

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 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 The Uniform Construction Code superseded N.J.A.C. 5:16 (Chapter 16, Standard Building Code) and N.J.A.C. 5:20 (Chapter 20, Safety Glazing Materials), which were repealed by R.1978 d.360, effective October 6, 1978.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 The UCC also superseded N.J.A.C. 5:21 (Chapter 21, Uniform Standards Code for Mobile Homes), which was repealed by R.1982 d.7, effective February 1, 1982.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, but 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 for specific rulemaking activity.

Cross References

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

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

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

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

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SUBCHAPTER 1. GENERAL PROVISIONS**5:23-1.1 Title; division into subchapters**

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

(b) The chapter consists of the following subchapters:

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

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

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

i. N.J.A.C. 5:23-3.11B contains references to the Department of Environmental Protection's rules concerning underground storage tanks, codified at N.J.A.C. 7:14B, which are jointly enforced by this Department and local enforcing agencies pursuant to this chapter.

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

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

6. "Manufactured Homes and Manufactured Home Add-On Units Not Subject to Federal Regulations" which may be cited throughout the regulations as N.J.A.C. 5:23-4B and when referred to in subchapter 4B may be cited as this subchapter.

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

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

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

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

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

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

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

14. "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.

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

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

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

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

(b) substantially amended.

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

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

Added 9 and 10 to (b).

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

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

Text added at (b)5.

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

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

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

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

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

Text on elevators added at (b).

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

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

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

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

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

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).

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, 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 subchapters 2 and 5 of this chapter.

“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.

“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.

"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).

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 Prior permits; transitional rules for public school facilities

(a) A building, plumbing or electrical permit issued under valid construction regulations prior to the effective date of the regulations shall remain valid, and the construction of any building or structure may be completed pursuant to and in accordance with said permit. The construction of any building or structure started before the promulgation of the regulations that did not, as of the date of the beginning of the construction, require a construction permit may be completed without a construction permit.

(b) In the case of a project for which a permit has not been issued on the effective date of any code revision, and for which plans are submitted based upon drawings and specifications prepared in conformance to the code in force immediately prior to the effective date of the code revision, the construction official shall, upon request of the applicant, for a period of six months after the effective date of the code revision, issue a permit to construct such project pursuant to the code in force immediately prior to the effective date of the code revision.

(c) In the case of a project involving a public school facility for which an application for final plan approval, equivalent to a permit application, was made to, and final plan review was begun by, the State Department of Education prior to the effective date of L. 1983, c. 496 (April 17, 1984), the construction of such project may be completed in accordance with and pursuant to the code applicable to such facilities prior to April 17, 1984.

1. If final plan review was started by the State Department of Education but not completed by April 17, 1984, and the project does not involve only the removal of asbestos, the final plan review shall be completed by the State Department of Education and the inspections shall be done by the local enforcing agency having jurisdiction. A construction permit shall be required. The plan review portion of the fee shall be paid to the State Department of Education and the balance of the fee shall be paid to the local enforcing agency.

2. If final plans were approved by the State Department of Education on or before April 17, 1984, regardless of whether or not construction started on or before April 17, 1984, or if the project involves only the removal of asbestos from a public school facility, inspections shall be done by the State Department of Education. A construction permit shall not be required and all fees shall be paid to the Department of Education.

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).

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 NFPA 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 regulations 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 provisions of the regulations for the proposed new use group, and such change does not result in any greater hazard to public safety or welfare.

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).

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, alteration or repair of an elevator, moving stairway, 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, certificate of approval or certificate of compliance, as the case may be, has been issued therefor by the construction official having jurisdiction.

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.

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.

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 provisions, or to change to a different use group, or 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.

(b) The following are exceptions from (a) above:

1. Ordinary repairs as defined by N.J.A.C. 5:23-2.7 shall not require a permit or notice to the enforcing agency;

2. Minor work as defined by N.J.A.C. 5:23-2.17A shall require a permit. However, work may proceed, upon notice to the enforcing agency, before the permit is issued;

3. Emergency work not involving lead abatement, except that a permit shall be applied for or notice given as soon thereafter as is practicable, but not later than 72 hours thereafter.

4. Permit requirements for tents and membraned structures shall be as set forth in N.J.A.C. 5:23-3.14(b)16i. A temporary greenhouse meeting the criteria set forth in N.J.A.C. 5:23-3.14(b)16i(4) shall not require a permit except as otherwise provided in N.J.A.C. 5:23-3.14(b)16i(5).

5. Gas utility company shall not be required to obtain a permit or give notice to the enforcing agency for replacement of interior gas utility company-owned metering (meter and related appurtenances) by exterior gas utility company owned-metering if the work is performed by qualified employees of the gas utility company.

(c) An annual construction permit may be issued by the construction official to educational, industrial, institutional, mercantile, business and government facilities based upon submission of the following in duplicate:

1. Identification of the facility and the buildings covered by the application for the annual permit.

2. Identification of the location within the facility where the annual permit records will be maintained.

3. A listing of the names, titles and trade specialties of the facility's full-time maintenance staff.

4. The name of the person responsible for the maintenance logs, job assignments and quality control.

5. A statement from the management of the facility attesting that the maintenance staff performing work under the annual permit are under the direct supervision of a qualified individual, as set forth under N.J.A.C. 5:23-2.14(e)1, or are individually qualified in their respective trades.

i. Evidence of qualification shall be journeyman status, civil service status, trade experience, trade school certification, college degree, State licensure pursuant to law or other appropriate evidence of competence.

ii. No person employed on the maintenance staff of a facility shall be deemed to be qualified to engage in lead abatement unless he or she has been certified by the New Jersey Department of Health pursuant to

section 3 of P.L. 1993, c.288 (N.J.S.A. 26:20-3) (see N.J.A.C. 8:62).

6. A statement from the management explaining their policies and procedures for providing training on construction codes on a regular basis for their entire maintenance staff.

7. A statement from the management explaining the procedures of the applicant to ensure proper quality control of the work performed under the annual permit.

8. Receipt of the required annual permit fee and training registration fee.

(d) The Construction Official, upon review of the application may issue or deny an annual construction permit in whole or in part. The construction permit (Form F-170C) shall state that the permit is an annual permit and indicate the technical subcodes in which the facility is approved to do work under the annual permit. A copy of the annual permit shall be forwarded by the Construction Official to the Department of Community Affairs Training Section along with the appropriate training registration fee.

(e) Conditions of the annual permit are as follows:

1. The "annual permit" may be issued for building/fire protection, electrical, mechanical or plumbing work or any combination of those classifications of work, providing that the individual responsible for work done under the annual permit possesses knowledge as evidenced in accordance with N.J.A.C. 5:23-2.14(c)5, in the technical work classification for which the annual permit is sought.

i. An approved copy of the annual permit application shall be kept at a facility's maintenance office within the municipality having jurisdiction for review by the Construction Official and appropriate subcode official. The Construction Official shall be notified of the location of the facilities maintenance office.

2. The life of the annual construction permit shall be limited to one year;

3. The facility shall maintain a construction log of all work performed. The construction log shall contain the date, a brief description and estimated or actual cost of the project. This log shall be subject to a quarterly inspection by the construction official or his authorized representative. Any business record showing when and where work was done and the extent of such work shall be deemed to be a construction log. Applications for the renewal of the "annual permit" shall be filed with the Construction Official at least 60 days prior to the expiration of the current annual permit. The facility application shall make current the information previously submitted to the Construction Official. The application for renewal shall be accompanied by the established fee.

4. The annual permit covers all construction or maintenance work done by the facility's full-time maintenance

staff, but shall not include work performed by outside contract even if the contractor is hired by the facility and working under direct supervision of the facility's maintenance staff. Work performed by outside contract shall be subject to applicable UCC regulations and State Licensure Law.

5. A permanent work log, approved by the construction official, of all work done under the "annual permit" must be maintained at a facilities maintenance office on site or must be available at the time of the inspection upon 24 hours notice of such inspection. The log must contain the date, a brief description of the work, photographs for any work which was not inspected prior to closing as set forth in (e)8 below, and the name of the person supervising the work. The log shall be retained for three years.

6. Architectural or engineering drawings, as required by law for work done under the annual permit, shall be prepared by a registered architect or licensed engineer as defined by the statutory requirements of the professional registration laws of this State and shall be kept permanently on file and be made available to the Construction Official and appropriate subcode official, for review upon request.

7. The appropriate subcode official, at least two (2) times a year, shall perform inspections of the facility for which an annual permit has been issued. The maximum time between inspections shall be a six month period.

8. Work that is normally inspected prior to closing shall be ordered to be reopened by the facility upon written notice from the Construction Official or appropriate subcode official if he has reason to believe that a violation is present. A photograph shall be taken of any work intended to be enclosed without inspection.

9. Any work that is done under the supervision of the facilities maintenance staff and under a regular construction permit shall be entered into the annual permit log. The construction permit number shall be listed as a part of the entry.

10. Any training material made available to the facility by this Department will be used as directed.

i. The facility will conduct a minimum of five (5) instructional hours per year per subcode area in which the annual permit has been issued. Management of the facility will insure that the training is attended by all supervisors, engineers, foremen and workers involved in construction or maintenance work done under the annual permit.

ii. A training log will be maintained by the management of the facility. This log will indicate the types of training conducted, the dates, names and signatures of the staff who attended the training and certification by management to the Construction Official that the information is correct.

11. Any changes to the annual construction permit application shall be forwarded to the Construction Official within 30 days of the change.

12. The following work is not permitted under an annual permit:

- i. Any work done on a facility that would result in a change of use of a building or part of a building;
- ii. New buildings and additions regardless of size;
- iii. Alterations completed between inspection periods in excess of 5,000 square feet per building;
- iv. Any work done on a facility that would result in an increase to the area of a building;
- v. The installation or alteration of a sprinkler system;
- vi. Any work that affects the required means of egress;
- vii. Any modification work, other than routine maintenance, that affects life safety systems, such as, but not limited to:

- (1) Emergency lighting systems;
- (2) Smoke and heat detection systems;
- (3) Stand-by generator systems;
- (4) Emergency smoke evacuation systems.

viii. Any work which would disturb asbestos and require a permit to perform.

(f) Construction requirements for commercial farm buildings shall be as set forth in N.J.A.C. 5:23-3.2(d).

As amended, R.1981 d.462, eff. December 7, 1981.

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

(c)1i: added "under the control and supervision of a person"; (c)1iii: added "any business construction log."

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

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

Section substantially amended.

Amended by R.1986 d.213, effective June 16, 1986.

See: 17 N.J.R. 2490(a), 18 N.J.R. 1266(a).

Subsection (e) substantially amended.

Administrative Correction: "facility's" changed from "facilities" throughout.

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

Amended by R.1990 d.558, effective November 19, 1990.

See: 22 N.J.R. 1969(b), 22 N.J.R. 3483(a).

Conditional exemption for hoopouses or polyhouses added.

Amended by R.1991 d.60, effective February 19, 1991.

See: 22 N.J.R. 3609(a), 23 N.J.R. 405(b).

Gas utilities exempt from permit and notice requirements.

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

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

Mechanical work added to (e)1.

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 (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.381, effective July 17, 1995.

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

5:23-2.15 Construction permits—application

(a) The application for a permit shall be submitted on the standard Construction Permit Application form prescribed by the Commissioner at N.J.A.C. 5:23-4.5(b)2 and shall be accompanied by the required fee as provided for in this subchapter and N.J.A.C. 5:23-4. The application shall contain a general description of the proposed work, its location, the use and occupancy of all parts of the building or structure and of all portions of the site or lot not covered by the building or structure, and such additional information as may be required by the construction official, which shall include, but not be limited to, the following:

1. The name and address of the owner: Where the owner is not a resident of the State, he shall designate a resident as agent for the purpose of service of any notices or orders which may be necessary. Such address shall not be limited to a post office box, but shall specify a physical location where such owner or agent may be found during normal business hours. Where the owner is a corporation, partnership or other business entity, the application shall indicate the names and addresses of the officers, or other responsible persons upon whom service may be made;

2. The street address and lot and block number of the property upon which the building or structure is proposed to be erected;

3. A description of the proposed work, including the use group classification, proposed construction type, lot ground coverage in square feet, total floor area in square feet, total building or structure volume in cubic feet, the total number of plumbing fixtures, the total number of electrical fixtures, outlets and major appliances, a description of the type of heating system, the source of water supply, the mode of sanitary waste disposal and a listing of any special, unusual or hazardous facilities proposed for inclusion in the building or structure;

4. The estimated cost of the work for which a permit is sought, including but not limited to building construction, on-site construction, and all integral equipment, built-in furnishings and finishes. Where any material or labor proposed for installation in the building or structure is furnished or provided at no cost, its normal or usual cost shall be included in the estimated cost;

5. A statement that all required State, county and local prior approvals have been given, including such certification as the construction official may require;

6. For Class I structures, a list of all materials and work requiring special inspections, and a list of agencies, qualified licensed professionals or firms intended to be retained for conducting those inspections in accordance with the requirements of the building subcode; and

7. If the work involves lead abatement, the applicant shall provide the following:

i. A copy of the scope of work which shall describe precisely the location and extent of the work;

ii. A sketch plan showing the locations where abatement work is to be performed and showing emergency egress routes for any occupants to be in the building during abatement;

iii. A record of all materials to be used for all phases of the job, including encapsulants, enclosures, containment materials and replacement components, as appropriate;

iv. A copy of the lead evaluation report, if any has been done, prepared by a business firm certified by the Department pursuant to N.J.A.C. 5:17 to do lead evaluation; and

v. The degree to which any lead hazards identified in any report prepared by a lead evaluation firm certified by the Department will be abated.

(b) In addition, the following information shall be required on any application for a construction permit when such information is available, but not later than the commencement of work.

1. The names and addresses of all contractors engaged or planned for engagement by the owner in the execution of the work.

i. A current validated State builder registration card shall be shown by the contractor and the registration number of the contractor shall be recorded on the permit, pursuant to the New Home Warranty and Builder's Registration Act (N.J.S.A. 46:3B-1 et seq.), if the project is a one or two family dwelling, condominium or cooperative, unless it is to be built in whole or in part by an owner, in which case an affidavit shall be filed by the owner on a form prescribed by the Department of Community Affairs, in which he acknowledges that work done by him, or by a subcontractor working under his supervision, is not covered under the New Home Warranty and Builders' Registration Act and states that he will disclose this information to any person purchasing the property from him within 10 years of the date of issuance of a certificate of occupancy.

2. The name and license number of the contractor or subcontractor for plumbing and for electrical work where such work is proposed.

i. Plumbing and electrical work shall not be undertaken except by persons licensed to perform such work pursuant to law, except in the case of a single family homeowner on his own dwelling.

ii. The seal and signature of the licensed plumbing and electrical contractor shall be affixed to the corresponding subcode application form.

3. The name and address of the responsible person who will be in charge of the work and who is responsible to the owner for ensuring that all work is installed and completed in conformity with the regulations. The person may be the design architect or engineer, the contractor or a third party acceptable to the construction official.

4. If the work involves lead abatement, one of the following shall be supplied:

i. The name and Department certification number issued pursuant to N.J.A.C. 5:17 of any business firm undertaking the lead abatement; or

ii. If the work is to be done by employees of the owner of the property, the name and New Jersey Department of Health certification number issued pursuant to N.J.A.C. 8:62 of each such employee; or

iii. If the work is to be done on an owner-occupied single family dwelling, a certification by the owner stating that he or she owns and occupies the property as a principal place of residence, will be performing the abatement work, and has received the written information for homeowners prepared by the Department explaining the danger of improper lead abatement, procedures for conducting safe lead abatement, and the availability of certified lead abatement contractors or of any available training for homeowners.

5. In the event of any change of contractor or person in charge of work under (b)1, 2, 3 and 4 above, such change shall be filed as an amendment to the application.

(c) A separate application and permit shall be required for each building.

(d) Application for a permit shall be made by the owner, or his agent, a licensed engineer, architect or plumbing, electrical or other contractor employed in connection with the proposed work. If the application is by a person other than the owner in fee, it shall be accompanied by an affidavit of the owner or the authorized person making the application, that the proposed work is authorized by the owner in fee, and that the applicant is authorized to make such application. All issued permits shall remain the property of the owner even if the application was made by a contractor or authorized agent.

(e) Plans, plan review, plan approval:

1. Plans and specifications: The application for the permit shall be accompanied by not less than two copies of specifications and of plans drawn to scale, with sufficient clarity and detail dimensions to show the nature and character of the work to be performed. Plans submitted shall only be required to show such detail and include such information as shall be reasonably necessary to assure compliance with the requirements of the code and these regulations. When quality of materials is essential for conformity to the regulations, specific information shall be given to establish such quality; and this code shall not be cited, or the term "legal" or its equivalent be used, as a substitute for specific information.

i. Site diagram: There shall also be filed a site plan showing to scale the size and location of all the new construction and all existing structures on the site, distances from lot lines and the established street grades; and it shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing structures and construction that are to remain on the site or plot.

ii. Building plans and specifications shall contain: Foundation, floor, roof and structural plans; door, window and finish schedules; sections, details, connections and material designations.

iii. Electrical plans and specifications shall contain: Floor and ceiling plans; lighting, receptacles, motors and equipment; service entry location, line diagram and wire, conduit and breaker sizes.

iv. Plumbing plans and specifications shall contain: Floor plan; fixtures, pipe sizes and other equipment and materials; isometric with pipe sizes, fixture schedule and sewage disposal.

v. Mechanical plans and specifications shall contain: Floor or ceiling plans; equipment, distribution location, size and flow; location of dampers and safeguards; and all materials.

vi. Engineering details and specifications: The construction official and appropriate subcode official may require adequate details of structural, mechanical, plumbing and electrical work, including computations, stress diagrams and other essential technical data to be filed. All engineering plans and computations shall bear the seal and signature of the licensed engineer or registered architect responsible for the design. Plans for buildings shall indicate how required structural and fire-resistance rating will be maintained for penetrations made for electrical, mechanical, plumbing and communication conduits, pipes and systems.

(1) Plumbing plans for class III structures may be prepared by persons licensed pursuant to "The Master Plumber Licensing Act", N.J.S.A. 45:14C-1 et seq. Electrical plans for class III structures may be prepared by persons licensed pursuant to "The Electrical Contractors Licensing Act", N.J.S.A. 45:5A-1 et seq.;

(2) Whenever the licensing board pursuant to either of the above Acts shall provide for a seal evidencing that the holder is licensed, such shall be acceptable to the enforcing agency in lieu of affidavit;

(3) Mechanical plans for class III structures may be prepared by mechanical contractors.

vii. Architect's or engineer's seal: The seal and signature of the registered architect or licensed engineer who prepared the plans shall be affixed to each sheet of each copy of the plans submitted and on the first or title sheet of the specifications and any additional supportive information submitted. The construction official shall waive the requirement for sealed plans in the case of a single family home owner who had prepared his own plans for the construction, alteration or repair of a structure used or intended to be used exclusively as his private residence, and to be constructed by himself, providing that the owner shall submit an affidavit attesting to the fact that he has prepared the plans and provided further that said plans are in the opinion of the construction official, and appropriate subcode official, legible and complete for purposes of ensuring compliance with the regulations.

viii. The construction official upon the advice of the appropriate subcode official may waive the requirement for plans when the work is of a minor nature.

ix. Building, electrical, plumbing and mechanical work required to be shown may be shown on a single set of plans or a single drawing so long as the drawings are clear and legible.

2. Examination of plans: All plans submitted and any amendments thereto accompanied by the required documentation and application, and upon payment of the fee established by the enforcing agency, shall be numbered, docketed and examined promptly after their submission for compliance with the provisions of the regulations.

3. Plan review:

i. Department or other State agency review: When a review and release of plans by the Department or other State agency designated by the Department pursuant to N.J.A.C. 5:23-3 is required, the owner or agent of the owner shall file an application for construction plan release for each project, along with three sets of plans, specifications and such other supporting information as the Department or other designated reviewing agency may require on forms obtained from the Department or such reviewing agency. The plans, specifications and other supporting information shall conform to the requirements of (e) above.

(1) Release of plans: Plans complying with the provisions of the regulations shall be released by the department and written notice of approval shall be given the applicant promptly and no later than 20 business days after the submission thereof. Plans failing to comply with the provisions of the code shall be rejected and written notice of rejection, stating the ground of rejection, shall be given the applicant promptly and not later than 20 business days after the submission thereof. Whenever plans have been rejected and are thereafter revised and resubmitted to meet stated grounds of rejection, the revised plan

shall be approved if they meet the stated grounds of rejection; and written notice of approval or written notice of rejection stating the grounds of rejection shall be given the applicant promptly and not later than seven business days after the resubmission thereof. (Exception: The Department shall issue a plan release for prototype plans for which a "prototype or master plan" has been previously released in the same municipality, within three business days from application.)

(2) Endorsement of released plans: All plans and amendments thereto, when approved by the department, shall be stamped or endorsed "released", followed by a notation of the date of plan release. One set of such released plans shall be retained by the department, two sets of such released plans shall be submitted to the local enforcing agency with the application for construction permit as herein provided.

(3) Partial filing: When circumstances require, a project may be filed in part (that is, footings, structural, electrical, plumbing, and so forth). Each partial submittal shall include sufficient detail to assure that the proposed portion of work complies with the regulations. A plan "release" for such a portion of work shall be issued without prejudice as to whether a "release" shall be issued for the entire project.

(4) Prototype or master plan filing: Designs repeatedly used at different locations may be designated as "prototype or master plans" and filed as follows: On initial application, one additional complete set of repeated portions of the project, with as many variations as can be shown on the plans, may be submitted along with a request for prototype or master plan filing. Subsequent submittals shall consist of at least a plot plan which is signed and sealed by a registered architect or licensed professional engineer, including utilities, exterior elevations of the specific building, and the prototype or master plan file identification number. In addition, a schematic or sketch plan that clearly shows the floor plan arrangement, and any necessary mechanical, electrical and plumbing information not clearly shown in the prototype plan or on the subcode sections, must be submitted.

(5) Construction permits: Owners and their agents shall not apply to a local enforcing agency for a construction permit for any building or structure for which a department plan review and release is required by N.J.A.C. 5:23-3, unless such review and release has been applied for and received by the applicant as evidenced by presentation of released plans to the local enforcing agency.

ii. Local enforcing agency plan review: Where a Department or other State plan review is not required by the regulations, an applicant for a construction

permit shall be deemed to have applied for a local enforcing agency plan review by filing an application for a construction permit.

(1) When the plans submitted with an application for a construction permit or amendment thereto are accompanied by plans which have been released by the department or other designated agency pursuant to the regulations, then further municipal plan review and fee therefor shall not be required. Release of the plans by the department shall not prevent enforcing agency officials from thereafter requiring correction of any errors in said plans or from issuing a stop work order when in violation of the regulations. In such case the enforcing agency shall notify the department;

(2) Where a design is used repeatedly at different locations, the plans attached to the first application for the construction permit may be designated as a "prototype or master plan". These plans may include as many variations as can be shown. Subsequent submittals shall consist of a plot plan which is signed and sealed by a registered architect or professional engineer, including utilities, exterior elevations, and a reference to the prototype plan by application or permit number. In addition, a schematic or sketch plan that clearly shows the floor plan arrangement, and any necessary mechanical, electrical and plumbing information not clearly shown in the prototype plan or on the subcode sections, must be submitted;

iii. Validity of plan release or prototype approval: The released plans or prototype approval (Department or local) shall be valid for the purposes of applying for a construction permit until six months after the date of adoption of the next edition of the code, as set forth in N.J.A.C. 5:23-1.6(b).

iv. Time limitation of application: An application for a permit for any proposed work shall be deemed to have been abandoned six months after date of filing, unless such application has been diligently prosecuted or a permit shall have been issued; except that for reasonable cause, the construction official may grant one or more extensions of time for additional periods not exceeding 90 days each.

v. Amendments to application: Amendments to an application, plan or other records accompanying the same may be filed at any time before completion of the work for which the permit is sought or issued; such amendments shall be deemed part of the original application, and shall, if approved, be filed therewith. If the amendment involves a substantial deviation from the original application, a new affidavit of consent shall be required. If a department plan review was required originally, the enforcing agency shall not permit an amendment to an application unless the amendment has been "released" by the department.

vi. Building systems: Structural, electrical and mechanical designs performed and certified by licensed architects or engineers need not be checked in detail by the staff of the enforcing agency, but shall remain as the responsibility of the professional certifying such design.

vii. A schematic or sketch plan, when required pursuant to this subsection, shall not be deemed to be a construction copy of a plan and shall therefore not be required to be signed or sealed by a registered architect or licensed professional engineer.

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

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

(b)1i: deleted text "The registration number of the contractor", and added "A current validated ... contractor and the".

Amended by R.1985 d.479, effective September 16, 1985.

See: 17 N.J.R. 1462(a), 17 N.J.R. 2248(b).

(b)2ii added. (d) text added "All issued permits ..."

Administrative Correction: Cleaned up typographical errors.

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

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

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

Text added at (a)6 on Class I structure.

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.381, effective July 17, 1995.

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

Case Notes

Compliance with former N.J.A.C. 5:23-2.5 requirements for permit to non-contractor owner to perform repairs. *Winn v. Margate City*, 204 N.J.Super. 114, 497 A.2d 928 (Law Div.1985).

Requirement of architect's or engineer's seal on plans does not broaden scope of engineering practice into architecture; engineer's plan limitations. *State Board of Architects v. North*, 197 N.J.Super. 349, 484 A.2d 1297 (Ch.Div.1984).

Prior-approval rule discussion; zoning matters involved in construction must be resolved before issuance of permits. *Bell v. Twp. of Bass River*, 196 N.J.Super. 304, 482 A.2d 208 (Law Div.1984).

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 regulations 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 effective date of the regulations 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).

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.

(d) Inspection of minor work:

1. Inspections shall be required for minor work and the enforcing agency shall inspect any such work within 30 days of notice;

2. Upon written request from the owner and within 10 days of the completion of said minor work, the construction official shall issue a certificate of occupancy, certificate of approval or certificate of compliance, as the case may be, stating that the work performed under a Minor Work Permit substantially complies with the UCC. The inspection shall be based upon what is visible at the time of said inspection and the certificate of occupancy, certificate of approval or certificate of compliance shall so indicate.

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.1993 d.580, effective November 15, 1993.
See: 25 N.J.R. 3692(a), 25 N.J.R. 5145(c).
Amended by R.1993 d.663, effective December 20, 1993.
See: 25 N.J.R. 4546(a), 25 N.J.R. 5927(a).
Amended by R.1995 d.381, effective July 17, 1995.
See: 27 N.J.R. 970(a), 27 N.J.R. 2715(a).

5:23-2.18 Inspections

(a) Preliminary inspection: Before issuing a permit, the construction official and appropriate subcode official shall where necessary examine or cause to be examined all buildings, structures and sites for which an application has been filed for a construction permit.

(b) Inspections during the progress of work:

1. The construction official and appropriate subcode officials shall carry out such periodic inspections during the progress of work as are necessary to insure that work installed conforms to the approved plans and the requirements of the regulations.

i. Inspection by all subcodes for one and two-family dwellings for which construction must cease until inspection is made shall be limited to four as follows:

(1) The bottom of footing trenches before placement of footings, except that in the case of pile foundations, inspections shall be made in accordance with the requirements of the building subcode;

(2) Foundations and all walls up to grade level prior to back filling;

(3) All structural framing and connections prior to covering with finish or infill material; plumbing underground services, rough piping, water service, sewer, septic services and storm drains; electrical rough wiring, panels and service installations; insulation installations;

(4) Installation of all finished materials, sealings of exterior joints; plumbing piping, trim and fixtures; electrical wiring, devices and fixtures; mechanical systems equipment.

ii. Inspections for all subcodes, of construction other than one and two-family dwellings shall be limited to those required for one and two-family dwellings and the following fire suppression systems; heat producing devices; any inspections required by any subcode of the regulations;

iii. Any additional inspections, as permitted by this chapter and as may be required by the municipality, shall be of the type and nature that construction may continue without interruption;

iv. Special inspection schedule: Where buildings proposed for construction exceed two stories in height or by their nature pose complex or unusual inspection problems, the construction official or appropriate subcode official may specify additional or special inspections to the applicant in writing prior to the issuance of a permit and during construction in the case of unforeseeable circumstances. Where Class I structures incorporate construction techniques covered under the special inspection provisions of the building subcode, such special inspections shall be provided for. The applicant shall provide a list of special inspections required by the building subcode when applying for the permit.

(c) Notice for inspection:

1. The owner or other responsible person in charge of work shall notify the enforcing agency when the work is ready for any required inspection specified herein or required by the construction official or appropriate subcode official. This notice shall be given at least 24 hours prior to the time the inspection is desired. Inspections shall be performed within three business days of the time for which it was requested. The work shall not proceed in a manner which will preclude the inspection until it has been made.

(d) Final inspection: Upon completion of the building or structure, and before issuance of the certificate of use and occupancy required herein, a final inspection shall be made and all violations of the approved plans and permit shall be noted and the holder of the permit shall be notified of the discrepancies by the construction official.

(e) Inspections records: The enforcing agency shall make a written record of all inspections, including any discrepancies or violations noted and shall maintain those reports as a

public record which shall be available for public inspection during normal business hours.

(f) Department inspections: At the request of an enforcing agency, the Department may assist the enforcing agency in the inspection of any construction, provided that the enforcing agency has submitted the plans and specifications for such construction to the Department.

(g) The construction official shall serve as an agent of the Bureau of Housing Inspection of the Department of Community Affairs for the purpose of inspecting newly constructed and altered hotels and multiple dwellings in order to enforce the provisions of the regulations for the maintenance of hotels and multiple dwellings (N.J.A.C. 5:10). Responsibility for inspection may be delegated to the appropriate subcode official(s).

Amended by R.1981 d.182, effective June 4, 1981.
See: 13 N.J.R. 187(b), 13 N.J.R. 333(b).
Amended by R.1992 d.244, effective June 15, 1992.
See: 24 N.J.R. 1147(a), 24 N.J.R. 2243(a).
Class I inspections added to (b)iv.

5:23-2.18A Utility load management device installation programs

(a) Whenever a public utility proposes to undertake a program of installing load management devices at the properties of a substantial number of service customers within a limited period of time, it may apply to the Department for permission to utilize the procedure set forth in this section.

(b) A utility with a program to install load management devices shall submit detailed information to the Department on the design of the device.

(c) The utility shall provide an educational program acceptable to the Department to acquaint any interested Department personnel and municipal subcode officials with the device and with installation and operating procedures.

(d) The utility shall insure that all devices to be installed are identical in design, listed and labeled or otherwise approved according to this chapter for their intended use.

(e) At least one month in advance of any installations, the utility shall submit to the Department, and to each affected municipality, notice of the anticipated number of installations to be performed in each municipality. A maximum and a minimum figure may be submitted where there is uncertainty about the number to be scheduled by customers. An approximate number of weeks for installations in that municipality shall be given along with an approximate number of installations per week.

1. Each week, in advance of installation, the utility shall notify the municipality of any change in the anticipated number of installations for that week. No weekly number of installations shall be so great that the cumulative number of installations in the municipality shall exceed the maximum anticipated number submitted.

2. Prior to the commencement of any installation, and as soon as may be practicable, the utility or its contractors will provide to each municipality notice of the actual sites of installations.

3. The Department and the municipalities shall be notified as soon as possible in the event of any change in existing schedules by the utility or its contractors.

(f) On the Monday following installations, the utility shall submit to each municipality a completed permit application for all installations completed in the municipality's jurisdiction during the preceding week.

1. A listing of all permits so delivered shall be filed by the utility with the Department.

2. All devices installed during that week, by a single contractor, shall be included on that application. The application shall include the Construction Permit Application (F100B) and an Electrical Subcode Technical Section (F120B).

3. Since the permit is not, typically, for work at a single location, the block number shall be entered as "UCC 2.18" and the lot as "A." The work site location shall be the name of the municipality and the owner in fee shall be the utility.

4. In addition to the Construction Permit Application, the utility or contractor shall supply the municipality a complete listing of locations where the device(s), listed on this permit, were installed. This list shall include owner's name, owner's address, block and lot, date of installation, type of device(s) installed, and the contractor's name.

(g) If, for any reason, a permit application, or any part, is found to have been submitted in error, the utility or its contractors shall notify the municipality as soon as possible.

(h) When all required municipal and utility inspections have been approved, a single certificate of approval, for that permit, shall be issued to the utility.

(i) If any municipality or the Department has reason to suspect that permit applications are being mishandled or carelessly accounted for, an investigation may be conducted of the utility's permit files for this project and of any permits in the possession of individual contractors in the utility's employ for this project.

(j) The utility shall pay to each municipality 30 percent of the permit fees otherwise due and owing.

(k) The municipality shall inspect 30 percent of the installations performed and shall record the results of those inspections. The utility shall inspect at least 10 percent of the installations performed and shall record the results of those inspections and forward those results concurrently to the municipality and to the Department weekly.

(l) If a municipality or a utility discovers a defect rate of not less than seven percent for any contractor employed by the utility, the Department shall be immediately notified. The Department shall investigate and, in the interest of public safety, shall be authorized to order that:

1. The offending contractor cease to be employed by the utility for this project;
2. The utility remit the fees necessary to inspect all existing installations of the offending contractor in all municipalities where that contractor has performed work;
3. That each municipality affected perform inspections of all the offending contractor's existing installations; and
4. That the utility or its designees correct or remove all defective installations to the satisfaction of the municipal officials.

(m) If, at any time, the Department tabulates a program-wide defect rate equal to or exceeding three percent, the utility shall be notified and the inspection rate and fee rate in (j) and (k) above shall rise to 50 percent.

(n) If the three percent or greater program-wide defect rate cannot be reduced within two weeks, the program may be terminated by the Department by notifying the utility and all affected municipalities.

(o) A municipality in which a defect rate equal to or greater than seven percent has been twice reported to the Department and which has reason to believe that the program cannot be successfully implemented within its jurisdiction may notify the Department and the utility of the need for termination of the program in that municipality. The Department, upon verifying the accuracy of the municipality's claim, shall issue a notice to the utility and to the municipality ordering the termination of the program in that municipality.

New Rule, R.1989 d.550, effective November 6, 1989.
See: 21 N.J.R. 233(a), 21 N.J.R. 3458(a).
Amended by R.1994 d.28, effective January 18, 1994.
See: 25 N.J.R. 4546(b), 26 N.J.R. 352(a).

5:23-2.19 Special technical services

(a) Whenever the construction official and the appropriate subcode official determine that a need for special technical services exists with regard to a particular project for which the municipal enforcing agency is classified to perform plan review, the construction official may require the applicant to obtain and furnish to the construction official at the applicant's expense, a report from a licensed engineer or registered architect. Such report shall contain the information deemed necessary by the construction official to aid in his determination. Such may include, but not be limited to:

1. Plan review services;
2. Site investigation;
3. Structural analysis;

4. Building systems analysis (that is, mechanical, electrical, vertical transportation, and so forth).

(b) The commissioner reserves the right to further regulate the performance of special technical services.

5:23-2.20 Tests and special inspections

(a) All tests and special inspections required by the provisions of the regulations shall be made and conducted under the supervision of the enforcing agency and in accordance with such inspection and test procedures as may be prescribed by the provisions of the regulations, with the expense of all test and inspections to be borne by the owner or lessee, or the contractor performing the work.

(b) The construction official may accept tests and test reports of the Department and other government agencies, as well as signed statements and supporting inspection and test reports filed by qualified licensed professionals or approved agencies or firms.

(c) The construction official may accept a chimney certification for replacement of fuel fired equipment (form F-370), signed by the person who installed the replacement fuel fired equipment, in lieu of requiring the removal and reinstallation of the chimney vent connector for purposes of inspection of the chimney or vent.

