
- 2. Structural connections between industrialized/modular buildings and/or building components;
- 3. Connections required to complete the mechanical and/or utility systems;
- 4. Any special conditions affecting other structural elements.

Repeal and New Rule, R.1994 d.96, effective February 22, 1994.
See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).
Section was "Certification".

5:23-4A.10 Uniform Administrative Procedures

(a) The Uniform Administrative Procedures of the Industrialized Building Commission, hereby incorporated by reference, shall constitute the procedures by which the Department shall assure itself and the Commission of the compliance of industrialized/modular building construction with the State Uniform Construction Code, assess the adequacy of the building systems and verify and assure the competency and performance of evaluation and inspection agencies.

(b) Copies of the Uniform Administrative Procedures may be obtained from the Industrialized Building Commission, Suite 210, 505 Huntmar Park Drive, Herndon, VA 22070.

(c) The Department shall approve those evaluation or inspection agencies that the Commission designates as meeting the requirements of Part VI, Section 1 of the Uniform Administrative Procedures and that the Commission finds otherwise qualified to perform the functions delegated to it.

(d) The Department shall take such enforcement action against a manufacturer, inspection agency or evaluation agency as recommended by the Commission if, pursuant to the Uniform Administrative Procedures, the Commission determines that such manufacturer, inspection agency or evaluation agency has failed to fulfill its responsibilities under the Uniform Administrative Procedures.

(e) Any notice or order issued pursuant to this subchapter shall be in writing and shall be served upon the respondent party by certified mail, return receipt requested.

Repeal and New Rule, R.1994 d.96, effective February 22, 1994. See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

Section was "Inspection by the Department or by an approved agency".

5:23-4A.11 Appeals

(a) Any person, firm or corporation acting on behalf of itself or a class adversely affected by any notice, order, ruling, decision or action of any evaluation and inspection agency or of the Commissioner may file an appeal.

(b) An application for a hearing must be filed within 20 business days of receipt by the applicant of the notice, order, decision or action complained of.

(c) The notice of appeal may be filed either in person or by mail and shall be addressed to the Hearing Coordinator, Division of Housing and Development, CN 802, Trenton, New Jersey 08625.

(d) The application shall be in writing and shall set forth the rule under which the appeal is being brought and the facts and circumstances of the case.

(e) The application shall include, where appropriate, the following information and documentation:

1. A copy of the notice, order, ruling, decision or action that is the subject of the appeal;
2. A copy of the building system, compliance assurance program or other document involved;
3. A description of the industrialized/modular building or building component affected;
4. A statement of the relief sought by the appellant; and
5. In the event of an appeal from an action or decision of an evaluation and inspection agency, the application shall contain a copy or, if that is unavailable, a written statement, of the prior decision or other action of the agency being appealed.
6. In the event of any appeal from an action or decision of the Commission where a hearing has already been conducted pursuant to the Uniform Administrative Procedures the application shall contain a copy of the prior decision or other action of the Commission on such appeal.

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

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

Repeal and New Rule, R.1994 d.96, effective February 22, 1994.

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

Section was "Enforcing agency procedures and inspections".

5:23-4A.12 Conduct of hearings

Hearings in contested cases shall be conducted by the Office of Administrative Law pursuant to 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.

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, label fee increased from \$100.00 to \$130.00.

In (a)2, label 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.

Repeal and New Rule, R.1994 d.96, effective February 22, 1994.

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

Section was "Fees for labels; labels".

5:23-4A.13 (Reserved)

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 "Notification of changes in name, address, ownership or location".

5:23-4A.14 (Reserved)

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 "Proprietary information".

5:23-4A.15 (Reserved)

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 "Requirements for submission of compliance assurance programs".

3. Connections required to complete the mechanical and/or utility systems; and

4. Any special conditions affecting other structural elements.

5:23-4B.10 Appeals

(a) Any person, firm or corporation acting on behalf of itself or a class adversely affected by any notice, order, ruling, decision or action of any evaluation and inspection agency or of the Commissioner may file an appeal.

(b) An application for a hearing must be filed within 20 business days of receipt by the appellant of the notice, order, ruling, decision or action complained of.

(c) The notice of appeal may be filed either in person or by mail and shall be addressed to the Hearing Coordinator, Division of Housing and Development, CN 802, Trenton, New Jersey 08625.

(d) The application shall be in writing and shall set forth the rule under which the appeal is being brought and the facts and circumstances of the case.

(e) The application shall include, where appropriate, the following information and documentation:

1. A copy of the notice, order, ruling, decision or action that is the subject of the appeal;
2. A copy of the building system, compliance assurance program or other document involved;
3. A description of the industrialized/modular building or building component affected;
4. A statement of the relief sought by the appellant; and
5. In the event of an appeal from an action or decision of an evaluation and inspection agency, the application shall contain a copy or, if that is unavailable, a written statement, of the prior decision or other action of the agency being appealed.

5:23-4B.11 Conduct of hearings

Hearings in contested cases shall be conducted by the Office of Administrative Law pursuant to 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.

SUBCHAPTER 4C. ENFORCEMENT OF FEDERAL MANUFACTURED HOME STANDARDS

Authority
N.J.S.A. 52:27D-124.

Source and Effective Date

R.1994 d.96, effective February 22, 1994.
See: 25 N.J.R. 5388(a), 26 N.J.R 1073(a).

5:23-4C.1 Delegation of authority

The authority of the Department of Community Affairs as the State Administrative Agency to enforce Federal manufactured home construction and safety standards is hereby delegated to the Bureau of Code Services (the "Bureau"), CN 816, Trenton, New Jersey 08625.

5:23-4C.2 Relation to Federal law

(a) This subchapter incorporates the Federal regulations found at 24 C.F.R. Sections 3282.152, 3282.153, 3282.309 and 3282.401 et seq. (Subpart I), including all subsequent amendments and supplements to these sections. These sections are hereby incorporated by reference.

(b) Every manufacturer who produces manufactured homes in this State shall comply with all applicable requirements of 24 C.F.R. Section 3282.401 et seq. (Subpart I).

(c) The Bureau shall monitor manufacturer compliance with the requirements of 24 C.F.R. Section 3282.401 et seq. (Subpart I) primarily by checking records required to be kept by manufacturers in the State pursuant to 24 C.F.R. Section 3282.404(b) at least once annually.

(d) Nothing in this chapter shall be read to conflict with any provision of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (P.L. 93-383) as amended or Federal regulations promulgated thereunder (42 U.S.C. Section 5401 et seq.). Whenever it shall appear that a provision of this chapter is in conflict with any Federal standard or requirement under the Federal Manufactured Housing Construction and Safety Standards Act, Federal law shall govern.

5:23-4C.3 Complaint procedure

(a) Complaints or other information concerning an imminent safety hazard or a failure to conform with applicable standards of any manufactured home manufactured, sold, leased, introduced, imported or delivered in this State may be made to the Bureau.

(b) When a consumer complaint or other information indicating the possible existence of an imminent safety hazard or a failure to conform to applicable standards is received by the Bureau, the Bureau shall forward the complaint or other information to the manufacturer of the manufactured home in question.

(c) When it appears from the complaint or other information that more than one manufactured home may be involved, the Bureau shall send a copy of the complaint or other information to the State Administrative Agency of the state where the manufactured home was manufactured or, if there is no such State Administrative Agency, to the Secretary of the United States Department of Housing and Urban Development (the "Secretary") and, when it appears that an imminent safety hazard or serious defect may be involved, simultaneously send a copy to the Secretary.

5:23-4C.4 Hearing and appeal procedures

(a) When the Bureau is the appropriate agency to hold a hearing for presentation of views as provided for at 24 C.F.R. Sections 3282.405 and 3282.407, the Bureau shall follow the procedures set forth in 24 C.F.R. Sections 3282.152 and 3282.153, with the Bureau acting as the Secretary would otherwise act under that section. Where 24 C.F.R. Section 3282.152 requires publication in the Federal Register, the Bureau shall provide equivalent notice throughout the State by publication in the New Jersey Register.

(b) Any person who is aggrieved by any determination issued by the Bureau pursuant to 24 C.F.R. Section 3282.407, or who is aggrieved by application of this subchapter, may request and shall be granted a hearing on the matter pursuant to the Administrative Procedure Act before the Office of Administrative Law.

1. Such person shall file a written petition requesting such hearing, which shall set forth a brief statement of the grounds therefor, with the Hearing Coordinator of the Division of Housing and Development, CN 802, Trenton, New Jersey 08625, within 15 days of receipt of the ruling, action, notice or order complained of.

2. The final decision in each such case shall be issued by the Commissioner.

3. Any determination of the Bureau that is not appealed to a hearing before the Office of Administrative Law shall be considered the final determination of the Bureau and of the Department of Community Affairs upon the expiration of the 15 day period for submission of a hearing request.

4. When a final determination by the Bureau and the Department of Community Affairs has become effective, or when notice has been given to a manufacturer of the final decision of the Commissioner, that a defect or noncompliance exists, the manufacturer may, within 10 days of the effective date of such final determination or receipt of notice of such final decision, appeal to the Secretary.

(c) Any party in a proceeding held pursuant to 24 C.F.R. Section 3282.407, including, specifically, owners of affected manufactured homes, states in which affected manufactured homes are located, consumer groups representing owners, manufacturers and parties with similar substantial interest, may appeal to the Secretary in writing any final determination or final decision of the Bureau or of the Commissioner that is adverse to the interest of that party. This appeal shall be made within 30 days of the effective date of the final determination by the Bureau or of notice of the final decision of the Commissioner, as the case may be.

5:23-4C.5 Monitoring inspection fee

There is hereby established a monitoring inspection fee of \$19.00 which is to be paid by manufacturers for each manufactured home manufactured in New Jersey.

SUBCHAPTER 5. LICENSING OF CODE ENFORCEMENT OFFICIALS

RECODIFICATION TABLE

Old Citation	New Citation
5.5(b)1	5.6
5.5(b)2	5.7
5.5(b)3i	5.8
5.5(b)3ii	5.9
5.5(b)3iii	5.10
5.5(b)3iv	included in 5.8, 5.9 and 5.10
5.5(b)4i	5.11
5.5(b)4ii	5.12
5.5(b)4iii	included in 5.11 and 5.12
5.5(b)5i	5.13
5.5(b)5ii	5.14
5.5(b)5iii	5.15
5.5(b)5iv	included in 5.13, 5.14 and 5.15
5.5(b)6i	5.16
5.5(b)6ii	5.17
5.5(b)6iii	included in 5.16 and 5.17
5.5(b)7	5.18
5.5(b)8	5.19
5.5(b)9	5.20
5.5(b)10 (proposed)	5.5(d)5
5.5(c)-(e)	5.5(b)-(d)
5.6	5.21
5.7	5.22
5.8 (reserved)	—
5.9	5.24
5.10	5.25
5.11	5.26
5.12	5.23

5:23-5.1 Title; scope; intent

(a) This subchapter of the regulations adopted pursuant to authority of the Uniform Construction Code Act, entitled "Licensing of Code Enforcement Officials", shall be known and may be cited throughout the regulations as subchapter 5, and when referred to in this part of the regulations may be cited as "this subchapter."

(b) Unless otherwise specifically provided, all references to article or section numbers, or to provisions not specifically identified by number, shall be construed to refer to such article, section or provision of this subchapter.

(c) This subchapter shall control all matters relating to qualifications for and licensing of all subcode enforcement officials engaged in or to be engaged in the administration and enforcement of the New Jersey Uniform Construction Code, including types of licensed code enforcement officials; procedures for application, issuance, denial and revocation of licenses; the approval of testing and/or educational programs offered to meet the requirements for licensing of code enforcement officials or construction board of appeal members; application fees for a license; and enforcement of penalties for violations of this subchapter. Additional provisions regarding the licensing of elevator subcode officials are contained in N.J.A.C. 5:23-12.

(d) The Uniform Construction Code has been adopted to ensure public safety, health, and welfare insofar as they are affected by building construction. In order for the code to be enforced adequately and effectively, code officials will need to have sufficient knowledge and competence to administer and interpret the code's standards. This can best be achieved through the creation of an education and training program and the development of licensing requirements.

1. It is the purpose of this subchapter to establish standards and procedures for the licensing of Uniform Construction Code enforcement officials, and to require all persons performing duties with respect to the inspection of building construction for any political subdivision within this State, or in a private capacity, to be licensed as provided in this subchapter.

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 Unit established; hearings

(a) Rules concerning licensure of code enforcement officials are:

1. Established: There is hereby established in the Bureau of Technical Services, Division of Housing and Development, a Licensing Unit. The Unit shall consist of such employees of the Department of Community Affairs as may be required for the efficient implementation of this subchapter.

2. Powers and duties: The unit shall have the following responsibilities in addition to all others provided in this subchapter.

i. To issue such licenses as may be called for herein when warranted;

ii. 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;

iii. To suspend or revoke a license provided for herein upon the establishment of good cause.

(b) Rules concerning hearings are:

1. Any person aggrieved by any notice, actions, 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.

2. Rules concerning hearing procedure are:

i. The aggrieved person must request a hearing. The request must be made within 15 days after receipt of the action or ruling being appealed. The request should be mailed to the Hearing Coordinator, Division of Housing and Development, Department of Community Affairs, CN 802, Trenton, New Jersey 08625-0802. The request for hearing should raise all issues that will be set forth 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.

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 I, II and III.

(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 II and III, and to carry out field inspection activities for structures in classes I, II and III.

(3) Building inspector with a specialty in residential and small commercial structures (R.C.S.): *Build-*

ing inspectors R.C.S. are authorized to review plans for structures in class III and to carry out field inspection activities for structures in classes I, II and III.

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 I, II and III.

(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 II and III, and to carry out field inspection activities for structures in classes I, II and III.

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 I, II and III.

(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 II and III, and to carry out field inspection activities for structures in classes I, II and III.

(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 III and to carry out field inspection activities for structures in classes I, II and III. 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 I, II and III.

(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 II and III, and to carry out field inspection activities for structures in classes I, II and III.

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 Use Group R-3 or R-4 structures. 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.

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.

5:23-5.4 Licenses required

(a) After October 1, 1978 no person shall be appointed to the position of construction official or subcode official unless that person has received a license required for that position pursuant to these regulations. No person currently holding an appointment as a construction official or subcode official or receiving an appointment prior to October 1, 1978, shall continue to hold such appointment or to act in such capacity after December 31, 1980, unless that person has received the necessary license pursuant to these rules.

(b) After October 1, 1978, no person shall be appointed to a technical inspector position in an enforcing agency for which a license requirement has been established by this subchapter unless that person has received the license. No person currently holding an appointment as a technical inspector shall continue to hold such appointment or act in such capacity after December 31, 1980, unless that person has received the license required by these rules.

(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 Technical 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 Technical Services, Licensing Unit, of any change in employment status or address within one month of the change. A non-refundable 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 Technical 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 Technical Services, Licensing Unit within one month of any change in employment status prior to accepting any new position and of any change of address. A non-refundable 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)5i 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)5. At the end of one year of full time internship, the supervisor shall forward notice to the Department of Community Affairs, Bureau of Technical 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) Rules concerning effect are:

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 on and after January 1, 1981, 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 as qualified for such position, or to use any title or otherwise represent himself 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 shall be deemed a violation of this section subject to a penalty of not more than \$500.00 for each offense.

3. It shall be a violation of these rules on and after October 1, 1978, 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 on and after January 1, 1981, for an enforcing agency to continue an individual in employment in a position for which a license is required pursuant to these rules, 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(g) of these rules, 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.

(g) For the period July 1, 1992 to June 30, 1996, interim rules for elevator subcode officials and inspectors shall be as follows:

1. Except as otherwise provided in (f)2 below, no person shall be appointed to the position of elevator subcode official or appointed as an elevator inspector

unless he or she shall have been licensed in accordance with this subchapter.

2. No person serving as an elevator subcode official, or holding employment as an elevator inspector, on June 30, 1992 shall continue to serve in such capacity, or hold such employment, after June 30, 1996, unless he or she shall have been licensed in accordance with this subchapter.

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).

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 Technical Services, accompanied by the required non-refundable application fee established in N.J.A.C. 5:23-5.22. The application shall include such information and documentation as the Commissioner may require pursuant to this subchapter.

(b) After receipt of the required non-refundable fee, the Department shall determine, by examination of the application and review of 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.

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 requirements for the license sought. However, results of passed tests taken prior to July 1, 1991 of test module 6B—Elevator General shall be accepted toward fulfilling the requirements for elevator inspector H.H.S. licensure, if application is received by the Department within three years of issuance of the test results or by June 30, 1992, whichever is later.

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.

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) The following persons shall be exempt from the requirements of this section and shall be issued a license upon submission of an application and payment of the required fee:

1. Licensed plumbing inspectors:

i. A license of the appropriate type and specialty shall be issued to any person holding or receiving, prior to January 1, 1978, tenure or permanent civil service status.

ii. A person licensed by the Department under the above provision 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 without recourse to the above provision.

2. Licensed electrical inspectors:

i. A license for electrical inspector I.C.S. shall be issued to any person holding or receiving, prior to January 1, 1978, an electrical inspector's license, issued by the New Jersey Public Utilities Commission, pursuant to Title 48, Revised Statutes.

ii. A person licensed by the Department under the above provision 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 without recourse to the above provision.

3. Inspectors with civil service status or tenure:

i. A license of the appropriate type and specialty shall be issued to any person holding or receiving, prior to January 1, 1978, tenure or permanent civil service status.

(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, 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 of Use Group R-3 or R-4 structures.

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).

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 herein for at least one of the five subcode official licenses; 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

2. Successful completion of an approved construction official educational program as required by N.J.A.C. 5:23-5.20 prior to application.

3. A provisional license shall be issued to any person provided that such person is licensed or is simultaneously licensed as a subcode official. Such person shall have

successfully completed the educational program required herein within 24 months of issuance of the provisional 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 5:23-5.5(b)1.

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 (a)1 "in the specialty ... license is sought".

Administrative Correction to (a)2.

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).

Simultaneous license accepted.

Case Notes

Citation to former N.J.A.C. 5:23-5.25 for construction official's qualifications; township manager without authority over matters of code enforcement and official discipline due to State legislative preemption. *J.P. Properties, Inc. v. Macy*, 183 N.J.Super. 572, 444 A.2d 1131 (Law Div.1982).

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.

5:23-5.7 Subcode official requirements

(a) A candidate for a license as a building, electrical, fire protection, plumbing or elevator subcode official shall meet the following qualifications:

1. Possession of the qualifications established herein for a technical inspector license in at least the same specialty as the subcode official license being applied for; and

2. Successful completion of an approved subcode official educational program as established in N.J.A.C. 5:23-5.20 prior to, or at the time of, application; and

3. Completion of such additional experience in the subcode of qualification as may be required, beyond that needed for licensure as a technical inspector, to provide at least the following total experience:

i. Ten years in construction, design or supervision as a journeyman in a skilled construction trade currently regulated by the Uniform Construction Code; or 10 years as a technical inspector; or 10 years as a construction contractor in a field of construction currently regulated by the construction code; or

ii. Five years of experience in construction, design or supervision in building construction work, provided that such persons possess, prior to this experience, at least a bachelor's degree from an accredited institution of higher education in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction; or

iii. Three years of experience in construction, design or supervision as a licensed engineer or registered architect, provided that such person possess a license as

an engineer or architect issued by the State of New Jersey at the time of application.

4. Exceptions to experience requirements follow:

i. A candidate for a license as a fire protection subcode official shall possess at least the following experience:

- (1) Three years of experience as a fire prevention official; or
- (2) Three years of experience as a fire protection official; or
- (3) Three years of experience as a firefighter.

ii. A candidate for a license as a building, plumbing or electrical subcode official who obtained the technical license in that subcode area under the provisions of N.J.A.C. 5:23-5.5(d)1 shall possess the following experience:

- (1) Three years of experience as an inspector in that specific subcode area; or
- (2) Three years of experience in a skilled trade directly related to that specific subcode area; or
- (3) Two years of experience in that specific subcode area as an inspector or in construction, design or supervision with at least a bachelor's degree from an accredited institution of higher education in architecture or engineering or in architecture or engineering technology or in a major area of study directly related to building construction; or
- (4) One year of experience in that specific subcode area as an inspector or in construction, design or supervision as a licensed engineer or registered architect, provided that such person possesses a license as an engineer or architect issued by the State of New Jersey at the time of application.

5. A provisional license shall be issued to any person who possesses the required experience listed above provided that such person is licensed or is simultaneously licensed as a technical inspector in the same subcode area. Such person shall have successfully completed the educational program required herein within 24 months of issuance of the provisional license.

6. A person who is already licensed as a fire protection subcode official must have the total years of experience as described in (a)3 above to satisfy the experience requirement for any other subcode official 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 5.5(b)2.

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

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

Added text to (a)6 "other than fire protection subcode official license".

Correction: Added "experience" to text in (a)6.

See: 18 N.J.R. 1963(b).

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)2.

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).

Elevator subcode official added.

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

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

Experience to be prior to application; simultaneous licensing accepted.

Amended by R.1992 d.393, effective October 5, 1992.

See: 24 N.J.R. 2661(a), 24 N.J.R. 3525(a).

Experience requirements for reciprocal subcode license added to (a)4; (a)6 deleted.

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).

Case Notes

Position of electrical subcode official not a professional service; contract to approved inspection agency requires competitive bidding (citing former N.J.A.C. 5:23-5.5) Twp. of Burlington v. Middle Department Inspection Agency, Inc., 175 N.J.Super. 624, 421 A.2d 616 (Law Div.1980).

5:23-5.8 Building inspector H.H.S. requirements

(a) A candidate for a license as a building inspector H.H.S. shall meet one of the following educational and/or experience requirements:

1. Seven years of experience consisting of one of the following, or a combination thereof:
 - i. Experience in construction, design or supervision as a journeyman in a skilled trade currently regulated by the building subcode; or
 - ii. Experience as a building or housing inspector; or
 - iii. Experience as a construction contractor in a field of construction currently regulated by the building subcode; or
2. Graduation 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, and two years of subsequent experience in construction, design, inspection or supervision in a field of construction currently regulated by the building subcode; or
3. Possession of an associate's degree in code enforcement from an accredited institution of higher education, and three years of subsequent experience in the construction, design, inspection or supervision of construction work regulated by the building subcode; or
4. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for a license as a building inspector H.H.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for building inspector H.H.S.; provided, however, that persons having 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 a current New Jersey registration/license as an architect or engineer

shall be exempted from the educational program requirements for building inspector H.H.S.

2. Successful completion of an examination as required by N.J.A.C. 5:23-5.23.

3. Possession of, or eligibility for, the building inspector I.C.S. license.

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



Case Notes

Regulations valid and applicable to plumbing inspectors. New Jersey State Plumbing Inspectors Assn., Inc. v. Sheehan, 163 N.J.Super. 398, 394 A.2d 1244 (App.Div.1978) certification denied 79 N.J. 484, 401 A.2d 239 (1979).

5:23-5.17 Plumbing inspector I.C.S. requirements

(a) A candidate for a license as a plumbing inspector I.C.S. shall meet one of the following educational and/or experience requirements:

1. Five years of experience consisting of one of the following, or a combination thereof:
 - i. Experience in construction, design or supervision as a journeyman in a skilled trade currently regulated by the plumbing subcode; or
 - ii. Experience as a plumbing inspector; or
 - iii. Experience as a construction contractor in a field of construction currently regulated by the plumbing subcode; or
2. Graduation 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, and one year of subsequent experience in construction, design, inspection or supervision in a field of construction currently regulated by the plumbing subcode; or
3. Possession of an associate's degree in code enforcement from an accredited institution of higher education, and two years of subsequent experience in the construction, design, inspection or supervision of construction work regulated by the plumbing subcode; or
4. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for a license as a plumbing inspector I.C.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for plumbing inspector I.C.S.; provided, however, that persons having 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 a current New Jersey registration/license as an architect or engineer, shall be exempted from the educational program requirements for plumbing inspector I.C.S.
2. Successful completion of an examination as required by N.J.A.C. 5:23-5.23.