Amended by R.1992 d.244, effective June 15, 1992.
See: 24 N.J.R. 1147(a), 24 N.J.R. 2243(a).

Special inspections added.
Amended by R.1995 d.249, effective June 5, 1995, (operative October 1, 1995).
See: 27 N.J.R. 619(a), 27 N.J.R. 2187(a).
Added (c).

5:23-2.21 Construction control

(a) Responsibilities: The provisions of this section shall define the construction controls required for all buildings involving professional architecture/engineering services and delineate the responsibilities of such professional services together with those services that are the responsibility of the contractor during construction.

(b) Professional architecture/engineering services:

1. Design: All new, alteration, repair, expansion, addition or modification work involving the practice of professional architecture/engineering, as defined by the statutory requirements of the professional registration laws of this State, shall be prepared by registered architects or licensed engineers. All plans, computations and specifications required for a construction permit application must be prepared by or under the direct supervision of a registered architect or licensed engineer and bear his signature and seal in accordance with the State's statutes and regulations governing the professional registration and certification of architects/engineers.

(c) Responsible person in charge of work: The owner shall designate a person to be in charge of the work who shall be responsible for:

1. Review and approval of all shop drawings, documents, and details pertaining to the construction phase;
2. Verification of all controlled materials per building subcode requirements of testing, certification and identification; and
3. Special inspection of critical construction components;
4. The responsible person in charge of work shall perform the necessary services and be present on the construction site on a regular and periodic basis to determine that, generally, the work is proceeding in accordance with the documents approved for the construction permit.

(d) Reporting: At the completion of the construction, the responsible person in charge of work shall submit to the construction official a report as to the satisfactory completion and the readiness of the project for occupancy. Major deviations from the approved permit documents shall be listed in the report; minor exceptions to the permit documents not endangering occupancy need not be included.

(e) Construction contractor services: The actual construction of the work shall be the responsibility of the contractor(s) as identified on the approved construction permit and shall involve:

1. Execution of work in accordance with the regulations;
2. Execution and control of all methods of construction in a safe and satisfactory manner;
3. Execution of all work in accordance with the approved construction documents and directives of the architect or engineer;
4. In general, render all such construction services as required to effect a safe and satisfactory installation of the project;
5. Upon completion of the construction, he shall certify to the best of his knowledge and belief that such has been done in substantial accord with the above, with all pertinent deviations specifically noted.

(f) The provisions of this section do not relieve the enforcing agency of any of the responsibilities required by the regulations.

5:23-2.22 Premanufactured construction

(a) Premanufactured construction certified in accordance with N.J.A.C. 5:23-4A or 4B, and carrying an appropriate label, shall be accepted as conforming to the requirements of the regulations to the extent provided for by the particular label for purposes of local construction inspection approval.

1. Prior to accepting the unit, the appropriate subcode official may require the performance of nondestructive tests.

2. In the case of visible signs of damage and/or any visible code violations, the construction official shall consider the seriousness of the nonconformance or damage and accordingly issue a Temporary Certificate of Occupancy or Certificate of Occupancy or deny such Certificate. If a Temporary Certificate is issued or a Certificate is denied, the construction official shall request that the label-issuing agency reaffirm in writing that the assembly still conforms to the regulations and notify the Department in writing.

3. No inspection requiring disassembly, damage to, or destruction of certified premanufactured construction shall be conducted.

(b) The appropriate subcode officials shall inspect the installation of any premanufactured unit or assembly and all work installed or completed on site to determine compliance with the regulations and the approved plans.

Amended by R.1994 d.96, effective February 22, 1994.
See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

5:23-2.23 Certificate requirements

(a) New buildings: A building or structure hereafter erected shall not be used or occupied in whole or part until a form of certificate of occupancy shall have been issued by the construction official.

1. The enforcing agency shall upon application by the owner issue a certificate of occupancy when all requirements of the regulations have been met.

(b) Building hereafter altered: A building or structure hereafter enlarged, extended or altered shall not be occupied or used until the certificate of occupancy shall have been issued by the construction official certifying that the work has been completed in accordance with the provisions of the approved permit, except as is provided in the regulations. Any use or occupancy which was not discontinued during the work of alteration, shall be discontinued within 30 calendar days after the completion of the alteration unless the certificate of occupancy is secured from the enforcing agency.

(c) Existing buildings: Upon request of the owner of an existing building or structure, the construction official, with the approval of the subcode officials, shall issue a certificate of continued occupancy provided that there are not violations of law or orders of the construction official pending and it is established after inspection and investigation of available municipal records that the alleged use of the building or structure has lawfully existed. The certificate of continued occupancy shall evidence only that a general inspection of the visible parts of the building has been made, and that 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(a) have been found. Nothing in this subsection shall prevent the continued lawful use and occupancy of any such lawfully existing building or structure.

(d) Change of use: After a change of use has been made in a building or structure, the reestablishment of a prior use that is not legal in a new building of the same type of construction is prohibited unless the building complies with all applicable provisions of the regulations. A change from one prohibited use for which a permit has been granted to another prohibited use shall be deemed a violation of the regulations.

(e) Temporary certificate of occupancy: Upon the request of a holder of a permit, the construction official may issue a temporary certificate of occupancy for a building or structure or part thereof before the entire work covered by the permit shall have been completed, provided such portion or portions may be occupied safely prior to full completion of the building or structure without endangering life or public welfare.

(f) Application: A written application for a certificate of occupancy shall be filed with the enforcing agency by the owner or his agent. The application shall include the following:

1. The name and address of the owner or his agent;
2. The location of the building or structure;
3. If a change of use is contemplated, the current and proposed use groups;
4. The statement by the responsible person in charge of work, that to the best of his knowledge all work has been completed in accordance with the permit, the approved plans, and the regulations;
5. A statement of the final cost of construction work, including the basic structure, all on-site improvements, built-in furnishings and fixtures and all integral equipment exclusive of process or manufacturing equipment;
6. A set of "as built" or amended drawings if the building or structure deviates from the approved plans filed with the construction permit application; and
7. A test and balance report for mechanically ventilated Class I and II buildings of Use Groups B and E submitted by a licensed professional engineer or by a test and balance professional certified by the Associated Air Balance Council or the National Environmental Balancing Bureau. The signed report shall include:
 - i. Minimum quantity of outdoor air required by code;
 - ii. Minimum quantity of outdoor air specified in the design;
 - iii. Actual measured outdoor cubic feet/minute (CFM) or a derived quantity, if actual measurement is not possible; and
 - iv. Actual measured total CFM.

(g) Contents of certificate: When a building or structure is entitled thereto, the construction official shall issue a certificate of occupancy within 10 business days after written application therefor.

1. The certificate shall certify the purpose for which the building or structure may be used in its several parts.

2. The certificate of occupancy shall specify: the use group(s), in accordance with the provisions of the building subcode; the maximum live load on all floors as prescribed in the building subcode; the occupancy load in the building and all parts thereof as defined in the building subcode; and any special stipulations and conditions of the construction permit.

3. The construction official shall affix his signature to the certificate and, by so doing, shall certify that the building or structure has been approved for occupancy by all applicable subcode officials in accordance with the provisions of N.J.A.C. 5:23-3.

(h) No temporary or final certificate of occupancy shall be granted until all required utilities, including but not limited to water, sewer, electric and gas are installed and in service.

(i) Equipment listed below, which has been determined by the Department to create a significant potential hazard to public health and safety, shall be granted a certificate of compliance by the construction official based upon the findings of the appropriate subcode official or approved agency for the time period specified. Such equipment shall periodically be reinspected or tested in accordance with the provisions of the regulations, prior to the expiration of a certificate of compliance, and any violations shall be corrected, before a new certificate may be issued. No device shall continue in operation unless a valid certificate of compliance has been reissued.

1. High pressure boilers: 12 months;
2. Refrigeration systems: 12 months;
3. Pressure vessels: 12 months;
4. Cross-connections and backflow preventers: 12 months.

(j) Elevator devices, as defined in N.J.A.C. 5:23-12, have been found by the Department to pose a significant potential hazard to public health and safety and shall therefore be tested or reinspected periodically in accordance with N.J.A.C. 5:23-12. A device shall be granted a certificate of compliance by the construction official for the time period specified. No device shall be operated unless a valid certificate of compliance has been issued. Any violation shall be corrected before a new certificate may be issued. A temporary certificate of compliance may be granted to keep in service a device on which repairs are being diligently performed, if the elevator subcode official finds that no hazard to the public is thereby created. A temporary certificate of

compliance may be issued for no longer than 180 days. The elevator subcode official shall provide written notice to the construction official whenever temporary approval is granted.

1. No certificate of compliance shall be issued for any elevator device in use on or before July 1, 1991 that is subject to these rules and is not registered with the Department in accordance with N.J.A.C. 5:23-12, except that elevator devices in structures classified as Use Group R-3 and R-4 shall be exempt from registration. Elevator devices wholly within R-2 residences, not accessible to the general public, shall also be exempt.

2. No certificate of occupancy shall be issued for any new structure that contains an elevator device until each such device is registered in accordance with N.J.A.C. 5:23-12, except that structures classified as R-3 or R-4, and R-2 structures in which all elevator devices are wholly within dwelling units and not accessible to the general public, shall be exempt.

3. Elevator devices that have been temporarily taken out of operation, so that modernization or repair work can be performed, shall be exempt from periodic inspection requirements during the period of approved non-operation.

4. Elevator devices in structures classified as Use Groups R-3 and R-4, excepting those elevator devices accessible to the public, shall be exempt from periodic inspection requirements. Elevator devices wholly within dwelling units in R-2 structures and not accessible to the general public shall also be exempt. In addition, signed statements and supporting inspection and acceptance test reports, filed by an approved qualified agent or agency, for elevator devices in such structures, other than elevator devices accessible to the public, may be accepted by the construction official, in accordance with N.J.A.C. 5:23-2.19 and 2.20, in lieu of inspections performed by, and acceptance tests witnessed by, the enforcing agency.

(k) Revocation: The enforcing agency may revoke a certificate of occupancy whenever a condition of a certificate has been violated.

(l) Time limit: The provisions of the regulations do not preclude periodic certification pursuant to other applicable laws and ordinances.

(m) Lead Abatement Clearance Certificate: Following a lead hazard abatement job performed by a business firm or by an employee or employees of the owner of a property, a written application for a lead abatement clearance certificate shall be filed with the enforcing agency by the owner or the owner's agent. The application shall include a certification by the firm or person performing the work that all applicable provisions of N.J.A.C. 5:17 have been met, including the clearance requirements, and that the components or areas in the scope of work submitted in the permit application are lead safe.

1. When the lead hazard abatement work includes encapsulation or enclosure, the certification by the firm or person performing the work shall include any recommendations for on-going maintenance or precautions to be taken to maintain the integrity of the encapsulation or enclosure.

2. When all lead hazards identified in an evaluation report prepared by a firm licensed by the Department pursuant to N.J.A.C. 5:17 have been totally and permanently abated, the certification shall so state.

3. When an owner-occupant of a single-family house is performing the work, a lead abatement clearance certificate may be requested by the owner. The application for a lead abatement clearance certificate shall include a statement signed by a lead evaluation contractor certified by the Department pursuant to N.J.A.C. 5:17, or signed by an individual inspector/risk assessor certified by the New Jersey Department of Health pursuant to N.J.A.C. 8:62 indicating that the clearance standards contained in N.J.A.C. 5:17 have been met and that all components or areas in the scope of work submitted in the permit application have been rendered lead-safe.

i. When lead abatement work has been performed by an owner-occupant pursuant to an order issued by a local health department, a lead abatement clearance certificate shall be required.

4. When lead abatement work has been performed pursuant to an order issued by a local health department, no lead abatement clearance certificate shall be issued without the approval of the local health department.

Amended by R.1984 d.120, effective April 16, 1984.

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

(c): "N.J.A.C. 5:23-2.14 have been determined ... have been found," "lawful" added.

Amended by R.1987 d.91, effective February 2, 1987.

See: 18 N.J.R. 2348(a), 19 N.J.R. 289(c).

Added new (i)2; renumbered (i)2.-9. as (i)3.-10.

Amended by R.1988 d.167, effective April 18, 1988.

See: 20 N.J.R. 223(b), 20 N.J.R. 893(b).

Added text to (b) "after the completion of the alteration".

Amended by R.1991 d.180, effective April 1, 1991.

See: 23 N.J.R. 257(a), 23 N.J.R. 1028(b).

In (i), deleted inspections of sprinkler systems, hazardous uses and places of assembly.

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

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

Potentially hazardous equipment approvals time-limited at (i); elevator requirements added at (j).

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.1993 d.421, effective September 7, 1993.

See: 25 N.J.R. 2161(a), 25 N.J.R. 4073(a).

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.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).

Law Review and Journal Commentaries

Arbitration—Condominiums—Consumer Fraud Act. Steven P. Bann, 137 N.J.L.J. No. 2, 65 (1994).

Attorneys fees—Condominiums—Damages—DCA—PREFDA. 132 N.J.L.J. No. 9, 45 (1992).

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.

Condominium vendor committed unconscionable practice within scope of Consumer Fraud Act. *Cybul v. Atrium Palace Syndicate*, 272 N.J.Super. 330, 639 A.2d 1146 (A.D.1994), certification denied 137 N.J. 311, 645 A.2d 140.

Penalties could not be imposed on condominium vendor for failure to obtain temporary certificates of occupancy. *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).

Purchasers were entitled to return of deposit for failure of vendors to timely perform. *Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate*, 247 N.J.Super. 511, 589 A.2d 1046 (A.D.1991), certification denied 126 N.J. 338, 598 A.2d 895.

Not substantially complete condominium unit could not be occupied. *Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate*, 247 N.J.Super. 511, 589 A.2d 1046 (A.D.1991), certification denied 126 N.J. 338, 598 A.2d 895.

Certificates of occupancy cannot bar occupancy. *Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate*, 247 N.J.Super. 511, 589 A.2d 1046 (A.D.1991), certification denied 126 N.J. 338, 598 A.2d 895.

Developer's failure to timely issue temporary certificate of occupancy (TCO) required refund of purchasers' deposits. *Department of Community Affairs, Div. of Housing and Development v. Atrium Palace Syndicate*, 244 N.J.Super. 329, 582 A.2d 821 (A.D.1990), certification denied 126 N.J. 317, 598 A.2d 878.

Building does not qualify for property tax exemption if certificate of occupancy issued after assessment date; use of building for exempt purposes prior to issuance of certificate irrelevant to exemption issue (citing former N.J.A.C. 5:23-2.7). *Grace & Peace Fellowship Church, Inc. v. Cranford Twp.*, 4 N.J.Tax 391 (Tax Ct.1982).

5:23-2.24 Conditions of certificate of occupancy

(a) Certificate of occupancy shall be conditioned upon the following:

1. That the completed project meets the conditions of the construction permit, the approved drawings including all amendments, and all prior approvals;
2. That all required fees have been paid in full;
3. That all necessary inspections have been completed and that the completed project meets the requirements of the regulations;

4. That all violations have been corrected and that any assessed penalties have been paid;

5. That all protective devices and equipment required to be installed by the regulations will continue to be operational as required by the regulations.

(b) No certificate of occupancy shall be issued for any new home, built by a builder, as such terms are defined in N.J.A.C. 5:25-1.3, except after filing by the builder with the construction official of proof that the new home has been enrolled in either the State New Home Warranty Security Plan or a private plan approved by the Department of Community Affairs. If the new home is enrolled in the State New Home Warranty Security Plan, proof shall be in the form of a validated copy of the Certificate of Participation, required pursuant to N.J.A.C. 5:25-5.5, and proof of payment of the warranty premium.

(c) No certificate of occupancy shall be issued for any new home built by an owner or in which any design, construction, plumbing or electrical work has been done by the owner unless the owner shall file with the construction official an affidavit in which he certifies that all work has been done in conformity with applicable law, acknowledges that work done by him or by any subcontractor working under his supervision, is not covered under the New Home Warranty and Builders' Registration Act (N.J.S.A. 46:3B-1 et seq.) and states that he will disclose this to any person purchasing the property from him within 10 years of the date of issuance of a certificate of occupancy. The affidavit shall be filed on a form prescribed by the Department of Community Affairs.

(d) No certificate of occupancy shall be issued for any building used or intended to be used as a rooming house or a boarding house, as such terms are defined in section 3 of the Rooming and Boarding House Act of 1979 (P.L. 1979, c.496; N.J.S.A. 55:13B-1 et seq.), except after filing by the owner with the construction official of a photocopy of a license to own a rooming or boarding house issued to the owner by the Department of Community Affairs.

(e) No certificate of occupancy shall be issued for a hotel or multiple dwelling, as defined in the Hotel and Multiple Dwelling Law (N.J.S.A. 55:13A-1 et seq.), except after filing by the owner with the construction official of a photocopy of a certificate of registration issued by the Bureau of Housing Inspection of the Department of Community Affairs.

(f) No certificate of occupancy shall be issued for any building containing one or more elevators unless:

1. Compliance certificates for all the elevators installed in the building have been issued in accordance with N.J.A.C. 5:23-2.23; and
2. All of the elevators in the building have been registered with the Department in accordance with N.J.A.C. 5:23-12.3.

(g) No certificate of occupancy shall be required in the case of minor work as provided for by N.J.A.C. 5:23-2.17A.

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

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

Text added at (f).

Case Notes

Citation to former N.J.A.C. 5:23-2.7; municipal requirement for payment of property taxes before permit issuance 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).

5:23-2.25 Establishment of fees

The municipality in accordance with this chapter shall by ordinance establish enforcing agency fees for the following activities: plan review; construction permit; certificate of occupancy; elevator device inspections and tests and certificate of compliance; certificate of approval; demolition permit; moving of buildings permit; lead abatement clearance certificate; and sign permit. The fee shall be collected prior to the issuance of the permit certificate. A schedule of such fees shall be posted in the office of the construction official and shall be accessible to the public.

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

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

Elevator activities added.

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

Citation to former N.J.A.C. 5:23-4.8 fee standards; municipal requirement for payment of property taxes before permit issuance 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).

5:23-2.26 Plan review fees

Twenty percent of the construction permit fee shall be deemed to be the plan review fee. When a department plan review fee has been collected pursuant to the regulations or when a plan review is waived, then the enforcing agency construction permit fee shall be reduced by 20 per cent from the amount otherwise specified in the municipal enforcing agency fee schedule.

5:23-2.27 Refunds

In the case of discontinuance of a building project, the volume of the work actually completed shall be computed. Any excess for the uncompleted work shall be returned to the permit holder; except that all penalties that may have been imposed on the permit holder under the requirements of the regulations shall first be collected. Plan review fees are not refundable.

5:23-2.28 Volume computation

(a) General: For the determination of the permit fees, the volume of the structure shall be computed as provided in this section.

(b) Structures with basements: The volume of the structure shall include all enclosed dormers, porches, penthouses and other enclosed portions of the structure extending from the basement or cellar floor to the mean height of a pitched roof, or the average height of the top of the roof beams of a flat roof.

(c) Structures without basements: For structures without basements or cellars, the volume shall be based on the height measured to a level located one-fifth the distance from the first floor level to the bottom of the footings, but not to exceed 2½ feet below the first floor level.

(d) Open sheds: For open sheds and structures of a similar character, the volume shall be measured within the perimeter of the roof for a height from the grade line to the mean roof level.

(e) No fee shall be required for premanufactured construction, assembly or components transported to a construction site. A fee shall be required for work performed at the site, including, but not limited to, foundation systems, structural installations and external utility connections.

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

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

(e) added.

5:23-2.29 Entry

(a) The owner of any premises upon which a building or structure is to be constructed shall be deemed to have consented to inspection, by the enforcing agency, of the entire premises and of any and all construction being performed on it until a certificate of occupancy has been issued.

(b) An inspector, or team of inspectors, on presentation of proper credentials, shall have the right to enter and inspect such premises, and any and all construction thereon, for purposes of insuring compliance with the provisions of the applicable construction permit, and the regulations. All inspection pursuant to the act and the regulations shall be between the hours of 9:00 A.M. and 5:00 P.M. on business days, or when construction is actually being undertaken; provided, however, that inspections may be conducted at other times if the enforcing agency has reasonable cause to believe that an immediate danger to life, limb or property exists, or if permission is given by an owner, or his agent, architect, engineer or builder. No person shall accompany an inspector or team of inspectors on any inspection pursuant to the regulations, unless his presence is necessary for the enforcement of the regulations, or unless consent is given by an owner or his agent, architect, engineer or builder.

(c) Any construction official, subcode official or any inspector, presenting themselves for inspection of any occupied building shall present to the owner the owner's agent or occupant their personal identification as provided by the municipality.

(d) After the certificate of occupancy shall have been granted, the construction official shall not enter upon such premises for purpose of inspection, unless upon reasonable grounds to believe that a condition of the certificate of occupancy has been violated, or in the case of equipment granted approvals of limited duration pursuant to this subchapter, or in the case of emergencies, or unsafe buildings, or upon reasonable cause to believe construction work is underway without a permit having been issued.

(e) Nothing herein is intended to limit the right of a municipality to adopt property maintenance regulations and provide for inspection, pursuant to any other law, ordinance or judicial decision of this State. However, no such regulation shall conflict with any provision of the regulations.

Administrative Correction to (b): Changed "than" to "that".
See: 22 N.J.R. 2503(b).

5:23-2.30 Violation, notice and orders

(a) Whenever the construction official or the appropriate subcode official shall determine that there exists a violation of the provisions of the regulations, or of a detailed statement or plan approved thereunder, or where there exists a violation of a permit or certificate issued under the regulations, the construction official shall issue a notice of violation and orders to terminate directing the discontinuance of the illegal action or condition and the correction of the violation.

(b) The notice and orders shall contain at least the following information:

1. The name and address of the owner; the address at which the violation occurred; the name and address of the person to whom the order is directed, and if it be other than the owner, a copy shall be delivered to the owner or his agent stating that the owner bears joint responsibility for bringing about compliance with the person named and that if a penalty is imposed, the enforcing agency will not issue a certificate of occupancy until such penalty has been paid; the permit number, a citation to the sections of the regulations violated; an order to terminate violations within a time specified in the order; the amount of penalty assessed, if any, and if cumulative, an explanation of the method of computation; and shall be signed by the appropriate subcode official and the construction official.

2. Unless an immediate hazard to health and safety is posed, the construction official shall permit such time period for correction as is reasonable within the context of the situation.

(c) Extensions: The construction official may grant extensions of time whenever he shall determine that despite diligent effort, compliance cannot be accomplished within the time specified in the notice. If, however, such extension shall be for a period in excess of three business days, or if more than one extension of less than three business days is

sought, the construction official shall require a written application of extension stating the need, upon which he shall rule in writing, and which shall be made a part of the permanent file of the project.

Case Notes

Penalty assessed against property owners for violations of housing code; failure to request an extension of time for reinspection. *Piercy v. Department of Community Affairs*, 94 N.J.A.R.2d (CAF) 27.

5:23-2.31 Compliance

(a) If the notice of violation and orders to terminate have not been complied with, the construction official in addition to any other available remedies likely to bring about compliance, may request the legal counsel of the municipality, or of the joint enforcement agency, or the Attorney General in the case of the State, to institute the appropriate proceeding at law or in equity to restrain, correct, or abate such violation or to require the removal or termination of the unlawful use of the building or structure in violation of the provisions of the regulations or of the order or direction made pursuant thereto.

(b) Penalties;

1. Any person or corporation, including an officer, director or employee of a corporation, shall be subject to a penalty of not more than \$500.00 if that person:

- i. Violates any of the provisions of the act or the regulations;

- ii. Constructs a structure or building in violation of a condition of a building permit;

- iii. Fails to comply with any order issued by an enforcing agency or the department;

- iv. Makes a false or misleading written statement, or omits any required information or statement in any application or request for approval to an enforcing agency or the department.

2. Anyone who knowingly refuses entry or access to an inspector lawfully authorized to inspect any premises, building or structure pursuant to the act or the regulations, or who unreasonably interferes with such an inspection, shall be subject to a fine of not more than \$250.00.

3. With respect to (b)liii above, a person shall be guilty of a separate offense for each day that he fails to comply with a stop construction order validly issued by an enforcing agency or the department and for each week that he fails to comply with any other order validly issued by an enforcing agency or the department. With respect to (b)li and iv above, a person shall be guilty of a separate offense for each violation of any provision of the act or the regulations and for each false or misleading written statement or omission of required information or statement made in any application or request for approval to an enforcing agency or the department. With respect

to (b)lii above, a person shall be guilty of a separate offense for each violation of conditions of a construction permit.

4. No such penalty shall be assessed except upon notice of violation and orders to terminate and upon the expiration of the time period delineated in the notice; except that in the case of a false or misleading statement pursuant to (b)liv above, the failure to obtain a construction permit or request required inspections, or allowance of occupancy prior to receipt of a certificate of occupancy, an order to pay a penalty shall be issued immediately upon the discovery of the violation.

5. The construction official may separately serve a notice of penalty assessment and order to pay a penalty, whenever he shall not have done so in the original notice and orders.

6. The penalties pursuant to this section may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law" (N.J.S.A. 2A:58-1 et seq.). Jurisdiction to enforce such penalties is conferred upon judges of the municipal court in addition to the courts specified by N.J.S.A. 2A:58-2. Suit may be brought by a municipality or the State of New Jersey. Payment of a money judgment pursuant hereto shall be remitted in the case of a suit brought by a municipality to the municipal treasurer and in the case of a suit brought by the State of New Jersey to the State Treasurer.

(c) The construction official may assess a monetary penalty whenever such shall be likely to assist in bringing about compliance.

(d) Stop construction order: If the construction of a structure or building is being undertaken contrary to the provisions of the regulations, or other applicable laws or ordinances, the enforcing agency may issue a stop construction order in writing which shall state the reasons for such order and the conditions upon which construction may be resumed and which shall be given to the owner or the holder of the construction permit or to the person performing the construction. If the person doing the construction is not known, or cannot be located with reasonable effort, the notice may be delivered to the person in charge of, or apparently in charge of, the construction. No person shall continue, or cause to allow to be continued, the construction of a building or structure in violation of a stop construction order, except with the permission of the enforcing agency to abate a dangerous condition or remove a violation, or except by court order. If an order to stop construction is not obeyed, the enforcing agency may apply to the appropriate court as otherwise established by law for an order enjoining the violation of the stop construction order. The remedy for violation of such an order provided in this subsection shall be in addition to, and not in limitation of,

any other remedies provided by the regulations, law or ordinance.

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.

5:23-2.32 Unsafe structures

(a) All buildings or structures that shall become unsafe, or unsanitary, or that contain deficient or blocked exitway facilities, or which constitute a fire hazard or are otherwise dangerous to human life or the public welfare, or that by reason of illegal or improper use or occupancy shall be deemed unsafe buildings or structures, shall be taken down and removed or made safe and secure. A vacant building that is unguarded or open at door or window shall be deemed a fire hazard and unsafe within the meaning of this chapter.

1. Examination and record of damaged structure: The appropriate subcode official shall examine every building or structure reported as dangerous, unsafe structurally, unsanitary or constituting a fire hazard and shall prepare a report to be filed in a docket of unsafe structures and premises, stating the use of the structure, the nature of the hazard, the nature and estimated amount of damages, if any, caused by collapse or failure.

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 acceptance or rejection of the terms of the order. Such person may seek review before the Construction Board of Appeals within 10 business 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 structure 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.

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.

City, as landowner, did not have immunity from claim that 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).

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 Construction board of appeals

There shall be established in each county of the State, a construction board of appeals to hear appeals from the decisions of enforcing agencies in that county; provided that a municipality may establish its own construction board of appeals; and provided further, that where two or more municipalities have combined to appoint a joint enforcing agency for all subcodes, they may combine to establish a joint construction board of appeals. Such municipal or joint

board of appeals shall hear appeals from municipal or joint enforcing agencies, as the case may be, instead of the county board.

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

(a) Whenever an enforcing agency shall deny an application for a construction permit, fail to act upon an application for a construction permit, fail to act upon an application for a certificate of occupancy, refuse to grant a variation pursuant to this subchapter, or make any other decision pursuant or related to the act or the regulations, including the assessment of any monetary penalties, an owner or his authorized agent may appeal to the construction board of appeals.

(b) The application for appeal shall be taken within 20 business days of the receipt of written notice of the denial or other decision of the enforcing agency.

(c) The application for appeal shall be in writing, filed with the board, briefly setting forth the appellant's position. Such application shall state the name and address of the appellant, the address of the building or site in question, the permit number, and shall reference the specific sections of the regulations in question, and the extent and nature of the appellant's reliance on them. The appellant may append to his written application any data or information that he may deem appropriate to his cause.

1. The enforcing agency shall make available to the board the full record of the application below, which shall include a detailed explanation of the reasons for the denial of the appellant's request.

(d) The application shall be accompanied by a fee in the sum of \$50.00 unless established otherwise by the local or county governing body. An application shall not be considered complete unless accompanied by the appeal fee. In the case of appeal based on the failure of the enforcing agency to act within any time frame specified, the fee shall be waived.

(e) The time for appeal may be extended prior to a meeting upon application to the secretary of the board, or may be extended at any regular or special meeting of the board, by the affirmative vote of a majority of the board present.

Case Notes

Appellate rights of applicant denied construction permit; procedure. *Bell v. Twp. of Bass River*, 196 N.J.Super. 304, 482 A.2d 208 (Law Div.1984).

5:23-2.36 Procedure of the board

(a) The board shall meet upon notice of the chairman or at stated periodic meetings, if warranted by the volume of work. The hearing shall be recorded and copies made available upon request at the expense of the requesting party.

(b) All hearings shall be open to the public. The appellant, his representatives or legal counsel and the enforcing agency through the construction official or the appropriate subcode official shall be granted an opportunity to address the board, present testimony, examine and cross-examine witnesses consistent with reasonable rules of procedure and due process.

(c) Membership:

1. When five members are not present to consider a specific appeal, either the appellant or the enforcing agency shall upon request be entitled to a postponement of the hearing. If there is no such request for a postponement, any decision made by the members present shall be binding and shall be considered as a decision of the full board. No meetings shall be conducted unless there are at least three members of the board present.

2. No specific combination of business or profession represented on the board need be present when less than the full board is convened, or when the board is convened with alternate members, unless an affirmative vote of the regular members present determines that because of the nature of a particular matter before it, a certain specific trade or profession not present, is required. Further, the appellant or the enforcing agency shall upon request, and upon a concurring vote of a majority of the regular members present, be entitled to a postponement of the hearing upon the grounds that a certain specific trade or profession not present, is required.

Case Notes

Chairman of county construction board of appeals had judicial immunity from civil rights claim for allegedly causing board to not consider landowners' appeal from county construction officer's decision. *Akins v. Deptford Tp.*, D.N.J.1993, 813 F.Supp. 1098, affirmed 995 F.2d 215, certiorari denied 114 S.Ct. 478, 126 L.Ed.2d 429, affirmed 17 F.3d 1428.

Clerk of county construction board of appeals had judicial immunity from civil rights liability for alleged intentional failure to file landowners' appeal from county construction officer's decision. *Akins v. Deptford Tp.*, D.N.J.1993, 813 F.Supp. 1098, affirmed 995 F.2d 215, certiorari denied 114 S.Ct. 478, 126 L.Ed.2d 429, affirmed 17 F.3d 1428.

Due process was not violated by failure of county construction board of appeals to accept and process appeal from decision of county construction officer. *Akins v. Deptford Tp.*, D.N.J.1993, 813 F.Supp. 1098, affirmed 995 F.2d 215, certiorari denied 114 S.Ct. 478, 126 L.Ed.2d 429, affirmed 17 F.3d 1428.

Board of Review procedures in permit denial reviews. *Bell v. Twp. of Bass River*, 196 N.J.Super. 304, 482 A.2d 208 (Law Div.1984).

5:23-2.37 Decision of the board

(a) Procedure:

1. The board shall hear the appeal, render a decision thereon, and file its decision with a statement of the reasons therefore with the enforcing agency from which the appeal has been taken not later than 10 business days following the submission of the appeal, unless such period of time has been extended with the consent of the appellant. Such decision shall also be filed with the Construction Code Element, Bureau of Regulatory Affairs, CN816, Trenton, NJ 08625. Decisions of the board shall be available for public inspection at both the offices of the bureau and the enforcing agency during normal business hours.

2. Such decision may affirm, reverse, or modify the decision of the enforcing agency or remand the matter to the enforcing agency for further action. Whenever the board shall reverse or modify the decision of the enforcing agency, its statement of reasons therefor shall explain in specific detail the nature and extent of its disagreement with the enforcing agency.

3. Decisions of the board shall be by a concurring vote of three members. Failure to secure three concurring votes shall be deemed a confirmation of the decision of the enforcing agency; except that when less than five members are present, a majority of those present shall be required for concurrence. Any dissenting member may attach a statement of reasons in opposition to the decision of the board.

4. Every action of the board shall be by resolution and copies shall be forwarded by certified or registered mail to the appellant or his representatives.

5. Failure by the board to hear an appeal and render and file a decision thereon, within the time limits prescribed in this section, shall be deemed a denial of the appeal for purposes of a complaint, application or appeal to a court of competent jurisdiction.

6. The enforcing agency shall take immediate action in accordance with the decision of the board, unless otherwise stayed by a court of competent jurisdiction.

7. Any party, including the enforcing agency, may within 30 days, appeal from the decision of the board to a court of competent jurisdiction.

(b) Criteria: Decisions of the board shall be in accordance with the following:

1. Where an enforcing agency has failed to act on an application for a construction permit, the board may

order the enforcing agency to act or may grant such permit if the applicant is otherwise entitled thereto, or may deny the permit.

2. Where an enforcing agency has denied an application for a construction permit, the board may reverse or modify such decision upon a finding that such was arbitrary, or based upon an erroneous interpretation of the regulations.

3. Where an enforcing agency has, pursuant to this subchapter, denied in whole or in part an application for a variation, or placed conditions upon the granting of a variation, the board may, upon making the same findings as are required by this subchapter, grant such variation, and establish any conditions of the variation. Except as is otherwise specified, no variations may be granted from any of the requirements of N.J.A.C. 5:23-2, 4 and 5.

4. Where the appeal is from an order to pay a monetary penalty, the board may reduce such penalty if it determines that the assessment was excessive; it may void such penalty if it determines that its assessment was unnecessary to bring about compliance, or that it was an inappropriate remedy under the circumstances of the case; or it may hold such penalty in abeyance until the issuance of a certificate of occupancy or some earlier event or period in anticipation or reducing or voiding such penalty where no further violation of the regulations are uncovered.

5. Where the appeal is based on any other action of the enforcing agency, the decision of the board shall give effect to the intent and purpose of the act and shall be consistent with the interests of the general health, safety and welfare.

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

Case Notes

Chairman of county construction board of appeals had judicial immunity from civil rights claim for allegedly causing board to not consider landowners' appeal from county construction officer's decision. *Akins v. Deptford Tp.*, D.N.J.1993, 813 F.Supp. 1098, affirmed 995 F.2d 215, certiorari denied 114 S.Ct. 478, 126 L.Ed.2d 429, affirmed 17 F.3d 1428.

Clerk of county construction board of appeals had judicial immunity from civil rights liability alleged intentional failure to file landowners' appeal from county construction officer's decision. *Akins v. Deptford Tp.*, D.N.J.1993, 813 F.Supp. 1098, affirmed 995 F.2d 215, certiorari denied 114 S.Ct. 478, 126 L.Ed.2d 429, affirmed 17 F.3d 1428.

Due process was not violated by failure of county construction board of appeals to accept and process appeal from decision of county construction officer. *Akins v. Deptford Tp.*, D.N.J.1993, 813 F.Supp. 1098, affirmed 995 F.2d 215, certiorari denied 114 S.Ct. 478, 126 L.Ed.2d 429, affirmed 17 F.3d 1428.