Amended by R.1985 d.612, effective January 6, 1986.
See: 17 N.J.R. 1821(a), 18 N.J.R. 80(a).

Was 5:23-5.5(b)6ii.

Amended by R.1987 d.509, effective December 6, 1987.
See: 19 N.J.R. 1264(a), 19 N.J.R. 2270(a).

Substantially amended.

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

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

Experience subsequent to study; architects and engineers added; "significantly" replaced "directly".

5:23-5.18 Inplant inspector requirements

(a) A candidate for a license as an inplant inspector shall meet one of the following educational and/or experience requirements:

1. Five years of experience consisting of one of the following, or a combination thereof:
 - i. Experience in construction, design or supervision as a journeyman in a skilled trade currently regulated by the building, electrical, fire protection or plumbing subcode, or a combination thereof; or
 - ii. Experience as a building, electrical, fire protection or plumbing inspector, or a combination thereof; or
 - iii. Experience as a construction contractor currently regulated by any of the four above enumerated subcodes, or a combination thereof; or

2. Graduation from an accredited institution of higher education with a bachelor's degree in fire science or fire science technology, or in architecture or engineering, or in architectural or engineering technology, or in any other major area of study significantly related to building construction or fire science, and three years of subsequent experience in any one or more of the fields regulated by the above enumerated subcodes; or

3. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for a license as an inplant inspector shall have successfully completed examinations as required by N.J.A.C. 5:23-5.23.

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

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

Was 5:23-5.5(b)7.

Correction: (a)2 was inadvertently omitted from Section.

See: 18 N.J.R. 1963(c).

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.1992 d.272, effective July 6, 1992.

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

Fire science added.

5:23-5.19 Elevator inspector H.H.S. requirements

(a) A candidate for a license as an elevator inspector of high-rise and hazardous structures (H.H.S.) shall meet the following educational and/or experience requirements:

1. Seven years of experience consisting of one of the following, or combination thereof:

i. Experience in construction, design or supervision as a journeyman in a skilled trade currently regulated by the elevator subcode;

ii. Experience as an elevator inspector; or

iii. Experience as a construction contractor in a field of construction currently regulated by the elevator subcode; or

2. Graduation 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, and two years of subsequent experience in construction, design, inspection or supervision in a field of construction regulated by the elevator subcode; or

3. Possession of an associate's degree in code enforcement from an accredited institution of higher education and three years of subsequent experience in the construction, design, inspection, or supervision of construction work currently regulated by the elevator subcode; or

4. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for licensure as an elevator inspector H.H.S. shall also meet the following requirements:

1. Successful completion of an approved educational program meeting the requirements established in N.J.A.C. 5:23-5.20 for elevator inspector H.H.S.; provided, however, that persons having 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 a current New Jersey registration/license as an architect or engineer, shall be exempted from the educational program requirements for elevator inspector H.H.S. Additionally, any individual who has successfully completed an educational program determined by the Department as equivalent to that established in N.J.A.C. 5:23-5.20 shall also be exempted from the educational program requirements for elevator inspector H.H.S., provided application for licensure is received by the Department on or before June 30, 1992.

2. Successful completion of an examination as required by N.J.A.C. 5:23-5.23.

(c) On or after January 1, 1995, no person shall work either as an elevator inspector or as a subcode official under the provisions of N.J.A.C. 5:23-5.4(g) who does not hold an Elevator Inspector HHS License, an Elevator Inspector Certification or an Elevator Inspector Interim License.

1. An Elevator Inspector Certification shall be issued to those individuals who have documented they were employed as elevator inspectors on June 30, 1992 but have not satisfied the educational and/or examination requirements for the Elevator Inspector HHS license. This certification shall be non-renewable and shall be issued with an expiration date of June 30, 1996.

2. For an Elevator Inspector Interim License, an applicant shall document that he or she was employed as an elevator inspector on June 30, 1992, provide documentation of any additional relevant experience, and satisfy the educational and examination requirements set forth in (b)1 and 2 above. This license shall be renewable, subject to the requirements of N.J.A.C. 5:23-5.21.

i. An Elevator Inspector Interim License with Subcode Official endorsement shall be issued to any applicant for such endorsement who has satisfied the requirements for the Elevator Inspector Interim License; provided that, if the applicant has not successfully completed an approved subcode official educational program, as set forth in N.J.A.C. 5:23-5.20, the endorsement shall be issued on a provisional basis, pursuant to N.J.A.C. 5:23-5.7(a)5, and shall be valid for a period of 24 months only.

Amended by R.1985 d.612, effective January 6, 1986.
See: 17 N.J.R. 1821(a), 18 N.J.R. 80(a).

Was 5:23-5.5(b)8.

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 requirements specified.

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

"Significantly" replaced "directly".

Amended by R.1992 d.394, effective October 5, 1992.
See: 24 N.J.R. 2662(a), 24 N.J.R. 3525(b).

Experience must be in title of elevator inspector.

Amended by R.1994 d.435, effective September 6, 1994 (operative January 1, 1995).

See: 26 N.J.R. 1912(a), 26 N.J.R. 3706(c).

5:23-5.19A Mechanical inspector requirements

(a) A person validly licensed as an inspector in any subcode may apply for a mechanical inspector's license qualifying such person to perform mechanical inspections of Use Group R-3 or R-4 structures, if that person successfully completes the examinations required by N.J.A.C. 5:23-5.23.

(b) Notwithstanding the three-year time limit set forth in N.J.A.C. 5:23-5.5(b)4, results from any of the examinations already successfully completed and currently used for licensure may be submitted at the time of application and, in such case, examinations need not be re-taken.

New Rule, R.1993 d.187, effective May 3, 1993.

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

5:23-5.20 Standards for educational programs

(a) To carry out their responsibilities, code enforcement officials must be fully knowledgeable about code standards and adequately prepared to administer and enforce them properly. Code enforcement officials have the necessary technical and administrative training to effectively enforce the Uniform Construction Code at the local level. This article adopts explicit guidelines and standards for code enforcement official educational programs. Procedures governing the approval of such educational programs set forth in N.J.A.C. 5:23-5.24.

(b) This subsection covers the organizational, administrative, and operational functions that support the code enforcement educational programs.

1. Purposes and objectives: Programs for the effective education of code enforcement officials are expected to operate with appropriate purposes and objectives. An institution seeking initial and continuing approval of education programs should include in its category clearly defined statements of such purposes and objectives.

2. Organization: Sound educational programs can be operated effectively only when supported by adequate institutional arrangements. Accordingly, only programs offered by or under the auspices of institutions of higher education, licensed by the New Jersey Department of Higher Education, can be considered by approval. The Commissioner, however, may approve other training programs such as those conducted by an approved inplant inspection agency, where the students are solely code enforcement officials employed by the agency or by national model code organizations. The educational program proposal by the inplant agency must be submitted to the department with the application for approval as required in N.J.A.C. 5:23-4.13(b) and in the form specified in N.J.A.C. 5:23-5.24.

3. Admission, retention and evaluation policies and practices:

i. Admission to code enforcement official education programs: Provision should be made within the institution for orderly methods of obtaining and filing information relative to candidates applying for admission to code enforcement official education programs.

ii. Grading: An institution shall have evaluation procedures, including a mid-term and final examination, to assess the quality of its students when they complete programs and, at the very least, establish and apply pass/fail criteria.

iii. Retention: The nature of professional code enforcement studies calls for achievement and growth in technical competence. An institution should determine as objectively and systematically as possible specific strengths and weaknesses of the student as these effect the continuation of the student in code enforcement education programs.

iv. Evaluation: The institution should design and implement a well-defined plan for continuing evaluation of students enrolled in code enforcement programs. Measures of academic ability, observation by faculty (in courses, laboratories and field experiences) and other modes of appraisal should be utilized to assess specific strengths and weaknesses as they affect the student's retention within the education programs, readiness to assume a professional role in code enforcement.

4. Student personnel:

i. Supporting student services: Each student should know where to secure guidance and who is officially responsible for this program. Attention must be given to a plan for maintaining desirable student-faculty relationships.

ii. Student records: It is the responsibility of the institution to maintain an adequate system of student personnel accounting, including a permanent cumulative record of each student enrolled. To facilitate ready interpretation by licensing authorities, the graduate is entitled to an intelligible and adequate transcript of record, including a statement of course titles.

5. Faculty: Faculty members should be competent in their fields and have contacts with code enforcement environments and other sources so their teaching and research are current and relevant.

i. Faculty competence: The quality of the faculty is one of the more important factors in judging the effectiveness of an institution. Appraisal of the faculty should be made in terms of its competence to provide the program for which approval is being sought. Each faculty member, in subject matter and in professional fields, should have a high degree of competency in his area. The faculty consists of those instructors who teach in the curriculums and all personnel who direct students in all types of activities included as part of the curriculums. Those who teach courses should be familiar with practices in the code enforcement professional and/or building construction technology generally.

ii. Part-time faculty: The institution, recognizing that an appropriate faculty is one of the major determinants of the quality of its educational programs, should make provision for the use of part-time or adjunct faculty.

(1) No individual who has ever had a license suspended for a period of six months or more or has ever had a license revoked for any reason set forth in N.J.A.C. 5:23-5.25 shall be eligible to instruct code enforcement educational programs.

iii. Instruction: The institution will be expected to evaluate instruction systematically based on the performance of its students within the institution. Consideration will be given to such items as the performance of

the student in class tests, the quality of their subsequent work, and the degree to which the institution as a whole attains its goals in the preparation of code enforcement personnel. The institution should show that it utilizes a variety of appropriate instructional procedures which contribute to the effectiveness of the student's preparation, such as class discussions, lectures, laboratory work, and newer media.

6. Facilities and instructional materials: The institution shall provide physical facilities, instructional materials and other resources essential for conducting education programs.

i. Building and grounds: An institution should have a physical plant designed to serve effectually its defined purposes for education.

ii. Library: The library, as the principal materials resource center of the institution, should be adequate for the instructional research and other services pertinent to the code enforcement educational programs.

iii. Laboratories: Each institution should be provided with laboratory equipment sufficient for instructional purposes for each program offered.

iv. Inspection experiences: Each institution should establish a field experience center or centers either as part of the institution or in cooperation with nearby code enforcement agencies. These may be organized for field inspection experiences.

(c) All courses for credit toward a code enforcement official license should be designed to meet the following general standards:

1. Standard I, Institutional responsibility: Each institution is responsible for developing its code enforcement courses within the general policies relating to education and licensure of code enforcement officials in the State.

2. Standard II, Statement of objectives: Each course should be built upon a clear-cut statement of its purpose and objectives. These statements should be prepared by the instructors concerned, should be based on analysis of current practices and recommendations of the professional organizations representing this field, and should be available in writing.

3. Standard III, Statement of competencies: Each code enforcement course should be built on a clearly formulated statement of the competencies needed in the area.

4. Standard IV, Evaluation and recommendation of the student: Each course should include provision for a systematic program of evaluation procedures to determine the degree of the student's attainment of competency. These evaluation procedures should serve as the basis for recommending the student for credit toward the appropriate license.

5. Standard V, Supporting facilities and schedule: Each course should be supported by plant, facilities, equipment, library, and media resources and should include opportunities for field or laboratory experiences. Meeting-time adequate to implement a schedule course, including appropriate field and laboratory experiences, should be provided.

6. Standard VI, Staff: Each course should be staffed by instructors well-qualified by training and experience in the subject matter of the particular course area.