Regulation valid permitting appeal of board decision; Law Division proper forum to review action of administrative body with single locality authority; scope of proceedings; decision standards. *Bell v. Twp. of Bass River*, 196 N.J.Super. 304, 482 A.2d 208 (Law Div.1984).

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) Commercial farm buildings shall be constructed in accordance with the following criteria.

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. Commercial farm buildings shall be classified as Use Group S of the building subcode of the Uniform Construction Code, and shall include, but not be limited to the following: stall barns, milking parlors, poultry housing, horse arenas, farrowing houses, greenhouses, storage buildings for raw products and storage buildings for farm machinery and farm equipment.

3. Buildings containing any of the following uses are not included in the definition of a commercial farm building: residential structures; 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; processing facilities requiring specialized machinery to perform functions other than the washing, cleaning, hydrocooling, vacuum cooling, grading, sizing and packing of raw, unprocessed products unless the exempted functions are only the first step in a sequence of processing to be performed on the farm; mercantile structures, such as farm retail markets or nursery and greenhouse sales areas; and offices with either 11 or more occupants, or floor area greater than 1,200 square feet. Buildings containing any of these uses must provide fire separation and be constructed in accordance with the building subcode of the Uniform Construction Code.

4. Construction, height and allowable area requirements for commercial farm buildings and structures shall be for one of the types of construction specified in the building subcode and shall not exceed the area or height limitations of Table 503.

i. Exceptions to the requirements in (d)4 above are as follows:

(1) The area of a one-story commercial farm building of any type of construction shall not be limited if the building is entirely surrounded and adjoined by open space on the same lot not less than 100 feet in width.

(2) The area of a two-story commercial farm building of any type of construction shall not be limited if the building is entirely surrounded and adjoined by open space on the same lot not less than 100 feet in width and is provided with an approved automatic fire suppression system throughout, conforming to the Uniform Construction Code.

(3) Several unlimited area farm buildings excepted under (d)4i(1) and (2) above may be constructed on the same lot, or on an owner's contiguous lots, provided there remains at least 100 feet clear distance between the unlimited area farm building nearest another owner's property line or a public right of way; and provided that there is at least 100 feet clear distance between every unlimited area farm building and any other building not constructed under this exemption.

5. Unlimited area farm buildings exempted under (d)4i above shall meet the following additional relaxed requirements in lieu of those requirements in 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. In lieu of the requirements of section 1008.0, occupancy is limited to 30 people;

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

vi. 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. Offices with 11 or more occupants or more than 1,200 square feet must provide fire separation and be constructed in accordance with the building subcode of the Uniform Construction Code.

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).

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 will be published in the New Jersey Register at least 45 calendar days prior to its final approval. Thereafter, notice of final approval, stating effective date, will 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).

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)Ii 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. 5:23-7.100 through 7.116). Any complaint of noncompliance with these regulations shall be forwarded to the Department.

1. As an exception to (f) above, The Department of Education shall be the agency for the enforcement of the Barrier Free Recreation Standards for public school facilities.

(h) The Department of Community Affairs shall be the sole agency responsible for the enforcement of N.J.A.C. 5:23-11, the Indoor Air Quality Procedures and Standards for Buildings Occupied by Public Employees. Any complaint of noncompliance with that subchapter shall be forwarded to the Department. This subsection notwithstanding, the Department of Health may enforce the standards contained in N.J.A.C. 5:23-11 when such standards have been adopted by the Department of Labor.

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).

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 regulations

(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 make any amendment to such code or issue a new edition of such code, the commissioner shall make such amendment or new edition effective as soon as is practicable and consistent with their availability from the model code organization.

1. The commissioner shall take such steps as are necessary and appropriate to inform the public that such amendments or editions have been adopted by the model code organization, and of the date upon which they become effective in New Jersey. Notice shall include publication in the New Jersey Register and mailing a copy of such amendment or revision by regular mail to each enforcing agency and board of appeals.

i. Whenever such amendments or editions are too voluminous or otherwise become impractical to mail, the notice and the mailing to the enforcing agency shall state that such amendments or editions have been adopted by the model code organization and give notice as to where copies of the full text can be obtained.

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

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

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

viii. 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;

ix. 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

xxv. 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";

iv. Section 916.0 is amended to replace the phrase "administrative authority of the jurisdiction" with the term "fire protection subcode official";

7. The following amendment is made to Chapter 10 entitled "Means of Egress":

i. Section 1001.2 is amended to replace the phrase "Article 1 for modification of this code or by adoption of approved rules" with the regulations at "N.J.A.C. 5:23-2";

8. Chapter 11 of the building subcode entitled "Accessibility", is modified in the manner set forth in N.J.A.C. 5:23-7.

9. The following amendment is made to Chapter 13 entitled "Energy Conservation":

i. Chapter 13 is deleted in its entirety.

10. The following amendment is made to Chapter 15 of the building subcode, entitled "Roofs and Roof Structures":

i. Section 1512.1 is amended to delete the sentence "The repair . . . for new roofing."

11. The following amendments are made to Chapter 17 of the building subcode, entitled "Structural Tests and Inspections":

i. Section 1701.2 is amended to replace the term "approved rules" with the word "regulations";

ii. Section 1702.1, the definition of the term "approved agency" is amended to add the words "by the code official or other authority having jurisdiction in accordance with the regulations" after the word "approved";

iii. Section 1702.1, the definition and the term "Inspection, special" are deleted;

iv. Section 1705.1 is amended to add the words "for Class 1 structures or when requested by the building subcode official" after the words "special inspections" on lines 1 and 2;

v. Section 1705.1.1 is deleted in its entirety and replaced with the sentence: "Permit applications shall be made in accordance with N.J.A.C. 5:23-2.15";

vi. Section 1705.2 is amended to add the sentence: "Building elements fabricated off site shall be approved in accordance with N.J.A.C. 5:23-4.26";

vii. Section 1705.3.1 is deleted in its entirety;

viii. Section 1707.1 is amended to replace the phrase "approved rules" with the word "regulations," and to replace the phrase "Section 106.0" with the phrase "the regulations."

12. The following amendment is made to Chapter 27 of the building subcode, entitled "Electric Wiring, Equipment and Systems":

i. Chapter 27 is deleted in its entirety.

13. The following amendments are made to Chapter 28 of the building subcode, entitled "Mechanical Systems":

- i. Section 2803.0 is deleted in its entirety;
 - ii. Section 2811.0 is deleted in its entirety;
14. The following amendment is made to Chapter 29 of the building subcode, entitled "Plumbing Systems":
- i. Chapter 29 is deleted in its entirety.
15. The following amendments are made to Chapter 30 of the building subcode, entitled "Elevators and Conveying Systems":
- i. Section 3001.1 is amended to delete the phrase "Except as otherwise provided by statute" in the first line, to add the phrase "and where applicable, of N.J.A.C. 5:23-12" after the word "Chapter" in the second line, to delete the phrase "and amusement devices" in the second sentence and to replace the term "code official" with the term "construction official" in the second sentence;
 - ii. Section 3001.2 is amended to substitute the term "this code" for "these rules" and to add the following sentence: "However any education, experience or training requirements included or cited in reference standards shall not be binding in this State.";
 - iii. Section 3003.0 is deleted in its entirety except section 3003.3;
 - iv. Section 3004.1 is amended to delete the words "and maintenance" and substitute in lieu thereof "inspection and," and to delete the words "and periodic inspections";
 - v. Section 3004.2 is amended to add the words "inspection and" after the word "Acceptance" in the title and after the words "All such" in the seventh line; to delete the words "this code" in the first sentence and substitute in lieu thereof "these rules"; and to replace the term "code official" with the term "appropriate subcode official";
 - vi. Sections 3004.3 and 3004.4 are deleted in their entirety;
 - vii. Section 3004.5.2 is amended to delete the words "and amusement devices" and to add the word "and" after the word "freight lifts" in this section;
 - viii. Section 3004.5.4 is amended to replace the term "code official" with the term "construction official";
 - ix. Section 3005.0 is deleted in its entirety with the exception of section 3005.4 which is amended to replace the term "code official" with the term "construction official";
 - x. Section 3009.0 is amended to delete the words "Signals and" after the word "Emergency" in the title;
 - xi. Section 3010.2.2 is amended to replace the term "code official" with the term "fire protection subcode official";
 - xii. Section 3012.2 is deleted;
 - xiii. Section 3012.4 is amended to replace the term "code official" with the term "construction official";
 - xiv. Section 3012.5 is amended to replace the term "code official" with the term "construction official";
 - xv. Section 3013.0 is deleted in its entirety.
16. The following amendments are made to Chapter 31 of the building subcode, entitled "Special Construction":
- i. Section 3104.1.1 is deleted in its entirety and replaced by the following language:
 - (1) Temporary structures: A construction permit is required for the erection, operation or maintenance of all temporary structures (excluding tents and tensioned membrane structures) covering an area in excess of 120 square feet, including all connecting areas or spaces with a common means of egress or entrance, or which are used or intended to be used for gatherings of 10 or more persons;
 - (2) Tents with appurtenances: A construction permit is required for the erection, operation or maintenance of all tents or tensioned membrane structures of any size if they contain appurtenances such as platforms or electrical equipment;
 - (3) Tents without appurtenances: No permit is required for the erection, operation or maintenance of any tent or tensioned membrane structure without appurtenances if the tent or structure is no more than 900 square feet in area and no more than 30 feet in any dimension (excluding canopies), whether it is one unit or composed of multiple units. Tents used exclusively for recreational camping purposes shall be exempt from the above requirements.
 - (4) A temporary greenhouse, also called a "hoop-house" or "polyhouse," used exclusively for the production or storage of live plants, shall be exempt from the permit requirements of the Uniform Construction Code if it meets the following criteria:
 - (A) There is no permanent anchoring system or foundation;
 - (B) There is no storage, temporary or otherwise, of solvents, fertilizers, gases, or other chemical or flammable materials;
 - (C) The structure is no wider than 31 feet and there is an unobstructed path of no greater length than 150 feet from any point to a door or fully accessible wall area; and

(D) The covering of the structure is of a material no greater than six mils (152.4 micrometers) in thickness, conforming to N.F.P.A. 701 standard, that yields approximately four pounds of maximum impact resistance to provide egress through the wall.

(5) The provisions of (b)16i(4) above notwithstanding, if a temporary greenhouse contains any device subject to the electrical subcode or any mechanical equipment subject to the mechanical subcode, then a permit shall be required for the system or fixture only. If the temporary greenhouse is connected to a potable water system, a permit shall be required for the backflow prevention devices only;

ii. Section 3104.6 is amended to replace the term "code official" with the term "construction official";

iii. Section 3106.5 is amended to replace the term "authorities" with "authorities having jurisdiction";

iv. Section 3108.5 is amended to add the phrase "to comply with the requirements of the electrical subcode" after the word "grounded."

17. The following amendments are made to Chapter 32 of the building subcode, entitled "Construction in the Public Right of Way":

i. Section 3202.5 is deleted in its entirety.

ii. Section 3205.1 is amended to replace the term "code official" on line 1 with the term "construction official".

18. The following amendments are made to Chapter 33 of the building subcode, entitled "Sitework, Demolition and Construction":

i. Section 3302.1 is amended to replace the term "code official" on line 3 with the term "construction official";

ii. Section 3309.2 is amended to delete the words "and the construction and extension of soil and vent stacks and the location of window openings shall comply with the provisions of section 2908.3" and replace them with the following language:

(1) "When a new building is erected higher than an existing building, windows or other wall openings shall not be located nearer than 10 feet to an existing soil or vent stack on the lower building unless the owner of the new building makes the necessary provision to extend such soil or vent stacks to a height of not less than two feet above the topmost opening at his own expense and with the approval of the adjoining owner."

(2) "When the existing adjoining building is of greater height than the new building, the owner of the structure of greater height may, with consent of the owner of the new structure, extend all new soil, waste or vent stacks which are located within 20 feet of the common lot line to a level above the higher existing roof";

iii. Section 3310.3 is amended to replace the term "code official" on lines 1 and 4 with the term "construction official".

19. The following amendment is made to Chapter 34 entitled "Existing Structures":

i. Chapter 34 is deleted with the exception of section 3406.0, which is amended to replace the term "code official" with the term "construction official";

20. The following amendments are made to Chapter 35 of the building subcode, entitled "Referenced Standards":

i. Delete the entire subheading "ASHRAE" and all titles under this subheading;

ii. Under the subheading "BOCA," delete the following titles:

(1) National Property Maintenance Code;

(2) National Mechanical Code;

(3) National Plumbing Code;

(4) National Private Sewage Disposal Code.

iii. Under the subheading "CABO," delete the following titles:

(1) Model Energy Code.

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.1983 d.12, eff. February 7, 1983, operative February 22, 1983.

See: 14 N.J.R. 132(a), 15 N.J.R. 141(c).

Added (a)2 and (c).

Amended by R.1984 d.314, eff. August 6, 1984.

See: 16 N.J.R. 1139(a), 16 N.J.R. 2084(b).

This section was substantially amended.

Amended by R.1985 d.154, effective April 1, 1985 (operative July 1, 1985.)

See: 17 N.J.R. 239(a), 17 N.J.R. 810(a).

(a)2 added; subsection (c) added.

Correction: N.J.A.C. 5:23-3.14(c)5 was incorrect in adoption.

See: 17 N.J.R. 1409(a).

Amended by R.1985 d.324, effective July 1, 1985.

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

(b)3i: amended text.

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

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

Substantially amended.

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.270, effective June 20, 1988.

See: 20 N.J.R. 575(a), 20 N.J.R. 1344(a).

Added (a)3 and (c).

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

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

Text added at (c)2ii, 4, 5 and 7.

Amended by R.1990 d.325, effective July 2, 1990.

See: 21 N.J.R. 1654(a), 22 N.J.R. 2001(a).

Text added at (b)5xii(1) to conform to Fire Code.

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.1990 d.558, effective November 19, 1990.

See: 22 N.J.R. 1969(b), 22 N.J.R. 3483(a).

Conditional exemption for hoopouses or polyhouses added.

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

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

Article 26 amended at (b)14.

Amended by R.1991 d.429, effective August 19, 1991.

See: 23 N.J.R. 1487(a), 23 N.J.R. 2501(a).

In (a), added 3. Added (c).

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

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

Text added at (b)10v through viii.

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).

Case Notes

Set back provisions of borough zoning ordinance controlled conflicting state building code provisions. *Pfeuffer v. Sculco*, 242 N.J.Super. 181, 576 A.2d 309 (A.D.1990).

5:23-3.15 Plumbing subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c.217, the Commissioner hereby adopts the Model Code of the National Association of Plumbing-Heating-Cooling Contractors, known as "The National Standard Plumbing Code/1993", including all subsequent revisions and amendments thereto, as the plumbing subcode for New Jersey.

i. Copies of this code may be obtained from the sponsor at: NAPHCC, P.O. Box 6808, Falls Church, VA 22046.

2. "The National Standard Plumbing Code/1993", including all subsequent revisions and amendments thereto, may be known and cited as "the plumbing subcode."

(b) The following pages, chapters, sections or appendices of the plumbing subcode are amended as follows:

1. Page v: Delete the note referring to local changes under the heading Introductory Note.

2. The section entitled "Administration," comprising sections ADM 1.1 through ADM 1.13, is deleted in its entirety.

3. Chapter 1 of the plumbing subcode, entitled "Definitions," is amended as follows:

i. The definition of the term "administrative authority" is deleted in its entirety, and substitute in lieu thereof the following language, "Unless otherwise defined herein, or unless the context clearly indicates otherwise, the term "administrative authority" for pur-

poses of the plumbing subcode, shall mean the "plumbing subcode official."

ii. The definition of the term "approved" is amended to add after the word "authority" on line 3, the words "as defined in N.J.A.C. 5:23-3.7."

iii. The definition of the term "building" is deleted, and substitute in lieu thereof, the definition of the term "building" found in N.J.A.C. 5:23-1.4.

iv. The definition of the term "building classification" is amended to delete the term "administrative authority" and substitute in lieu thereof, the term "building subcode official."

v. The term "code" is deleted in its entirety.

vi. The term "family" is deleted in its entirety.

vii. The definition of and the term "nuisance" are deleted.

4. Chapter 2 of the plumbing subcode, entitled "General Regulations," is amended as follows:

i. Section 2.4.1 is amended to delete the sentence "The provisions of this paragraph may be waived by the administrative authority."

ii. Section 2.4.3 is amended to delete the phrase "or is approved by the administrative authority as having a desirable and acceptable function and is of ultimate benefit to the proper and continuing functioning of the plumbing system."

iii. Section 2.5 is deleted in its entirety.

iv. Section 2.6.4 is amended to insert the word "applicable" after the word "All" on line 1.

v. Section 2.9.3 is amended to delete the phrase "building code or as required by the proper administrative authority" and substitute in lieu thereof, the term "building subcode."

vi. Section 2.16 is amended to insert the number "Forty-two" in the blank space under item (a), and to insert the number "Twenty-four" in the blank space under item (b). Under item (c), delete the words "section 3.12.1" and substitute in lieu thereof, the words "N.J.A.C. 5:23-2.9."

vii. Section 2.19.1 is amended to delete the blank and the words "feet of any property line of the premises, or other."

viii. Section 2.19.2 is amended to delete the words "the Health Department or other agency having jurisdiction" and substitute in lieu thereof "The New Jersey Department of Environmental Protection and Energy."

ix. Section 2.25.1(h) is amended to add at the end, the words "which does not otherwise adversely affect health and safety."

5. Chapter 3 of the plumbing subcode, entitled "Materials," is amended as follows:

i. Section 3.1.1 is amended in the heading to delete the word "minimum" and under items (a) and (b) to delete the words "Section 3.12.2" at the end and substitute in lieu thereof, the words "N.J.A.C. 5:23-3.7."

ii. Section 3.1.2 is amended to delete the words "at least" on line 2. Also deleted the words "section 3.12" at the end and substituted in lieu thereof, the words "N.J.A.C. 5:23-3.7."

iii. Section 3.1.3 is amended to delete the words "Section 3.12.2" on line 4 and in lieu thereof, substituted the words "N.J.A.C. 5:23-3.7."

iv. Section 3.3.11 entitled "septic tank" is deleted in its entirety.

v. Section 3.11.1 is amended to delete the phrase "approved by the Administrative authority".

vi. Section 3.11.2 is amended to delete the phrase "except as may be otherwise authorized by the administrative authority".

vii. Sections 3.12.1, 3.12.2, 3.12.3, 3.12.4, and 3.12.5 are deleted in their entirety.

6. Chapter 4 of the plumbing subcode entitled "Joints and Connections" is amended as follows:

i. Section 4.2.17 is amended to delete the phrase "or by the administrative authority".

ii. Section 4.3.8a is amended to delete the word "acceptable" on line 2 and in lieu thereof, substitute "approved".

7. Chapter 5 of the plumbing subcode entitled "Traps and Cleanouts" is amended as follows:

i. Section 5.3.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on line 3.

ii. Section 5.3.4 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on line 2.

8. Chapter 6 of the plumbing subcode, entitled "Interceptors," is amended as follows:

i. Section 6.1.1 is amended to delete the phrase "in the opinion of the administrative authority" on line 2 and to add after line 5 the sentence "The determination of necessity shall be made by the administrative authority in accordance with N.J.A.C. 5:23-3.3."

ii. Section 6.3.2b is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the word "required" on line 4.

iii. Section 6.4.4 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the word "approval" on line 2.

9. Chapter 7 of the plumbing subcode, entitled "Plumbing Fixtures," is amended as follows:

i. Section 7.2.1 is amended to read "Water closets either flush tank, flushometer tank or flushometer valve operated shall be designed, manufactured and installed to be operable and adequately flushed with an average of 1.6 gallons or less of water per flushing cycle, when tested at any one test pressure in accordance with listed standards. Only pressurized (not gravity flow) water closets are acceptable for commercial uses. Commercial uses are A, E, B and M uses with an occupancy with more than two water closets connected to the building sewer."

(1) Exception: Installation of water closets bearing a manufacturer's date stamp indicating a date of manufacture prior to July 1, 1991 and requiring an amount in excess of 1.6 gallons per flush shall be permitted.

ii. Section 7.2.2 is amended to insert the number "1" in the blank provided.

iii. Section 7.2.3.1 is amended to insert the number "2.2" in the blank provided.

iv. Section 7.2.3.2 is amended to insert the number ".25" in the blank provided.

v. Section 7.2.4 is amended to insert the number "2.2" in the blank provided.

vi. Section 7.2.5 is amended to insert the number "2.5" in the blank provided.

vii. Section 7.16.1 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.7" after the words "administrative authority" on line 6.

viii. Section 7.23.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on line 2.

ix. Section 7.25 is amended to delete the words "local Administrative Authority" on line 2 and in lieu thereof, substitute the words "Barrier Free Subcode".

x. Note to Tables 7.24.1A, 7.24.1B, 7.24.1C, 7.24.1D and 7.24.1E is amended to delete the words "for handicap requirements see local, state, or national codes" in the second sentence.

xi. Figure 7.4.5 on page 7-3 is amended to delete the word "Code" and substitute in lieu thereof "Subcode" in the block at bottom.

10. Chapter 9 of the plumbing subcode, entitled "Indirect Waste Piping and Special Waste," is amended as follows:

i. Section 9.1.6 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on line 4.

ii. Section 9.3.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on lines 3 and 4.

iii. Section 9.7.2 is amended to delete the phrase "submitted to, and accepted by," on line 7 and in lieu thereof, substitute the phrase "approved in accordance with N.J.A.C. 5:23-3.3."

11. Chapter 10 of the plumbing subcode, entitled "Water Supply and Distribution," is amended as follows:

i. Section 10.2 is amended to add the words "in accordance with N.J.A.C. 5:23-3.3" after the words "Administrative Authority" on line 4.

ii. Section 10.4.2 is amended to delete the words "administrative authority" and in lieu thereof, substitute "authority having jurisdiction".

iii. Section 10.4.4 is amended to delete the words "administrative authority" and in lieu thereof, substitute "authority having jurisdiction".

iv. Section 10.4.9 is amended to delete the words "administrative authority" and in lieu thereof, substitute "authority having jurisdiction".

v. Section 10.5.4 is amended to delete the words "administrative authority" and in lieu thereof, substitute "authority having jurisdiction".

vi. Section 10.5.6b is amended to delete the phrase "by the local administrative authority" and in lieu thereof, insert "in N.J.A.C. 5:23-2.23".

vii. Section 10.8.1 is amended to add the phrase "as required by the authority having jurisdiction" after the word "practice" on line 4.

viii. Section 10.16.2 is amended to delete the phrase "when required by the administrative authority" on line 2.

12. Chapter 11 of the plumbing subcode, entitled "Sanitary Drainage Systems," is amended as follows:

i. Section 11.3.1 is amended to delete the words "administrative authority" and substitute in lieu thereof, the words "authority having jurisdiction" on line 5.

ii. Section 11.4.3 is amended at the end to add the sentence "Diversity factors shall be established in accordance with N.J.A.C. 5:23-3.3."

iii. Section 11.7.1a is amended to delete the words "administrative authority" on line 4 and in lieu thereof, substitute the words "authority having jurisdiction".

13. Chapter 12 of the plumbing subcode, entitled "Vents and Venting," is amended as follows:

i. Section 12.2.2 is amended to delete the words "administrative authority" and in lieu thereof, substitute the words "authority having jurisdiction" on line 3.

ii. Section 12.4.5 is amended to delete the phrase "when approved by the administrative authority".

iii. Section 12.5 is amended to delete the phrase "a fitting acceptable to the administrative authority", and in lieu thereof substitute "an approved fitting".

14. Chapter 13 of the plumbing subcode, entitled "Storm Drains," is amended as follows:

i. Section 13.1.5a is amended to read "subsoil drains shall be provided in accordance with the building subcode".

ii. Section 13.9.1 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the word "authority" on line 5.

15. Chapter 14 of the plumbing subcode, entitled "Medical Care Facility Plumbing Equipment," is amended as follows:

i. Section 14.25.2 is amended to add the phrase "in accordance with N.J.A.C. 5:23-3.3" after the words "administrative authority" on line 4.

16. Except as otherwise indicated in (b)16i below, sections 16.1 through 16.12.1.13 of chapter 16 of the plumbing subcode, entitled "Regulations governing individual sewage disposal systems for homes and other establishments where public sewer systems are not available" are deleted in their entirety.

i. Section 16.1.7 is retained and amended to read as follows: "When a sewage disposal system is being abandoned and a connection is being made to the public sewer system, the plumbing subcode official shall ensure that the abandoned septic system is disconnected from the building, pumped out and filled with gravel, stones or soil material."

Note: Existing standards of the Department of Environmental Protection and boards of health with respect to individual on-site sewage disposal systems remain in effect.

17. Chapter 17 of the plumbing subcode, entitled "Potable water supply system" and comprising sections 17.1 through 17.15.2 is deleted in its entirety.

Note: Existing standards of the Department of Environmental Protection and Energy and boards of health with respect to individual on-site water supply systems remain in effect.

18. Chapter 18 of the plumbing subcode, entitled "Mobile Home and Trailer Park Plumbing Standards," is amended as follows:

i. Whenever the term "trailer", "trailer coach", "trailer park", and so forth, is used in this subcode, it

shall have the same meaning as "mobile home", "mobile home park", and so forth, as used in the building subcode.

ii. Section 18.2.1 is amended to delete the last sentence beginning "Trailer home park".

iii. Section 18.2.2 is amended to delete the words "or sewerage disposal" on line 1.

iv. Section 18.5.8 is amended to add the phrase "and as provided by the authority having jurisdiction" after the words "chapter 10".

v. Section 18.8.1.2 is deleted.

vi. Section 18.8.3 is amended to add the phrase "for dependent trailers" after the word "park" on line 1.

vii. Section 18.8.4 is amended to add the phrase "for dependent trailers" after the word "park" on line 1.

19. Appendix E of the plumbing subcode, entitled "Special Design Plumbing Systems", is amended as follows:

i. Section E.2.1 is amended to delete the words "local administrative authority" on line 2 and in lieu thereof, substitute "authority having jurisdiction".

ii. Section E.4.2 is amended to delete the term "Administrative Authority" and substitute in lieu thereof "Authority Having Jurisdiction."

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.1983 d.12, eff. February 7, 1983, operative February 22, 1983.

See: 14 N.J.R. 1326(a), 15 N.J.R. 141(c).

Added (a) 3 and (c).

Amended by R.1984 d.314, eff. August 6, 1984.

See: 16 N.J.R. 1139(a), 16 N.J.R. 2084(b).

Section substantially amended.

Amended by R.1986 d.12, effective February 3, 1986.

See: 17 N.J.R. 2714(a), 18 N.J.R. 267(a).

(a)1i had a change of address; (a)3 and (c) added.

Amended by R.1987 d.81, effective February 2, 1987.

See: 18 N.J.R. 2237(b), 19 N.J.R. 289(d).

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.1989 d.66, effective February 6, 1989.

See: 20 N.J.R. 2846(a), 21 N.J.R. 288(a).

Added (c).

Amended by R.1990 d.58, effective February 5, 1990.

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

Added (d) adopting the 1989 Supplement to the 1987 National Standard Plumbing Code.

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

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

Text added at (a)3; (d)3ii 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.

Amended by R.1991 d.326, effective July 1, 1991.

See: 23 N.J.R. 804(a), 23 N.J.R. 2044(a).

GPF set at 1.6; gravity water closets not permitted in commercial uses.

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.67, effective February 3, 1992.

See: 23 N.J.R. 3602(a), 24 N.J.R. 404(b).

Low volume water closet exception added at (b)18i(1).

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.122, effective March 6, 1995 (operative July 1, 1995).

See: 26 N.J.R. 4874(a), 27 N.J.R. 894(a).

Case Notes

Statute providing that only licensed master plumbers could be plumbing contractors was unconstitutional. *Mechanical Contractors Ass'n of New Jersey, Inc. v. State*, 255 N.J.Super. 488, 605 A.2d 743 (A.D.1992).

5:23-3.16 Electrical subcode

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

1. Pursuant to authority of P.L. 1975, c.217, the Commissioner hereby adopts the Model Code of the National Fire Protection Association known as "the National Electrical Code/1993," including all subsequent revisions and amendments thereto, as the electrical subcode for New Jersey.

i. Copies of this code may be obtained from the sponsors at NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

2. The National Electrical Code/1993, including all subsequent revisions and amendments thereto, may be known and cited as "the electrical subcode."

(b) The following chapters or articles of the electrical subcode are amended as follows:

1. Article 90 of the electrical subcode, entitled "Introduction," is amended as follows:

i. Section 90-2(b)(5) is amended to delete the term "(FPN):" in the seventh line and add the words "the installation of utilization equipment and its associated wiring on private property (see section 90-2(a)(1) for installations covered) and" after the words "this Code cover" in the tenth line.

ii. Section 90-4, Enforcement, is amended to delete in the first paragraph the phrase, "authority having jurisdiction of enforcement of the code" and substitute in lieu thereof, the term "electrical subcode official." And add a new last sentence in the first paragraph: "Approval shall be in accordance with N.J.A.C. 5:23-2.9." Delete in the second paragraph the phrase "authority having jurisdiction" and substitute in lieu thereof the term "electrical subcode official" and add after "effective safety" the phrase "as provided in N.J.A.C. 5:23-2.9." Delete in the third paragraph the phrase "authority having jurisdiction" and substitute in lieu thereof the term "electrical subcode official" and delete the phrase "by the jurisdiction" after the word "adopted."

2. Chapter 1 of the electrical subcode Article 100, entitled "Definitions" is amended as follows:

i. The definition of the term "approved" is amended to delete the phrase "authority having jurisdiction" and substitute in lieu thereof, the phrase "electrical subcode official. Approval shall be in accordance with N.J.A.C. 5:23-3.7 and 3.8."

ii. Amend to include the following definition: "Authority having jurisdiction: Unless otherwise specifically noted the authority having jurisdiction for the Electrical Subcode shall be the Electrical Subcode Official".

iii. The definition of the term "building" is deleted and in lieu thereof, substitute the definition of the term "building" found in N.J.A.C. 5:23-1.4".

iv. The definition of the term "garage" is amended to add the sentence, "The term cutoff is intended to refer to the appropriate fire separation as required by the building subcode."

3. Chapter 3 of the electrical subcode, entitled "Wiring Methods and Materials," is amended as follows:

i. Section 300-4(a)(1) is amended to delete the wording from "so that the edge ..." on line three through "... cannot be maintained" on line five and in lieu thereof substitute "as required by the building subcode where the distance between the edge of the hole to the nearest edge of the wood member is less than 1¼ inches (31.8 mm)."

4. Chapter 5 of the electrical subcode, entitled "Special Occupancies," is amended as follows:

i. Exception to the section 500-3(a)(4), section 514-5(b) and section 514-5(c) are amended to delete the phrase "authority having jurisdiction" and substitute in lieu thereof the phrase "fire protection subcode officials."

ii. Part B of Article 550, entitled "Mobile Homes," comprising sections 550-5 through 550-15 is deleted in its entirety with the exception of section 550-5 which shall be retained.

(1) Exception—Part B is retained in its entirety in the case of mobile homes undergoing repair or alteration work.

iii. In Article 551, entitled "Recreational Vehicles and Recreational Vehicle Parks", delete from the title the words "Recreational Vehicles and".

(1) Section 551-1 is amended to delete the phrase "within or on recreational vehicles" on line 2.

(2) Parts B, C, D, E and F, comprising sections 551-10 through 551-60, are deleted in their entirety, with the exception of Figure 551-46(c), which shall be retained.

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.1984 d.314, effective August 6, 1984.

See: 16 N.J.R. 1139(a), 16 N.J.R. 2084(b).

Section substantially amended.

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.1990 d.253, effective May 21, 1990.

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

Amendments to (b)4i(2), ii(2).

Administrative Correction to (b)4i(2).

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 BOCA National Code/1990.

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

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

Case Notes

Former N.J.A.C. 5:23-3.6 designated "National Electrical code of 1975" as controlling code; statute of limitations. *Brown v. Jersey Central Power and Light Co.*, 163 N.J.Super. 179 394 A.2d 397 (App. Div.1978) certification denied 79 N.J. 489 401 A.2d 244.

5:23-3.17 Fire protection subcode

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

1. Pursuant to authority of P.L. 1975, c.217, as amended, the Commissioner hereby adopts the following portions of the building, electrical and mechanical subcodes, to the extent delineated in N.J.A.C. 5:23-3.4, as the fire protection subcode for New Jersey.

i. BOCA National Building Code/1993 of the Building Officials and Code Administrators International Inc. (N.J.A.C. 5:23-3.14):

(1) Chapter 4—Special Use and Occupancy;

(2) Chapter 7—Fire resistant Materials and Construction;

(3) Chapter 8—Interior Finishes;

(4) Chapter 9—Fire Protection Systems;

(5) Chapter 10—Means of Egress;

(6) Sections 1506.0 and 1511.0 of Chapter 15—Roofs and Roof Structures;

(7) Section 2114.0 of Chapter 21—Masonry;

(8) Sections 2603.0 through 2605.0 of Chapter 26—Plastic;

(9) Section 3106.0 of Chapter 31—Special Construction;

(10) Section 3305.0 of Chapter 33—Site Work, Demolition and Construction;

(11) Section 3406.0 of Chapter 34—Existing Structures.

ii. National Electrical Code/1993 of the National Fire Protection Association (N.J.A.C. 5:23-3.16).

(1) Article 300-21 of chapter 3—Wiring Methods and Materials;

(2) Article 450, Part C—Transformer Vaults of Chapter 4—Equipment for General Use;

(3) Chapter 5—Special Occupancies;

(4) Article 760 of chapter 7—Special conditions;

iii. BOCA National Mechanical Code/1993 of the Building Officials and Code Administrators International Inc. (N.J.A.C. 5:23-3.20):

(1) Chapter 4—Mechanical Equipment;

(2) Chapter 5—Kitchen Exhaust Equipment;

(3) Chapter 9—Flammable and Combustible Liquid Storage and Piping Systems;

(4) Chapter 10—Combustion Air;

(5) Chapter 12—Chimneys and Vents;

(6) Chapter 14—Fireplaces, Solid Fuel-Burning and Gas Accessory Appliances.

2. The model code portions listed above, including (where appropriate) all subsequent revisions and amendments thereto, may be known and cited as “the fire protection subcode”.

(b) Rules concerning modifications to subcodes are as follows:

1. The modifications made to the appropriate portion of the adopted model code in N.J.A.C. 5:23-3.14 (Building Subcode), N.J.A.C. 5:23-3.16 (Electrical Subcode) and N.J.A.C. 5:23-3.20 (Mechanical Subcode) will apply also to those portions as regards this adoption.

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.1984 d.314, effective August 6, 1984.

See: 16 N.J.R. 1139(a), 16 N.J.R. 2084(b).

Section substantially amended.

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

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

Substantially amended.

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.1990 d.253, effective May 21, 1990.

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

Reference to 1989 Supplement added; (a)1i(7) 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.

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

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

Case Notes

Zoning ordinance's definition of family violated Constitution. *Cherry Hill Tp. v. Oxford House, Inc.*, 263 N.J.Super. 25, 621 A.2d 952 (A.D.1993).

5:23-3.18 Energy Subcode

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

1. Pursuant to authority of P.L. 1975, c.217, as amended, the Commissioner hereby adopts the model code of the Building Officials and Code Administrators International, Inc., known as the BOCA National Energy Conservation Code/1993, including all subsequent revisions and amendments thereto, as well as the Illuminating Engineering Society's standard known as LEM-1, 1982, “IES Recommended Procedure for Lighting Power Limit Determination,” including all subsequent revisions and amendments thereto, as the energy subcode for New Jersey.

i. Copies of the BOCA National Energy Conservation Code/1993 may be obtained from the sponsor at BOCA, 4051 West Flossmoor Road, Country Club Hills, Illinois, 60477-5795.

ii. Copies of LEM-1, 1982, “IES Recommended Procedure for Lighting Power Limit Determination,” may be obtained from the sponsor at IES, 345 East 47th Street, New York, New York 10017.

iii. The model code and standard listed above, including (where appropriate) all subsequent revisions and amendments thereto, may be known and cited as the “energy subcode.”