(d) Each course of study shall consist of a planned pattern of instruction and experiences designed to meet the standards specified herein.

1. Building inspector R.C.S.: The following standards apply to programs designed to satisfy the educational program requirements for a license as building inspector R.C.S.:

i. Subject areas: The program shall provide at least 60 contact hours of instruction. It shall ensure technical competencies in the following subject as it applies to class III buildings as established in N.J.A.C. 5:23-3.

(1) Subject: Plan review and field inspection:

(A) Area 1, Structural design and analysis techniques: Structural design and analysis techniques necessary to check compliance with the code. Study may be limited to those wood-framing, light steel, and wall bearing construction systems which characterize the majority of class III buildings. Work should include foundation, wall, floor and roof framing systems.

(B) Area 2, Materials: Basic material standards and the field identification of materials complying with those standards utilizing methods such as lumber, plywood, steel and fire assembly-type, quality or grade markings. Code and enforcement requirements related to weatherability and durability of installed construction materials.

(C) Area 3, Plan review: Basic fire protection requirements including height and area limitation, means of egress, fire resistance ratings of structural elements, flame spread classification of construction materials, and combustibility of materials. Instruction in plan reading sufficient to permit an understanding of the process and to prepare the student to perform the duties of the position.

(D) Area 4, Inspection techniques: The use of basic inspection tools and test methods; the construction process for smaller buildings and the points at which inspection report writing including their preparation of violation notices and required inspection record keeping.

(E) Area 5, Uniform Construction Code: Organization and content of the Uniform Construction Code regulations and organization and content of the building subcode; fundamental knowledge of the building subcode's background, purpose, history, place in local government structure and relation to construction code enforcement programs at other levels of government. Basic classification of structures into class categories.

ii. The texts that are used in teaching this course shall include, but not be limited to, the BOCA National Building Code, the BOCA National Mechanical Code and the CABO One & Two Family Dwelling Code.

2. Building inspector I.C.S.: The following standards apply to programs designed to satisfy the educational program requirements for licensure as a building inspector I.C.S.

i. Prerequisites: Completion of an educational program meeting the requirements for building inspector I.C.S.

ii. Subject requirements: The program shall consist of two major subjects as specified below and shall provide at least 45 contact hours of instruction in each subject. It shall ensure technical competencies in the following areas as they apply to class II buildings as established in N.J.A.C. 5:23-3.

iii. Subject 1, Building construction and technology:

(1) Area 1, Structural systems:

(A) Structural design and analysis techniques necessary to check compliance with the requirements of the building subcode. Study may be limited to the type of structural systems and systems components commonly found in buildings of the size and complexity found in class II construction. Work should include soils analysis and engineering, foundation design, and wood frame, steel frame, reinforcement concrete or masonry wall bearing construction systems and cover sound installation practices as well as design theory. Particular emphasis should be placed on field verification procedures which ensure that materials actually installed are of the same strength and quality as assumed in the design calculations including controlled materials procedures.

(B) Basic durability and weatherability standards incorporated in the building subcode, such as roofing and siding installation, flashing, window and door installation tolerance and infiltration standards, interior finish installation requirements, durability and weatherability testing procedures and material standards included in or referenced by the subcode.

(C) Requirements of the building subcode with emphasis on the regulatory theory and purpose of these subcodes.

(2) Area 2, Fire protection systems:

(A) Systems design and installation practices required by the building subcode and/or its referenced standards for active and passive fire suppression, fire detection, and fire alarm systems.

(B) Testing methods, agencies and test verification procedures incorporated in the code for combustibility, flame spread, and fire resistance ratings.

(C) Basic code requirements designed to provide for fire protection, including height and area restrictions, fire ratings of structural components, arrangement, sizing, and protection of means of egress, flame spread and smoke generated requirements, material combustibility standard and the requirements for installation of fire detection, alarm and suppression systems.

(3) Area 3, Mechanical systems:

(A) General requirements of the electrical and plumbing subcodes and their relationship to the building subcode with emphasis on the regulatory theory and purpose of those subcodes.

(B) Subcode requirements for natural and/or artificial light, and ventilation sufficient to permit accurate checking of proposed or actual construction for compliance with those requirements.

(C) General systems design and installation practices for mechanical heating, ventilating and air conditioning systems and building lighting systems which emphasize on adequacy of same based upon the design standard incorporated in the subcode or its reference standards.

iv. Subject 2, Plan review and field inspection:

(1) Area 1, Uniform Construction Code: Organization and content of Uniform Construction Code regulations, including the barrier free subcode and organization and content of the building subcode; basic classification of structures into class categories.

(2) Area 2, Plan review:

(A) Methods of systematic plans analysis.

(B) Information pertaining to structural, architectural, mechanical, plumbing, fire protection and electrical features of building which must be shown on the plans to insure compliance with the requirements of the code.

(C) Code requirements related to fire divisions in buildings.

(D) Design analysis methods needed to ensure that structural and mechanical elements of building depicted on plans do in fact conform to code requirements.

(3) Area 3, Field inspection: Field inspection and controlled inspection techniques necessary to ensure that the materials installed at the construction site are of the same strength and quality as assumed by the design calculations and that they are installed in the manner required to achieve and preserve that strength. The program shall provide instruction in basic inspection report writing including the preparation of violation notices and required record keeping.

v. The texts used in teaching this course shall include, but not be limited to, the BOCA National Building Code, the BOCA National Mechanical Code and the BOCA National Energy Conservation Code.

3. Building inspector H.H.S.: The following standards apply to programs designed to satisfy the educational requirements for licensure as building inspector H.H.S.

i. Prerequisites: Completion of an educational program meeting the requirements for building inspector I.C.S.

ii. Subject requirements: The program shall consist of two major subjects as specified below and shall provide at least 30 contact hours of instruction in each subject. It shall ensure technical competencies in the following subject areas as they apply to class I and all other structures as established in subchapter 3 of these regulations.

iii. Subject 1, Advanced structural systems: Structural design and analysis technique necessary to check compliance with the code for the heavily loaded and technically advanced structural systems which characterize class I buildings. Subject covered should include pile and other foundation systems used to bear very heavy loads, analysis of high-rise framing systems including wind load and seismic considerations.

iv. Subject 2, Advanced mechanical systems: Requirements for and the design principals involved in the various types of heating, ventilating and air conditioning systems found in class I structures, with particular emphasis on procedures ensuring adequacy of installation including fire protection requirements for such systems.

v. The texts used in teaching this course shall include, but not be limited to, the BOCA National Building Code, the BOCA National Mechanical Code and the BOCA National Energy Conservation Code.

4. Electrical inspector I.C.S.: The following standards apply to programs designed to satisfy the educational program requirements for licensure as an electrical inspector I.C.S.

i. Subject requirements:

(1) The program shall consist of two major subjects as specified below and shall provide at least 30 hours of instruction in each subject.

(2) It shall ensure technical competencies in the following as they apply to class II and class III structures as established in subchapter 3 of these regulations.

ii. Subject 1, Systems design:

(1) Electrical service sizing and design to ensure adequate electrical service.

(2) Branch circuit and feeder design including conductor sizing and over-current protection requirements for the various types of circuits, including general lighting and power, appliance and motor circuits, switchboard and panelboard systems.

(3) Requirements for special fixtures, methods and devices required by the code in particular circumstances.

iii. Subject 2, Plan review and field inspection:

(1) Area 1, Uniform Construction Code:

(A) Organization and content of the Uniform Construction Code regulations and organization and content of the electrical subcode.

(B) Fundamental knowledge of electrical subcode's background, purpose, history, place in local government structure and relation to construction code enforcement programs at other levels of government.

(C) Basic classification of structures into class categories.

(2) Area 2, Plan review:

(A) Methods of systematic plans analysis. Identification of information that must be shown on the plans to insure compliance with the requirements of the code.

(B) Material requirements found in the code, including the ability to recognize approved material and standards and test methods which lead to such approval.

(3) Area 3, Field inspection:

(A) Proper installation methods for all approved materials leading to an ability to ensure that all materials are installed in accordance with proper methods.

(B) Basic inspection report writing including the preparation of violation notices and required inspection record keeping.

iv. The texts used in teaching this course shall include, but not be limited to, the National Electrical Code (NEC).

5. Electrical inspector H.H.S.: The following standards apply to programs designed to satisfy the educational program requirements for licensure as an electrical inspector H.H.S.

i. Prerequisites: Completion of an educational program meeting the requirements for electrical inspector I.C.S.

ii. Subject requirements: The program shall consist of one major subject as specified below and shall provide at least 45 hours of instruction in this subject. It shall ensure technical competencies in the following as it applies and class I and all other structures as established in N.J.A.C. 5:23-3.

(1) Subject 1, Advanced electrical systems design: The procedures, methods and calculations necessary to check the design, material, and installation practices for the more complex systems which characterize class I buildings, with particular attention being paid to the hazardous uses identified in article 4 of the building subcode and the hazardous (classified) locations identified in the electrical subcode.

iii. The texts used in this course shall include, but not be limited to, the National Electrical Code (NEC).

6. Fire protection inspector I.C.S.: The following standards apply to programs designed to satisfy the educational program requirements for licensure as a fire protection inspector I.C.S.

i. Subject requirements: The program shall consist of two major subjects as specified below and shall provide at least 60 contact hours of instruction in each subject. It shall ensure technical competencies in the following subjects as they apply to class II and class III as established in N.J.A.C. 5:23-3.

ii. Subject 1, Plan review and field inspection:

(1) Area 1, Uniform Construction Code:

(A) Organization and content of the Uniform Construction Code, N.J.A.C. 5:23; organization and content of the fire protection subcode.

(B) Fundamental knowledge of the fire protection subcode's background purpose, history, place in local government structure and relation to construction code enforcement programs at other levels of government.

(C) Basic classification of structures into class categories.

(2) Area 2, Systems design: Systems design and installation practices required by the Uniform Construction Code and/or its referenced standards for

active and passive fire suppression; understanding of fire detection and fire alarm systems sufficient to permit the review of plans to determine the adequacy of the systems.

(3) Area 3, Plan Review:

(A) Basic fire protection requirements; height and area limitations; fire resistance ratings of structural components; arrangement, sizing and protection of means of egress; flame spread and smoke generated requirements; combustibility of materials; and requirements for installation of fire detection; alarm and suppression systems; chimneys, flues and vents; and heating equipment and appliances.

(B) Methods of systematic plans analysis: The information pertaining to structural, architectural, mechanical, fire protection and electrical features of a building that must be shown on the plans to ensure compliance with the requirements of the Uniform Construction Code.

(C) Analysis methods needed to ensure that fire protection elements of buildings depicted on plans do in fact conform to code requirements.

(4) Area 4, Materials: Testing methods, agencies and test verification procedures incorporated in the code for combustibility, flame spread, and smoke generation requirements and fire resistance ratings.

iii. Subject 2, Fire protection systems:

(1) Area 1, Fire protection:

(A) Systems design and installation practices required by the code and/or its referenced standards for active and passive fire suppression; fire detection and fire alarm systems sufficient to permit the adequacy of systems designed to be checked through plan reviews and field inspections.

(2) Area 2, Electrical installations:

(A) An understanding of the material requirements found in the electrical code, including the ability to recognize approved material and an understanding of the standards and test methods which lead to such approval.

(B) An understanding of the proper installation methods of all approved materials, leading to an ability to ensure that all materials are installed in accordance with proper methods.

(3) Area 3, Fire prevention:

(A) The relationship of fire prevention codes that regulate the use and occupancy of buildings and fire protection codes that regulate their construction; the fire prevention code provisions; enforcement procedures and objectives including the

protection of places of assembly; the fire prevention code and its enforcement that will ensure an understanding of the manner in which those fire hazards not regulated by the construction code can be regulated in the interest of public safety and fire protection generally.

(4) Area 4, Field inspection:

(A) The use of basic inspection tools and test methods.

(B) The construction process and the points at which inspections must be made.

(C) Field inspection and controlled inspection techniques necessary to ensure that the materials installed at the construction site are of the same strength and quality as assumed by the design calculations and that they are installed in the manner required to achieve and preserve that strength.

(D) Basic inspection report writing, including the preparation of violation notices and required inspection record keeping.

iv. The texts used in teaching this course shall include, but are not limited to, the BOCA National Building Code, the BOCA National Mechanical Code, the CABO One & Two Family Dwelling Code, National Electrical Code (NEC) and the National Standard Plumbing Code.

7. Fire protection inspector H.H.S.: The following standards apply to programs designed to satisfy the educational program requirements for a license as a fire protection inspector H.H.S.

i. Prerequisites: Completion of an educational program meeting the requirements for fire protection inspector I.C.S.

ii. Subject requirements: The program shall consist of one major subject as specified below and shall provide at least 60 contact hours of instruction. It shall ensure technical competencies in the following areas as they apply to class I and all other structures as established in N.J.A.C. 5:23-3.

iii. Subject 1, Advanced fire protection requirements and plan review techniques:

(1) Area 1, Fire protection requirements: Material requirements established by the code including testing and listing procedures, an understanding of test methods, an ability to read, understand and interpret test reports for both active and passive fire protection requirements of systems of the type required to be incorporated in class I buildings.

(2) Area 2, Plan review:

(A) Code requirements related to fire divisions in buildings exceeding the height and area limitations established in the code for certain combinations of use and construction types such as regional shopping malls and high-rise construction.

(B) Code requirements related to unlimited area buildings design analysis methods needed to ensure that fire protection elements of buildings depicted on plans do in fact conform to code requirements.

iv. The texts used in teaching this course shall include, but not be limited to, the BOCA National Building Code, the BOCA National Mechanical Code, the National Electrical Code (NEC) and the National Standard Plumbing Code.

8. Plumbing inspector I.C.S.: The following standards apply to programs designed to satisfy the educational program requirements for a license as plumbing inspector I.C.S.

i. Subject requirements: The program shall consist of two major subjects as specified below and shall provide at least 45 contact hours of instruction in each subject. It shall ensure technical competencies in the following areas as they apply to class II and class III structures as established in subchapter 3 of these regulations.

ii. Subject 1, System design:

(1) Design and analysis techniques necessary to check the design of water service, hot and cold water distribution systems, hot water heating equipment, plumbing fixture layout and quantity, venting systems, and sanitary drainage systems for compliance with the code and adopted standards.

(2) Design and analysis techniques needed to ensure the compliance of in-building storm water drainage systems with the requirements of the code.

(3) Plumbing installation testing methods required to be employed by the code and proper application.

iii. Subject 2, Plan review and inspection methods and procedures:

(1) Area 1, Uniform Construction Code:

(A) Organization and content of Uniform Construction Code;

(B) Regulations;

(C) Organization and content of plumbing sub-code;

(D) Organization and content of the Barrier Free Subcode;

(E) Basic classification of structures into class types;

(F) Fundamental knowledge of the plumbing subcode's background, purpose, history, place in local government structure and relation to code enforcement programs at other levels of government.

iv. Area 2, Plan review and field inspection:

(1) Plan reading sufficient to permit an understanding of the process and to prepare the students to perform the duties of their position.

(2) Material standards in the code and methods by which those standards are developed.

(3) Installation methods and practices required to ensure that all approved materials including joints, conductors, traps and cleanouts, and structural support requirements are installed properly.

(4) Plumbing fitting and fixture requirement leading to an ability to ensure that all fittings and fixtures installed conform to the requirements of the code.

(5) Basic inspection report writing including the preparation of violation notices and required record keeping.

v. Area 3, Public health requirements:

(1) Knowledge of New Jersey Health Law and Code, including prior approval requirements.

vi. The texts used in teaching this course shall include, but not be limited to, the National Standard Plumbing Code, the BOCA National Mechanical Code, the BOCA National Energy Conservation Code and the CABO One & Two Family Dwelling Code.

9. Plumbing inspector H.H.S.: The following standards apply to programs designed to satisfy the educational program requirements for licensure as a plumbing inspector H.H.S.:

i. Prerequisites: Completion of an educational program meeting the requirements for plumbing inspector I.C.S.

ii. Subject requirements: The program shall consist of two major subjects as specified below and shall provide at least 60 hours of instruction in these subjects. It shall ensure technical competencies in the following as it applies to class I and all other structures as established in N.J.A.C. 5:23-3.

(1) Subject 1, Advanced plumbing system design: Plumbing system design component that will ensure the technical competence necessary to check the systems design and installation for the large and complex systems which characterize class I buildings, including pumps, pressure tanks and other such plumbing installations required.

(2) Subject 2, Advanced mechanical systems: Requirements for, and the design principals involved in,

the various types of heating, ventilating and air conditioning systems found in class 1 structures.

iii. The texts used in teaching this course shall include, but not be limited to, the National Standard Plumbing Code, the BOCA National Mechanical Code, and the BOCA National Energy Conservation Code.

10. Subcode official program: The following standards apply to programs designed to satisfy the educational program requirements for a license as a subcode official.

i. Prerequisites: Possession of a license as an inspector of the same type and specialty as the subcode official being applied for.

ii. Subject requirements: The program shall provide at least 45 contact hours of instruction. It shall ensure competence in subcode administration and enforcement and include instruction in the following subject:

(1) Subject, Subcode administration:

(A) Area 1, Administration: Subcode administration's background, purpose, place in local government structure and relation to construction code administration programs at other levels of government. Office procedures for inspectors, including forms and records used and purpose of each Method of establishing and maintaining proper review and approval of permit applications for compliance with the construction code and applicable laws and ordinances under the jurisdiction of related public agencies, including application contents, use of procedure and information sheets for applications, use of check lists for compliance with applicable ordinances, and processing of applications.

(B) Area 2, Legal aspects of Code enforcement: Purpose and fundamentals of stop orders, notices of penalty, 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 warrant and process of obtaining and issuing the warrant. The administrative hearing process under the State Construction Code Act. Legal aspects of the operations of the enforcing agencies, including legal processes and rules of evidence. Legal responsibilities of inspection personnel. Method of appealing hearing decisions to court and legal basis of doing so.

(C) 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.

11. Elevator Inspector H.H.S.: The following standards apply to programs designed to satisfy the educational program requirements for licensure as elevator inspector H.H.S. Each such program shall consist of three major subjects and shall provide at least 90 contact hours with a minimum of at least 30 contact hours of instructions in each subject as specified below and shall ensure technical competence in the following subject areas as they apply to all structures:

i. Subject 1: Inspection and testing rules and regulations for elevators, escalators, lifts and other miscellaneous hoisting and elevating equipment; hoistways and related constructions:

(1) Minimum requirements, acceptance tests; periodic and routine tests and inspections; alterations, repairs, replacements and maintenance; certificate of compliance;

(2) Construction of hoistways, enclosures and machine room; vents and opening protective requirements; pits; clearances and runbys for cars and counterweights; hoistway doors, hardware and operations; chair platforms; special requirements for escalators and other elevating equipment.

ii. Subject 2: Machinery and equipment for elevators, escalators and lifts:

(1) Guide rails; buffers and bumpers; counterweights; carframe and platforms; safeties and speed governors; suspension ropes; capacities; driving machines; valves, pipings and tanks for hydraulic elevators; terminal stopping devices; operating devices and control equipment; emergency operation and signalling devices; power wiring and controls.

iii. Subject 3: Plan review and inspection techniques:

(1) Performance standards for machinery, equipment and systems, materials standards; engineering and type tests; design data; special requirements for escalators, chairlifts and other elevating equipment; barrier-free subcode requirements for elevators and lifts; plan review techniques for electrical and mechanical systems; inspection techniques and checklists for inspection—inside the car, outside hoistway, top of car, machine room and pit and testing of various systems.

12. Construction official: The following standards apply to programs designed to satisfy the educational program requirements for a construction official license.

i. Prerequisites:

(1) Possession of a license as an inspector of the same type and specialty as the construction official license for which application is being made.

(2) Completion of the educational program required for subcode official.

ii. Subject requirements: The program shall provide at least 45 contact hours of instruction. It shall ensure competence in construction code administration and enforcement and shall include instruction in the following subject.

(1) Subject, Construction code administration:

(A) 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.

(B) 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.

(C) 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.

(D) 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.

5:23-5.21 Renewal of license

(a) The Department may issue the appropriate license following submission of an application, payment of the required non-refundable fee, and verification by the Licensing Unit of the Bureau of Technical 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 non-refundable fee, and verification by the Licensing Unit of the Bureau of Technical Services that the applicant has met such continuing educational requirements as may be established by the Commissioner. 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 process 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 \$10.00 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 (CEU's) will be approved by the Bureau of Code Services. One CEU equals 10 contact hours. CEU's will be awarded for technical and administrative licenses.

i. Inspector license only—1.5 CEU (technical);

ii. Inspector and subcode official licenses—2.0 CEU's (1.5 technical and 0.5 administrative);

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

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 either for individual inspectors or at least one representative of each municipality.

i. Regarding mandatory municipal seminars, at least one municipal code enforcement employee must attend the seminar. The construction official shall be responsible for compliance.

ii. Regarding mandatory inspector seminars, the Department may determine that either all active code officials or all licensed code officials must attend a specific seminar. Compliance shall be a requirement for license renewal.

(1) The Barrier Free Subcode seminar shall be a mandatory seminar. The building subcode official in each municipality shall have completed this course for license renewal after July 1, 1998. Barrier Free Subcode seminars completed after July 1, 1995 shall be counted toward meeting 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 \$65.00 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)1iii.

(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)1i 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).

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).

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 herein.

1. A non-refundable application fee of \$65.00 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.

2. A non-refundable application fee of \$35.00 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)1i, ii and iii above.

4. Renewal fee: The three year renewal application fee shall be \$65.00.

SUBCHAPTER 6. TAX EXEMPTIONS

5:23-6.1 (Reserved)

Amended by R.1984 d.25, effective February 6, 1984.

See: 15 N.J.R. 1977(a), 16 N.J.R. 238(c).

Amended by R.1984 d.121, effective April 16, 1984.

See: 16 N.J.R. 180(a), 16 N.J.R. 874(a).

Amended by R.1987 d.387, effective October 5, 1987.

See: 19 N.J.R. 433(b), 19 N.J.R. 1793(a).

"Solar energy systems; administrative requirements" expired April 1, 1988 pursuant to Executive Order No. 66(1978).

See: 20 N.J.R. 893(a).

5:23-6.2 (Reserved)

New Rule, R.1987 d.387, effective October 5, 1987.

See: 19 N.J.R. 433(b), 19 N.J.R. 1793(a).

"Technical standards for solar energy systems; general provisions" expired April 1, 1988 pursuant to Executive Order No. 66(1978).

See: 20 N.J.R. 893(a).

5:23-6.3 (Reserved)

New Rule, R.1987 d.387, effective October 5, 1987.

See: 19 N.J.R. 433(b), 19 N.J.R. 1793(a).

"Eligibility criteria for solar energy systems" expired April 1, 1988 pursuant to Executive Order No. 66(1978).

See: 20 N.J.R. 893(a).

5:23-6.4 Automatic fire suppression systems

(a) Applications for tax exemption pursuant to P.L. 1983, c.309 shall be made on a form prepared by the Department of Treasury, Division of Taxation, and made available to the public at the office of the enforcing agency.

(b) Construction official's responsibilities:

1. The construction official shall have responsibility for determining the eligibility of any proposed automatic fire suppression systems.

2. The construction official shall consult with the appropriate subcode officials in determining conformity with the building and fire protection subcodes and their referenced standards, as well as, where applicable, the most recently published editions of NFPA 13D, NFPA 20, NFPA 22 and NFPA 24. A system shall only be eligible for tax exemption if it conforms to such of these standards as are applicable to that type of automatic fire suppression system and appurtenant installations.

i. A system shall not be deemed ineligible because it is in a new building or because it only provides coverage to part of a building.