2. Any reference to the building code, mechanical code, or plumbing code listed in Chapter 8 shall be considered a reference to the appropriate adopted building, mechanical, or plumbing subcode in N.J.A.C. 5:23-3.

(b) The following chapters and sections of the energy subcode are amended as follows:

1. The following amendments are made to Chapter 1 of the energy subcode entitled “Scope and Application”:

i. Section E-101.1 is deleted in its entirety.

ii. The text of Section E-101.3 is deleted and the following language is substituted: “Buildings other than those of use group R-3 and R-4 as well as R-2 which are three stories or less in height shall meet the requirements of ASHRAE/IES 90.1-1989. For buildings of use group R-3, and R-4 as well as R-2 which are three stories or less in height, compliance with the applicable provisions of ASHRAE 90A or 90B listed in Chapter 8 shall be deemed to meet the requirements of this code, unless otherwise specifically provided for herein”.

iii. Section E-101.4 is amended to add the words “... except for buildings and structures required to comply with ASHRAE/IES 90.1-1989 as noted in section E-101.3” after the words “... shall apply” in the last sentence.

2. The following amendments are made to Chapter 3 of the energy subcode entitled “Building Envelope”:

i. Section E-302.1 is amended to delete the words "or the CABO Model Energy Code" and to add the following sentences: "For determining required thermal transmittance values for buildings of use groups R-3, R-4 and R-2 that are three stories or less in height, the following heating degree day values shall be used for the following counties:

(1) 4,500 annual Fahrenheit heating degree days shall be used for the counties of Cape May, Salem, Cumberland, Camden, Atlantic and Gloucester.

(2) 5,000 annual Fahrenheit heating degree days shall be used for the counties of Burlington, Ocean, Monmouth, Mercer, Middlesex, Essex, Hudson and Union.

(3) 5,500 annual Fahrenheit heating degree days shall be used for the counties of Somerset, Warren, Hunterdon, Morris, Bergen and Passaic.

(4) 6,000 annual Fahrenheit heating degree days shall be used for the county of Sussex."

3. The following amendments are made to Chapter 4 of the energy subcode entitled "Heating, Ventilating and Air Conditioning Systems and Equipment":

i. Delete section E-402.1.1 and substitute the words "Outdoor design temperatures shall be based on the 97½-percent value for heating and the 2½-percent value for cooling determined from Appendix A or from Table 1, Climatic Conditions for the United States, set forth in the current edition of the ASHRAE Fundamentals Handbook. Values between locations listed shall be determined by extrapolation."

4. The following amendments are made to Chapter 5 of the energy subcode entitled "Plumbing Systems":

i. Delete section E-503.0.

5. The following amendment is made to Chapter 6 of the energy subcode entitled "Electrical Systems":

i. In Section E-602.2, add the words "In buildings of Use Group R-2 which are under a condominium or cooperative form of ownership only, electrical energy use by the occupants of each dwelling unit may be determined by means of checkmetering rather than by use of a separate meter owned by the electric utility for each dwelling unit."

6. The following amendments are made to Chapter 7 of the energy subcode entitled "Alternative Systems":

i. Section E-701.1 is amended to delete the words "this code" on lines 3 and 6 and, in lieu thereof, substitute "the energy subcode."

7. The following amendment is made to Chapter 8 of the energy subcode entitled "Referenced Standards":

i. Delete the subheading CABO and all titles listed below the subheading.

8. The following amendments are made to section 2 of standard LEM-1 of the energy subcode, entitled "Scope":

i. Delete the first paragraph in the section and in lieu thereof, substitute "These provisions regulate the amount of power which may be utilized by buildings of use group R-3 and R-4 as well as R-2 which are three stories or less in height for lighting. No such building shall employ more power for lighting than that determined through the use of the criteria and calculated procedures contained herein."

(c) The requirements of the Energy Subcode shall apply as follows:

1. The thermal efficiency standards of the Energy Subcode shall apply to all newly constructed and renovated buildings.

2. The lighting efficiency standards of the Energy Subcode shall apply to all newly constructed and renovated buildings in use groups A, B, E, F, H, I, M, R, S and U as defined in the Building Subcode.

3. As used in this section, "newly constructed" means built in its entirety in accordance with a construction permit as required by this chapter and "renovated" means having changes made to the structure of an existing building in accordance with a construction permit as required by this chapter.

Amended by R.1987 d.387, effective October 5, 1987.

See: 19 N.J.R. 433(b), 19 N.J.R. 1793(a).

Substantially amended.

Amended by R.1988 d.50, effective February 1, 1988.

See: 19 N.J.R. 1862(b), 20 N.J.R. 268(a).

Added (b)6; renumbered (b)6.-7. as (b)7.-8.

Amended by R.1988 d.417, effective September 6, 1988.

See: 20 N.J.R. 699(b), 20 N.J.R. 2274(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.

Amended by R.1991 d.326, effective July 1, 1991.

See: 23 N.J.R. 804(a), 23 N.J.R. 2044(a).

Section E-502.1 deleted.

Amended by R.1991 d.429, effective August 19, 1991.

See: 23 N.J.R. 1487(a), 23 N.J.R. 2501(a).

In (b)5, deleted old and added new i.

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).

Case Notes

Registered architect retained to sign and seal drawings to comply with permit regulations entitled to approve as prepared or return for compliance modifications (citing Small Dwelling Energy Subcode). Deck House, Inc. v. New Jersey State Board of Architects, 531 F.Supp. 633 (D.N.J.1982).

Departments of Community Affairs and Energy could not amend state energy subcode. New Jersey Builders Ass'n v. Coleman, 227 N.J.Super. 23, 545 A.2d 783 (A.D.1988).

5:23-3.19 Manufactured home subcode

(a) Pursuant to authority of P.L. 1975, c.217, as amended, the Commissioner hereby adopts the Federal Manufactured Home Construction and Safety Standards, as set forth in Part 3280 of Title 24 of the Code of Federal Regulations, including all subsequent revisions and amendments thereto, as the manufactured home subcode for New Jersey.

1. Copies of the volume of the Code of Federal Regulations containing Part 3280 of Title 24 may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20420.

2. Part 3280 of Title 24 of the Code of Federal Regulations, including all subsequent revisions and amendments thereto, may be known and cited as the manufactured home subcode.

(b) The following sections of Subpart A of Part 3280 are deemed to be administrative in nature and are therefore excluded from the manufactured home subcode:

1. Section 3280.1, entitled "Scope";
2. Section 3280.5, entitled "Data plate";
3. Section 3280.6, entitled "Serial number";
4. Section 3280.7, entitled "Modular homes"; and
5. Section 3280.8, entitled "Certification label".

(c) Any manufactured home construction or safety issue not covered under the manufactured home subcode which is, however, covered under another subcode adopted pursuant to this subchapter shall be determined in accordance with such other subcode.

(d) The adoption of a manufactured home subcode shall not be construed as in any way limiting the power or duty of the Department of Community Affairs to enforce and comply with all applicable provisions of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 and the regulations promulgated pursuant thereto, including all subsequent revisions and amendments thereto, when authorized to do so by the Secretary of the United States Department of Housing and Urban Development.

Amended by R.1982 d.7, eff. February 1, 1982.

See: 13 N.J.R. 171(a), 14 N.J.R. 142(a).

This section was recodified from 5:23-3.9.

5:23-3.20 Mechanical subcode

(a) Rules concerning the 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 Mechanical Code/1993," including all subsequent revisions and amendments thereto. This code is hereby adopted by reference as the Mechanical 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 Flossmoor Road, Country Club Hills, Illinois 60478-5795.

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

2. Any references to the building code, plumbing code, or NFIPA 70 listed in Chapter 21 shall be considered a reference to the appropriate adopted building, plumbing, or electrical subcode in N.J.A.C. 5:23-3.

(b) The following chapters, sections or pages of the BOCA National Mechanical Code/1993 are amended as follows:

1. Chapter 1 of the mechanical subcode, entitled "Administration and Enforcement," is deleted in its entirety.

2. Chapter 2 of the mechanical subcode, entitled "Definitions," is amended as follows:

i. Section M-201.3 is amended to delete the words "codes listed in Chapter 21" on line 3, and in lieu thereof, substitute "subcodes."

ii. The definition of the term "administrative authority" is deleted in its entirety, and substitute in lieu thereof, the following language: "For the purpose of the mechanical subcode, the term 'administrative authority' shall mean the appropriate subcode official designed in N.J.A.C. 5:23-3.4."

iii. The definition of the term "approved" is amended to delete the words "code official or other."

iv. The definition of the term "building" is deleted and the definition found in N.J.A.C. 5:23-1.4 is substituted;

v. The term and definition of "code" is deleted in its entirety.

vi. The definition of the term "code official" is deleted in its entirety, and the following language is substituted: "For the purpose of the mechanical subcode, the term 'code official' shall mean the appropriate subcode official as designated in N.J.A.C. 5:23-3.4."

vii. The definition of the term "structure" is deleted and the definition found in N.J.A.C. 5:23-1.4 is substituted.

3. Chapter 4 of the mechanical subcode, entitled "Mechanical Equipment," is amended as follows:

i. Section M-403.1 is amended to delete "Section M-107.0" on line 3, and, to substitute in lieu thereof, "N.J.A.C. 5:23-3.7."

4. Chapter 5 of the mechanical subcode, entitled "Kitchen Exhaust Equipment," is amended as follows:

i. Section M-509.0, "Test and Cleaning Schedule" is deleted.

5. Chapter 9 of the mechanical subcode, entitled "Flammable and Combustible Liquid Storage and Piping Systems," is amended as follows:

i. Section M-901.1 is amended to add the words "For those systems that are subject to the Department of Environmental Protection and Energy's Underground Storage Tank Systems rules, N.J.A.C. 7:14B, the requirements of this article that conflict with the DEPE rules shall be inapplicable."

6. Chapter 15 of the mechanical subcode, entitled "Incinerators and Crematories," is amended as follows:

i. Section M-1501.2 is deleted in its entirety.

7. Chapter 16 of the mechanical subcode entitled "Ventilation Air" is amended as follows:

i. Section M-1604.0 is deleted in its entirety and substitute in lieu thereof "Requirements for ventilation air shall be as set forth in N.J.A.C. 5:23-3.20A".

ii. Section M-1605.1 is amended to delete the words "spaces designated by Note b of Table M-1604.3" and replace them with the words "smoking lounges; autopsy rooms; bathrooms of hotels, motels and dormitories; garages common to multiple dwelling units; public restrooms; and locker and dressing rooms".

8. Chapter 17 of the mechanical subcode, entitled "Air Quality" is deleted in its entirety.

9. Chapter 19 of the mechanical subcode, entitled "Energy Conservation" is deleted in its entirety.

10. Chapter 20 of the mechanical subcode, entitled "Boilers and Pressure Vessels, Maintenance and Inspection," is deleted in its entirety, with the exception of section M-2001.2.

11. The following amendments are made to Chapter 21 of the mechanical subcode, entitled "Referenced Standards":

i. Under the subheading "ASHRAE," delete the following title:

(1) Energy Conservation in New Building Design—with Addendum 90A-a-1987.

ii. Under the subheading "BOCA," delete the following titles:

(1) BOCA National Building Code.

(2) BOCA National Plumbing Code.

iii. Under the subheading "NFPA" delete the following title:

(1) National Electrical Code.

R.1984 d.314, eff. August 6, 1984.

See: 16 N.J.R. 1139(a), 16 N.J.R. 2084(b).

New rule.

Amended by R.1985 d.154, effective April 1, 1985 (operative July 1, 1985).

See: 17 N.J.R. 239(a), 17 N.J.R. 810(a).

(a)2 added; subsection (c) added.

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

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

In (b)5iv Section M-508 was deleted and Section M-508.1 was substituted.

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.270, effective June 20, 1988.

See: 20 N.J.R. 575(a), 20 N.J.R. 1344(a).

Added (a)3 and (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; (c)1 and 3 added.

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.429, effective August 19, 1991.

See: 23 N.J.R. 1487(a), 23 N.J.R. 2501(a).

In (a), added 3. Added new (c).

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

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

Text added at (b)7 and (c)1, deleting parts of article 16 of the mechanical subcode.

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.120, effective March 6, 1995 (operative July 1, 1995).

See: 26 N.J.R. 4874(b), 27 N.J.R. 894(b).

5:23-3.20A Indoor air quality subcode

(a) Pursuant to authority of P.L. 1975, c.217, as amended, the Commissioner hereby adopts the nationally-recognized standard of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., known as ASHRAE 62-1989 (Ventilation for Acceptable Indoor Air Quality), including all subsequent revisions and amendments thereto, as the standard for building ventilation and indoor air quality in all buildings or portions of buildings subject to this chapter in which mechanical ventilation is utilized. This standard is hereby adopted by reference as the indoor air quality subcode for New Jersey.

1. Copies of this standard may be obtained from the sponsor at: ASHRAE Publications Sales Department, 1791 Tullie Circle NE, Atlanta, GA 30329.

New Rule R.1992 d.183, effective April 20, 1992.

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

5:23-3.21 One and two family dwelling subcode

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

1. Pursuant to authority of P.L. 1975, c.217, the Commissioner hereby adopts the model code of the Council of American Building Officials known as "The CABO One and Two Family Dwelling Code/1992", including all subsequent revisions and amendments thereto, as the one and two family dwelling subcode for New Jersey subject to the modifications stated in (b) below.

i. Copies of this code may be obtained from BOCA International, 4051 West Flossmoor Road, Country Club Hills, Illinois 60478-5795.

(b) The following articles or sections of the one and two family building subcode are modified as follows:

1. Chapter 1 entitled "Administrative" is amended as follows:

i. Sections R-101 and R-102 are deleted and substituted in lieu thereof UCC regulations.

ii. Section R-103 is deleted and the following substituted in lieu thereof: "The provisions of this code apply only to the construction, alteration, repair or increase in size of detached one or two family dwellings of use group R-4 (including single family townhouses), of type 5B construction not more than 2 stories or 35 feet in height and 4,800 square feet in area per floor, and not located in areas prone to flooding. Dwellings to be erected in areas identified as prone to flooding by the most recent Flood Insurance Rate Map published by the Federal Emergency Management Agency shall be constructed in conformity with the building subcode, and the option to use the one and two-family dwelling subcode as an alternative to the building subcode shall not apply.

iii. Sections R-104 through R-117 are deleted.

iv. Section R-118 is amended to change the definitions as follows:

(1) The definition of the term "approved" is deleted and in lieu thereof substitute "approved by the building official or other authority having jurisdiction in accordance with the regulations."

(2) The definition of the term "Approved Agency" is amended to add the phrase "or other authority having jurisdiction in accordance with the UCC regulations" after the word "Official" on line 3.

(3) The definition of the term "Building 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.

(4) The definition of the term "Grade" is deleted and in lieu thereof substitute, "A reference plane representing the average of finished ground level adjoining the building at all exterior walls. When the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line, or when the lot line is more than 6 feet from the building, between the building and a point 6 feet from the building.

2. Chapter 2 entitled "Building Planning" is amended as follows:

i. Section R-201.2 is amended to modify Table R-201.2 to read as follows:

Table No. R-201.2

CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA

Roof Live Load (lbs./sq. ft.)	Roof Snow Load (lbs./sq. ft.)	Wind Pressure (lbs./sq. ft.)	Seismic Condition by Zone	Subject to Damage from		Subject to Damage from	Termite	Decay
				Weathering	Frost Line Depth			
20	20	see	See note 3	Severe	2'-6"	Yes	Yes	Yes
See note 1	See notes 1, 4	Appendix A and notes 5, 6, 7		See note 2	(Southern Area) 3'-0" (Northern Area) See notes 2, 4			

Notes:

1. Roof live and snow loads are not additive.
2. Weathering may require a higher strength concrete or grade of masonry than necessary to satisfy structural requirements of this code. The grade of masonry units shall be determined from ASTM C34, C55, C62, C73, C90, C129, C145, C216, or C652 listed in Section S-26.201. The frost line depth may require deeper footings than indicated in Figure R-303.
3. New Jersey is divided into two zones: Zone 1 consists of Monmouth and Burlington Counties and all counties to the south. Zone 2 consists of Mercer and Middlesex Counties and all counties to the North (see N.J.A.C. 5:23-9.4).
4. The enforcing agency having jurisdiction may establish values other than the ones listed for "roof snow load", and "frost line depth" if warranted by documented local climatic and geographic conditions.
5. Wind speed for Atlantic, Cape May, Monmouth and Ocean counties, and Bass River, Washington, Woodland townships in Burlington County shall be 90 mph.
6. Wind speed for Bergen, Camden, Cumberland, Essex, Gloucester, Hudson, Mercer, Middlesex, Morris, Passaic, Salem, Somerset, Union, and Burlington (except for Bass River, Washington and Woodland townships) counties shall be 80 mph.
7. Wind speed for Hunterdon, Warren and Sussex counties shall be 70 mph.

ii. Sec. R-202.1, in the first and third lines, delete "3 feet" and substitute in lieu thereof, "5 feet";

iii. Section R-203.5 "Required heating" is deleted.

iv. Section R-209.1—Opening Protection—Delete and substitute in lieu thereof the following: "Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid core wood doors not less than 1¾ inches in thickness or approved equivalent. The sills of all door openings between garages and adjacent interior spaces shall be raised not less than 4 inches above the garage floor."

v. Sec. R-209.2—Separation Required—Delete and substitute in lieu thereof the following: "Private garages located beneath rooms shall have walls, partitions, floors and ceilings separating the garage space from the adjacent interior spaces constructed of not less than 1 hour fire resistance rating. Attached private garages shall be completely separated from the adjacent interior spaces and the attic area by means of ½-inch gypsum board or equivalent applied to the garage side";

vi. Section R-212, under the second exception in the second line, delete "8½ inches" and substitute in lieu thereof, "8 inches";

vii. Section R-214.1 "Handrails": Delete paragraph 2 and replace with the following text: "All stairway handrails shall have a circular cross section with an outside diameter of at least 1¼ inches and not greater than 2 inches, or approved rails of equivalent graspability;

viii. Section R-215.1 "Smoke detectors required": Delete this section and replace with the following text: "Single or multiple station smoke detectors shall be installed and maintained at the following locations:

(1) In the immediate vicinity of the bedrooms;

(2) In all bedrooms; and

(3) In each story within a dwelling unit including basements. All detectors shall be interconnected such that the activation of one alarm will activate all the alarms in the individual unit. When the installation is complete, each detector, and all interconnecting wiring for multiple station detectors, shall be subject to acceptable testing in accordance with section 919.6 of the building subcode. All detectors shall be approved and listed and shall be installed in accordance with section 919.1 of the building subcode.

EXCEPTION: In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke detector installed on the upper level shall suffice for the adjacent lower level, provided

that the lower level is less than one full story below the upper level.

ix. Section R-215.2 is amended to delete the words from "or in buildings" to the end of paragraph;

x. Sec. R-216.2.4, after the words "foam filled doors" add the phrase "except for fire doors";

3. Chapter 3, entitled "Foundations," is amended as follows:

i. Sec. R-301.1, delete the words "Sec. R-108" and in lieu thereof insert "UCC regulations N.J.A.C. 5:23-3.6 and 3.7."

ii. From Section R-304.1 Concrete and Masonry: delete the exception;

iii. Add new section R-312 "Pile Foundations," reading as follows: "Where buildings are constructed under the scope of this subcode that utilize pile foundations, Chapter 18 of the building subcode shall apply."

4. Chapter 4, entitled "Wall Construction," is amended as follows:

i. Sec. R-401.1, delete the words "Section R-108" and in lieu thereof insert "UCC regulations N.J.A.C. 5:23-3.6 and 3.7";

ii. From Section R-404.3.1 Unreinforced Masonry: delete the second paragraph of the exception.

iii. From Section R-404.3.2 Reinforced Masonry: delete the exception.

5. Chapter 6, entitled "Floors," is amended as follows:

i. Sec. R-601.1, delete the words "Section R-108" and in lieu thereof insert "UCC regulations N.J.A.C. 5:23-3.6 and 3.7".

6. Chapter 7, entitled "Roof Ceiling Construction", is amended as follows:

i. Sec. R-701.1, delete the words "Section R-108" and in lieu thereof insert "UCC regulations N.J.A.C. 5:23-3.6 and 3.7".

7. Chapter 8, entitled, "Roof Coverings", is amended as follows:

i. Sec. R-801.1, delete the words "Section R-108" and in lieu thereof insert "UCC regulations N.J.A.C. 5:23-3.6 and 3.7".

ii. In Section R-801.3 Roof Covering Materials: On line eight delete the phrase "in areas . . . 3 feet" and replace with the phrase: "when the edge of the roof is less than 6 feet from the property line";

iii. Add a new section R-810 "Reroofing," reading as follows: Where an existing roof is replaced or recovered under the scope of this subcode, the provi-

sions of the building subcode, section 1512.0, as amended, shall apply.

8. Chapter 9, entitled "Chimneys and Fireplaces", is amended as follows:

i. Sec. R-901.7 is amended to add the following phrase after 1800°F.: "and embedded in medium duty refractory mortar complying with ASTM C105." Delete the "EXCEPTION";

ii. Section R-902 is amended to add the sentence "Factory built chimneys shall conform to U.L. 103 and be installed in accordance with their listing."

iii. Sec. R-903.2, in the last line, change "10 inches" to "12 inches";

iv. Sec. R-903.5, in the second line, change "3/8 inches . . . all imposed loads" to "4 inches solid masonry or equivalent";

v. Section R-903.7, in the second and fourth lines, change "2 inches" to "4 inches" and add the sentence "The minimum clearance to combustibles from the exterior surface of the smoke chamber shall be 2 inches";

vi. Sec. R-904.1 item # 4, is amended to add after the word "opening" the following: "for a fireplace having an opening of less than 6 square feet. The hearth of a fireplace with a larger opening shall extend a minimum of 20 inches beyond the face of the fireplace opening and a minimum of 12 inches on each side of the fireplace opening." Also, in Item # 5 of Sec. R-904.1, delete and substitute in lieu thereof: "Factory Built Fireplaces shall be listed, labeled and tested according to UL 127, and installed according to their listing";

vii. Sec. R-905—At the end of the section, add "Factory built fireplace stoves shall be tested according to UL 737."

9. Part IV—Mechanical, is amended as follows:

i. Section M-1001: Delete the words "Section R-108" and in lieu thereof insert "N.J.A.C. 5:23-3.6 and 3.7";

ii. Section M-1002.2: At the end of the section, add "Solid fuel burning room heaters shall be tested and labeled in accordance with UL 1482";

iii. Section M-1008 "Existing Mechanical Systems" is deleted;

iv. Section M-1009 "Inspections" is deleted;

v. Section M-1304.3 is amended to delete the words "conform to the requirements of part V of this code" and substitute in lieu thereof "conform to the requirements of the plumbing subcode";

vi. Section 1304.4 is amended to delete the words "Section P-2402" and substitute in lieu thereof "the plumbing subcode";

vii. Section M-1905 is amended to delete the words "Section P-2408" and substitute in lieu thereof "the plumbing subcode";

10. Part V—Plumbing, is deleted in its entirety. All requirements for plumbing shall be provided in accordance with the Plumbing Subcode listed in N.J.A.C. 5:23-3.15.

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 board of appeals in accordance with N.J.A.C. 5:23-4.40. 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 section 26 of this subchapter 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).

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 sub-code.

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.

7. The municipality shall provide the construction official, each subcode official and each inspector with personal identification which includes at least the name of the municipality, and the name, title and photograph of the individual. The identification shall be validated by the municipality.

8. A municipality may, in its discretion, employ a mechanical inspector to perform plan review and mechanical inspections, with oversight by a designated subcode official, for Use Group R-3 or R-4 structures.

(b) The municipality shall establish a central permit office under the direction and supervision of the construction official. This office shall receive applications for construction permits and plan review, issue construction permits and certificates of occupancy, collect fees, penalties, fines and issue notices, and orders. The office shall be open during normal business hours at times to be determined by the municipality. These times shall be posted in a conspicuous place and shall be comparable with the amount of construction activity in the municipality. Nothing herein shall prevent a municipality from establishing branch offices, but the public shall not, unless in the case of an emergency, unforeseen or unavoidable circumstance, be required to do business, except at the central permit office.

(c) The construction official and the subcode officials shall be available for consultation and discussion during normal business hours at scheduled times to be determined by the construction official. All inspections shall take place between 9:00 A.M. and 5:00 P.M. on business days or while construction is taking place, or in the case of emergency, or with the permission of the owner or his representative.

(d) The municipality shall ensure that the enforcing agency has adequate staff to review plans, applications, specifications and to schedule and perform inspections in a timely manner.

Amended by R.1982 d.23, effective February 1, 1982.

See: 13 N.J.R. 863(a), 14 N.J.R. 142(b).

(a)6: text deleted and replaced with new text through (a)6iv.

Notice of correction: "30 days. Acting appointments may not be made for longer than" was omitted from text in (a)6.

See: 20 N.J.R. 2823(a).

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

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

Added (a)8.

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).

Case Notes

Township's failure to make a proper temporary appointment in conformance with regulation resulted in plaintiff's appointment as subcode plumbing inspector becoming one of tenure pursuant to N.J.S.A. 52:27D-126(b). *DeStefano v. Washington Twp.*, 220 N.J.Super. 273, 531 A.2d 1090 (L.1987).

5:23-4.5 Municipal enforcing agencies; administration and enforcement

(a) Records and procedures: The municipality shall ensure that the construction official, with the assistance of the subcode officials and other necessary municipal employees, maintains a central file system, by block and lot, for each property in the municipality for which a permit has been issued or requested or for which an action has been taken by the municipal enforcing agency.

1. The files shall contain all information, including inspection reports, correspondence, and so forth, relevant to each application for a construction permit or certificate of occupancy.

2. The files shall contain or indicate the storage location of all plans and specifications too bulky for inclusion in the central file.

3. The files and records of the municipal enforcing agency shall be open to department review and audit and public inspection during normal business hours.

i. File copies of all documents in connection with building operations shall be retained in the official records as provided by law.

ii. Files and records shall be maintained in a manner consistent with the Municipal Procedures Manual established by the commissioner for this purpose.

(b) Forms:

1. The construction official shall ensure that all necessary forms and applications are available to the public at the central permit office.

2. The following standardized forms established by the Commissioner are required for use by the municipal enforcing agency:

Form No.	Name
F-100B	Construction Permit Application
F-110B	Building Subcode Technical Section
F-120B	Electrical Subcode Technical Section
F-130B	Plumbing Subcode Technical Section
F-140B	Fire Subcode Technical Section
F-150	Elevator Subcode Technical Section
F-155	Elevator Subcode Multiple Devices
F-160B	Application for a Variation
F-170C, D	Construction Permit, Required Inspection
F-180B	Construction Permit Notice
F-190B	Permit Update
F-210A	Notice of Violation and Order to Terminate/Notice Order to Pay Penalty
F-221A	Inspection Sticker Approval for Building
F-222A	Inspection Sticker Approval for Electric
F-223A	Inspection Sticker Approval for Plumbing
F-224A	Inspection Sticker Approval for Fire Protection
F-225	Inspection Sticker Approval for Elevator
F-230B	Inspection Sticker—Not Approved
F-240A	Notice of Unsafe Structure/Imminent Hazard
F-245A	Unsafe Structure Notice
F-250A	Stop Construction Order
F-255A	Stop Construction Notice

Form No.	Name
F-260B	Certificate
F-270B	Application for Certificate
F-310B	Elevator Inspection
F-320A	Elevator Notice
F-325	Notice of Elevator Device Sealed Out of Operation
F-330A	Application to Construction Board of Appeals
F-340A	Decision of Construction Board of Appeals
F-350B	Cut-In Card
F-360A	Denial of Permit
F-370	Chimney Certification for Replacement of Fuel Fired Equipment

3. The following standardized forms established by the Commissioner are optional for use by the municipal enforcing agency; provided, however, that where they are not used, equivalent forms or mechanisms are used by the enforcing agency to accomplish the same purpose:

Form No.	Name
F-200A	Inspection Notice
F-280B	T.C.O. Control Card
F-290A	Ongoing Inspections Control Card
F-300A	Ongoing Inspections Schedule
F-370	Tickler/X-Ref Card

4. No forms other than those established by the Commissioner shall be required of the public in connection with the administration and enforcement of the State Uniform Construction Code. The municipal enforcing agency may use additional forms for its own internal processing and recordkeeping. Nothing in this section pertaining to forms or in the forms themselves shall be deemed to affect the requirements for plans and specifications or documentation of prior approvals. Where there is insufficient space on a form for all required information, the form shall be used with attachments.

5. Printing of forms: The municipal enforcing agency shall arrange for the printing of all forms. Other interested persons may also arrange for the printing of forms or they may purchase and use forms printed by others. The municipal enforcing agency may provide for the inclusion of its name and other appropriate identifying information on the forms it has printed. However, the municipal enforcing agency shall accept forms not having municipal identification and shall, in any such case, insert the name of the municipality. All required forms shall be exact replicas of the forms required by the Commissioner, conforming in content, size, format and colors, except that all multi-part forms may be printed with an additional copy so long as the additional copy shall be in a color distinct from those specified by the Commissioner. Forms F-110A, F-120A, F-130A and F-140A may have the Subcode Technical Sections printed in any color or colors of ink as desired and Form F-310A (Elevator Inspection) may be printed as a multipart form on separate pages with up to four copies of each page.

(c) Logs:

1. The following standardized logs established by the Commissioner are required to be maintained by the municipal enforcing agency:

Log No.	Name
L-700B	Permit Fee Log
L-710A	Inspection Log
L-720B	Certificate Log
L-730A	Ongoing Inspection Log

2. The municipal enforcing agency shall maintain the required logs either on log sheets established by the commissioner or on log sheets or ledger books of its own choice or design, provided that all required entries are maintained.

(d) Monthly reports:

1. The following standardized report forms established by the Commissioner are required to be completed by the municipal enforcing agency and transmitted to the Department by the tenth business day following the end of each calendar month:

Report No.	Name
	Municipal Monthly Activity
R-811B	Report Certificates
R-812B	Municipal Monthly Activity Report Permits

2. Municipalities currently submitting monthly reports electronically shall continue to do so. Municipalities that do not already submit monthly reports electronically using UCCARS I shall begin to do so according to the following schedule:

i. By December 31, 1992, all municipalities issuing 600 or more permits per year as determined by the Department shall submit monthly reports electronically.

ii. By December 31, 1993, all municipalities issuing fewer than 600, but more than 200, permits per year as determined by the Department shall submit monthly reports electronically.

iii. All other municipalities shall have the option of submitting monthly reports electronically or by mail. Any municipality which issues more than 200 permits per year as determined by the Department for any future year shall submit monthly reports electronically beginning during the following year.

iv. A municipality that determines that compliance with this schedule would impose an undue hardship may apply to the Department for an extension of time. A request for an extension shall be in writing and shall set forth the reason(s) for such extension and the period of time for which the extension is sought. The Department shall give the municipality written notice of its determination in response to the extension request.

3. As long as funding permits, the Department shall provide the UCCARS I software, training and technical support for the system free of charge to municipalities. Municipalities may submit monthly reports electronically using an alternative system compatible with UCCARS as determined by the Department and capable of transmitting a monthly report based on UCCARS specifications.

4. Municipalities, at their option, may choose to add UCCARS II and III systems to their UCCARS I System and may obtain them, at no cost, from the Department, when available.

(e) Quarterly reports: The following standardized report established by the Commissioner is required to be completed by the municipal enforcing agency for State of New Jersey training fees and must be submitted quarterly, with the accompanying fees, pursuant to N.J.A.C. 5:23-4.19:

Report No.	Name
R-840B	State Training Fee Report

(f) The following standardized report form established by the Commissioner is optional for use by the municipal enforcing agency:

Report No.	Name
R-800A	Inspector's Report

(g) Exceptions: Exceptions may be made by the municipal enforcing agency to those requirements for records and procedures, forms, logs, and reports as stated in this section and in the Municipal Procedures Manual established by the commissioner only with the express written authorization of the Department. Requests for exceptions shall be in writing and shall detail the requirement(s) to which an exception is sought, the reason(s) for such exception and the duration for which the exception is sought, and shall be accompanied by any appropriate documentation and examples of alternative procedures, forms, logs or reports.

(h) Duties of construction officials:

1. The construction official shall enforce the regulations and:

i. Provide that applications are available, and assist the public in preparing the applications whenever necessary;

ii. Review all applications for completeness as to form and for verification of prior approvals. He may request additional documentation concerning prior approvals whenever it is deemed necessary;

iii. Upon receipt of the completed application, the construction official shall determine the proper fee for the work required;

iv. Collect all fees and penalties and ensure that funds are properly accounted for;

v. Ensure that the proper subcode official shall have an adequate time period to review appropriate applications, plans and specifications;

vi. Ensure that all requests for variation are properly prepared, documented and referred to the appropriate subcode officials;

vii. Issue the construction permit upon receiving the approval of all appropriate subcode officials;

viii. Record all notices of violation upon receiving notification of the appropriate subcode official, and determine all penalties for noncompliance with the penalty notices;

ix. Ensure that all required inspections are scheduled and performed within three business days of the time for which inspection has been requested;

x. Ensure that the reports of all inspections are completed and properly filed;

xi. Record stop work orders, upon notification of the appropriate subcode official;

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

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

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

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

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

xv. Prepare and obtain reports required in the regulations;

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

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

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

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

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

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

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

(i) Duties of subcode officials:

1. The subcode official shall enforce the regulations and:

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

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

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

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

v. Review requests for variations as necessary;

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

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

viii. Complete reports of all inspections performed;

ix. Issue stop work orders in the name of the enforcing agency and notify the construction official of same;

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

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

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

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

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

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

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

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

ii. The fire protection subcode official shall consult with the local fire service prior to granting any variations from the requirements of the fire protection subcode. If the fire protection subcode official is not himself a member of the local fire service, he shall, upon receipt of an application for a variation, forward a copy thereof to the local fire service and shall not grant a variation until he has received the comments of the local fire service or until 10 business days have passed, whichever comes first.

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

(j) Conflict of interest:

1. No person employed by an enforcing agency as a construction or subcode official or as an inspector shall carry out any inspection or enforcement procedure with respect to any property or business in which he or she, or a member of his or her immediate family, has an economic interest.

i. Where an inspection or enforcement procedure is necessary or required in any such property or business, the official or inspector shall arrange for the inspection or enforcement to be carried out either by another local enforcing agency or by the Department.

2. No person employed by an enforcing agency as a construction or subcode official, assistant to the construction or subcode official, trainee, inspector or plan reviewer, shall engage in, or otherwise be connected directly or indirectly for purposes of economic gain, with any business or employment furnishing labor, materials, products or services for the construction, alteration, or demolition of buildings or structures within any municipality in which he is so employed by an enforcing agency, and in any municipality adjacent to any municipality in which he is thus employed.

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

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

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

5. This section shall not apply to:

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

ii. Any such business or employment outside the State;

iii. Dual employment by two or more enforcing agencies;

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

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

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

7. Prior to July 1, 1992, this subsection shall not apply to any person employed as an elevator inspector who is not licensed under this chapter.

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

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

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

Amended by R.1984 d.303, effective July 16, 1984.

See: 16 N.J.R. 950(a), 16 N.J.R. 1968(b).

Added (g)2.

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

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

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

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

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

Radon mitigation added to (f)1xviii.

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

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

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

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

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

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

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

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

Form numbers changed in (b).

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

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

Conflict of interest and exception provisions added.

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

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

Report form number changed at (e).

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

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

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

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

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

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

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

Case Notes

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

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

5:23-4.5A Selection of private onsite inspection and plan review agencies

(a) Whenever a local governing body having jurisdiction elects to contract with a private onsite inspection and plan review agency to carry out the enforcement of one or more subcodes, as permitted by N.J.A.C. 5:23-4.14, the agency shall be selected in accordance with the provisions of this section.

(b) Prior to the selection of an on-site inspection agency, the local enforcing agency shall notify each private on-site agency authorized by the Department to serve as a subcode official for the subcode(s) to be contracted. The notification, which shall specify the term of the proposed contract, shall be delivered by certified mail, return receipt requested. The notice shall specify any local procedural requirements, including, but not limited to, staffing and response time requirements exceeding the minimum standards set forth in the code, with which the construction official and/or the governing body would expect a private on-site agency to comply in order to effectively enforce a subcode in accordance with the performance standards of the local enforcing agency. No other notice shall be required.

1. The notice shall specify that a written, sealed bid is requested, together with a qualification statement containing the information set forth in N.J.A.C. 5:23-4.5A(d), shall identify the subcode(s) for which a bid is requested, shall state the date and time by which bids and accompanying qualification statements must be submitted, which shall not be less than 30 days following the date of

mailing of the request for bids, and shall state the name and address of the person to whom bids and accompanying qualification statements shall be mailed or delivered.

2. All bids shall set forth the fees which the private on-site agency proposes to charge for work done by it in the municipality. Such fees shall be expressed as a uniform percentage, by subcode, which shall not exceed 100 percent, of the fees charged, as of the date on which the bids are opened, by the Department when it serves as an enforcing agency, which fees are set forth at N.J.A.C. 5:23-4.20.

3. The contract shall be awarded to the bidder that offers to charge the lowest percentage of the Department's fees and is determined by the governing body, after consultation with the construction official, to be able to effectively enforce the subcode(s) for which the bid was submitted.

4. The amounts to be charged by a private on-site agency awarded a contract pursuant to this section shall be the amounts set forth in N.J.A.C. 5:23-4.20 and/or 5:23-12.6(a) and (b) as of the date of the opening of the bids, multiplied by the percentage set forth in the bid. Such amounts shall be in effect for the entire contract period and shall not be affected by any subsequent increase in the fees set forth in N.J.A.C. 5:23-4.20 or 5:23-12.6(a) and (b).

(c) Written, sealed bids, together with separately sealed qualification statements containing the information required by (d) below, shall be submitted to the municipal officer responsible for receiving bids at or before the date and time established in the original notice of request for proposals. The said municipal officer shall forward all such qualification statements received to the construction official, who shall evaluate each qualification statement and advise the governing body, in writing, as to whether, in the construction official's judgment, each private agency submitting a proposal would be able to effectively enforce the subcode(s) for which the proposal is being submitted in the municipality, in accordance with the performance standards of the local enforcing agency.

(d) All qualification statements submitted by private on-site inspection agencies to serve as subcode officials shall be in writing and shall contain all of the information required by this subsection. Any omission of required information shall allow the local governing body the option to automatically disqualify the proposal. No additional information shall be required. The required information is as follows:

1. The name and principal business address of the agency;

2. The name of the person who will serve as the agency's responsible official and representative if the agency is awarded the contract;

3. A full listing of all agency technical, field inspection and supervisory personnel, grouped by job classification and title. The listing shall include the technical, educational and licensure qualifications of each person;

4. A full listing of the municipalities served by the agency. This list shall specifically identify the subcodes enforced in each case and the number of permits supervised and the number of inspections performed during an average month during the preceding year in each municipality;

5. A table of organization for the agency which is correlated by job title to the required personnel list;

6. The manner in which the agency compensates each class of employees, which shall be one of the following only: full-time salaried, part-time salaried, full-time hourly or part-time hourly. Where employees of a given class are compensated in more than one way, a percentage breakdown shall be provided;

7. The full address of each agency office which is open and staffed at least 35 hours per week by salaried or hourly agency employees;

8. A narrative description of the arrangements the agency plans to make for the issuance of minor work and single trade permits;

9. A narrative description of the arrangements the agency plans to make for discharging its plan review obligations;

10. The time in which the agency can perform, or has performed, plan reviews upon assignment by the construction official;

11. Any guarantees of time in responding to requests for required inspections or plan reviews where the time in responding is less than the maximum time established in these regulations. If an agency does not guarantee response time less than the maximum, the agency shall so state in its proposal.

12. The time in which the agency can respond, or has responded, to requests for required inspections from the construction industry; and

13. A narrative description of the arrangements the agency plans to make for providing emergency inspection services, including response time.

(e) When considering qualification statements submitted by authorized on-site inspection agencies seeking to act as a subcode official, construction officials and governing bodies shall base their determination as to whether an authorized on-site inspection agency would be able to effectively enforce the subcode on the following criteria:

1. The speed with which the agency can respond, or has responded, to requests for required inspections from the construction industry;

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.

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) 1xix 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).

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 for 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, hereinafter 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:

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

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

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

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

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

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

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

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

Chain of responsibility specified at (e).

5:23-4.14 Private enforcing agencies—administration and enforcement

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

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

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

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

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

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

- i. The number of inspections performed in each municipality, other than routine and periodic elevator maintenance inspections, and the number of inspections, other than routine and periodic elevator maintenance inspections, performed in each municipality more than 72 hours after the receipt of an inspection request by the construction official or the subcode official, whichever occurs first;

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

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

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

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

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

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

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

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

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

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

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

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

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

8. To perform all required inspections and reinspections.

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

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

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

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

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

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

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

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

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

2. This subsection shall not apply to:

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

ii. Any such business or employment outside the State;

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

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

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

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

iii. An on-site inspection agency that hires a municipal subcode official or inspector shall thereupon waive

the right to bid or contract in the employed subcode official or inspector municipality or municipalities.

iv. If the employed subcode official or inspector terminates employment with the municipalities and continues to be employed by the agency, or by another agency providing similar services, the agency or agencies shall waive the right to contract with that municipality, or those municipalities, for a period of two years.

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

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

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

- i. Building subcode: 40 percent;
- ii. Fire protection subcode: 20 percent;
- iii. Plumbing subcode: 20 percent; and
- iv. Electrical subcode: 20 percent.

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

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

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

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

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

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

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

Use of municipal subcode officials and inspectors further delineated.

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

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

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

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

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

Conflict of interest provisions added.

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

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

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, certificate of approval, 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 allocable 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.

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 shall be submitted by the applicant to the municipal construction official, who shall forward the fee 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."

(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. Volume or cost: Fees for new construction or alterations shall be as follows:

i. Fees for renovations, alterations, reroofing, repairs, and site construction associated with premanufactured 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 of occupancy 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 approximately cover the actual costs incurred in field inspection and processing for certificate of occupancy, but in any case shall not be more than the amount which would be charged for a construction permit for the project. 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.

(g) Elevator 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 a certificate of compliance and for inspections and 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).

(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)1ii, "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).

Case Notes

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.

(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).

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. The minimum fee shall be \$46.00.

(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. The minimum fee for a basic construction permit covering any or all of building, plumbing, electrical, or fire protection work shall be \$46.00.

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 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.

ii. Plumbing fixtures and equipment: The fees shall be as follows:

(1) The fee shall be in the amount of \$10.00 per fixture connected to the plumbing system for all fixtures and appliances except as listed in (c)2ii(2) below.

(2) The fee shall be \$65.00 per special device for the following: grease traps, oil separators, water-cooled air conditioning units, refrigeration units, utility service connections, back flow 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), gas piping, active solar systems, sewer pumps, interceptors and fuel oil piping. 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 or similar fixture, and motors or devices of less than one horsepower or one kilowatt or less.

(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 or detectors shall be \$65.00; for 21 to and including 100 heads or detectors, the fee shall be \$120.00; for 101 to and including 200 heads or detectors, the fee shall be \$229.00; for 201 to and including 400 heads or detectors, the fee shall be \$594.00; for 401 to and including 1,000 heads or detectors, the fee shall be \$822.00; for over 1,000 heads or detectors, the fee shall be \$1,050. In computing fees for heads and detectors, the number of each shall be counted separately and two fees, one for heads and one for detectors, shall be charged.

(2) The fee for each standpipe shall be \$229.00.

(3) The fee for each independent pre-engineered system shall be \$92.00.

(4) The fee for each gas or oil fired appliance that is not connected to the plumbing system shall be \$46.00.

(5) The fee for each kitchen exhaust system shall be \$46.00.

(6) The fee for each incinerator shall be \$365.00.

(7) 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 in the amount of 10 percent of the new construction permit fee that would be charged by the Department pursuant to these regulations. The minimum fee shall be \$120.00, except for one or two-family (use group R-3 of the building subcode) structures of less than 5,000 square feet in area and less than 30 feet in height,

and structures on farms, including commercial farm buildings subject to N.J.A.C. 5:23-3.2(d), for which the minimum fee shall be \$65.00.

iv. The fee for a certificate of occupancy granted pursuant to a change of use group shall be \$174.00.

v. The fee for a certificate of continued occupancy shall be \$120.00.

vi. There shall be no fee for a temporary certificate of occupancy.

vii. The fee for a certificate of approval or certificate of compliance certifying that the work done under a construction permit has been satisfactorily completed shall be \$28.00, except that there shall be no separate fee charged for a certificate of compliance issued after a successful periodic inspection.

viii. 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.

ix. 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.

x. 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 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."

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)6iii(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).

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), 17 N.J.R. 945(a).

Recodified from 4.25(k) and substantially amended.

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

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

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

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

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

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

5:23-4.32 (Reserved)

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

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

Recodified from 4.25(l) and substantially amended.

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

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

5:23-4.33 (Reserved)

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

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

Recodified from 4.25(m) and substantially amended.

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

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

5:23-4.34 (Reserved)

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

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

Recodified from 4.25(n) and substantially amended.

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

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

5:23-4.35 (Reserved)

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

See: 17 N.J.R. 1169(a), 18 N.J.R. 945(a).
 Recodified from 4.25(o) and substantially amended.
 Repealed by R.1990 d.313, effective June 18, 1990.
 See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).

5:23-4.36 (Reserved)

Amended by R.1986 d.142, effective May 5, 1986.
 See: 17 N.J.R. 1169(a), 18 N.J.R. 945(a).
 Recodified from 4.25(p).
 Repealed by R.1990 d.313, effective June 18, 1990.
 See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).

5:23-4.37 (Reserved)

Amended by R.1986 d.142, effective May 5, 1986.
 See: 17 N.J.R. 1169(a), 17 N.J.R. 945(a).
 Recodified from 4.25(q).
 Repealed by R.1990 d.313, effective June 18, 1990.
 See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).

5:23-4.38 (Reserved)

Amended by R.1986 d.142, effective May 5, 1986.
 See: 17 N.J.R. 1169(b), 18 N.J.R. 945(a).
 Recodified from 4.25(r).
 Repealed by R.1990 d.313, effective June 18, 1990.
 See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).

5:23-4.39 (Reserved)

R.1982 d.42, effective March 1, 1982.
 See: 13 N.J.R. 717(a), 14 N.J.R. 233(a).
 As amended, R.1982, d.232, effective August 2, 1982.
 See: 14 N.J.R. 496(a), 14 N.J.R. 834(e).
 Added Federal citation to (e). Prior to recodification of N.J.A.C. 5:23, this section was codified at 5:25-4.10A.
 Amended by R.1986 d.142, effective May 5, 1986.
 See: 17 N.J.R. 1169(a), 18 N.J.R. 945(a).
 Recodified from 4.25A.
 Amended by R.1990 d.313, effective June 18, 1990.
 See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).
 Address changed in (a); (l) added.
 Repealed by R.1994 d.96, effective February 22, 1994.
 See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).
 Section was "Enforcement of Federal manufactured home standards".

5:23-4.40 Construction boards of appeal**(a) Rules concerning establishment are:****1. Counties; adoption of resolution:**

i. Prior to the effective date of the regulations, the governing body of the county shall by resolution, establish a county board of appeals in accordance with this section. Such resolution shall be filed with the department.

ii. In any case where a municipality has not established a board of appeals with five qualified members at the time it receives an application for appeal, the applicant shall have an immediate right to have his appeal heard before the county board. The county board shall thereafter hear appeals from said municipality until such times as the municipality shall establish a board with five qualified members and notify the county of same.

(b) Rules concerning organization are:**1. Membership; term; qualifications of members:**

i. Every construction board of appeals shall consist of five members;

ii. Board members shall be appointed for a term of four years by the appointing authority of the county or municipality in question or, in the case of a joint municipal board, by means mutually determined by the governing bodies of such municipalities. For the members first appointed, the appointing authority shall designate the appointees' terms so that one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, and two for a term of four years. Vacancies on the board shall be filled for the unexpired term. Members may be removed by the authority appointing them for cause. A person may serve on more than one construction board of appeals;

iii. No more than two members of the board shall be selected from the same profession or business. At least one member of the board shall be as qualified as a plumbing subcode official, one as qualified as an electrical subcode official, one a registered architect, licensed professional engineer with building construction experience or other person as qualified as a building subcode official and one as qualified as a fire protection subcode official;

(1) Whenever a change to the regulations governing the composition of the construction board of appeals is made, the appointing authority shall implement the change when the term of any affected member(s) expires.

iv. No employee of any local enforcing agency may serve on the board of appeals exercising appeals jurisdiction over such enforcing agency. Other municipal and county employees may serve on such board, provided they be disqualified from consideration of matters affecting municipal or county-owned or leased structures;

v. Each member shall be qualified by experience or training to perform his duties as a member of the board, which shall be no less than that which is required of a construction or subcode official, under section 8b of the act. Members of the board need not be certified. No member shall receive an appointment unless he shall meet at least these minimum requirements.

(1) Each member shall be required to attend a course offered by the Department for members of construction boards of appeals within 12 months of appointment if he or she has not already done so. Members currently serving on a construction board of appeals will have 12 months from the date on which the Department announces the availability of the course in which to complete this course. The Department will notify each Board on the Department roster at least two months prior to this date in order to provide adequate notice. Members who have completed the subcode official course offered by the Department pursuant to the Uniform Construction Code Act will not be required to fulfill any additional educational requirement.

(2) The commissioner may further require that members of the board satisfactorily undertake more specialized training consistent with the duties of members of a board of appeals.

(3) Failure to satisfactorily undertake such a program shall be deemed good cause for removal by the appointing authority. Failure to be present at one more than 50 percent of all meetings of the board during any calendar year shall be considered good cause for removal by the appointing authority; provided, however, that disqualification pursuant to (b)3 below shall not be considered in computing attendance;

vi. The appointing authority shall designate one of the members to serve as chairman;

2. The appointing authority may appoint such number of qualified alternates as it may deem appropriate to serve during the absence or disqualification of any member. Such appointment may be for a specified term not to exceed four years, or on a case-by-case basis. Such alternates shall not be members of the enforcing agency, the decisions of which are subject to the review of the board;

3. Exemption of members: A member of the board shall not pass on any question in which he is engaged as contractor or material dealer, or in which he has been involved in the preparation of plans or specifications, or in which he has any personal or professional interest;

4. Compensation of board members: The appointing authority shall determine the compensation, if any, of members of the board, but they shall in any event be reimbursed for all necessary expenses incurred by them in the performance of their duties;

5. Secretary of the board: Whenever the municipal appointing authority shall designate a municipal board of appeals, within its jurisdiction, the construction official shall designate a clerk from the enforcing agency to serve as secretary to the board, and to maintain its records. In the case of county boards such secretary shall be designated by the appointing authority of the county. In the case of a joint board, the secretary shall be determined by agreement of the parties;

6. Departmental appeal: Whenever the department shall act as the enforcing agency under Section 10 of the State Uniform Construction Code Act, the commissioner shall provide an appeal in lieu of the appeal to the county, municipal or joint construction board of appeals. Such hearings shall be governed by the provisions of the Administrative Procedure Act, and the time provisions applicable to county or municipal boards. Any such case shall be adjudicated before the Office of Administrative Law and the final decision shall be issued by the Commissioner.

(c) Rules concerning administration and enforcement are:

1. Appeals shall be in accordance with N.J.A.C. 5:23-2.35;

2. Procedures shall be as stipulated in N.J.A.C. 5:23-2.36;

3. Decisions of the board shall be as provided in N.J.A.C. 5:23-2.37.

(d) Rules concerning prospective interpretations are:

1. The board of appeals shall be bound to the prospective interpretation of the regulations by the commissioner;

2. Whenever the commissioner shall make a prospective interpretation of, or issue a departmental interpretation pursuant to N.J.A.C. 5:23-3.9, such shall be forwarded by regular mail to each board of appeals and to each enforcing agency.

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)6, that cases to be heard by the OAL with final decision by the Commissioner.

As amended, R.1984 d.54, eff. March 5, 1984.

See: 15 N.J.R. 2088(a), 16 N.J.R. 424(a).

(b)liii added: "and one as qualified as a fire protection subcode official;"

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 4.26.

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

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

Added (b)liii(1) and (b)lv(1).

SUBCHAPTER 4A. INDUSTRIALIZED/MODULAR BUILDINGS AND BUILDING COMPONENTS

5:23-4A.1 Purpose

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

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

Amended by R.1994 d.96, effective February 22, 1994.
See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

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

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

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

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

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

(b) The Industrialized Buildings Commission shall:

1. Provide the states regulating the design and construction of industrialized/modular buildings and building components with a system for coordinating and uniformly administering their rules and regulations for such buildings, all in a manner that will assure mutual acceptance of industrialized/modular buildings and building components; and

2. Provide to Congress assurances that would preclude the need for a voluntary preemptive Federal regulatory system for industrialized/modular housing, as outlined in Section 572 of the Housing and Community Development Act of 1987, including development of model standards for industrialized/modular housing construction, such that design and performance will insure quality, durability and safety, will be in accordance with cost-effective energy conservation standards and will promote the lowest total construction and operating costs over the life of such housing.

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 "Objective".

5:23-4A.3 Scope

(a) This subchapter shall govern the design, manufacture, handling, storage, delivery, and installation of industrialized/modular buildings and building components intended for installation in this State. Industrialized/modular buildings or building components certified pursuant to this subchapter may be sold for, delivered to, or installed on, building sites located in the State. Industrialized/modular buildings that are not required to be labeled or comply with code approval under this chapter are exempt from the requirements of this subchapter.

(b) Industrialized/modular buildings or building components certified pursuant to this subchapter shall be deemed to comply with all requirements of this chapter.

(c) Except as otherwise specifically provided, this subchapter shall not apply to requirements concerning land use and zoning, building set-backs, side and rear yards, property lines and on-site development, construction and inspection; provided, however, that such requirements shall not be more stringent than those imposed on other types of buildings in the same zone or area.

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).

5:23-4A.4 Definitions

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

"Act" means the State Uniform Construction Code Act, P.L. 1975, c.217, as supplemented by P.L. 1991, c.457 and the Interstate Compact on Industrialized/Modular Buildings ratified thereby.

"Approved" means approved by the Industrialized Buildings Commission, a participating state or a designated evaluation/inspection agency.

"Building component" means any subsystem, sub-assembly or other system of closed construction that is designed for use in, or as part of, a structure. "Building component" may include structural, electrical, mechanical, plumbing and fire protection systems and other systems affecting health and safety.

"Building system" means a method of constructing a type of industrialized/modular building or building component that is described by plans, specifications and other documentation that together establish a set of limits meeting the requirements of this subchapter for that type of industrialized/modular building or building component. This may include structural, electrical, mechanical, plumbing and fire protection systems and other systems affecting health and safety.

"Certification" means the process whereby participating states and local building inspection agencies are assured that elements of closed construction that it is not practical to inspect at the building site conform to the applicable codes.

"Certification label" means an approved insignia or seal evidencing certification in accordance with the Uniform Administrative Procedures of the Industrialized Buildings Commission.

"Closed construction" means any building, building component, assembly or system manufactured in such a manner that concealed parts or processes of manufacture cannot be inspected at the building site without disassembly, damage or destruction. This definition shall not include products, such as structural, electrical and plumbing fixtures and equipment that are tested, listed, labeled and certified by a nationally recognized testing laboratory.

"Code" means the codes, standards, specifications and requirements adopted pursuant to N.J.A.C. 5:23-4A.5.

"Commission" means the Industrialized Buildings Commission.

"Compliance assurance documents" means approved building system documents, an approved compliance assurance manual and approved on-site installation instructions.

"Compliance assurance program" means the policies and procedures that assure that industrialized/modular buildings and building components, including their manufacture, storage, delivery, assembly, handling and installation, conform with this subchapter and with the Uniform Administrative Procedures.

"Designated" means selected by the Commission to perform one or more of the inspection and/or evaluation functions described under the Uniform Administrative Procedures.

"Evaluation agency" means a designated person or organization, private or public, determined by the Commission to be qualified by reason of facilities, personnel, experience and demonstrated reliability and independence of judgment, to investigate and evaluate industrialized/modular buildings, building components, building systems or compliance assurance programs.

"Independence of judgment" means not being affiliated with, or influenced or controlled by, building manufacturers or producers, suppliers or vendors of products or equipment used in industrialized/modular buildings and building components, in any manner that is likely to affect capacity to render reports and findings objectively and without bias.

"Industrialized/modular building" means any building of closed construction, including, but not limited to, modular housing that is factory-built single-family and multi-family housing (including closed wall panelized housing) and other modular, nonresidential buildings. "Industrialized/modular building" does not include any structure subject to the requirements of the National Manufactured Home Construction and Safety Standards Act of 1974.

"Inspection agency" means a designated person or organization, private or public, that is determined by the Commission to be qualified by reason of facilities, personnel, experi-

ence and demonstrated reliability and independence of judgment, to monitor compliance assurance programs.

"Installation" means the process of affixing, or assembling and affixing, industrialized/modular building or building components on the building site.

"Interim reciprocal agreement" means a formal reciprocity agreement as defined in P.L. 1991, c.457, the statute ratifying the Interstate Compact on Industrialized/Modular Buildings.

"Module" means a closed wall structure or substantial part of a closed wall structure incorporating one or more rooms used as habitable, occupiable or mechanical/equipment space.

"Nonconformance" means the failure to adhere to the requirements of an approved building system or, where the building system is not specific, to the code.

"Participating state" means any compacting state or any non-compacting state acting under an interim reciprocal agreement.

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).

5:23-4A.5 Standards

(a) Building systems shall comply with all applicable provisions of the State Uniform Construction Code.

(b) The Commissioner has determined that industrialized buildings and building components built to the following codes are consistent with the basic purposes of the State Uniform Construction Code Act and this chapter and that these codes are therefore acceptable, in lieu of the comparable subcodes adopted pursuant to this chapter, for industrialized/modular construction:

1. Building codes:

- i. Uniform Building Code, ICBO, Whittier, CA;
- ii. Standard Building Code, SBCCI, Birmingham, AL.

2. Plumbing codes:

- i. Uniform Plumbing Code, IAPMO, Los Angeles, CA;
- ii. National Plumbing Code, BOCA;
- iii. Standard Plumbing Code, SBCCI;
- iv. One and Two Family Dwelling Code, CABO, Part V—Plumbing.

3. Mechanical codes:

- i. Uniform Mechanical Code, ICBO;
- ii. Standard Mechanical Code, SBCCI;

iii. Standard Gas Code, SBCCI.

4. Energy codes:

- i. Model Energy Code, CABO;
- ii. Regulations of any participating state;
- iii. National Building Code, BOCA—Chapter 13.

5. Barrier-free codes:

- i. Americans With Disabilities Act regulations;
- ii. National Building Code, BOCA—Chapter 11.

(c) Alternates: The provisions of this subchapter are not intended to prevent the use of any technologies, techniques or materials not specifically prescribed by the codes, standards, specifications and requirements, provided any such alternate has been approved.

1. Applications for such alternates shall be filed in writing with the evaluation agency. The application shall contain the current requirements of the codes, standards or specifications from which an alternate is sought and a statement of how the proposed alternate would adequately protect the health, safety and welfare of both the occupants and the public.

2. The evaluation agency may approve any such alternate, provided that it determines that the proposed design is satisfactory and that the material, method or work offered is, for the purpose intended, consistent with the adopted codes and standards as to quality, strength, effectiveness, fire resistance, durability and safety. The evaluation agency shall require that sufficient evidence or proof be submitted to substantiate any claim that may be made regarding the use of any such alternate. The evaluation agency shall notify the applicant of the determination. If the application is denied, the notification shall state the reasons for the denial.

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).

5:23-4A.6 Amendments

(a) The Department may amend these rules pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) Any proposed amendments to national codes adopted by reference in these regulations shall be undertaken pursuant to N.J.A.C. 5:23-3.13, State-sponsored code change proposals.

5:23-4A.7 Certification required

No person or agency shall deliver, sell, lease or install any industrialized/modular building or building component in the State unless such building or building component is certified in accordance with this subchapter.

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 "Administration and enforcement".

5:23-4A.8 Product control and identification

(a) The following information shall be typewritten on a smudge-proof, permanent manufacturer's data plate located in the vicinity of the certification label:

1. The name and address of the manufacturer;
2. The serial (manufacturer's identification) number(s);
3. The manufacturer's plan approval designation (model number/name);
4. The certification label number(s);
5. The construction classification;
6. The occupancy classification (use group);
7. The seismic zone;
8. The wind velocity load;
9. The roof and floor live load;
10. The fire rating for exterior walls;
11. The thermal transmittance values;
12. The date of manufacture; and
13. The name and date of each code complied with.

(b) The manufacturer shall apply a serial number to each unit at the beginning of the production process. The serial number shall not be applied to a feature of the industrialized building or building component that is readily removable. The location of the serial number(s) shall be identified in the manufacturer's compliance assurance program.

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.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 "Approvals of building systems and compliance assurance programs".

5:23-4A.9 Compliance assurance documents

(a) The building systems documents shall consist of plans, specifications, calculations, test results and/or other documents that describe in detail the product and the manufacturing processes employed to produce industrialized/modular buildings or building components. The documents need only show details for equipment provided by the manufacturer. The documents shall be comprehensively indexed and shall treat the material listed below in detail. For the building systems to be evaluated, the following shall be provided:

1. General requirements:

i. All plans, specifications and other documentation shall be submitted in four copies.

ii. All documents submitted with the application shall be identified to indicate the manufacturer's name.

iii. A clear space shall be provided on all sheets of plans near the title box for the stamp(s) of approval.

iv. Manufacturers shall submit plans showing all elements relating to specific systems on properly identifiable sheets.

v. Structural connections and connections of systems, equipment and appliances to be performed on-site shall be identified, detailed and distinguished from work to be performed in the manufacturing facility.

vi. The method of interconnection between the industrialized/modular buildings or building components and the location of connections shall be indicated.

vii. Design calculations and/or test reports shall be submitted when required by the evaluation agency. The manufacturer shall cross-reference all designs to the appropriate calculations and/or test reports.

viii. Documents shall indicate the location of the certification label(s).

ix. Drawings shall be dated and identified and shall include an index that can be used to determine whether the package is complete.

x. Documents shall provide or show, as appropriate, occupancy or use, area, height and number of stories, type of construction and loads (wind, floor, snow and seismic).

2. Documents for industrialized/modular buildings or building components shall provide or show, as appropriate, the details listed in (b)2i through vi below. Only the minimum documentation necessary to demonstrate each alternative possible within the system shall be required.

i. General information as follows:

(1) Details and methods of installation of industrialized/modular buildings or building components on foundations and/or attachment to each other;

(2) Floor plan(s) and typical elevation(s);

(3) Cross-sections necessary to identify major building components;

(4) Details of flashing, such as at openings and at penetrations through roofs and subcomponent connections, including flashing material and gauge to be used;

(5) Attic access and attic ventilation, when required by the code;

(6) Exterior wall, roof and soffit material;

(7) Interior wall and ceiling material;

(8) Barrier-free provisions, if applicable;

(9) Sizes, locations and types of doors and windows;

(10) Suggested foundation plans, vents and underfloor access; and

(11) Details of any elevator or escalator system, including method of emergency operation, when provided.

ii. Fire safety details:

(1) Details of fire-rated assemblies, including reference listing or test report for all stairway enclosures, doors, walls, floors, ceiling partitions, columns, roofs and other enclosures;

(2) Means of egress, including details of aisles, exits, corridors, passageways and stairway enclosures;

(3) The flame spread and smoke-developed classification of interior materials;

(4) The location of required draftstops and firestops;

(5) Opening protectives in fire resistance-rated systems and assemblies; and

(6) Drawings of fire suppression systems, standpipe, fire alarms and detection systems, when required.

iii. Structural details, as follows:

(1) Calculations of structural members and/or test results, where appropriate, except where compliance can be demonstrated through code tables, accepted handbooks and listing documents;

(2) Details of structural elements, including framing details, spacing, size and connections;

(3) The grade, species and specifications of materials;

(4) Typical foundation plans, details and assumed design soil-bearing value;

(5) A schedule of roof, floor, wind and seismic loads upon which designing is based; and

(6) The column loads and column schedule.

iv. Mechanical details, as follows:

(1) The location of all equipment, appliances and baseboard radiation units;

(2) Energy conservation calculations;

(3) Input/output rating of all equipment and appliances, as appropriate;

(4) Duct and register locations, sizes and materials, as appropriate;

(5) The method of providing combustion air, if required;

(6) The method of providing ventilation air, if required;

(7) The method of providing make-up air, if required; and

(8) The location of flues, vents and chimneys and clearances from air intakes, combustible materials and other vents and flues.

v. Plumbing details as follows:

(1) A schematic drawing of the plumbing layout, including, but not limited to: size of piping, fittings, traps and vents, closeouts and valves and gas, water and drainage systems; and

(2) Plumbing materials and location of all equipment, appliances and safety controls to be used, including indication of the rating and capacity of equipment and appliances.

vi. Electrical details, as follows:

(1) Details of any service equipment provided by the manufacturer;

(2) The method of grounding service equipment;

(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".

5:23-4A.16 (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 "Building system documentation, quality control program requirements and on-site installation instructions requirements".

5:23-4A.17 (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 "Approval of evaluation and inspection agencies".

5:23-4A.18 (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 "Procedures for approving evaluation and inspection agencies and delegating authority to them".

5:23-4A.19 (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 "Continued approval of evaluation and inspection agencies".

5:23-4A.20 (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 "Suspension and revocation; evaluation and inspection agencies".

5:23-4A.21 (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 "Reciprocity".

5:23-4A.22 (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 "Procedures for granting or refusing reciprocity to another jurisdiction".

5:23-4A.23 (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 "Procedures for reciprocal certification of industrialized modular buildings or building components".

5:23-4A.24 (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 "Suspension and revocation; reciprocal certification".

5:23-4A.25 (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 "State licensure and training".

5:23-4A.26 (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 "Appeals".

5:23-4A.27 (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 "Conduct of hearings".

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

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).

5:23-4B.1 Scope

(a) This subchapter shall govern the design, manufacture and installation of manufactured homes, and manufactured home add-on units, not subject to the Federal Manufactured Home Construction and Safety Standards, intended for installation in this State.

(b) Manufactured homes and manufactured home add-ons may be sold for, delivered to, or installed on building sites located in any jurisdiction of this State, if they have been approved and certified pursuant to this subchapter.

5:23-4B.2 Applicability

Approval of evaluation and inspection agencies, documents submission, review and approval, construction control, and inspection and certification of manufactured home add-on units shall, additionally be governed by the applicable requirements of the Federal Manufactured Home Construction and Safety Standards.

5:23-4B.3 Standards

(a) Manufactured (mobile) homes, as defined in N.J.A.C. 5:23-1.4, shall:

1. Comply with all the applicable provisions of the Federal Manufactured Home Construction and Safety Standards; and
2. Be approved or certified in accordance with the said Federal standards.

(b) Manufactured home add-on units shall:

1. Comply with the applicable provisions of N.J.A.C. 5:23; and
2. Be certified pursuant to N.J.A.C. 5:23-4B.7.

5:23-4B.4 Administration and enforcement

(a) The Department shall administer and enforce all provisions of this subchapter. The Department shall have responsibility for evaluating and approving building systems and for inspecting and certifying manufactured home add-on units for compliance with this subchapter. The Department shall allow the use in the State of New Jersey of manufactured home add-on units labeled and certified by approved evaluation and inspection agencies in accordance with this subchapter.

(b) The Department shall approve building systems for manufactured home add-on units and shall approve compliance assurance programs that comply with the requirements of this subchapter. The Department may delegate to approved evaluation agencies all or part of the evaluation of building systems and compliance assurance programs.

5:23-4B.5 Acceptability

(a) Manufactured (mobile) homes built in accordance with the Federal Manufactured Home Construction and Safety Standards and bearing a Federal label of certification shall be accepted as conforming to the requirements of this chapter for purposes of local construction inspection approval.

(b) Manufactured (mobile) home add-on units built in accordance with the New Jersey Uniform Construction

Code and bearing a manufactured home add-on label of certification shall be accepted as conforming to the requirements of this chapter for the purpose of local construction inspection approval.

5:23-4B.6 Approvals of building systems and compliance assurance program

(a) Approved evaluation agencies shall be permitted to approve building systems and compliance assurance program for manufactured home add-on units.

(b) Building systems shall be evaluated and approved in accordance with this subchapter.

(c) Compliance assurance programs shall be evaluated and approved in accordance with this subchapter.

5:23-4B.7 Certification

(a) Manufactured home add-on units accepted by the Department or by an approved inspection agency as having been manufactured according to an approved building system and an approved compliance assurance program shall be certified by the Department as complying with the requirements of this chapter.

(b) The Department may delegate to evaluation and inspection agencies all or part of the inspection or the issuance or attachment of labels to manufactured home add-on units.

(c) A Department label of certification for each manufactured home add-on unit that is certified pursuant to this subchapter shall be permanently attached thereto in an accessible and visible location. The location of the label shall be indicated on the approved building system documentation.

1. An approved label for a manufactured home add-on unit shall bear the following information:

i. State of New Jersey—Department of Community Affairs—approved mobile home add-on unit—N.J.A.C. 5:23; and

ii. A label serial number.

5:23-4B.8 Labels; fees

(a) An approved evaluation and inspection agency requesting the Department to issue labels of certification for manufactured home add-on units shall pay a fee of \$70.00 for each label.

(b) One manufactured home add-on unit label of certification shall be required for each manufactured home add-on unit.

5:23-4B.9 Requirements for submission of compliance assurance documents

(a) The manufacturer shall not start production of any manufactured home add-on unit unless the building systems documents, compliance assurance program and on-site installation instructions have been approved in accordance with this subchapter.

(b) The building systems documents consist of plans, specifications, calculations, test results and/or other documents that describe in detail the product and manufacturing processes employed to produce manufactured home add-on units. The documents need only show details for equipment provided by the manufacturer. The documents shall be comprehensively indexed and shall meet the requirements of this subchapter.

(c) The compliance assurance program is a system employed by the manufacturer to assure conformance with the approved building system documents. The compliance assurance manual shall be comprehensively indexed and shall meet the requirements of this subchapter.

(d) The on-site installation instructions shall consist of specific installation procedures provided by the manufacturer that specify the materials and procedures required to install the unit in conformance with the code and applicable standards. Specific installation procedures provided by the manufacturer shall include:

1. Details for connection of manufactured home add-on units to the foundation;
2. Structural connections as required;
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

Old Citation	New Citation
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.): Building 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)1vii.

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. 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.

6. 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.

7. 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 license as a result of revocation or of failure to renew within two 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 license as a result of revocation or of failure to renew within two 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)1iii 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)1i: 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).

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).

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)5 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.

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.

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

Was 5:23-5.5(b)3i.

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).

Architects or engineers added.