3. The construction official shall, in addition, review the cost estimates provided by the applicant.

4. The construction official may require documentation in the form of signed contracts, contractor estimates and the like if he deems it necessary.

5. The construction official shall grant or deny certification of the system prior to issuance of the construction permit and shall notify the applicant of his decision at that time.

6. The construction official shall forward a copy of the approved application for exemption to the municipal as-

essor for his action upon issuance of the certificate of occupancy or certification of completion.

(c) The enforcing agency, after giving written notice to the owner, may revoke such certification whenever any of the following appears:

1. The exemption was obtained by fraud or misrepresentation;

2. The claimant for tax exemption has failed substantially to proceed with the construction, reconstruction, installation or acquisition of an automatic fire suppression system;

3. The mechanical system to which the certificate relates has ceased to be used for the primary purpose of providing automatic fire suppression and is being used for a different primary purpose;

4. The claimant for tax exemption hereunder has so departed from the equipment, design and construction previously certified by the enforcing agency that, in the opinion of said enforcing agency, the automatic fire suppression system is not suitable and reasonably adequate for the purpose of providing automatic fire suppression.

(d) The construction official shall notify the assessor in writing of the revocation of the certification.

(e) Appeals may be made regarding the decision of the construction official to the Construction Board of Appeals, in accordance with N.J.A.C. 5:23-2.34.

New Rule, R.1984 d.121, effective April 16, 1984.

See: 16 N.J.R. 180(a), 16 N.J.R. 874(a).

This section replaces 5:23-6.2, Construction Official's Responsibilities, which was recodified as N.J.A.C. 5:23-6.1(b).

Recodified from 5:23-6.2 by R.1987 d.387, effective October 5, 1987.

See: 19 N.J.R. 433(b), 19 N.J.R. 1793(a).

5:23-6.5 (Reserved)

Recodified as 5:23-6.1(e) by R.1984 d.121, effective April 16, 1984.

See: 16 N.J.R. 180(a), 16 N.J.R. 874(a).

SUBCHAPTER 7. BARRIER FREE SUBCODE

Subchapter Historical Note

Subchapter 7, Barrier Free Subcode, sections 7.1 through 7.99 were repealed by R.1995 d.144 and existing sections 7.100 through 7.116 were recodified as sections 7.2 through 7.18, effective March 20, 1995 (operative July 1, 1995). See: 26 N.J.R. 2698(a), 26 N.J.R. 3524(a), 27 N.J.R. 1180(a).

Law Review and Journal Commentaries

Disability Law: Public Accommodations and the ADA. David J. Popiel, 170 N.J.Law. 16 (Mag.) (July 1995).

Disability Law: Housing Discrimination and the Disabled. David P. Lazarus, Susan DiMaria, 170 N.J.Law. 20 (Mag.) (July 1995).

5:23-7.1 Accessibility standards

(a) Chapter 11 of the building subcode, entitled "Accessibility," is adopted with the modifications set forth in this subchapter.

1. Copies of the building subcode, which is the BOCA National Building Code/1993, including all subsequent revisions and amendments thereto, may be obtained from the sponsor at: BOCA, International, 4051 West Flossmoor Road, Country Club Hills, Illinois 60478-5795.

2. Copies of CABO/ANSI A117.1, referenced in the BOCA National Building Code, may be obtained from the secretariat at: Council of American Building Officials, 5203 Leesburg Pike, Suite 708, Falls Church, Virginia 22041.

(b) The following sections of chapter 11 of the building subcode are modified as follows:

1. Section 1103.1, Exception 3 is modified to read as follows: "Buildings of Use Group R-2, R-3 or R-4 with three or fewer dwelling units are not required to comply with the provisions of this Chapter. For purposes of applying this Chapter, dwelling units within a single structure separated by fire walls do not constitute separate buildings.

3.1. Multistory dwelling units in buildings without elevators are not required to comply with the provisions of this Chapter.

3.2. Accessory structures for individual exempt dwelling units are not required to comply with the provisions of this Chapter.

3.3 Facilities and their associated sites available to the general public or available for the common use of the building's residents are required to comply with the provisions of this Chapter.

3.4 When any dwelling unit, regardless of whether it is exempt from the provisions of this Chapter, includes a B use or an M use, the portion of the dwelling unit used exclusively for the B use or M use and that portion used both for the B use or M use and for residential purposes shall comply with all applicable provisions of this subchapter. This shall include the sidewalk, if any, the door or entryway and hallways, and those portions of the dwelling unit, interior or exterior, available to or used by customers or clients, including toilet facilities."

2. In Section 1104.2, Exception 2, is modified to read as follows: "Buildings of less than 10,000 square feet total gross enclosed floor area and less than three stories in height shall not be required to have elevators unless they house the offices of health care providers (Use Group B), passenger transportation facilities and airports (Use Group A-3), multitenant facilities of Use Group M, or are owned and occupied by public entities. Additionally, floors with less than 3,000 square feet are not required to be served by an elevator unless they contain the offices of health care providers (Use Group B) or are within passenger transportation facilities and airports (Use Group A-3), multitenant facilities of Use Group M, or buildings owned and occupied by public entities."

3. In Section 1104.2, add the following exceptions:

"3. In buildings of Use Group R-2, R-3 or R-4 elevators are required to provide an accessible route of travel with the following exceptions:

3.1 Buildings which are less than four stories and which have four or fewer dwelling units per floor;

3.2 Buildings less than three stories.

3.3 Floors that contain less than 3,000 square feet and are at other than the entry level."

4. Section 1105.1 is modified to read as follows: "Where parking is provided at sites required to be accessible or adaptable, accessible parking spaces complying with CABO/ANSI A117.1 listed in Chapter 35 shall be provided in compliance with Table 1105.1 except as required by Sections 1105.2 and 1105.3." At Table 1105.1, delete the title and text of "Note a."

5. In Section 1107.2.3, Table 1107.2.3 is modified to provide that, in assembly spaces with a capacity of over 500 seats, the number of required wheelchair spaces shall be "6 plus 1 for each 100 over 500."

6. Section 1107.3.3 is modified to read as follows: "Buildings or portions thereof of Use Group I-3 shall have at least one accessible inmate confinement area or room per institution, and at least one accessible inmate toilet and bathing facility per institution. All public or common areas and employee areas, including toilet or bathing facilities, shall be accessible."

7. Section 1107.4.1 is modified to read as follows: "In occupancies in Use Group R-1 containing six or more guestrooms, accessible guestrooms shall be provided in accordance with the following table:

Number of Rooms	Accessible Rooms
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of Total
1001 and up	20 plus 1 for each 100 over 1000

Add the following note at the end of the Table: "Note: Owner-occupied residences with 1-5 lodgers are Use Group R-3 and are exempt."

In hotels with more than 50 guestrooms, roll-in type showers shall be provided in one-half, but not less than one, of the required accessible guestrooms."

8. The main paragraph of Section 1107.4.2 is modified to read as follows: "Unless exempted under Section 1103.1, as modified, all dwelling units in buildings served by elevators and all ground floor units in buildings without elevators shall be made adaptable in accordance with CABO/ANSI A117.1 listed in Chapter 35. For purposes of applying this requirement, the ground floor shall mean the first floor of a building containing dwelling units, regardless of whether that floor is at grade."

9. Section 1107.4.2, Exceptions are modified to read as follows:

"1. In buildings without elevators, multistory dwelling units are not required to comply with the provisions of this Chapter. In multistory dwelling units in buildings with elevators, all rooms or spaces on the entry level must be accessible or adaptable and an adaptable bathroom or powder room must be provided on the entry level; however, an interior accessible route to the other levels of living space is not required.

2. Recreational facilities must be accessible in accordance with N.J.A.C. 5:23-7.2 through 7.18."

10. The main paragraph of Section 1107.4.3 is modified to read as follows: "In buildings of Use Group R-2 and R-3 not otherwise exempted from the provisions of this Chapter by Section 1103.1, as modified, at least one accessible route shall connect accessible building or facility entrances with all accessible and adaptable dwelling units within the building or facility and with those exterior and interior spaces and facilities that serve the accessible or adaptable dwelling unit."

11. Delete the title and text of the Exception to Section 1107.4.3.

12. In Section 1108.3, modify the Exception as follows:

"Exceptions

1. Elevators within a dwelling unit.
2. Platform lifts may be part of an accessible route when necessary to provide:

2.1 a line of sight while complying with dispersal requirements in A use buildings;

2.2 access to a performing area;

2.3 access to incidental occupiable spaces, such as, but not limited to, projection booths and equipment control rooms, that are not open to the general public and that have not more than 5 occupants."

13. In Section 1108.7, add the following additional subsections:

"1108.7.4 Telephones: When public use telephones are provided, one telephone per floor or one telephone in each bank of public telephones shall comply with CABO/ANSI A117.1, Section 4.29. Each accessible public tele-

phone and 25 percent of other public telephones in each bank shall be equipped with volume control that complies with CABO/ANSI A117.1, Section 4.29.5. At each accessible telephone, either a forward or a parallel approach shall be provided that complies with CABO/ANSI A117.1, Section 4.2.4.

1108.7.5 Automatic Teller Machines (ATM's): At each ATM, clear floor space shall be provided for either a parallel or forward approach pursuant to CABO/ANSI A117.1, Section 4.2.4. If only a forward approach is provided, all operating controls shall comply with the reach ranges in CABO/ANSI A117.1, Section 4.2.5. If only a parallel approach is provided, reach ranges shall be provided as follows: Where the reach depth to the controls is 10' or less, the maximum height for the controls shall be 54'. For each increase in reach depth of 1', the maximum height for the controls shall be reduced by 1/2'. The reach depth shall not exceed 24' with a corresponding maximum height of 46'. If both a parallel and a forward approach are provided, the reach ranges shall comply with CABO/ANSI A117.1, Section 4.2.5 or with the parallel reach range requirements described above."

14. Section 1108.7.3 is modified to read as follows:

"Where check-out aisles are provided, accessible check-out aisles shall be installed in accordance with Table 1108.7.3. Where checkout aisles of different types are provided (express lanes, for example), at least one of each type shall be accessible. Traffic control devices, security devices and turnstiles located in accessible check-out aisles or lanes shall be accessible."

15. Section 1109.2, number 1, is modified to read as follows:

"1. Accessible parking spaces required by Section 1105.1. Each accessible parking space shall be marked with an R7-8 sign from the Manual of Uniform Traffic Control Devices displaying the international symbol of accessibility. Beneath the R7-8 sign, each accessible parking space shall also be marked with an R7-8P sign, as required by N.J.S.A. 39:4-197.3.c., containing the following language:

"PENALTY

\$100 FIRST OFFENSE

SUBSEQUENT OFFENSES

\$100 MINIMUM AND/OR

UP TO 90 DAYS

COMMUNITY SERVICE

TOW-AWAY ZONE"

The bottom of the R7-8 sign shall be mounted approximately 60 inches above the parking lot surface."

16. Section 1109.2, number 4, is modified to read as follows:

"4. Accessible toilet and bathing units."

17. Section 1110.4 is modified to read as follows: "These provisions shall apply to buildings and facilities designated as historic structures that undergo alterations or a change of occupancy, unless technically infeasible. If the historic character of the building is adversely affected, the application of Section 3406.0 shall be permitted. At a minimum, at least one accessible route from an accessible parking space, public transportation stop or passenger loading zone to an accessible entrance shall be provided; at least one accessible entrance shall be provided; an accessible route from the accessible entrance to all publicly-used spaces on the level of the accessible entrance shall be provided; when toilet facilities are provided, at least one accessible toilet facility shall be provided."

(c) The provisions of this Chapter shall not apply to a change of use of a building of less than 10,000 square feet total gross enclosed floor area where there is no attendant construction or renovation work being performed.