Historical Note

Original rules to 5:23-5.8 concerning substitution of alternative education, training or experience, which were filed as part of R.1977 d.304, effective October 1, 1977. See: 9 N.J.R. 257(b), 9 N.J.R. 413(b). These rules were repealed by R.1982 d.10, effective February 1, 1982. See: 13 N.J.R. 801(a), 14 N.J.R. 143(b).

5:23-5.9 Building inspector I.C.S. requirements

(a) A candidate for a license as a building 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 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 one year 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 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 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 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 building 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 building inspector I.C.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 R.C.S. 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)3ii.

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

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

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).

"Directly" replaced with "significant".

5:23-5.10 Building inspector R.C.S. requirements

(a) A candidate for a license as a building inspector R.C.S. shall meet one of the following educational and/or experience requirements:

1. Three 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; or
3. Possession of an associate's degree in code enforcement from an accredited institution of higher education, and one year 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 R.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 building inspector R.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 building inspector R.C.S.; and
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)3iii.

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

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).

Architects or engineers added; "directly" replaced with "significant".

5:23-5.11 Electrical inspector H.H.S. requirements

(a) A candidate for a license as an electrical 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 electrical subcode; or
- ii. Experience as an electrical inspector; or
- iii. Experience as a construction contractor in a field of construction currently regulated by the electrical 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 electrical 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 electrical subcode; or

4. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for a license as an electrical 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 electrical inspector H.H.S.; provided, however, that persons having a bachelor's degree in architecture or engineering, or in architectural or in 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 electrical inspector H.H.S.; and

2. Successful completion of an examination as required by N.J.A.C. 5:23-5.23.

3. Possession of, or eligibility for, the electrical inspector I.C.S. 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)4i.

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).

Architects or engineers added; "directly" replaced with "significant".

Case Notes

Position of electrical subcode official not a professional service or extraordinary unspecifiable service when contracted to approved inspection agency; competitive bidding on contract necessary. Twp. of

Burlington v. Middle Department Inspection Agency, Inc., 175 N.J.Super. 624, 421 A.2d 616 (Law Div.1980).

5:23-5.12 Electrical inspector I.C.S. requirements

(a) A candidate for a license as an electrical 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 electrical subcode; or
 - ii. Experience as an electrical inspector; or
 - iii. Experience as a construction contractor in a field of construction currently regulated by the electrical 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 electrical 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 electrical subcode; or
4. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for a license as a electrical 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 electrical 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 electrical inspector I.C.S.; and
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)4ii.

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).

Architects or engineers added; "directly" replaced with "significant-ly".

5:23-5.13 Fire protection inspector H.H.S. requirements

(a) A candidate for a license as a fire protection 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 the fire service (other than as an apprentice or as a person in training), with fire prevention, fire protection or firefighting responsibilities; or
 - ii. Experience in construction, design or supervision as a journeyman in a skilled trade currently regulated by the fire protection subcode; or
 - iii. Experience as a construction contractor in a field of construction currently regulated by the fire protection subcode; 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 two years of subsequent experience in responsibilities regulated by the fire protection subcode and/or experience in the fire service with fire prevention, fire protection or firefighting responsibilities; or
3. Possession of an associate's degree from an accredited institution of higher education in code enforcement, fire science, or fire science technology, and three years of subsequent experience in responsibilities regulated by the fire protection subcode and/or experience in the fire service with fire prevention, fire protection or firefighting responsibilities; or
4. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for a license as a fire protection 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 fire protection inspector H.H.S.; provided, however, that persons having an associate's degree in code enforcement, fire science, or fire science technology, or a bachelor's degree in fire science, architecture or engineering, or in architectural, engineering or fire science technology, or in any other major area of study significantly related to building construction or fire science, or who possess a current New Jersey registration/license as an architect or engineer, shall be exempted from the educational program requirements for fire protection 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 fire protection inspector I.C.S. 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)5i.

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).

Architects and engineers added; "directly" replaced by "significantly".

5:23-5.14 Fire protection inspector I.C.S. requirements

(a) A candidate for a license as a fire protection 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 the fire service (other than as an apprentice or as a person in training) with fire prevention, fire protection, or firefighting responsibilities; or

ii. Experience in construction, design or supervision as a journeyman in a skilled trade currently regulated by the fire protection subcode; or

iii. Experience as a construction contractor in a field of construction currently regulated by the fire protection subcode; 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 one year of subsequent experience in responsibilities regulated by the fire protection subcode and/or experience in the fire service with fire prevention, fire protection or firefighting responsibilities; or

3. Possession of an associate's degree from an accredited institution of higher education in code enforcement, fire science, or fire science technology, and two years of subsequent experience in responsibilities regulated by the fire protection subcode and/or experience in the fire service with fire prevention, fire protection or firefighting responsibilities; or

4. Possession of a current New Jersey registration/license as an architect or engineer.

(b) A candidate for a license as a fire protection 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 fire protection inspector I.C.S.; provided,

however, that persons having an associate's degree in code enforcement, fire science or fire science technology, or a bachelor's degree in fire science, architecture or engineering, or in architectural, engineering or fire science technology, or in any other major area of study significantly related to building construction or fire science, or who possess a current New Jersey registration/license as an architect or engineer, shall be exempted from the educational program requirements for fire protection 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)5ii.

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).

Experience to be subsequent to degree; fire science added; architects and engineers added.

5:23-5.15 Fire protection inspector R.C.S. requirements

Issuance of the fire protection inspector R.C.S. license shall be discontinued after July 31, 1991. All licenses issued on or before that date shall cease to be valid after July 31, 1993.

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)5iii.

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.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.1992 d.272, effective July 6, 1992.

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

Text at (b) deleted.

5:23-5.16 Plumbing inspector H.H.S. requirements

(a) A candidate for a license as a plumbing 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 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 two years 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 three 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 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 plumbing 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 plumbing inspector H.H.S.

2. Successful completion of an examination as required by 5:23-5.23.

3. Possession of, or eligibility for, the plumbing inspector I.C.S. 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)6i.

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).

Architects and engineers added; "significantly" replaced "directly".

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, pursu-

ant 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 subcode;

(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 condem-

nations 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 two 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 two years. 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 of the appropriate type and specialty, upon a finding that the license has been issued, and that the applicant is entitled to such license to replace one that has been lost, destroyed, or mutilated. Payment of a fee as may be established by the Commissioner 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 Technical Services. One CEU equals 10 contact hours. CEU's will be awarded for technical and administrative licenses.

i. Inspector license only—1.0 CEU (technical);

ii. Inspector and subcode official licenses—1.5 CEU's (1.0 technical and 0.5 administrative);

iii. Inspector, subcode official and construction official licenses—2.0 CEU's (1.0 technical and 1.0 administrative).

2. If an individual adds an inspector license in a new subcode area to an existing license, the continuing education requirements for the new subcode area are calculated in proportion to the time remaining on the existing license.

i. If there is less than two years, but more than one year, remaining on the existing license, then the technical CEU requirements are 0.5 CEU's for the new subcode area.

ii. If there is one year or less remaining on the existing license, then there is no technical CEU requirement for renewal in the new subcode area.

3. If an individual adds administrative licenses to an existing license, the continuing education requirements are as follows:

i. For those adding both a subcode official and construction official license:

(1) If there is less than two years, but more than one year, remaining on the existing license, then the administrative CEU requirement is 0.5 CEU's for renewal of the new licenses.

(2) If there is one year or less remaining on the existing license, then there is no administrative CEU requirement for renewal of the new licenses.

ii. For those adding either a subcode official or a construction official license:

(1) If there is less than two years remaining on the existing license, then there is no administrative CEU requirement for renewal of the new license.

4. To maintain a mechanical inspector's license, 1.0 CEU (technical) shall be completed, as required by this section, in addition to any other CEU requirements for other licenses held.

(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 two 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 \$43.00 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 two 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 two 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.

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 \$43.00 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 \$22.00 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 two-year renewal application fee shall be \$43.00.

5. Persons who have become ineligible to retain their administrative license by reason of failure to remove the provisional status of such license within the prescribed two-year period must submit a non-refundable application fee of \$22.00 in order to reapply for said administrative license without recourse to any further provisional status privilege.

6. Registration and examination fees for the certification of construction code officials: The fee schedule shall be as submitted by the administrative agency of the examination program to the Department.

Amended by R.1983 d.548, effective December 5, 1983.

See: 15 N.J.R. 1406(a), 15 N.J.R. 2033(b).

In (a)1, added i-iii. In (a) 2 and 3, deleted old and added new text. In (a)4, increased fee from \$20.00 to \$30.00. Also added 5 and 6.

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

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

Was 5:23-5.12.

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

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

Recodified from 5.23.

Administrative Correction to (a)3.

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

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

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

In (a)1, fee increased from \$30.00 to \$40.00.

In (a)2, fee increased from \$10.00 to \$20.00.

In (a)4, fee increased from \$30.00 to \$40.00.

In (a)5, fee increased from \$10.00 to \$20.00.

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

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

Fee non-refundable; fee as charged to Department by administering agency.

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

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

Mechanical inspector added to (a)1i.

5:23-5.23 Examination requirements

(a) Examinations shall be held, at least twice annually, to establish eligibility for the following license specialties: building inspector R.C.S., building inspector I.C.S., building inspector H.H.S., electrical inspector I.C.S., electrical inspector H.H.S., fire protection inspector I.C.S., fire protection inspector H.H.S., plumbing inspector I.C.S., plumbing inspector H.H.S., elevator inspector H.H.S., and inplant inspector.

1. In instances where more than one license level within a given subcode area requires the successful completion of one or more examination modules, award of the higher level license specialty will be dependent upon successful completion of the educational program in accordance with N.J.A.C. 5:23-5.20 and the examination module(s) required for the lower level license, or possession of the applicable lower level license.

2. Applicants for licenses listed above shall demonstrate competence by successful completion of the relevant examination modules of the National Certification Program for Construction Code Inspector administered by the Educational Testing Service for the Department.

(b) Requirements for specific licenses are as follows:

1. Examination requirement for the building inspector R.C.S.:

i. Successful completion of examination module 1A—Building One and Two Family Dwelling.

2. Examination requirements for building inspector I.C.S.:

i. Successful completion of examination modules 1B—Building General and 4A—Mechanical One and Two Family Dwelling.

3. Examination requirements for building inspector H.H.S.:

i. Successful completion of examination module 1C—Building Plan Review.

4. Examination requirements for electrical inspector I.C.S.:

i. Successful completion of examination modules 2A—Electrical One and Two Family Dwelling and 2B—Electrical General.

5. Examination requirements for electrical inspector H.H.S.:

i. Successful completion of examination module 2C—Electrical Plan Review.

6. Examination requirements for fire protection inspector I.C.S.:

i. Successful completion of examination modules 3B—Fire Protection General and 4A—Mechanical One and Two Family.

7. Examination requirements for fire protection inspector H.H.S.:

i. Successful completion of examination module 3C—Fire Protection Plan Review.

8. Examination requirements for plumbing inspector I.C.S.:

i. Successful completion of examination modules 5A—Plumbing One and Two Family Dwelling and 5B—Plumbing General.

9. Examination requirements for plumbing inspector H.H.S.:

i. Successful completion of examination module 5C—Plumbing Plan Review.

10. Examination requirements for inplant inspector:

i. Successful completion of examination modules 1A—Building One and Two Family Dwelling, 2A—Electrical One and Two Family Dwelling, 4A—Mechanical One and Two Family Dwelling and 5A—Plumbing One and Two Family Dwelling.

11. Examination requirements for elevator inspector:

i. Successful completion of examination module 6B—Elevator General.

12. Examination requirements for mechanical licensure are:

i. Successful completion of the National Certification Test, 4A Mechanical, 1 and 2 family; and

ii. Successful completion of the National Certification Test, 4B Mechanical General.

(c) Rules concerning notice of examinations are:

1. Notice of examinations shall be given by announcements available from the Licensing Unit and at such other places as the Department may determine to be appropriate.

(d) Examinations shall be conducted in accordance with the rules and procedures established by the Educational Testing Service.

(e) After an examination has been completed and scored, applicants shall be notified of their final rating.

(f) The following records pertaining to every examination shall be preserved for a period of three years:

1. The resulting list of grades;

2. Such other records of information in the custody of the Department as may be pertinent.

Amended by R.1982 d.10, effective February 1, 1982.

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

(a) substantially amended.

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

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

Increased examinations from once to twice annually. Added the National Certification Program Construction Code Inspector Tests by E.T.S. Deleted old text in (i) concerning rules for the conduct of examinations and added present text. Revised (m) concerning the preservation of examination records by deleting description of tests and applicant test papers.

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

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

Substantially amended.

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

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

Was 5:23-5.9.

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

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

Recodified from 5.24 and deleted (f) and (g).

Administrative Correction to (a).

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

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

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

Exam modules 4A—Mechanical and 1 and 2 Family added to fire protection inspector ICS exam requirements.

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

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

Stylistic changes.

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

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

Stylistic changes.

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

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

Added (d)12.

5:23-5.24 Procedure for approving educational programs

(a) Any licensed institution of higher education may submit any credit or noncredit course for approval as a component of the educational programs required by N.J.A.C. 5:23-5.20 herein. The application should be in letter form, be submitted at least 60 days prior to the first class session of the course, and contain all the information specified herein.

(b) Each application should be submitted in the name of the institution by a person authorized to do so. It should contain the following minimum information:

1. The name of the course or program;

2. A description of the length of each session, the frequency of the sessions and the total number of sessions;

3. An outline showing the course or program content broken down by session. Any laboratory or practical work should be identified as such;

4. A description of any texts or materials to be used. The description should identify whether the text or materials will be mandatory or suggested;

5. A description of the institution's standard for faculty members who will be employed to instruct the course or program;

6. An estimate of the program's duration (that is, the number of times it will be offered);

7. A statement that the institution will notify the department if the program is withdrawn or changed at anytime;

8. A statement that the institution will conduct the course or program in accordance with N.J.A.C. 5:23-5.20 herein and will maintain such records as are therein required;

9. A statement of such charges as the institution has established for the course or program.

(c) The Department reserves the right to undertake such reviews as may be necessary to verify the accuracy of an application or conformity with these regulations. The institution, by submitting an application, expressly agrees to cooperate in such reviews.

(d) An institution may conduct a program which satisfies only a portion of the requirements established in N.J.A.C.

5:23-5.20 or may establish a series of courses designed to fulfill all the requirements for the educational program of that article.

(e) Upon verification that the program or course will satisfy some or all of the educational program requirements, the department will:

1. Issue a letter of approval to the institution which letter shall contain any terms or conditions of such approval;
2. Place the name of the institution and the course on the Department's list of approved courses. That list will be made available to the public.
 - i. Any approval shall be limited in that it is effective only as long as the course conforms to the application submitted and approved.

(f) Whenever a course or program has been approved by the department, the institution offering the course may include the statement "This course is approved for credit toward a license issued by the Department of Community Affairs pursuant to the State Uniform Construction Code Act" in any catalog, bulletin or informational circulars. Whenever such a statement is included, however, the catalog, bulletin or circular shall also contain a statement describing precisely the nature and extent of the approval.

(g) The Department may revoke its approval, after notice and the opportunity to be heard, whenever it ascertains that a course has lapsed or is no longer in conformity with the requirements of these regulations, and/or the terms of the department's approval. Whenever approval has been revoked or a course has been withdrawn by an institution, a new application and approval shall be required before the course may again be offered as providing credit toward a license.

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

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

Was 5:23-5.10.

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

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

Recodified from section 25.

Administrative Correction to (a), (b)8 and (d).

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

5:23-5.25 Revocation of licenses and alternative sanctions

(a) The Department may revoke a license, suspend a license for not more than 60 days and/or assess a civil penalty of not more than \$500.00, if the Department determines that the person involved:

1. Has violated the provisions of the Uniform Construction Code regulations;
2. Has obtained a license by fraud or misrepresentation, or the person named in the license has obtained it by fraud or misrepresentation;

3. Has aided or abetted in practice as a licensed code enforcement official any person not authorized to practice as a licensed code enforcement official under the provisions of these regulations;

4. Has fraudulently or deceitfully practiced as a licensed code enforcement official;

5. Has been grossly negligent or has engaged in misconduct in the performance of any of his duties;

6. Has failed, over a period of time, to maintain a minimally acceptable level of competence;

7. Has been found to have failed to report an offer or bribe or other favor in a proceeding under this act or other appropriate law of this or any other state or jurisdiction;

8. Has failed to comply with any order issued by the department;

9. Has made a false or misleading written statement, or has made a material omission in any submission to the department;

10. Has engaged in any conduct which demonstrates incompetency or dishonesty; or

11. Has failed to enforce the Uniform Construction Code Act or regulations.

(b) The Department, in addition or as an alternative, as the case may be, to revoking or suspending a license, or assessing a penalty, may issue a letter of warning, reprimand, or censure with regard to any conduct which, in the judgment of the Department, warrants a letter of warning, reprimand or censure. Such letters, in addition to any other filing of requirements, shall be made a part of the licensing file of the individual.

(c) Conviction of a crime, or conviction of an offense in connection with one's performance as a licensed code enforcement official or inspector, shall constitute grounds for revocation or suspension of a license.

(d) The Commissioner shall appoint review committees to advise the Department concerning the appropriateness of sanctions that the Department proposes to take against persons licensed under the respective subcodes who are alleged to have done any act or omission proscribed by (a) above. The Department shall provide necessary staff for the review committees.

1. Each review committee shall consist of three persons licensed and currently employed by municipalities as subcode officials in the subcode, at least two of whom shall also be licensed as construction officials and at least one of whom shall not be employed by any one enforcing agency for a total of more than 20 hours per week. The Commissioner shall give the State organizations of officials and inspectors in each subcode an opportunity to comment on persons proposed to serve as members of each review committee prior to their appointment.

2. Members of the review committees shall be appointed by the Commissioner and shall serve for terms of three years; except that, of those members first appointed, one shall serve for one year, one shall serve for two years, and one shall serve for three years. No person shall be a member of a review committee for more than two consecutive terms. The Commissioner shall also appoint two alternate members of each committee, who shall be persons licensed and currently employed by municipalities as subcode officials in the subcode. The Commissioner shall designate each alternate as either a first or a second alternate. Alternates shall serve for two years, except that, of the alternates first appointed to each review committee, one shall serve for two years and one shall serve for one year.

3. No review committee shall hear any case or issue any recommendation without three members, who may be either regular or alternate members, being present.

4. In any case in which the Department makes a preliminary finding that a licensee has done any act or omission proscribed under (a) above, it shall have the case reviewed by the appropriate review committee prior to the issuance of any order revoking or suspending the license or assessing a civil penalty.

5. The Department shall present whatever evidence it may have to the review committee. The licensee shall be given notice of the meeting of the review committee and may appear before the review committee to present his or her position, but there shall be no cross-examination of either the licensee or any representative of the Department. Nothing said by the licensee or by any other persons at the meeting of the review committee shall be used in any way, nor shall any member of a review committee be required to testify concerning proceedings before the review committee, in any subsequent proceeding.

6. The review committee shall submit its recommendations as to the sanctions, if any, that ought to be imposed, to the Assistant Director for Construction Code Enforcement within 20 business days following the meeting. No sanctions shall then be imposed without the express approval of the Assistant Director for Construction Code Enforcement. Failure of a review committee to submit a timely recommendation shall be deemed to be concurrence with the action proposed to be taken by the Department. Notice of the review committee's recommendation, or failure to issue a recommendation, shall be given to the licensee.

7. A meeting of the review committee shall not be deemed to be a hearing or an adversarial proceeding and the findings of the advisory committee shall be deemed to be only a recommendation that is not binding on the Department.

8. A licensee shall be entitled to contest any order imposing sanctions in an administrative hearing, pursuant

to N.J.A.C. 5:23-5.2, regardless of whether he or she has exercised the option of appearing before a review committee.

(e) If a mechanical inspector loses any licensure, through any circumstances, mechanical licensure shall be terminated at the same time, whether or not the loss of the other licensure is in any way related to the performance of mechanical inspection duties.

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

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

As amended, R.1981 d.134, effective April 10, 1981.

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

(b) added, and old (b) renumbered as (c).

As amended, R.1982 d.8, effective February 1, 1982.

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

Catchline: added "and alternative sanctions".

(a): added "or assess ... \$500.00"; (a)8-10 added.

(b): added "or assessing a penalty"; deleted "does not warrant ... suspension"; added "warrants ... censure"; deleted "of warning ... censure".

As amended, R.1982 d.436, effective December 20, 1982.

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

Added "of a crime, or conviction of an offense" and "shall constitute" to (c).

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

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

Added test in (a) "suspend a license for not more than 60 days and".

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

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

Was 5:23-5.11.

Amended by R.1986 d.173, effective May 19, 1986.

See: 18 N.J.R. 16(b), 18 N.J.R. 1099(b).

(a)10 added; old (a)10 renumbered (a)11. This amendment was proposed under the old citation 5:23-5.11.

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

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

This section recodified from section 26.

Amended by R.1992 d.68, effective February 3, 1992.

See: 23 N.J.R. 3441(a), 24 N.J.R. 406(a).

Text on review committees added at (d).

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

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

Stylistic changes.

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

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

Added (e).

Case Notes

Elevator inspector's misconduct warranted revocation of elevator subcode official and elevator inspection license. *Garcia v. Department of Community Affairs*, 94 N.J.A.R.2d (CAF) 63.

False information on applications for electrical inspector, fire protection inspector, plumbing inspector, and subcode official warranted revocation. *Department of Community Affairs v. Zieniuk*, 93 N.J.A.R.2d (CAF) 35.

Appearance of conflict of interest was ground for revocation of license of fire protection subcode official. *Wood v. Bureau of Regulatory Affairs*, 92 N.J.A.R.2d (CAF) 133.

Construction official who was convicted of theft by deception forfeited his licenses to practice under the Uniform Construction Code. *Bureau of Regulatory Affairs v. Gaipa*, 92 N.J.A.R.2d (CAF) 129.

Licenses of construction and fire protection subcode official of Class II municipality were revoked for violations of provisions of the New

Jersey Administrative Code. *Stankard v. Department of Community Affairs, Bureau of Regulatory Affairs*, 92 N.J.A.R.2d (CAF) 77.

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 assessor 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).

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 telephone 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 1/8". 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 responsibility shall be divided among subcode officials as follows:

i. Plan review with regard to compliance with BOCA, Chapter 11, Section 1108; CABO/ANSI A117.1, Section 4.17.2; Section 4.19; Section 4.20; and Section 4.15 shall be the joint responsibility of the building and plumbing subcode officials.

ii. Plan review with regard to compliance with CABO/ANSI A117.1, Section 4.25 shall be the responsibility of the plumbing, fire protection and electrical subcode officials.

iii. Plan review and inspection with regard to compliance with CABO/ANSI A117.1, Section 4.15.2; Section 4.15.3; Section 4.17.3; Section 4.17.4; Section 4.19.2; Section 4.19.4; Section 4.20.2; Section 4.20.4; Section 4.21.5; Section 4.22.5; Section 4.22.6; Section 4.33.3.2.2; Section 4.33.3.4.4; Section 4.33.4.3; Section 4.33.4.4.1; Section 4.44.4.4.3; Section 4.33.4.5.1; and Section 4.33.4.5.2 shall be the responsibility of the plumbing subcode official.

iv. Inspection with regard to compliance with CABO/ANSI A117.1, Section 4.17.2 and BOCA, Chapter 11, Section 1108.4 shall be the responsibility of the building subcode official.

v. Inspection with regard to compliance with BOCA, Chapter 11, Section 1108, as modified by vi below, shall be the responsibility of the plumbing subcode official.

vi. Inspection of all controls and operating mechanisms referred to in CABO/ANSI A117.1, Section 4.25 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.

vii. Enforcement of the remaining sections of this subchapter shall be the responsibility of the building subcode official.

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).

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., Bkrcty.D.N.J.1991, 133 B.R. 310.

5:23-7.2 Recreation

(a) All facilities, equipment, and sites or portions thereof, intended for outdoor, active or passive recreation shall meet all applicable requirements of this subchapter in addition to the provisions of N.J.A.C. 5:23-7.3 through 7.18. 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.

(b) Compliance with the provisions of this subchapter that relate to outdoor recreational equipment, facilities or sites shall be the responsibility of the manager of that recreational facility, of the owner of the facility, whether publicly or privately held, and of the agency responsible for the administration of that facility.

1. The facility manager and/or the facility owner or agency responsible for administration of the facility shall certify, in writing, that any work performed complies with all applicable provisions of this subchapter and shall retain this certification on file.

2. Complaints regarding lack of enforcement of these provisions shall be directed to the facility manager and the facility owner or agency responsible for administration of the facility. The facility manager shall respond within 30 days to any written complaint received detailing the position taken with respect to this complaint. If the facility manager fails to respond in a manner satisfactory to the party registering the complaint, then that party shall have recourse to the appeals process as set forth at N.J.A.C. 5:23-2.38 and 3.11.

3. Any alteration, renovation and/or addition to any existing recreational facility, the cost of which meets or exceeds the limit set forth in N.J.S.A. 40A:11-3, shall be performed in compliance with all applicable provisions of this subchapter. This limit shall apply to both privately- and publicly-owned recreational facilities. If it is feasible to achieve a greater degree of compliance with this subchapter with respect to the entire recreation area, then the facility manager may make alterations, renovations or additions in compliance with the applicable provisions of this subchapter to other facilities or equipment in lieu of the facility or equipment originally being altered, renovated and/or added.

i. Notwithstanding the above provisions, no alteration, renovation or addition shall be made which reduces or diminishes the degree to which any facility meets the criteria of this subchapter.

New Rule, R.1988 d.352, effective August 1, 1988.

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

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).

5:23-7.3 Recreation: definitions

"Park" or "recreation area" means an area set aside and designated for recreation, including either active participation, as in sports, or passive recreation, as in the observation of nature.

"Recreation equipment" means equipment and prescribed surrounding safety areas, including, but not limited to, fixed equipment, fixed manipulative play equipment (such as playground equipment), picnic tables, benches, fire places and grills, ski lifts, and aerial tramways.

"Recreation facility" means a facility, body of water, dock, court, field, location, or portion thereof, intended for active or passive recreation.

"Site access points" means entrances, waiting areas, drop-off zones, parking areas, and public transportation stops serving the recreational area or facility, except those used solely for maintenance purposes.

"Support facility" means a facility ancillary to a recreation facility including, but not limited to, toilet facilities, food services, information services, first aid stations, drinking fountains, telephones, spectator seating and shelters. Facilities primarily housing mechanical equipment or those exclusively used for storage are not included in this definition.

"Undeveloped areas" means wilderness areas used for activities such as camping, hunting, fishing or the observation of nature or open space conservation areas.

New Rule, R.1988 d.352, effective August 1, 1988.

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

5:23-7.4 Recreation: exceptions

These recreation requirements do not apply to undeveloped areas as defined in N.J.A.C. 5:23-7.3. These requirements also shall not apply to facilities, equipment or sites which are associated with buildings exempted by N.J.A.C. 5:23-7.1(b)1, 2 or 3.

New Rule, R.1988 d.352, effective August 1, 1988.

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

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).

5:23-7.5 Recreation: route of travel

There shall be an accessible route of travel connecting the following elements: at least 25 percent, but not less than one, of each type of support facility provided, at least one site access point and those recreation facilities and recreation equipment required to be accessible.

New Rule, R.1988 d.352, effective August 1, 1988.

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

5:23-7.6 Recreation: pools

(a) At least one pool of each type provided in each distinct area on a site, intended for swimming, soaking, wading, or diving, exclusive of those intended for ornamental, decorative, or mechanical purposes, must adjoin an accessible route of travel. The interior of swimming pools, defined as pools with a depth ranging between 24 inches and 13 feet, and the interior of soaking pools, shall be made accessible by one of the methods detailed in (a)1 through 3 below. Wading pools, defined as pools with a maximum depth of less than 24 inches, and diving pools, defined as pools or tanks whose minimum depth is over 13 feet, are excluded from this interior access requirement.

1. A vertical lift meeting the following criteria and as shown in Figure 7.6a:

i. Designed by its manufacturer for independent operation by the user;

ii. Equipped with a chair designed for independent transfer from a wheelchair. The chair shall have a rigid seat with a depth of at least 15 inches and shall have a rigid back support at least 15 inches high;

(1) As an alternative to (a)1ii above, a pool may be equipped with a moving platform meeting the criteria of CABO/ANSI A117.1, Section 4.11. A wheelchair shall be provided to the user if this option is used.

iii. Adjoining a clear level floor area meeting the criteria of CABO/ANSI A117.1, Section 4.3 whose minimum dimensions are five feet by five feet;

iv. Having controls which meet the criteria of CABO/ANSI A117.1, Section 4.25; and

v. Located to meet the criteria of Figure 7.6a.

2. Interior/exterior steps meeting the criteria of Figure 7.6b:

Figure 7.6a
Pool Entry

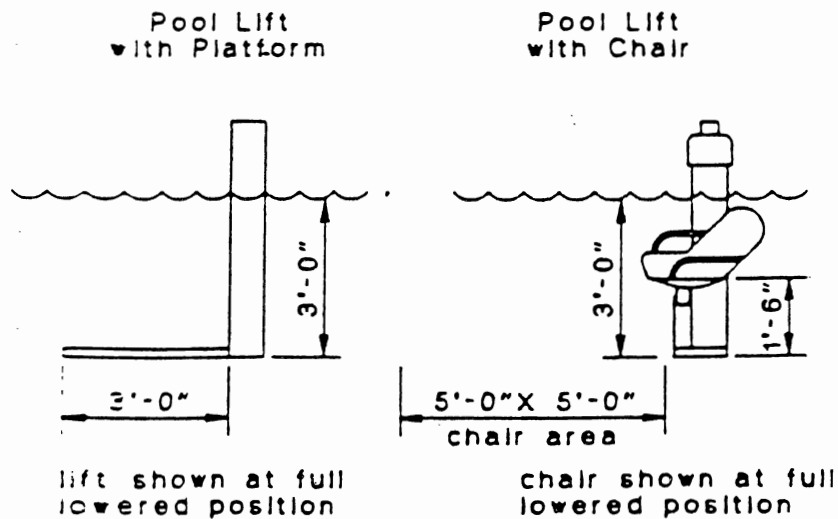
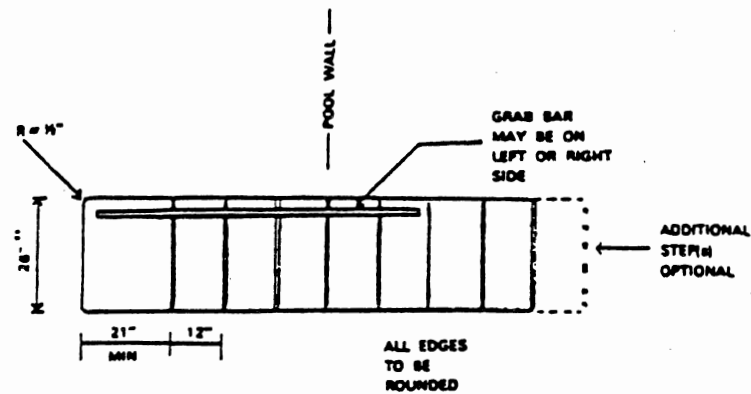
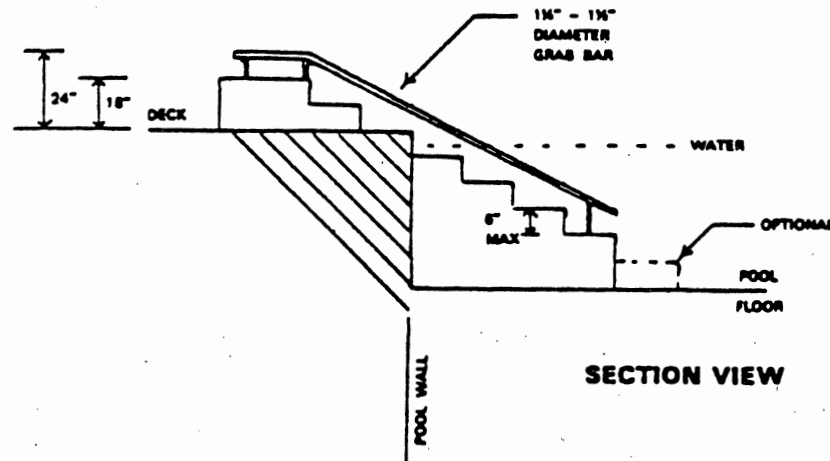


Figure 7.6b



PLAN VIEW



SECTION VIEW

i. The edge of the steps shall be white, orange, yellow or some other color which contrasts with the color of the pool for the safety of the visually impaired.

3. A ramp meeting the criteria of Figure 7.6c.

i. A wheelchair shall be provided to the user if this option is used.

ii. The edge of the ramp shall be white, orange, yellow or some other color which contrasts with the color of the pool for the safety of the visually impaired.

Figure 7.6c
Ramp Into Water



Maximum ramp slope 1:12.
Provide no handrails but provide curbs.
Maximum ramp run 30'-0", use
additional ramp runs with 5'-0" level
platforms between, as necessary.
In pools, assure no access under ramp.

New Rule, R.1988 d.352, effective August 1, 1988.

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

Amended by R.1988 d.503, effective November 7, 1988.

See: 20 N.J.R. 1764(b), 20 N.J.R. 2754(a).

Added (a)2i and (a)3ii: also amended Figure 7.104b.

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).

5:23-7.7 Recreation: swimming and skating areas

(a) At each designated swimming and/or skating area at natural or man-made bodies of water, there shall be an accessible route of travel connecting at least one point at the water's edge, defined as the mean high water mark.

1. At designated swimming and/or skating areas, the provision of access as described in (a) above at one location per site shall be deemed as satisfying the requirements of this section.

(b) Where swimming is provided, there shall be a ramp leading into the water to a depth of three feet. The ramp shall meet the criteria of CABO/ANSI A117.1, Section 4.8 and of Figure 7.6c except that handrails shall not be provided. Visual markings for the underwater portion of the ramp, such as floats or flags, shall be provided to define the side edges. Alternately, means of access to a minimum water depth of three feet may be achieved by other methodologies, as specified in N.J.A.C. 5:23-7.6. This provision shall not apply in those ocean front areas where wave action would render the provision of a ramp impractical from an engineering standpoint.

New Rule, R.1988 d.352, effective August 1, 1988.
See: 19 N.J.R. 1270(a), 20 N.J.R. 1873(b).
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).

5:23-7.8 Recreation: boating areas

(a) Each boating area with docking facilities shall have one accessible mooring space.

(b) Each accessible mooring space shall adjoin an accessible route of travel and shall have a minimum clear space of five feet by five feet to allow transfer to the boat. Additionally, each accessible mooring space shall be a maximum of 36 inches above the mean water level in non-tidal areas.

New Rule, R.1988 d.352, effective August 1, 1988.
See: 19 N.J.R. 1270(a), 20 N.J.R. 1873(b).

5:23-7.9 Recreation: fishing areas

If docks are provided in a fishing area, the criteria of N.J.A.C. 5:23-7.8 shall apply.

New Rule, R.1988 d.352, effective August 1, 1988.
See: 19 N.J.R. 1270(a), 20 N.J.R. 1873(b).
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).

5:23-7.10 Recreation: court games

(a) The surface of the court must adjoin an accessible route of travel. Entrances to courts required to be accessible shall meet criteria of CABO/ANSI A117.1, Section 4.13. On sites with more than one court, at least one of each type of court in each distinct area at a site shall adjoin an accessible route of travel. Where there is a main or center court, this court shall be included as one of those on an accessible route of travel. Additionally, all permanent spectator viewing areas seating 50 or more persons shall be on an accessible route of travel.

(b) Court surfaces shall meet the criteria of CABO/ANSI A117.1, Section 4.3, except in those instances where the recognized rules of the particular game dictate another surface.

New Rule, R.1988 d.352, effective August 1, 1988.
See: 19 N.J.R. 1270(a), 20 N.J.R. 1873(b).
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).

5:23-7.11 Recreation: ice rinks and roller rinks

The surface of at least one of each type of rink provided in each distinct area on a site shall adjoin an accessible route of travel.

New Rule, R.1988 d.352, effective August 1, 1988.
See: 19 N.J.R. 1270(a), 20 N.J.R. 1873(b).

5:23-7.12 Recreation: playing fields

There shall be an accessible route of travel to at least one of each type of playing field provided in each distinct area on a site. For an overlay field, an accessible route of travel to the primary field shall fulfill the requirements of this section. For a complex of playing fields in a single area, an accessible route of travel to the area shall fulfill the requirements of this section. Additionally, all permanent spectator viewing areas seating 50 or more persons shall be on an accessible route of travel.

New Rule, R.1988 d.352, effective August 1, 1988.
See: 19 N.J.R. 1270(a), 20 N.J.R. 1873(b).

5:23-7.13 Recreation: golf facilities

(a) For golf facilities, there shall be an accessible route of travel to the area where the transfer to golf carts is made.

(b) Bridges, if provided, shall either be designed for use by golf carts or shall meet the criteria of CABO/ANSI A117.1, Section 4.8.

(c) Where curbs are provided at points where courses cross thoroughfares, ramps or curb ramps meeting the criteria of CABO/ANSI A117.1, Section 4.8 shall be provided.

New Rule, R.1988 d.352, effective August 1, 1988.
See: 19 N.J.R. 1270(a), 20 N.J.R. 1873(b).
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).

5:23-7.14 Recreation: ski lifts, aerial tramways, and conveyors

(a) In areas where ski lifts or other comparable mechanisms for skiing are provided, there shall be an accessible route of travel connecting site access point(s) and support facilities required to be accessible with the area where the transfer to skis is made.

(b) In areas where aerial tramways, conveyors or other comparable mechanisms for sightseeing are provided, there

shall be an accessible route of travel connecting site access point(s) and support facilities required to be accessible and the moving seat, car or platform of the aerial tramways, conveyors, or comparable mechanisms. A five feet by five feet clear, level area meeting the criteria of CABO/ANSI A117.1, Section 4.3 shall be provided immediately adjacent to the upper, lower, and any intermediate terminals of such mechanisms to facilitate transfer from a wheelchair to the seat, car, or platform. If seats are involved, they shall be at a height of 16 inches to 18 inches above the clear, level area.

(c) There shall be a control immediately available to the operator of the ski lift, aerial tramway or conveyor to stop and restart the mechanism to allow the transfer of a disabled person on and off.

(d) The requirements of this section shall not apply to moving sidewalks or other horizontal conveyors guided by a track or tracks.

New Rule, R.1988 d.352, effective August 1, 1988.

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

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).

5:23-7.15 Recreation: trails

(a) Trails through undeveloped areas are exempted from the requirements of this subchapter.

(b) All other trails shall meet the criteria of CABO/ANSI A117.1, Section 4.3.

1. Signs, where provided, shall meet the criteria of CABO/ANSI A117.1, Section 4.28.

New Rule, R.1988 d.352, effective August 1, 1988.

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

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).

5:23-7.16 Recreation: camping sites

(a) In camping areas in other than undeveloped areas, at least four percent (rounded off to the next higher whole number) of camp sites shall meet the following criteria:

1. There shall be an accessible route of travel connecting these accessible camp sites with site access point(s) and support facilities required to be accessible;

2. Sites and signs leading to such sites shall be marked with the International Symbol of Accessibility displayed as specified in CABO/ANSI A117.1, Section 4.28;

3. Where tent platforms are provided, each of those required to be accessible shall be equipped with a ramp meeting the criteria of CABO/ANSI A117.1, Section 4.8;

4. The accessible camp sites shall be distributed throughout the camping area to the degree feasible as determined by the topography of the area.

New Rule, R.1988 d.352, effective August 1, 1988.

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

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).

5:23-7.17 Recreation: equipment

(a) There shall be an accessible route of travel connecting site access point(s) required to be accessible, recreation facilities required to be accessible, support facilities required to be accessible, and each piece of recreation equipment required to be accessible as delineated below.

(b) Four percent of all picnic tables, benches, fireplaces and grills provided, rounded to the next higher whole number, but not less than one, shall be on an accessible route of travel.

1. Such equipment shall be distributed throughout the picnic area to the degree feasible as determined by the topography of the area.

(c) At least 25 percent of all fixed manipulative play equipment within each play area on a site shall be of a type identified by the manufacturer as usable by both disabled and non-disabled persons and shall be on an accessible route of travel.

1. For each piece of recreation equipment required to be accessible whose manufacturer specifies a surrounding, resilient safety area, providing access to that safety area shall constitute compliance with the requirements of this section.

i. Sand or pea gravel shall not be used within resilient safety areas associated with equipment required to be accessible.

2. As existing playground equipment is replaced in any play area which is on an accessible route of travel, at least 50 percent of the replacement equipment shall be of a type identified by the manufacturer as usable by both disabled and non-disabled persons until the percentage as specified in (c) above is met.

New Rule, R.1988 d.352, effective August 1, 1988.

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

5:23-7.18 Recreation: equestrian facilities

At the area normally used for mounting at each recreational equestrian facility, a mounting platform for people with disabilities shall be provided. The top of the platform shall be at a height 32 inches above the surface upon which the horse stands. The mounting platform shall have a minimum dimension of five feet long and three feet wide. Any ramp necessary to provide access to the mounting platform shall meet the criteria of CABO/ANSI A117.1, Section 4.8, except that a maximum slope of 1:9 shall be allowed.

New Rule, R.1988 d.352, effective August 1, 1988.

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

Amended by R.1988 d.503, effective November 7, 1988.

See: 20 N.J.R. 1764(b), 20 N.J.R. 2754(a).

Platform height changed from 42 inches to 32 inches.

Administrative Correction.

See: 22 N.J.R. 1355(b).

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).

SUBCHAPTER 8. ASBESTOS HAZARD ABATEMENT SUBCODE

Cross References

Child care center physical plant requirements, see N.J.A.C. 10:122-5.2.

5:23-8.1 Title; scope; intent

(a) This part of the regulations, adopted pursuant to P.L. 1975, c.217, the Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and entitled Asbestos Hazard Abatement Subcode shall be known and may be cited throughout the regulations as N.J.A.C. 5:23-8 and when referred to in this subchapter, may be cited as "this subchapter."

1. In addition, the New Jersey Departments of Health and Labor have jointly adopted regulations pursuant to P.L. 1984, c.217, the Asbestos Control and Licensing Act (N.J.S.A. 34:5A-32 et seq.) and are cited as N.J.A.C. 8:60, and N.J.A.C. 12:120, respectively. These regulations provide for: a standardized training course for all asbestos workers; licensing of asbestos abatement contractors; and issuing asbestos worker performance permits for asbestos abatement workers.

i. Copies of N.J.A.C. 12:120 may be obtained from the New Jersey Department of Labor, Division of Workplace Standards, Asbestos Control and Licensing, CN 054, Trenton, New Jersey 08625-0054. These rules provide that any asbestos abatement project, excluding an operations and maintenance activity, must be conducted by a licensed contractor pursuant to the referenced rules, including projects involving buildings and structures which are not within the scope of this subchapter.

2. The New Jersey Department of Environmental Protection and Energy has authority to enforce regulations regarding the transport and disposal of asbestos-containing materials pursuant to N.J.S.A. 13:1D-9 and 13:1E-1 et seq. These rules are cited as N.J.A.C. 7:26.

i. Copies of N.J.A.C. 7:26 may be obtained from the New Jersey Department of Environmental Protection and Energy, Division of Solid Waste Management, 840 Bear Tavern Road, CN 414, Trenton, New Jersey 08625.

3. All samples collected and submitted for analysis for asbestos pursuant to this subchapter shall be analyzed for asbestos in accordance with N.J.A.C. 5:23-8.21.

(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, which pertains to educational facilities and public buildings as defined in N.J.A.C. 5:23-8.2, shall control matters relating to: construction permits for asbestos abatement; fees; licenses; certification; work permits; reports required; documentation; inspections by the asbestos safety technician; air monitoring; enforcement responsibilities; and remedies and enforcement. This subchapter controls the abatement of asbestos from a building. A construction permit for renovation or demolition shall be required pursuant to N.J.A.C. 5:23-2 for any other work performed subsequent to the asbestos abatement project.

1. Any private building that houses a day care center, nursery or educational facility shall be subject to this subchapter when an asbestos hazard abatement project takes place within the building or any part of the building regardless of the remoteness of the facility or its size relative to the building. An asbestos hazard abatement project shall have a construction permit from the enforcing agency.

2. All common areas in a building, or part thereof, leased by a public entity, such as, but not limited to, building entrances and lobbies, rest rooms, cafeterias, hallways, stairwells, and elevators where public employees may normally traverse and all areas with mechanical equipment that serve the areas occupied by the public employees, shall be subject to this subchapter when an asbestos hazard abatement project takes place within the building or any part of the building.

3. This subchapter shall apply to exterior portions of buildings, such as: exterior hallways connecting buildings; porticos; mechanical system insulation; cooling towers; and steam or other service tunnels serving or connecting buildings. These exterior spaces are to be considered, for the purposes of obtaining a construction permit pursuant to this subchapter, a single homogeneous area for purposes of abatement project design.

4. Projects involving the removal of non-friable, miscellaneous asbestos-containing material from interior spaces shall be subject to this subchapter where the method chosen to remove the non-friable material may cause the building environment to become contaminated with airborne asbestos fibers. Removal shall be in accordance with N.J.A.C. 5:23-8.20.

(d) Until further action is taken, this subchapter remains advisory for all other buildings and structures in the State.

(e) This subchapter seeks to provide and ensure public safety, health, and welfare insofar as they are affected by asbestos and asbestos-containing materials. It is not intended to, nor shall it be construed to, conflict with or impede the operation of the asbestos work standards issued by the

Occupational Safety and Health Administration, 29 CFR Section 1910.1001 et seq., 29 CFR Section 1926.58 and N.J.A.C. 12:100-12, the Asbestos Subchapter of the New Jersey Safety and Health Standards for Public Employees. The purpose of this subchapter is to assure that work is performed in a safe manner as a pre-condition to the issuance of a certificate of occupancy.

1. It is the purpose of this subchapter to establish standards and procedures to ensure that all State laws and regulations applicable to asbestos hazard abatement work are actually adhered to wherever work takes place.

2. Asbestos has been a pervasive construction material which in many of its forms poses no significant health risk. These standards and procedures need not be applied to all work involving asbestos-containing materials but only those which pose serious health hazards to the public.

3. Asbestos that is, or that can readily become, friable was a widely used construction material. Its removal, replacement, repair, enclosure or encapsulation shall be considered construction work and shall therefore require a construction permit issued pursuant to the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.). Asbestos and asbestos-containing materials were, in many cases, used in order to satisfy important code requirements pertaining to fire safety. Accordingly, where asbestos was used originally to satisfy fire code requirements, it shall not be removed unless it is replaced, as part of the project, with material or assembly which has equivalent fire resistive or heat resistive characteristics. Additionally, any encapsulation materials or methods shall conform to the construction requirements of the Uniform Construction Code.

Amended by R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Deleted text in (c) "administrative authority having jurisdiction" and substituted "asbestos safety technician;"

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).

Revised section with stylistic changes.

In (a)1ii: added language regarding asbestos abatement projects. Added new (a)3.

In (c): added language clarifying subchapter's scope. Added new (c)3 and (c)4.

Amended by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Case Notes

New Jersey asbestos rules preempted by Occupational Safety & Health Act (OSHA) to the extent that they addressed issue of education and training in the workplace; balance of N.J. asbestos program was unenforceable because preempted provisions were not severable from remaining provisions, and because OSHA considered and rejected testing, certification, license and permit requirements similar to New Jersey's program. *New Jersey State Chamber of Commerce v. State of New Jersey*, 653 F.Supp. 1453 (D.N.J.1987).

5:23-8.2 Definitions

The following words, terms and abbreviations when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.

"Airlock" means a serial arrangement of rooms whose doors are spaced a minimum of four feet apart so as to permit ingress or egress through one room without interfering with the next and constructed in such a manner as to prevent or restrict the free flow of air in either direction.

"Air pressure differential" means air pressure lower than surrounding areas, generally caused by exhausting air from a sealed space (work area).

"Amended water" means water to which a surfactant has been added.

"Asbestos" means a general term used to describe a group of naturally occurring hydrated mineral silicates. The asbestiform varieties include chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite and actinolite.

"Asbestos-containing material" means any material which contains more than one percent asbestos by weight.

"Asbestos hazard abatement project" means the removal, enclosure, or encapsulation of more than 25 square feet of asbestos-containing material used on any equipment or surface area such as wall, or ceiling area; or the removal or encapsulation of more than 10 linear feet of asbestos-containing material on covered piping.

"Asbestos Safety Control Monitor" means a business entity authorized pursuant to N.J.A.C. 5:23-8 to ensure compliance with the Asbestos Hazard Abatement Subcode.

"Asbestos Safety Technician" means a person certified by the New Jersey Department of Community Affairs, hired by the asbestos safety control monitor who continuously monitors and inspects the asbestos abatement work pursuant to this subchapter. This person shall be required to be on the job site during the time the asbestos abatement work is taking place and perform all duties and responsibilities established by these regulations.

"Authorized personnel" means the owner, the owner's representative, asbestos abatement contractor personnel, asbestos safety control monitor personnel, emergency personnel, or a representative of any Federal, state, or local regulatory agency or other personnel under contract for or having jurisdiction over the project.

"Certificate of Completion" shall mean the certificate issued by the asbestos safety control monitor signifying that the asbestos hazard abatement work has been completed in conformance with N.J.A.C. 5:23-8.

"Construction permit for asbestos abatement" means required official approval to commence any asbestos hazard abatement project. This permit is issued by the enforcing agency.

"Contractor" means the Asbestos Removal Contractor licensed by the New Jersey Department of Labor.

"County facility" means all buildings and structures, or parts thereof, which are under the ownership or control of a county. This includes, but is not limited to, administration offices, court houses, sheriff offices, welfare offices, maintenance facilities and garages.

"Critical barrier" means two layers of nominal six mil polyethylene sheeting that completely seals off the work area to prevent the distribution of fibers to the surrounding area, such as the opening between the top of a wall and the underside of ceiling construction, electrical outlets, nonremovable lights, HVAC systems, windows, doorways, entranceways, ducts, grilles, grates, diffusers, wall clocks, speaker grilles, floor drains, sink drains, etc.

"Decontamination unit" means serial arrangement of rooms or spaces for the purpose of separating the work area from the building environment upon entering the work area and for the cleaning of persons, equipment, and contained waste prior to returning to the clean environment.

"Demolition" means the actual destruction and removal of a building, or part of a building, without intent to renovate, repair, or replace.

"Educational facility" means all buildings and structures, or parts thereof, (both public and private) which are under the ownership or control of an educational institution and which are used for student residences, educational purposes or learning experiences, dining facilities, libraries, or support facilities. Educational institutions include schools, colleges, universities, academies, child day care centers and nurseries.

"Employee" means an asbestos abatement worker having a valid work permit, issued by the New Jersey Department of Labor and employed by the contractor.

"Encapsulation" means the treatment of asbestos-containing materials with a material that surrounds or embeds asbestos fibers in an adhesive matrix to prevent the release of fibers, as the encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

"Enclosure" means the construction of an airtight, impermeable, permanent barrier around asbestos-containing material to control the release of asbestos fibers into the air.

"Engineering controls" means all methods used to maintain low fiber counts in work areas and occupied spaces, including, but not limited to, air management, barriers to ensure public safety, and methods to confine airborne asbestos fibers to the work area.

"EPA" means the United States Environmental Protection Agency.

"Flame-resistant polyethylene sheet" means a single polyethylene film in the largest sheet size possible to minimize seams, nominal six mil thick, conforming to requirements set forth by the National Fire Protection Association Standard 701, Small Scale Fire Test for Flame-Resistant Textiles and Films.

"Friable" means any material applied to ceilings, walls, piping, duct work, etc., which when dry may be crumbled, pulverized, or reduced to a powder by hand pressure.

"Glove bag" means a polyethylene bag or other techniques or work practices approved by Department especially designed to enclose sections of equipment for the purpose of removing asbestos-containing material without releasing fibers into the air.

"Glovebag work area enclosure" means the enclosure that defines the work area for glovebag activity.

"HEPA" means High Efficiency Particulate Air filter, capable of filter efficiency of 99.97 percent down to 0.3 um (microns).

"Local education agency" means any local educational agency as defined in Section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381); the owner of any nonpublic, nonprofit elementary, or secondary school building; or the governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

"Miscellaneous asbestos-containing material" means interior building material on structural components, structural members or fixtures such as vinyl asbestos flooring, ceiling tiles, transite and asbestos cement board, and fire-resistant gaskets and seals but does not include surfacing material or thermal system insulation.

"Municipal facility" means all buildings and structures, or parts thereof, which are under the ownership or control of a municipality. This includes, but is not limited to, city halls, police stations, fire houses, welfare offices, maintenance facilities, and garages.

"NESHAP" means the National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61).

"NIOSH" means the National Institute for Occupational Safety and Health.

"Non-friable" means material which when dry may not be crumbled, pulverized, or reduced to powder by hand pressure.

"Occupied building" means a building or structure where occupancy is permitted in certain areas outside of the required containment during an asbestos hazard abatement project.

"Operations and maintenance activity" means corrective action not intended as asbestos abatement. The amount of friable asbestos-containing material that can be abated per year per project is 25 square feet or less or, if on covered piping, 10 linear feet or less.

"PCM" means Phase Contrast Microscopy.

"Polyethylene sheet" means a single nominal six mil thick polyethylene film.

"Privately owned buildings containing educational facilities" means all buildings and structures, or parts thereof, which are under the ownership or control of private parties, and which are used for educational purposes or learning experiences. Educational facilities include child day care centers, nurseries, laboratories, and schools.

"Public building" means any building or structure or part thereof, owned, leased or managed by the State or any of its departments, divisions, bureaus, boards, councils, authorities, or other agencies; or by any county, municipality, or any agency or instrumentality thereof.

"Removal" means the taking out or the stripping of asbestos-containing material from a building or structure.

"Repair" means returning damaged asbestos-containing material to an undamaged condition or to an intact state using recommended work practices so as to prevent the likelihood of fiber release.

"Sealant" means a liquid or solution to be used as a binding agent, such as a diluted encapsulant or a water based paint, on dried exposed surfaces from which asbestos containing material has been removed. The color of the coat shall be separate and distinct from the underlying substrate.

"Separation barrier" means a wall constructed to isolate the clean area from the work area and to support the polyethylene sheets.

"State facility" means all buildings and structures, or parts thereof, which are owned, managed or leased by the State of New Jersey.

"Strippable coating" means a water-based latex material, which is either available in aerosol cans or pre-mixed for spray application, formulated to adhere to surfaces and to be removed cleanly by peeling off at the completion of the abatement project.

"Surfacing asbestos-containing material" means material in a building that is sprayed-on, troweled-on, or otherwise applied to surfaces, such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing or other purposes.

"TEM" means Transmission Electron Microscopy.

"Thermal system insulation" means material in a building applied to pipes, fittings, boilers, breeching, tanks, ducts, or other interior structural components to prevent heat loss or gain, or water condensation, or for other purposes.

"um" means microns, or micrometers.

"Water column (w.c.)" means a unit of measurement for pressure differential.

"Wet cleaning" means the process of eliminating asbestos contamination from building surfaces and objects by using cloths, mops, or other cleaning utensils which have been dampened with amended water or a removal encapsulant and afterwards thoroughly decontaminated or disposed of as asbestos contaminated waste.

"Work area" means the area where asbestos related work or removal operations are performed which is defined and/or isolated to prevent the spread of asbestos dust, fibers or debris, and entry by unauthorized personnel.

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.1987 d.525, effective December 21, 1987.
See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Added definitions and deleted "negative pressure".

Amended by R.1989 d.342, effective July 3, 1989.
See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

In "Asbestos" definition, added: "anthophyllite; tremolite and actinolite."

Changed stylistically definitions of: "Construction permit for asbestos abatement"; "Engineering controls"; "Large asbestos hazard abatement project"; "Minor asbestos hazard abatement project"; and "Small asbestos hazard abatement project".

In "Encapsulation": Added new definition, deleting prior language.

In "Enclosure": Added new definition, deleting prior language.

Added new definitions for: EPA; Local education agency; Miscellaneous asbestos-containing material; Non-friable; PCM; Public building; Removal; Repair; Surfacing asbestos-containing material; TEM and Thermal system insulation.

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

5:23-8.3 Enforcement; licensing; special technical services

(a) Except as is otherwise provided in (b)1 below, the provisions of this subchapter shall be enforced by municipal enforcing agencies utilizing asbestos safety control monitors or by the New Jersey Department of Community Affairs, hereafter cited as the Department, if applicable, and shall be administered and enforced uniformly throughout the State. This subchapter shall be in addition to existing regulations already adopted pursuant to the Uniform Construction Code Act (P.L.1975, c.217 as amended) and known as the Regulations for the Uniform Construction Code (N.J.A.C. 5:23). This subchapter contains administrative procedures for the inspection of asbestos abatement work involving removal, encapsulation, enclosure, repair, renovation, or demolition work which disturbs asbestos.

1. Rules concerning exceptions are as follows:

i. State-owned, State-managed or State-leased buildings: The Department utilizing asbestos safety control monitors shall be the sole enforcing agency to administer and enforce the Asbestos Hazard Abatement Subcode with respect to State-owned, State-leased or State-managed buildings.

(b) The joint regulations adopted by the New Jersey Departments of Health and Labor, which are cited as N.J.A.C. 8:60 and N.J.A.C. 12:120, respectively, provide the licensing requirements of contractors who perform any of the functions of application, enclosure, removal or encapsulation.

1. Rules concerning licenses are as follows:

i. A licensed contractor shall be required for an asbestos hazard abatement project.

ii. A licensed contractor shall not be required for an operations and maintenance activity.

2. Nothing herein shall be construed as limiting the ability of the Department of Labor to cite contractors for violations of the provisions of this subchapter.

(c) Whenever the Asbestos Safety Control Monitor determines that the need for interpretations and/or assistance exists with regard to a particular project, the asbestos safety control monitor shall contact the department who shall make such determination deemed necessary. Such may include, but not be limited to:

1. Plan and specification services;
2. Site investigation;
3. Site inspections.

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.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Added State-leased.

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 8.3 as new 8.4 with minor stylistic changes. Section 8.4 was formerly "Minor asbestos hazard abatement job."

In (b)1i and ii: changed "job" to "project".

Recodified from 5:23-8.4 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, "Pre-project procedures," recodified as 5:23-8.13.

Case Notes

Evidence was sufficient to find failure to comply with New Jersey asbestos containment procedures. N.J.S.A. 52:27D139. McLaughlin v. Bureau of Code Services, 91 N.J.A.R.2d (CAF) 11.

5:23-8.4 Variations

(a) No variations from the requirements of this subchapter shall be made except upon written approval from the

enforcing agency. The application for a variation shall be filed by the owner or his agent and forwarded to the enforcing agency with the recommendation of the asbestos safety control monitor. Any variation shall be consistent with N.J.A.C. 5:23-2.

(b) An application for a variation pursuant to this section shall be filed in writing with the enforcing agency and shall include specifically:

1. A statement of the requirements of this subchapter 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;

4. A statement of feasible alternatives to the requirements of this subchapter which would adequately protect the health, safety and welfare of the occupants or intended occupants and the public generally and which would adequately prevent contamination of the environment. Plans describing any relevant aspects of the variation requested, as pertaining to the layout of the work area, work procedures, exit requirements, or safety, shall be submitted with the statement of feasibility; and

5. The appropriate fee.

(c) When the Department is the enforcing agency, the fee for an application for a variation from this subchapter shall be \$467.00 and shall be paid by check or money order payable to the "Treasurer, State of New Jersey."

(d) The validity of an approved variation shall be determined as follows:

1. Any approved variation shall become invalid if the authorized work is not commenced within 12 months after the approval of the variation, or if the authorized work is suspended or abandoned for a period of 12 months after the time of commencing the work.

Amended by R.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(b), 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 8.5 as new 8.6. Section 8.6 was formerly "Construction permit for asbestos abatement".

In (a): changed "approval" to "recommendation regarding the asbestos safety control monitor firm".

In (a)1: deleted "and Health and New Jersey Department of Higher Education" from text, and added (a)1i.

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)1i, increased fee from \$325.00 to \$432.00.

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

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

Fee increased at (a)1i.

Recodified from 5:23-8.6 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, "Enforcement; licensing; special technical services," recodified as 5:23-8.3.
 Administrative Correction.
 See: 25 N.J.R. 2862(a).

5:23-8.5 Construction permit for asbestos abatement

(a) It shall be unlawful to undertake an asbestos hazard abatement project unless the owner of the facility, or an authorized representative on behalf of the owner, first files an application in writing with the enforcing agency and obtains the required permit. This permit shall serve as notice for public record in the office of the enforcing agency. All work shall be monitored and controlled by the asbestos safety control monitor who will advise the enforcing agency of its findings.

1. The enclosure of any amount of asbestos-containing material used to cover pipes shall not require a permit for asbestos abatement pursuant to this subchapter, but it may be considered construction work.

2. A construction permit shall be obtained when required by the enforcing agency pursuant to N.J.A.C. 5:23-2.

(b) All asbestos abatement work shall be conducted in unoccupied buildings, unless a written statement signed by the asbestos safety control monitor denoting portions of the building that may be occupied is filed as required by N.J.A.C. 5:23-8.19(c)8.

1. The asbestos safety control monitor shall not be required to file such a written statement denoting the occupancy of the building by maintenance personnel who are properly trained and/or security personnel essential to the building operation.

2. The asbestos safety control monitor shall not be required to file such written statement denoting occupied portions of the building for a cleared area in a multi-phase project that has received a Temporary Certificate of Occupancy from the enforcing agency when such occupancy applies to contractors or related personnel involved with post-abatement activity.

(c) The Department or a municipality utilizing an asbestos safety control monitor which has been authorized by the Department to enforce the Asbestos Hazard Abatement Subcode within its jurisdiction shall be the sole enforcing agency for asbestos hazard abatement work.

(d) The application for a construction permit for asbestos abatement shall be subject to the following:

1. The application for a permit shall be submitted in such form as the department may prescribe and shall be accompanied by the required fee as provided for in this subchapter.

2. The application for a construction permit for asbestos abatement shall be required to include the following:

i. The name, address and license number of the asbestos contractor pursuant to N.J.A.C. 12:20 Asbestos Licenses and Permits under the jurisdiction of the New Jersey Department of Labor;

ii. The asbestos hazard assessment, which shall be prepared by the New Jersey Department of Health, or by a county or local department of health or a private individual who has received accreditation as an inspector under the United States Environmental Protection Agency's Model Accreditation Program as referenced in 40 CFR 763. The accreditation will be issued by an EPA-approved training agency, and that accreditation will include the place of training, accreditation number and expiration date. Accreditations are issued for one year. This assessment shall be required unless the requirement for an assessment has been waived in writing by the New Jersey Department of Health;

iii. The name and address of the private air monitoring firm, hired by the building owner, who shall act as the asbestos safety control monitor authorized by the New Jersey Department of Community Affairs and shall be responsible for continuously monitoring the asbestos abatement project;

iv. Four sets of plans and specifications indicating: the scope of the proposed work; type and percentage of the asbestos; the total amount of square and/or linear footage of asbestos-containing material to be abated; the provisions proposed to contain the asbestos-containing material during abatement work including, but not limited to, separation barriers, critical barriers, and the route of travel for removing asbestos waste from the work area; a copy of the site plan; and a floor plan indicating exits. The approved plans and specifications shall be distributed as follows: one set each to the construction official, asbestos safety control monitor, building owner, and project site;

v. Documentation that all buildings will be unoccupied at the time an asbestos abatement project takes place, except as approved by the asbestos safety control monitor as delineated in N.J.A.C. 5:23-8.19;

vi. The name and address of the New Jersey Department of Environmental Protection and Energy registered waste hauler and of the New Jersey Department of Environmental Protection and Energy registered landfill where asbestos waste will be deposited;

vii. The scheduled starting and completion dates for the asbestos abatement project;

viii. The method of air analysis used pursuant to N.J.A.C. 5:23-8.21 for determining the final clearance level in order to reoccupy the building.

3. It shall be the responsibility of the owner or his agent to file with the enforcing agency, in the event of any change in (d)2i, iii and vi above. Such change shall be filed as an amendment to the application and shall be forwarded to the Department as set forth in (h) below. The replacement firm shall assume all responsibilities for the asbestos abatement work to continue, while the preceding firm still bears responsibility for its action.

(e) The issuance of a construction permit for asbestos abatement shall be subject to the following:

1. Submission of a completed application;
2. The described work and containment measures shall conform to the requirements of this subchapter and the requirements of any other applicable law or rule adopted or enforced by any other State agency;
3. A written release of the plans and specifications by the asbestos safety control monitor.
4. cursory plan review shall be done by the enforcing agency to determine the need of replacement material for maintaining the structural integrity of a building; if required, a separate construction permit shall be issued by the enforcing agency. In addition, a review shall be done to ensure that means of egress are maintained in occupied buildings.

(f) The issuance of the construction permit for asbestos abatement authorizes preparation of the work area. This initial preparation of the work area shall be observed by the asbestos safety technician to ensure compliance with this subchapter. No actual asbestos abatement work shall commence until a pre-commencement inspection has been conducted and approved by the asbestos safety technician.

(g) A permit, once issued, shall remain valid only as long as all of the information contained in the application remains correct and is adhered to. Any change shall require an amendment to the application before the change takes place. Failure to adhere to these requirements may result in a stop work order.

(h) The owner or his or her agent shall notify the Department in writing within three business days of the issuance of the construction permit for asbestos abatement, if the enforcing agency is a municipal enforcing agency and not the Department. Such notice shall be supplied in the form of a copy of the completed application for a construction permit for asbestos abatement and a copy of the permit.

1. Notification shall be sent to:

New Jersey Department of Community Affairs
Bureau of Code Services
Asbestos Safety Unit
CN 816
Trenton, New Jersey 08625-0816

(i) The owner or his or her agent shall notify the following in writing as required in NESHAPS (40 CFR Part 61, Subpart M):

1. Notification shall be sent to:

i. U.S. Environmental Protection Agency
Region II NESHAP
26 Federal Plaza, Room 1033
New York, New York 10278; and

- ii. New Jersey Department of Community Affairs
Bureau of Code Services
Asbestos Safety Unit
CN 816
Trenton, New Jersey 08625-0816

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.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 8.6 as new 8.7 with stylistic changes. Section 8.7 was formerly "Inspections; violations".

In (a): deleted "Health and New Jersey Department of Education ..." from text.

In (b)2ii: Added text regarding required accreditation of an asbestos hazard assessor.

In (b)2iv-v: revised text to clarify plans and specifications and added new (b)2viii.

In (f)1: changed address and name of "Asbestos Safety Unit."

In (g): deleted "10 days prior to the start of the asbestos abatement project" and added text requiring compliance with Federal register.

Added new (g)1ii.

Recodified from 5:23-8.7 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, "Minor asbestos hazard abatement project," recodified as 5:23-8.14.

5:23-8.6 Coordination with other permits

(a) When a building owner or an authorized representative on behalf of the owner submits an application for a construction permit for repair, renovation, or demolition work, the following information shall be required to be given to the construction official having jurisdiction before a construction permit is issued:

1. An architect/engineer certification concerning whether asbestos will be disturbed and to what extent it will be disturbed during the planned construction work.

- i. Where any work not requiring an architect/engineer is involved then this certification will be required of the contractor undertaking the work.

(b) When it is certified that asbestos may become disturbed in a building or structure subject to this subchapter, an assessment performed by the New Jersey Department of Health, county or local health department, or by a private business entity authorized by the New Jersey Department of Health shall be required, unless the requirement for an assessment has been waived.

1. Boiler and water storage tank removal projects which require the removal of asbestos insulation from the boiler, water storage tank and piping shall not require an assessment before a permit is issued by the enforcing agency.

2. If the assessment indicates that the work and the disturbance which will result from it has made asbestos hazard abatement work necessary, then the construction official shall inform the building owner, or his agent, that

all asbestos abatement work shall conform to this subchapter.

i. The work which will cause the disturbance will not be permitted to proceed until the hazard abatement work is complete or the asbestos-containing material clearly presents no further hazard.

ii. The construction official shall issue a partial permit for work which clearly will not disturb or interfere with the asbestos hazard abatement work.

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 8.15 and (b) substantially amended. Old 8.16 has been repealed.

Amended by R.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Added text in (b) "county or local ..."; added new (b)1 and renumbered old (b)1 to 2.

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 8.17 as new 8.18. Section 8.17 was formerly "Asbestos safety control monitor".

Recodified from 5:23-8.17 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, "Variations," recodified as 5:23-8.4.

5:23-8.7 Inspections; violations

(a) Pre-commencement inspections shall be conducted as follows:

1. Notification in writing to the Asbestos Safety Control Monitor shall be made by the applicant or contractor to request a pre-commencement inspection at least 48 hours in advance of the desired date of inspection. This inspection shall be requested each time another work area is started in a multi-phase project.

2. The asbestos safety technician shall ensure that:

i. The work area is properly prepared and that all containment measures are in place pursuant to this subchapter;

ii. All workers shall present to the asbestos safety technician a valid work permit issued by the New Jersey Department of Labor;

iii. Measures for the disposal of removed asbestos material are in place and shall conform to the adopted standards;

iv. The contractor has a list of emergency telephone numbers at the work area which shall include the asbestos safety control monitor firm employed by the building owner and telephone numbers for fire, police, emergency squad, local hospital and health officer, New Jersey Department of Labor and New Jersey Department of Health and New Jersey Department of Community Affairs.

3. If all is in order, the asbestos safety technician, shall issue a written notice to proceed with the asbestos abatement in the field. If the project site is not in order, then any needed corrective action must be taken before any work is to commence. Conditional approval shall not be granted.

4. The Department reserves the right to make a pre-commencement inspection in addition to the required pre-commencement inspection conducted by the asbestos safety technician before a written notice to proceed is issued.

(b) Progress inspections shall be conducted as follows:

1. Primary responsibility for ensuring that the asbestos abatement work progresses in accordance with this subchapter rests with the asbestos safety technician. This asbestos safety technician shall continuously be present to observe the progress of work and perform required inspections and tests.

2. If the asbestos safety technician observes irregularities at any time, the asbestos safety technician shall direct such corrective action as may be necessary.

3. Where a sealant is required to be applied after removal, a pre-sealant inspection shall be conducted to ensure that all asbestos-containing material has been removed properly before the sealant is applied. If the pre-sealant inspection is acceptable to the asbestos safety technician, he should indicate this acceptance in writing.

(c) Clean-up inspections shall be conducted as follows:

1. Notice for clean-up inspection shall be requested by the contractor at least 48 hours in advance of the desired date of inspection;

2. The clean-up inspection shall be conducted prior to the removal of the critical barriers;

3. The asbestos safety technician shall ensure that:

i. The project site has been properly cleaned and is free of all visible dust and asbestos and asbestos-containing material; and

ii. All abated asbestos-containing material has been properly placed in a locked secure container outside of the work area.

4. If all is in order, and acceptable air results have been achieved, the asbestos safety technician shall issue a written notice of authorization to remove barriers from the work area.