(d) When alteration or renovation work is performed on a building, the following shall apply:

1. No alteration work shall decrease the accessibility of the building;

2. No alteration shall be required to provide greater accessibility than is required by the standards for new construction;

3. If compliance with the new construction standards in (b) above is technically infeasible, accessibility shall be provided to the maximum extent feasible.

4. Accessibility shall be included as part of alteration work to the extent that the cost of providing accessible building features, such as, but not limited to, an accessible building entrance, an accessible route to the altered area, accessible restrooms, accessible telephones, or accessible drinking fountains is not disproportionate to the cost of the overall alteration work. A cost is considered disproportionate if it exceeds 20 percent of the cost of the alteration work.

(e) Variations and exceptions are as follows:

1. Where it can be demonstrated that one or more of the provisions of this subchapter are technically infeasible, variations or exceptions to those specific provisions may be granted if:

- i. The spirit and intent of the law are observed;
- ii. Public welfare and safety are assured; and
- iii. Equivalent facilitation and protection for people with disabilities are secured.

2. In no case shall a complete waiver of these requirements be granted.

3. Procedures for granting variations and exceptions shall be in accordance with N.J.A.C. 5:23-2.9 through 2.13.

(f) Enforcement of this subchapter shall be the primary responsibility of the building subcode official except as otherwise designated below:

1. Plan review with regard to compliance with BOCA, Chapter 11, Section 1108; CABO/ANSI A117.1, Sections 4.15 (drinking fountains); 4.17 through 4.22 (bathroom facilities); 4.33.3.2 (dwelling units—water closets); 4.33.3.4.4 (bathtub—faucets); 4.33.3.4.5 (shower spray unit); and 4.33.4.5.1 through 4.33.4.5.4 (dwelling units—counters and sinks) shall be the joint responsibility of the building and plumbing subcode officials.

2. Plan review and inspection with regard to compliance with CABO/ANSI A117.1, Section 4.25 of the controls and operating mechanisms regulated by the electrical, fire protection, or plumbing subcodes shall be the responsibility of the corresponding subcode official. Controls of all other mechanisms shall be inspected by the building subcode official.

3. Inspection with regard to compliance with CABO/ANSI A117.1, Sections 4.15.2 (drinking fountains—spouts); 4.15.3 (drinking fountains—operable parts); 4.17.1 (water closets—general); 4.17.3 (water closets—height); 4.17.5 (water closets—flush controls); 4.18.2 (toilet stalls); 4.19.2 (urinals—height); 4.19.4 (urinals—flush controls); 4.20.2 (lavatories—height); 4.20.4 (lavatories—exposed pipes); 4.20.5 (lavatories—controls); 4.21.5 through 4.21.8 (bathtubs—controls, shower unit, enclosure, rim); 4.22.2.1 (transfer showers); 4.22.2.2 (showers—size and clearance); 4.22.3 (showers—seat); 4.22.5 through 4.22.8 (showers—controls, shower unit, threshold, enclosure); 4.33.3.2.1 and 4.33.3.2.2 (dwelling units, water closets—placement and height); 4.33.3.3.1 (lavatories); 4.33.3.4.4 (faucets); 4.33.3.4.5 (shower spray); 4.33.4.5.1 through 4.33.4.5.4 and 4.33.4.5.8 (dwelling units—sinks); shall be the responsibility of the plumbing subcode official.

4. Enforcement of the technical requirements for elevators shall be the responsibility of the elevator subcode official. The building subcode official shall be responsible to ensure that the elevator is on an accessible route.

New Rule, R.1995 d.144, effective March 20, 1995 (operative July 1, 1995).

See: 26 N.J.R. 2698(a), 26 N.J.R. 3524(a), 27 N.J.R. 1180(a).

Amended by R.1997 d.304, effective July 21, 1997.

See: 29 N.J.R. 2204(a), 29 N.J.R. 3248(a).

Substantially amended (f).

Case Notes

Department has duty to promulgate regulations prescribing kinds, types and quality of public facilities for physically handicapped. *D.I.A.L., Inc. v. New Jersey Dept. of Community Affairs*, 254 N.J.Super. 426, 603 A.2d 967 (A.D.1992).

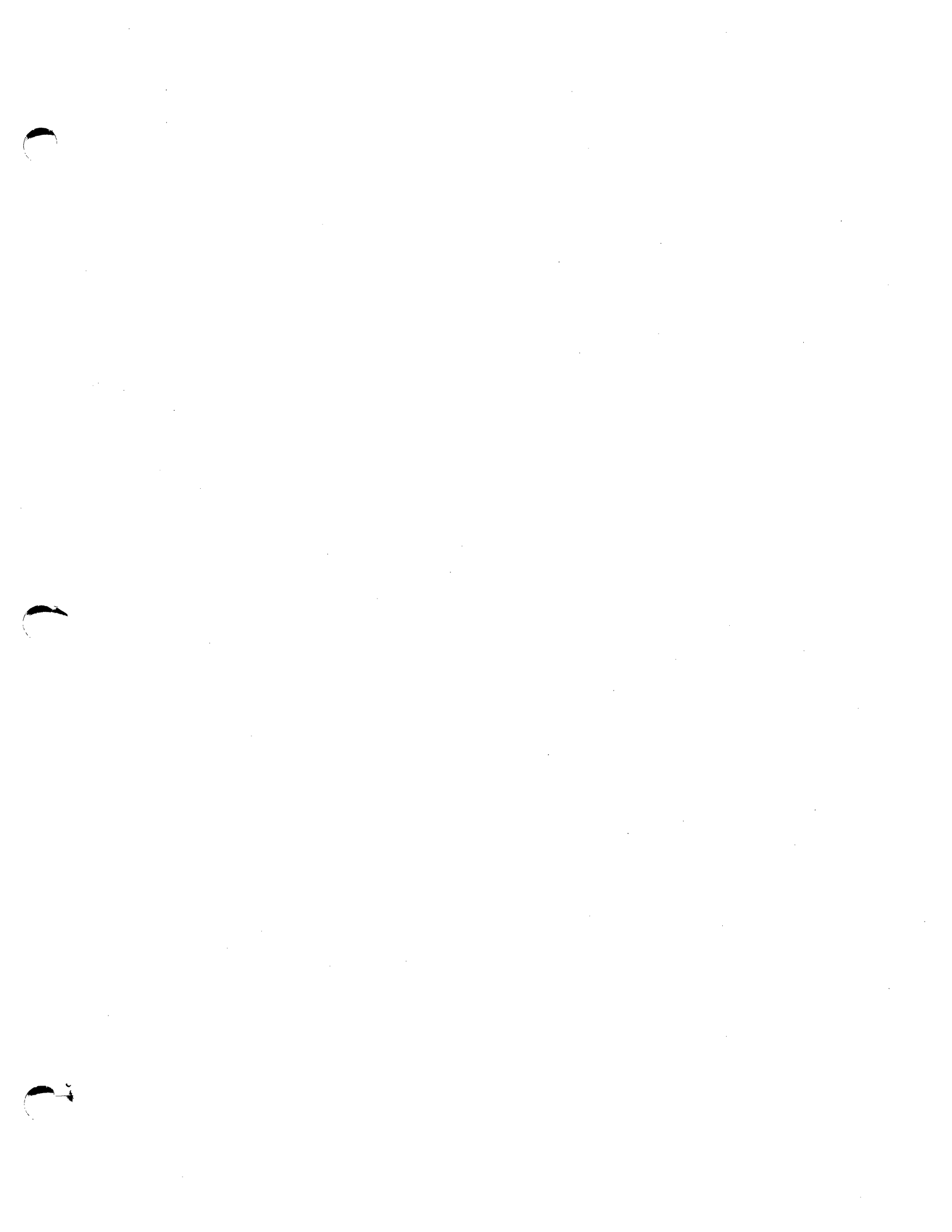
Uniform Construction Code Act requires Commissioner to adopt State Uniform Construction Code. *D.I.A.L., Inc. v. New Jersey Dept. of Community Affairs*, 254 N.J.Super. 426, 603 A.2d 967 (A.D.1992).

City could pursue its claim against debtor alleging violation of certificate of occupancy without impediment from automatic stay and city's dispute with debtor did not need to be resolved in bankruptcy forum. Matter of 560 Ocean Club, L.P., Bkrtcy.D.N.J.1991, 133 B.R. 310.

all applicable requirements of this subchapter in addition to the provisions of N.J.A.C. 5:23-7.3 through 18. All support facilities and site access points required to be on an accessible route of travel shall be made accessible in accordance with the applicable provisions of this subchapter.

5:23-7.2 Recreation

(a) All facilities, equipment, and sites or portions thereof, intended for outdoor active or passive recreation shall meet



(2) The address of the building or structure;

(3) Certificate of Completion submitted by the asbestos safety control monitor.

3. If all the information required is complete and in accordance with this subchapter, a certificate of occupancy shall be issued.

(b) Certificate of Completion requirements are as follows:

1. It shall be unlawful to apply for a certificate of occupancy until a certificate of completion has been issued by the asbestos safety control monitor.

2. Within five days of completion of an asbestos hazard abatement project the owner/agent shall file for a certificate of completion from the asbestos safety control monitor.

3. The application for a certificate of completion shall be in writing and submitted in such form as the department may prescribe.

4. A Certificate of Completion shall be issued only if:

- i. All information is complete.
- ii. Final inspection by the asbestos safety technician reveals no visible evidence of asbestos.
- iii. All requirements of this subchapter have been met.
- iv. An acceptable final air monitoring level has been attained pursuant to N.J.A.C. 5:23-8.21 and documentation of that air level has been submitted in writing.

Amended by R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Amended by R.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Changed level of fibers from .01 to .010.

Amended by R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Recodified old 8.8 as new 8.9. Section 8.9 was formerly "Fees".

Deleted old (a)2i.(4) regarding air monitoring level requirement.

In (b)4iv.: added "an acceptable" defining Final air monitoring levels and deleted "of .010 fibers per cc or lower". Also added text regarding N.J.A.C. cite and "submitted in writing" requirement.

Recodified from 5:23-8.9 and amended by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior text at section, "Inspections; violations", recodified as 5:23-8.7.

Case Notes

Inability to travel due to weather did not exonerate asbestos safety technician from being held responsible for deficiencies previously left at work site. Department of Community Affairs v. Stewart, 95 N.J.A.R.2d (CAF) 62.

5:23-8.9 Fees

(a) The enforcing agency that issues the construction permit and the certificate of occupancy for an asbestos hazard abatement project shall establish by regulation/ordinance the following flat fee schedule:

1. An administrative fee of \$70.00 for each construction permit issued for an asbestos hazard abatement project.

2. An administrative fee of \$14.00 for each certificate of occupancy issued following the successful completion of an asbestos hazard abatement project.

(b) The authorization and reauthorization fees for the asbestos safety control monitor are delineated in N.J.A.C. 5:23-8.11.

(c) The application fee for certification as an asbestos safety technician is delineated in N.J.A.C. 5:23-8.10.

(d) All fees shall be paid by check or money order, payable to "Treasurer, State of New Jersey".

Amended by R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Substantially amended.

Amended by R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Recodified old 8.9 as new 8.10. Section 8.10 was formerly "Precautions and procedures during a large asbestos abatement job."

In (b): changed "defined" to "delineated" and "8.17" to "8.18".

Added new (c).

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, increased fee from \$50.00 to \$65.00.

In (a)2, increased fee from \$10.00 to \$13.00.

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 at (a)1 and 2.

Recodified from 5:23-8.10 and amended by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior text at section, "Certificate of occupancy; certificate of completion", recodified as 5:23-8.8.

5:23-8.10 Asbestos safety technician

(a) Any candidate for certification as an asbestos safety technician shall submit an application to the Department accompanied by the required application fee established in (c) below. The requirements for certification as an asbestos safety technician are as follows:

1. At least 24 college credits in academic sciences, including biology, chemistry, industrial hygiene, environmental science, physics, geology or related fields; or one year of work experience which included performing environmental assessment activities, which may be substituted for this education requirement;

2. Successful completion of a course in air monitoring methods consisting of a minimum of 30 contact hours that shall include hands-on experience with using and calibrating various types of air monitoring equipment; or six months of work experience performing air monitoring including at least 30 hours of on-the-job training, which may be substituted for this education requirement;

3. Successful completion of a training course for asbestos worker/supervisors approved by the New Jersey Department of Health pursuant to N.J.A.C. 12:120 and N.J.A.C. 8:60;

i. One year of experience in monitoring asbestos abatement activities may be substituted for completion of an approved training course;

ii. Six months of experience monitoring asbestos abatement may be substituted for completion of an approved training course if the individual is an industrial hygienist certified by the American Board of Industrial Hygiene;

4. Successful completion of a course for asbestos safety technicians approved by the New Jersey State Department of Community Affairs;

5. Successful passing of an examination for asbestos safety technicians administered by the National Assessment Institute in cooperation with the National Asbestos Council, or any equivalent examination approved by the Department.

(b) The Department shall renew the certification following submission of an application, payment of the required fee pursuant to (c) below, and verification by the Department that the applicant meets the requirements for the certification in this section.

1. Every two years any certification already issued shall be renewed upon submission of an application, payment of the required fee, and verification by the Department that the applicant has met such continuing educational requirements as may be established by the Commissioner. The Department shall renew the certification previously issued for a term of two years. The renewal date shall be 45 days prior to the expiration date. The expiration dates shall be July 31 or January 31.

2. The Department shall issue, upon application, a duplicate certification upon a finding that the certification has been issued and the applicant is entitled to such certification to replace one which has been lost, destroyed, or mutilated. Payment of a fee as established by N.J.A.C. 5:23-8.10(c) shall be required.

3. The Department may establish by rule continuing education requirements as deemed necessary for the renewal of a certification.

(c) No application for certification or recertification shall be acted upon unless said application is accompanied by a \$43.00 fee.

(d) Duties of the asbestos safety technician shall be as follows:

1. The asbestos safety technician shall perform all air sampling specified in this subchapter, as delineated in N.J.A.C. 5:23-8.21 and shall be thoroughly familiar with this subchapter. He or she shall inform the department who his or her employer is at the time of his or her application for certification, and shall notify the department in writing within 10 working days of any change in status or employer. He or she shall have access to all areas of the asbestos abatement project at all times and shall continuously inspect and monitor the performance of the contractor to verify that said performance complies with this subchapter while work is in progress. The asbestos safety technician shall be on site from the initial preparation of the work area through the approved final visual inspection, and shall perform all inspections pursuant to N.J.A.C. 5:23-8.7.

2. The asbestos safety technician shall direct the actions of the contractor verbally and in writing to ensure compliance with this subchapter. The asbestos safety technician shall require that all workers present a valid asbestos worker performance permit issued by the New Jersey Department of Labor before entering the work area. In matters of negligence and/or flagrant disregard for the safety of any person, including the possibility of contaminating the building environment and the emergence of an unsafe condition at the work area, the asbestos safety technician shall direct such corrective action as may be necessary. If the contractor fails to take the corrective action, or if the contractor or any of his or her employees continually violates the requirements of any regulation, then the asbestos safety technician shall order, in writing, that the work be stopped. If the contractor fails to comply with the order, the asbestos safety technician shall notify the enforcing agency, who shall issue a Stop Work Order to the contractor and have the work area secured until all violations are abated.

3. The asbestos safety technician shall calculate, based on the actual available output (not the rated output) of the air filtering units, the required number of air filtration units for each work area. This calculation shall be made whenever the volume of the work area changes. The asbestos safety technician shall inform the owner, contractor, and the abatement project designer of any discrepancies between the number of units required and those in operation within the work area. If problems are identified and not corrected, the asbestos safety technician shall inform the enforcing agency who shall take necessary measures to ensure corrective action;

4. At the beginning of each work shift, every four hours thereafter, and at the end of the contractor's work day, the asbestos safety technician shall monitor pressure differential by digital manometers with continuous print-out or other approved low pressure monitoring devices for each work area. One or more separate monitoring systems shall be installed for every 10,000 square feet of separation surface adjacent to the work area. Pressure monitoring shall be representative of all adjacent areas. The pressure differential shall meet the minimum requirement set forth in N.J.A.C. 5:23-8.15(b)9 or 8.17(d)6i or 8.19(c)4ii, as appropriate.

5. The asbestos safety technician shall ensure that the contractor smoke tests all the glovebags after they are attached and before the commencement of work.

6. For unoccupied buildings, upon receipt of testing results indicating that concentrations above the acceptance criteria established in N.J.A.C. 5:23-8.21 have occurred during the abatement project, the asbestos safety technician shall immediately direct corrective action and verbally report these results within 24 hours to the contractor, the owner and the abatement project designer. Such verbal notification shall be followed by written notification to the contractor, the owner and the abatement project designer. A copy shall be sent to the enforcing agency and the Department within three business days from receipt of the results. For occupied buildings, the procedure set forth at N.J.A.C. 5:23-8.19 shall be followed.

7. The asbestos safety technician shall monitor the removal of all asbestos-contaminated waste from the work area to ensure that it takes place in conformance with N.J.A.C. 5:23-8.22, in the following manner:

i. Direct removal by a collector/hauler registered with the New Jersey Department of Environmental Protection and Energy pursuant to N.J.A.C. 7:26 and pursuant to New Jersey Department of Transportation rules at N.J.A.C. 16:49.

ii. Indirect removal by placement in a locked and secure container, for temporary storage, awaiting the New Jersey Department of Environmental Protection and Energy registered waste hauler.

8. The asbestos safety technician shall keep an up-to-date and comprehensive daily log of on-site activities. The log shall be updated continuously. The name of the project, name of the asbestos safety technician, and date shall be recorded daily. Each entry shall contain the event, the time of event and shall be initialed by the asbestos safety technician. One section of the log shall contain observations concerning contractor compliance with activities required under this subchapter listing all deficiencies encountered. In addition, the log shall list the name of each person entering the work area. The log shall be a bound book and all entries shall be in ink. The log shall be kept at the project site and shall be made available upon request at all times to the owner, the abatement project designer and to appropriate local and State agencies.

9. The asbestos safety technician shall prepare a comprehensive final report to include daily logs, required inspection reports, observations and air monitoring results. This report shall be made part of the official record filed by the asbestos safety control monitor.

(e) Penalties: The Department may suspend or revoke a certification, or assess a civil penalty of not more than \$500.00, for each offense, if the Department determines that an individual:

1. Has violated the provisions of the Uniform Construction Code regulations;

2. Has obtained a certification by fraud or misrepresentation;

3. Has aided or abetted in practice as an asbestos safety technician any person not authorized to practice as an asbestos safety technician under the provisions of this subchapter.

4. Has fraudulently or deceitfully practiced as an asbestos safety technician.

5. Has been grossly negligent or has engaged in misconduct in the performance of any of his duties;

6. Has failed to maintain a minimally acceptable level of competence;

7. Has been found to have accepted or failed to report an offer of a bribe or other favors 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 willful material omission in any submission to the Department;

10. Has failed to enforce this subchapter; or

11. Has performed the duties of an asbestos safety technician without being certified as such.

(f) In addition to, or as an alternative to, revoking or suspending a certification or assessing a penalty, the Department may issue a letter of warning, reprimand, or censure with regard to any conduct which, in the judgment of the Department, warrants such a letter. Such letter shall be made a part of the certification file of the individual. A copy of such action shall be sent to an officer of the asbestos safety control monitor firm employing the individual.

(g) Conviction of a crime or an offense shall constitute grounds for revocation or suspension of a certification.

Amended by R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Recodified from 8.14 and substantially amended.

Amended by R.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Substantially amended.

Repeal and New Rule, R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Repealed old 8.15 and replaced with new rule 8.16. Section title remains same; new rule includes substantive changes regarding asbestos safety technician duties.

New Rule R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Amended by R.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Substantially amended.

Amended by R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Recodified old 8.18 to new 8.19. Section 8.18 was formerly "Application of asbestos".

In (d)3: added language regarding professional experience substitution for education requirements.

In (d)5: added New Jersey Administrative code citations.

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

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

In (i)1 and 2, fee increased from \$30.00 to \$40.00.

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.

Recodified from 5:23-8.16 and 8.19 by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior text at section, "Fees", recodified as 5:23-8.9.

Amended by R.1994 d.436, effective September 6, 1994 (operative January 1, 1995).

See: 26 N.J.R. 2183(a), 26 N.J.R. 3707(a).

5:23-8.11 Asbestos safety control monitor

(a) An asbestos safety control monitor may be an individual, partnership, corporation, or other business entity organized for the purpose of enforcing and administering this subchapter.

1. Each asbestos safety control monitor shall enter into a contract for each asbestos hazard abatement project with the building owner or his authorized agent. The contract shall specify: the scope of the project with the provision that the asbestos safety control monitor shall carry out all the rules and responsibilities established by this subchapter, how the asbestos safety control monitor is to be paid for its services and the name of the employee who shall serve as the representative of the asbestos safety control monitor authorized to review and approve all documents related to the administration of this subchapter.

2. Each asbestos safety control monitor authorized by the Department shall organize its operation to effectively fulfill the requirements of this subchapter. Each person assigned to perform the duties of an asbestos safety technician shall be certified as an asbestos safety technician by the Department.

3. The asbestos safety control monitor shall report to the Department through its designee and shall be subject to the orders and directives of the Department in matters relating to the enforcement of this subchapter.

(b) The Department shall authorize the establishment of an asbestos safety control monitor:

1. No person shall undertake the services described in this section or enter into any contract pursuant to this subchapter without first receiving the authorization of the Department.

i. Except that applicants who have received notice from the Department that their application is complete and suitable for processing may begin to promote or otherwise make their anticipated availability known provided that the applicant discloses in writing at the time of undertaking any such activity that he has not yet been authorized by the Department.

2. Applicants for authorization as an asbestos safety control monitor shall submit an application on the prescribed form, with the required fee pursuant to (h) below, and any additional information the Department may require.

3. Following a determination by the Department that an application is complete and suitable for processing, the Department shall review and evaluate the information contained in the application and such other information as the Department shall deem necessary to enable it to make an accurate and informed determination of approval or disapproval. Within 30 days following the receipt of a completed application, the Department shall make its determination as to whether authorization as an asbestos safety control monitor shall be granted or denied, and shall notify the applicant. In the event of denial, the Department shall provide the applicant with a written explanation of the reasons for denial.

4. The application for authorization shall contain information relating to:

i. The financial integrity of the applicant as evidenced by a reviewed financial statement prepared by an independent certified public accountant;

ii. The qualifications of the management and technical personnel of the applicant, including a statement that all technical personnel who are to be assigned as asbestos safety technicians are certified by the Department;

iii. The type of analysis done (for example, NIOSH 7400) and the laboratory(ies) that do the procedures. If the applicant does its own lab analysis, it shall list the type of equipment used and the personnel using it, with their qualifications. All laboratories shall be accredited by the National Institute of Standards and Technology (NIST). The laboratory shall be a current proficient participant in the American Industrial Hygiene Association Proficiency Analytical Testing Program or any other recognized equivalent program for PCM. All laboratory analysis shall be performed in accordance with N.J.A.C. 5:23-8.21;

iv. The names of all technical personnel, including asbestos safety technicians with their certification numbers, and their range of salaries and other compensation;

v. The policies and procedures of the applicant for the hiring, training, education, and supervision of all technical personnel involved in the supervision and performance of duties pursuant to this subchapter;

vi. The prior experience of the applicant in performing similar or related functions;

vii. The capability of the applicant to review plans and specifications and to inspect asbestos abatement work to ensure that the completed work is in compliance with this subchapter;