(d) Final inspections shall be conducted as follows:

1. Upon notice by the owner or by the contractor and within 48 hours after the removal of the critical barriers, a final inspection shall be made to ensure the absence of any visible signs of asbestos or asbestos-containing materials and that all removed asbestos and asbestos contaminated materials have been properly disposed of off-site in accordance with the rules of the New Jersey Department of Environmental Protection and Energy, N.J.A.C. 7:26-1, which is referenced in N.J.A.C. 5:23-8.22.

2. The Department reserves the right to make a final inspection in addition to the required final inspection conducted by the asbestos safety technician before a certificate of occupancy is issued by the enforcing agency.

(e) The Department inspections shall be conducted as follows:

1. The Department shall make scheduled and/or unannounced periodic inspections of any work area involving asbestos abatement work for the purpose of enforcing this subchapter.

(f) Violations: The asbestos safety technician shall ensure that the work conforms to this subchapter. If it is found that the asbestos abatement work is being conducted in violation of this subchapter, the asbestos safety technician shall direct such corrective action as may be necessary. If the contractor fails to comply with the corrective action required, or if the contractor or any of their employees habitually and/or excessively violate the requirements of any rule, then the asbestos safety technician shall order, in writing, that the work be stopped. If the contractor fails to comply with the order, then the asbestos safety technician shall notify the enforcing agency, which shall issue a stop work order to the contractor, have the work area secured until all violations are abated, and assess a penalty of \$500.00 which shall not be reduced or settled for any reason.

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.1987 d.525, effective December 21, 1987.
See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Added New Jersey Department of Community Affairs.

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 8.7 as new 8.8 with various stylistic changes. Section 8.8 was formerly "Certificate of occupancy; certificate of completion".

In (a): added new 4.

In (d): added new 2.

In (f): revised language to specify order procedures regarding violations.

Administrative correction to (a)2.

See: 21 N.J.R. 3747(a).

Recodified from 5:23-8.8 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, "Construction permit for asbestos abatement," recodified as 5:23-8.5.

5:23-8.8 Certificate of occupancy; certificate of completion

(a) Certificate of occupancy requirements are as follows:

1. It shall be unlawful to re-occupy the portion of a building that was vacated during an asbestos hazard abatement project until a certificate of occupancy has been issued by the enforcing agency. The certificate of occupancy shall be issued upon receipt of a certificate of completion issued by the asbestos safety control monitor and verified by the enforcing agency that the building or a portion of a building is in conformance with all applicable requirements of the Uniform Construction Code and that any walls, floors, trim, doors, furniture or other items damaged during the work shall be repaired or refinished to match existing materials.

2. The application for a certificate of occupancy shall be in writing and submitted in such form as the Department may prescribe and shall be accompanied by the required fee as provided for in this subchapter.

i. The application shall include the following:

(1) The name and address of the owner;

(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.

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 num-

bers, 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;

viii. A statement that the applicant is not affiliated with, or influenced or controlled by any producer, manufacturer, supplier or vendor of products, supplies or equipment used in asbestos hazard abatement or by any abatement contractor; and

ix. Proof of insurance as required pursuant to N.J.A.C. 5:23-8.11(c)3v.

5. Authorization shall be valid for a period of one year. The expiration dates shall be March 31 or September 30.

6. 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 asbestos safety control monitor shall make current the information previously submitted to the Department. The asbestos safety control monitor shall provide additional information as the Department may request. The application shall be accompanied by the fee established pursuant to (h) below. The Department may conduct such additional investigations of the applicant as it may deem necessary.

i. Within 30 days following receipt by the Department of an application for reauthorization, the Department shall make its determination as to whether the asbestos safety control monitor continues to meet the requirements of the regulations. In the event of disapproval, the Department shall provide the asbestos safety control monitor 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.

ii. The Department, on its own motion or at the request of any asbestos safety control monitor, may grant a temporary reauthorization of such agency for a period not to exceed 60 days.

(c) Records shall be maintained by the asbestos safety control monitor of all inspections, applications, approved plans, air tests, log sheets and any other information that may be required by the enforcing agency or the department. These records shall be open to department audit and shall not be destroyed or removed from the offices of the asbestos safety control monitor without the permission of the department.

1. The asbestos safety control monitor shall provide the Department with written notification of any change of licensed personnel and any change of principals within 30 days.

2. The enforcing agency shall be the sole agent for the collection of all fees and penalties from the property owner, the designated agent or anyone in their employ.

3. Each asbestos safety control monitor shall have the following responsibilities:

i. To maintain an adequate number of certified staff to enforce the Asbestos Hazard Abatement Subcode for the projects contracted;

ii. To review and approve the plans and specifications, release them in writing, and forward them to the enforcing agency for issuance of a permit;

iii. To be subject to the department's rulings, directives and orders;

iv. To provide adequate supervision to its employees to ensure conformance to the provisions of this subchapter;

v. To carry liability insurance equal to that required of private enforcing agencies pursuant to N.J.A.C. 5:23-4.14(e)5;

vi. To process and return all documents, plans, specifications, and applications within the time frame specified by this subchapter.

vii. To provide technical assistance to the building owner in the preparation of a construction permit application;

viii. To provide written notification of the start of a project to the department a minimum of 10 days prior to the start of the project and telephone notification to the department by the asbestos safety technician on the first day of the start of the project;

ix. To perform all required inspections and reinforcements pursuant to this subchapter;

x. To perform all tests required by this subchapter;

xi. To give testimony at a hearing or in court, as required by the construction official or the Department;

xii. To prepare all reports required by this subchapter or as may be required by the Department from time to time;

xiii. To meet its obligations under its contract with the building owner;

xiv. To issue and maintain documentation and certification, including, but not limited to, plan release, permit application and permit issued by the enforcing agency (if a firm is the duly authorized agent of the owner), variations submitted, written notice to proceed, written notice to remove barriers, certificate of completion, violation notices, daily logs, inspection records, observations, calculations, backup records, air monitoring results and a separate listing of any contractor deficiencies observed during the course of the work;

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

xvi. Upon completion of an asbestos hazard abatement project, the asbestos safety control monitor shall submit a final comprehensive report consisting of, but not limited to, plan release, permit application and permit issued by the enforcing agency (if a firm is the duly authorized agent of the owner), variations submitted, written notice to proceed, written notice to remove barriers, certificate of completion, violation notices, daily logs, inspection records, observations, calculations, backup records, air monitoring results and a separate listing of any contractor deficiencies observed during the course of the work. The final report shall be submitted to the building owner within 60 days of issuance of the Certificate of Completion. A copy of the final report shall be made available to the Department within 10 days of written request.

(d) Whenever an asbestos safety control monitor enters into a contract to provide asbestos safety control monitoring services in connection with an asbestos hazard abatement project, the asbestos safety control monitor shall not have any economic relationship with another party involved with the project. Laboratory services needed by the asbestos safety control monitor shall not be provided by any laboratory that has any economic relationship with the abatement contractor.

1. The asbestos safety control monitor may perform air monitoring required pursuant to the related OSHA requirements only through a contract with the building owner.

(e) Penalties, suspension and revocation procedures are as follows:

1. In addition to any other remedies provided by the Uniform Construction Code regulations, N.J.A.C. 5:23, the department may suspend or revoke its authorization of any asbestos safety control monitor or assess a civil penalty of not more than \$500.00 per violation, 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 this subchapter, or that a change of facts or circumstances makes it unlikely that the asbestos safety control monitor can continue to discharge its responsibilities under this subchapter in a satisfactory manner, or any provision of this subchapter has been violated, or that the asbestos safety control monitor has been negligent or has emerged in misconduct in the performance of any of its duties, or that the asbestos safety control monitor has failed to maintain a minimally acceptable level of competence.

i. During the period of suspension, the affected asbestos safety control monitor shall not be authorized to discharge any of its responsibilities under this subchapter unless otherwise specified in the notice of suspension or order of the Department.

2. The Department shall notify such asbestos safety control monitor of its suspension or revocation in writing. Copies of the notice of suspension shall be forwarded by the Department to all building owners with implementing contracts with the affected asbestos safety control monitor. The suspension shall be effective on the date the affected asbestos safety control monitor receives the notice of suspension or on any later date that may be designated in the notice of suspension.

3. The Department may revoke its approval of any asbestos safety control monitor without previously suspending its authorization. In such event, the Department shall send a written notice to the affected asbestos safety control monitor of its intention to consider revocation of its authorization stating the grounds therefore. The notice shall be sent to the affected asbestos safety control monitor and to all building owners with implementing contracts with the affected asbestos safety control monitor.

i. No such asbestos safety control monitor shall reapply for approval as an asbestos safety control monitor until the expiration of one year from the date of the order of revocation.

4. Upon the suspension or revocation of approval of an asbestos safety control monitor, any building owner with an implementing contract with the asbestos safety control monitor shall have the right to terminate its contract with such asbestos safety control monitor and be free of all obligations thereunder and to enter into an implementing contract with any other asbestos safety control monitor.

(f) In addition or as an alternative to revoking or suspending an authorization, 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 response. Such letter shall be made part of the authorization file of the firm.

(g) Conviction of a crime or an offense shall constitute grounds for revocation or suspension of an authorization.

(h) Authorization and reauthorization fees are as follows:

1. Authorization fee: Any asbestos safety control monitor submitting an application to the Department under this subchapter for approval as an asbestos safety control monitor shall pay a fee of \$3,500 for the authorization which is sought.

2. Once authorized, the asbestos safety control monitor shall pay a fee of six percent of the gross revenue

earned solely from asbestos safety control monitoring activities. This fee shall be payable quarterly, accompanied by a completed form prescribed by the Department, and is due within one month of the close of the indicated quarter according to the following schedule: First quarter—January 1 to March 31; second quarter—April 1 to June 30; third quarter—July 1 to September 30; and, fourth quarter—October 1 to December 31. The monies obtained from the preparation of plans and specifications and payments for laboratory services shall not be included in the calculation of this quarterly fee.

3. Reauthorization fee: Any asbestos safety control monitor submitting an application to the department under this subchapter for reapproval as an asbestos safety control monitor shall pay a fee of \$1,750.

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.490, effective November 16, 1987.

See: 19 N.J.R. 1684(a), 19 N.J.R. 2134(a).

Fee raised from \$1,000 plus five percent to \$1,250 plus six percent.

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.

Correction: Asbestos safety control monitor fee raised from \$2,000 to \$2,500 equal to six not five percent and reapproval fee raised from \$1,000 to \$1,250 equal to six not five percent.

See: 20 N.J.R. 1115(a).

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 8.17 to new 8.18, with minor stylistic changes throughout. Section 8.18 was formerly "Asbestos safety technician: certification requirements". In (a)4iii: Revised text to specify program that testing laboratories are required to participate.

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

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

In (h)1, authorization fee increased from \$2,500 to \$3,250. In (h)2, reauthorization fee increased from \$1,250 to \$1,625.

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 5:23-8.18 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, "Precautions and procedures during a large asbestos hazard abatement project", recodified as 5:23-8.15.

Administrative Correction.

See: 26 N.J.R. 4760(a).

5:23-8.12 Application of asbestos

(a) This section shall apply to the application of asbestos, except as provided in (a)1 below.

1. This section shall not apply to asbestos materials which are applied in solid, non-friable form, such as floor tiles or cement pipe.

(b) The requirements of this section are set forth in order to prevent the contamination of the building environment which may be caused by improperly performed asbestos application work.

1. No person may cause or allow surface coating by spraying on any building structure, facility, installation or internal or external portion thereof, using asbestos or any

friable material containing in excess of 0.25 percent by weight of asbestos. See N.J.A.C. 7:27-17.

2. The direct application of asbestos material during construction or renovation of structures, facilities or installations by means such as troweling by hand shall be prohibited.

3. The only permissible applications of asbestos-containing materials during construction or renovation of structures, facilities or installations shall be those in which the asbestos is securely bound into a solid matrix before the application is performed, such as floor tiles in which asbestos is a minor component.

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.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 8.11 as new 8.12, changing abatement "job" to "project" throughout with stylistic changes. Section 8.12 was formerly "Asbestos encapsulation and enclosure".

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 8.17.

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 8.19 to new 8.20. Section 8.20 was formerly "Appeals".

Recodified from 5:23-8.20 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, "Precautions and procedures during a small asbestos hazard abatement project", repealed.

5:23-8.13 Pre-project procedures

Before an asbestos abatement project begins, the owner shall have evaluated whether or not the scope of work for a specific project will require that all surfaces in the work area are to be HEPA vacuumed and/or wet-wiped. This is in order to remove any dust which may contain asbestos and might, therefore interfere with the final inspection and final air clearance level needed to reoccupy the building. The surfaces to be cleaned shall include, but not be limited to, all horizontal and vertical surfaces and such inside spaces as room ventilators, storage lockers, and utility and storage closets. The cleaning shall be accomplished by trained employees of the building owner as delineated in this subchapter before the asbestos abatement project begins or it shall be made part of the scope of work of an asbestos abatement project to be completed by the licensed contractor.

New Rule, R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Section 8.3 formerly was "Enforcement; licensing; special technical services".

Recodified from 5:23-8.3 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, "Asbestos encapsulation and enclosure", recodified as 5:23-8.16.

5:23-8.14 Operations and maintenance activities

Operations and maintenance activity, as defined in N.J.A.C. 5:23-8.2, involves asbestos abatement work that may be performed without application or notice to the enforcing agency. Mechanical, electrical, plumbing or general construction work that involves the incidental disturbance of asbestos-containing material shall also be considered an operations and maintenance activity. Examples include, but are not limited to, corrective action which includes removal, repair, encapsulation and enclosure of asbestos-containing insulation on pipes, beams, walls or ceilings, etc.; disturbance or routine maintenance activities which may involve asbestos-containing material; clean up of asbestos debris from a floor; and maintenance activities that may include the removal of asbestos-containing material, if required in the performance of another maintenance activity not intended as asbestos abatement, or minor repairs to damaged insulation which do not require removal. The stabilization of any amount of asbestos-containing materials used to cover piping, boilers, tanks, structural members, or similar equipment by applying duct tape, re-wettable glass cloth, canvas, cement, or other sealable material to seal exposed areas where asbestos fibers may be released, shall also constitute an operations and maintenance activity. Asbestos hazard abatement projects shall not be broken down into smaller component parts in order to qualify as an operation and maintenance activity.

(b) Specific records of each operations and maintenance activity shall be kept on file at a central location by the owner of the facility and shall be open for review and audit by the enforcing agency and for public inspections during normal business hours.

1. The information required shall be:
 - i. Location/name/number of building;
 - ii. Exact locations of the work area within the building;
 - iii. Type of abatement work conducted;
 - iv. Scope of work;
 - v. Type of replacement material used (if applicable);
 - vi. Date;
 - vii. Name(s) and address(es) of personnel; and
 - viii. Location of the disposal site.

(c) A certificate of occupancy or completion is not required for an operations and maintenance activity.

(d) Requirements concerning wetting methods are as follows:

1. Wetting methods shall be used whenever asbestos-containing materials are disturbed.

2. Asbestos materials shall be wetted using amended water applied by means of an airless sprayer to minimize the disturbance of asbestos-containing material. Asbestos-containing materials shall be wetted from the initiation of the maintenance or renovation operation that disturbs asbestos-containing material. The wetting agents shall be used continually throughout the work period to ensure that any dry asbestos-containing material exposed in the course of the work is water-soaked and remains wet until final disposal.

(e) Asbestos-containing material shall be disposed of as specified in N.J.A.C. 5:23-8.22.

Amended by R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Added text to (a) "Mechanical, electrical, plumbing ... hazard abatement job"; deleted text in (a)1 "although asbestos abatement ... to N.J.A.C. 5:23-2." and added "Although the enclosure ... to N.J.A.C. 5:23-2."

Amended by R.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Deleted text in (a) "This work requires ... job takes place." Added (b) and (c).

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 8.4 as new 8.5 and changed "abatement job" to "abatement project." Section 8.5 was "Variations".

In (a): Revised language and added text to define work involved in project.

In (b): Added language regarding the wearer of a respirator.

Recodified old (c) in the new (d), with stylistic changes. Added new (c)1-4 and new (e).

Recodified from 5:23-8.5 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, "Glove bag technique", recodified as 5:23-8.17, "Limited containment removals".

5:23-8.15 Asbestos hazard abatement projects

(a) No asbestos hazard abatement work including preparation shall be performed or continued without having a certified asbestos safety technician at the work area.

(b) Protective clothing, equipment, and general procedures for asbestos abatement shall be subject to the following requirements:

1. Only authorized personnel shall be permitted in the work area. The contractor shall provide the required respirators and protective clothing to all who may inspect or visit the work area;

2. The protective clothing and equipment requirements set forth in this section shall be used to prevent the contamination by persons engaged in asbestos abatement projects of areas and buildings accessible to or used by the public;

3. All persons entering the work area shall wear protective clothing. All clothing worn during removal operations shall be disposed of as contaminated waste. The requirement that clothing be disposed of as contaminated waste shall not include rubber boots, respirators, eye protection, hard hats, and other protective clothing, which can be easily cleaned.

4. Polyethylene bags shall be six mil thick and of sufficient size for their intended use;

5. All tape, spray-on adhesives, glove bags, glue, and other materials used in the abatement process shall be of sufficiently high quality to serve their intended purpose;

6. The contractor shall have available sufficient inventory of protective clothing, respirators, filter cartridges, polyethylene sheeting, duck tape, spray-on adhesives, and air filters. Sufficient personal protective equipment shall be available for usage by authorized personnel;

7. The contractor shall have available shower stall(s) and sufficient plumbing for these showers including hot and cold running water and sufficient hose length and drain systems or an acceptable alternate such as a portable decontamination trailer with showers. Waste shower water shall be added to asbestos-contaminated waste material before disposal in a permitted asbestos waste landfill or it shall be solidified using an approved polymer to prevent leaks or accidental spills within a facility or during transport for disposal to a permitted asbestos waste landfill or it shall be filtered using a five μ filter and disposed of in the sanitary drain, if allowed by local treatment works by regulation or as allowed by permit;

8. The contractor shall have available adequate ladders and/or scaffolds and sufficient temporary lighting equipped with ground fault circuit interruptors for the asbestos safety technician and all others who may inspect the work;

9. The contractor shall have available HEPA filter equipped air filtering equipment capable of filtering asbestos fibers to 0.3 μ at 99.97 percent efficiency and of sufficient quantity and capacity to cause a complete air change or total air filtration within the work area at least once every 15 minutes. Nothing in this subchapter shall be construed to limit the maximum exhaust capacity from the work area. If the situation warrants, the specifications for the abatement project may require additional air changes per hour. The exhaust capacity from the work area shall be sufficient to establish a pressure differential between the work area and all adjacent spaces greater than or equal to 0.03 inches w.c. for unoccupied buildings and greater than or equal to 0.05 inches w.c. for occupied buildings.

i. Pressure differential shall be monitored by digital manometers with continuous printout or other approved low pressure monitoring devices. The asbestos safety technician shall zero and level the gauges each time a reading is taken.

ii. One or more separate pressure monitoring systems shall be installed by the asbestos safety control monitor firm near the entrance(s) to the work area and between the work area and any interior spaces from which make-up air is drawn.

iii. In unoccupied buildings, if the pressure differential drops below 0.01 inches w.c., the asbestos safety technician and the contractor supervisor shall investigate and evaluate the engineering controls to determine the source of the pressure loss and the contractor shall institute corrective action as indicated.

iv. In occupied buildings, the procedures set forth in N.J.A.C. 5:23-8.19 shall be followed.

10. Air shall flow into the work area through all openings, including the decontamination chamber and waste exit ports, any areas in the work area where air leakage may occur, and other controlled makeup air inlets. Air shall exhaust through the air pressure differential filtration unit by means of flexible or solid duct leading outside the building. The air-filtering equipment should be positioned at a maximum distance from the decontamination chamber to maximize filtration of airborne fibers. Sufficient air shall be exhausted by an approved HEPA equipped vacuum truck or HEPA equipped air filtration units when necessary to provide air pressure differential. Air filtration units shall be in operation at all times;

11. Asbestos-containing material shall be disposed of as specified in N.J.A.C. 5:23-8.22.

(c) Decontamination procedures are as follows:

1. The contractor shall provide an adequate decontamination unit consisting of a serial arrangement of rooms or spaces adjoining the work area or a decontamination trailer. Each airlock shall be clearly identified and separated from the other by polyethylene crossover sheet doors designed to minimize fiber and air transfer as people pass between areas. A minimum of two layers of polyethylene sheeting shall be required for floors, walls, and the ceiling for on-site constructed decontamination units. Polyethylene crossover sheet doors shall have at least three layers of polyethylene sheeting and be weighted so as to fall into place when people pass through the area. Decontamination chamber doors shall be of sufficient height and width to enable replacement of equipment that may fail and to safely stretch or carry an injured worker from the site without destruction of the chamber or unnecessary risk to the integrity of the work area. Such doors must be at least four feet wide, and the distance between sets of doors must be at least four feet.

i. As an alternative to the use of polyethylene crossover sheet doors, any other suitable method to accomplish this end shall be acceptable, if it is approved by the asbestos safety control monitor. Alternative doors shall provide for adequate exiting in accordance with the building subcode of the Uniform Construction Code.

2. The decontamination areas shall consist of the following:

i. Clean room: In this room persons remove and leave all street clothes and put on clean disposable coveralls. Appropriate NIOSH approved respiratory protection equipment is also picked up in this area. No asbestos contaminated items are permitted in this room.

ii. Shower room: This is a separate room used for transit by cleanly dressed people entering the work area from the clean room and for showering by them after they have undressed in the equipment room. This is a contaminated area.

iii. Equipment room: Work equipment, footwear, and all other contaminated work clothing shall be stored here. This is also a change and transit room for people. All areas between the shower room and work area shall be considered part of the equipment room. This is a contaminated area.

3. In order to prevent contamination of the environment, the contractor shall be responsible for controlling access at the work area and shall maintain a daily log of personnel entering the work area. A list of names of workers shall be posted with their start and stop times for each day. In addition, the contractor shall ensure that all persons who enter the work area shall observe the following work area entry and exit procedures:

i. Person enters clean room and removes street clothing, puts on protective clothing and a respirator, and passes through shower room into equipment room.

ii. Any additional required clothing and equipment previously deposited in the equipment room is put on.

iii. Person proceeds to work area.

iv. Before leaving the work area, the person shall remove all gross contamination and debris from the coveralls using a vacuum with a high efficiency particulate air (HEPA) filter. In practice, this is usually carried out by one person assisting another.

v. The person then proceeds to equipment room and removes all clothing except approved respirators. Extra clothing may be stored in contaminated end of the unit. Disposable coveralls are placed in a bag for disposal with other material.

vi. The person then proceeds directly into the shower room. Respirators shall be taken off last to prevent inhalation of fibers during removal of contaminated clothing, and shall not be removed until they have been washed free of dust.

vii. After showering, the person moves to the clean room and dresses in street clothing prior to exiting.

viii. Respirators are picked up, washed thoroughly, and disinfected as required, wrapped and stored in the clean room.

4. The contractor shall ensure that filters in cartridge type respirators used during the preparation and abatement phase of the project are removed, wetted, and discarded as contaminated waste. All new filters shall be in place in the respirator prior to reuse. For powered air purifying respirators or supplied air respirators, the manufacturer's instructions shall be followed about the proper decontamination sequence.

5. There shall be no smoking, eating, or drinking in any contaminated areas (shower room, equipment room, and work area). Respirators shall be worn in all contaminated areas.

6. Nondisposable footwear shall remain inside the contaminated area until completion of the activity, and shall be thoroughly cleaned at that time.

(d) Preliminary preparations in the work area shall be conducted as follows:

1. The contractor shall provide and post in clearly visible locations, appropriate caution and/or danger signs indicating that asbestos work is being conducted and that unprotected persons should not enter;

2. Employees of the contractor permitted pursuant to N.J.A.C. 8:60 and N.J.A.C. 12:120 or persons employed by the building owner who have successfully completed a maintenance/custodial or worker training course approved by the New Jersey Department of Health shall clean with wet cloths and/or with HEPA vacuums as appropriate all objects that can be removed from the work area without disrupting the asbestos-containing material. Objects shall include, but not be limited to, furniture, equipment, drapes, and curtains. The cloths used for cleaning shall be disposed of as asbestos contaminated waste. If the room and objects within it are shown to be uncontaminated by asbestos, then other employees of the building owner or contractor may remove such objects;

3. The contractor shall install or build a decontamination facility in accordance with this section;

4. The contractor shall arrange for shutting down and sealing off all electrical, heating, cooling, and ventilating or other air handling systems. However, if approved by the asbestos safety control monitor, the lighting and the receptacles in the work area may be used if these are properly protected by ground fault circuit interruptors and can be adequately cleaned following abatement;

5. The contractor shall establish written emergency procedures to be posted within each work area. These procedures shall include plans for medical emergencies, fire evacuation, temporary loss of electrical power or water and procedures for repair and clean-up following temporary breach of containment barriers.

(e) Isolation and barrier construction in the work area shall be conducted as follows:

1. Before removing any asbestos from the work area, the contractor shall ensure that the outer perimeters of the work area have been securely sealed off from the rest of the building;

2. All vertical and horizontal surfaces except those of asbestos containing materials shall be sealed with watertight polyethylene sheeting except as provided in (e)3 below;

3. The only permissible exception to total enclosure shall be:

i. An entrance airlock with showers and a decontamination chamber;

ii. A debris removal airlock to permit cleaning and removing asbestos waste;

iii. Staircases; and

iv. Controlled makeup air inlets into the work area.

4. Polyethylene sheeting shall be used to isolate contaminated from uncontaminated areas. This polyethylene sheeting shall be replaced or repaired immediately if torn or damaged. One layer of polyethylene sheeting shall be required for walls and two layers of polyethylene sheeting shall be used to seal open space between work areas and non-contaminated areas and for all floors. In buildings required by the Uniform Construction Code to be of noncombustible construction, all materials used to construct separation barriers must meet the Uniform Construction Code, building subcode requirements for that building and all plastics used must be flame resistant.

(f) Initial activity in the work area shall be conducted in the following order:

1. Remove filters from all heating, ventilating, and air conditioning systems. Wet the filters and place them in polyethylene bags, double bagged with visible labels, for disposal as asbestos-containing waste. Squeeze all excess air out of the bag before sealing to prevent puncture during disposal. Secure bags by twisting, taping, folding over, and sealing them with duct tape.

2. The contractor shall wet clean and/or HEPA vacuum all non-removable non-asbestos items such as radiators and suspended light fixtures in the work area, including built-in equipment; and shall cover with two layers of polyethylene sheeting taped securely in place;

3. The contractor shall detach and wet clean removable electrical, heating, and ventilating equipment and other items which may be connected to the asbestos surfaces. These items shall be removed from the work area and returned and reattached to their proper place when the work area has been decontaminated and final air testing has provided satisfactory results;

4. The contractor shall seal all floor, wall, and ceiling penetrations with suitable material such as expanding foam insulation before covering the surfaces with polyeth-

ylene sheeting. The contractor then shall seal all openings between the work area and uncontaminated areas including but not limited to, windows, doorways, elevator openings, skylights, corridor entrances, floor and sink drains, air ducts, grills, grates and diffusers with critical barriers consisting of two layers of polyethylene sheeting taped securely in place or stapled or fastened by spray-on adhesives, glue beads, or horizontal wood battens or the equivalent. Floor drains shall be sealed individually and then covered as all other floor surfaces with two layers of polyethylene sheeting. Separation barriers may be constructed to support the critical barriers. Separation barriers shall not block any required means of egress;

5. For floor covering two layers of polyethylene sheeting shall be used. The first layer of floor sheeting shall extend up the wall at least 12 inches. The second layer shall be extended up walls at least 24 inches. Sheetting shall be sized so as to minimize the number of seams necessary. No seams shall be located at the joints between walls and floors;

6. Wall sheeting shall consist of one layer of polyethylene sheeting. It shall be installed to minimize joints and shall overlap floor sheeting by at least 18 inches. No seams shall be located at the corners. Wall coverings shall be taped first to the upper most edge of the wall and shall hang straight down;

7. When a strippable coating is used in place of polyethylene sheeting, it must be manufactured for the specific application required for walls, floors, or windows.

i. When dry, the strippable coating must have a class A rating as a building material and must meet the following requirements when tested in accordance with ASTM E-84: flame spread no greater than 20, fuel contributed 0, and smoke developed no more than 110.

ii. The strippable coating shall be applied uniformly in such a manner as to achieve a minimum uniform final thickness of six mil for each layer required pursuant to this subchapter.

iii. Manufacturer's specifications shall be followed for the method of application and for the protection of the applicators and building occupants.

iv. Use of the product shall be authorized in advance by the asbestos safety control monitor firm. The material shall be delivered to the project site in unopened, factory-labeled containers.

8. As all existing ventilating systems in work area are to be sealed throughout the removal operation, an alternative system shall be utilized. Install approved HEPA equipped air filtration units with filters in place. HEPA equipped air filtration units shall be of sufficient number and capacity to ensure that total air volume is exchanged at least once every 15 minutes and an acceptable pressure differential is established and maintained. These units shall be rated by the manufacturer as to their actual working air capacity and field tested pursuant to N.J.A.C. 5:23-8.10(d)4.

(g) Sequence of asbestos removal activities shall be as follows:

1. The asbestos-containing material shall be sprayed with water containing an additive to enhance penetration (amended water) or removal encapsulant. All wetting agents shall be tested on a small area before use to ensure effectiveness. A fine low-pressure spray of this solution shall be applied to prevent fiber disturbance preceding removal. The removal encapsulant or amended water shall be sprayed on as many times and as often as necessary to ensure that the asbestos material is adequately wetted throughout (especially that asbestos nearest the substrate) to prevent dust emission.

2. As a method of organizing the asbestos removal work, workers shall begin working on the areas nearest to the decontamination unit and work towards the HEPA equipped air filtration units. If this is not feasible, the asbestos safety control monitor firm shall approve an alternative to this requirement.

3. The wet material from each section shall be packed and sealed into labeled six mil polyethylene bags and double bagged with visible labels or placed in labeled, leak-proof containers, prior to starting the next section. Water-soaked fallen material shall be picked up while wet.

4. Contaminated material containing sharp edged items shall be cut to manageable size while adequately wet, and then placed in suitable leak-tight and puncture-proof containers or wrapped individually in two separate polyethylene sheets and double bagged.

5. Bags and drums shall be marked with the label prescribed by 40 CFR Part 61, Subpart M of the US EPA, 29 CFR 1926 of OSHA, and 49 CFR—Parts 100-199 of the US DOT Hazardous Waste Hauling regulations. The outside of all containers shall be wet-cleaned or HEPA vacuumed before leaving the work area.

6. After completion of this removal phase (stripping), all surfaces from which asbestos has been removed shall be scrubbed using nylon or bristle brushes and wet sponged or cleaned by an equivalent method to remove visible asbestos-containing material. During this work, the surfaces being cleaned shall be kept wet using amended water or a removal encapsulant. All disposable equipment shall be packaged for disposal. Containers shall be washed with amended water or a removal encapsulant and shall have all exterior particulate matter removed prior to removal from the contaminated area.

7. All accessory equipment shall be moved to the equipment room and decontaminated for removal.

8. All free water (in contaminated areas) shall be retrieved and added to asbestos-contaminated waste and/or placed in plastic lined leak-tight drums and/or solidified with an acceptable polymer or it shall be filtered using a five μ filter and disposed of in the sanitary drain, if allowed by local treatment works by regulation or as allowed by permit.

9. Final clean-up of the work area may commence.

(h) Final clean-up of the work area shall be conducted as follows:

1. The contractor shall first clean all surfaces in the work area using a fine spray or mist of amended water or removal encapsulant applied to all surfaces followed by the wet-wiping procedure using disposable cloths. These cloths shall be disposed of or rinsed thoroughly on a frequency sufficient to eliminate visible accumulation of debris. The contractor shall allow all surfaces to dry before re-entering the work area and proceeding to (h)2 below.

i. The contractor shall notify the asbestos safety technician in writing that a pre-sealant inspection is requested.

2. After completion of cleaning all surfaces in the work area and upon receiving a satisfactory pre-sealant inspection, the contractor shall spray coat all dried exposed surfaces with a sealant. The color of this coat shall be separate and distinct from the underlying substrate. The surfaces to be coated shall include surfaces from which asbestos-containing materials have been removed (such as ceilings) and polyethylene which has been used to cover walls, floors and non-removable fixtures and equipment.

3. The polyethylene sheeting used to protect floors, walls, fixtures and equipment shall be carefully removed and rolled up, with the contaminated portion on the inside, and packaged for disposal. Tape and any other debris shall also be disposed of in sealed polyethylene bags labeled as asbestos-contaminated waste.

4. Wet clean with amended water or a removal encapsulant all walls, floors, woodwork, ceilings, electric light fixtures and other surfaces. Allow all surfaces to dry and repeat procedure. Cloths or sponges used in the cleaning operation shall be disposed of as contaminated waste.

5. The polyethylene sheeting used to maintain critical barriers between work areas and clean areas such as those in doorways, windows and air vents shall be sprayed with encapsulant, but not removed until air monitoring is completed and satisfactory results have been obtained.

6. After completion of the cleaning operations the contractor shall:

i. Notify the asbestos safety technician that a clean-up inspection can be performed to ensure all visible asbestos has been removed and the area is dust free;

ii. Request final air clearance monitoring of the work area.

7. After the work area is found to be in compliance with the acceptance criteria, the following tasks shall be performed by the contractor:

i. All critical barriers shall be removed and bagged in polyethylene bags for disposal;

ii. The inside of windows shall be washed;

iii. Any walls, floors, trim, doors, furniture or other items damaged during the work shall be repaired and refinished to match existing material;

8. Notice for a final inspection shall be made by the owner or contractor to the asbestos safety control monitor.

9. Upon receiving a satisfactory final inspection, application for a Certificate of Completion may be made.

(i) Special precautions shall be implemented, where appropriate, including, but not limited to, the following examples:

1. Asbestos abatement projects involving ceiling tile and T-grid components, elevators, carpet, contaminated soil and projects in tunnels, crawl spaces, plumbing access panels, and/or involving live electrical panels or live steam lines are likely to present unique conditions that will require special precautions in addition to the procedures described in this section. In instances where special precautions need to be instituted, they shall be described in plans and specifications approved by the asbestos safety control monitor firm.

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.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 8.10 to new 8.11, changing abatement "job" to "project" throughout with stylistic changes. Section 8.11 formerly was "Precautions and Procedures during a small hazard abatement job".

In (g): deleted old 7 regarding air monitoring results and recodified old 8 through 10 as new 7 through 9 with no change in text.

Recodified from 5:23-8.11 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, "Disposal of asbestos waste", recodified as 5:23-8.22.

5:23-8.16 Asbestos encapsulation and enclosure

(a) Encapsulation constitutes spraying friable asbestos-containing material with a liquid sealant (not including paint) that helps bind the asbestos together with other material components to adhere it firmly to the building structure.

1. The requirements of this section are set forth in order to prevent the contamination of the building environment which may be caused by improperly performed asbestos encapsulation work.

i. Encapsulation shall not be performed where:

(1) Asbestos-containing material is friable, damaged, or deteriorating;

(2) Effective long-term inspection of the encapsulated site cannot be assured;

(3) The source of asbestos is highly accessible to building occupants and damage to material is possible;

(4) The asbestos-containing material does not adhere well to the substrate;

(5) There is existing or potential water damage to asbestos containing material;

(6) The asbestos-containing material is more than one inch thick; and is used to cover ceilings, walls, beams, or other structural members;

(7) The asbestos-containing material is subject to high vibration.

ii. Encapsulation may be performed when:

(1) Damage to the material is improbable;

(2) The asbestos-containing material is granular or cementitious;

(3) The encapsulating material is known to bond asbestos to the subsurface and asbestos-containing material and also retains its bonding integrity;

(4) Asbestos-containing material has been removed and loose fibers remain which should be bonded.

iii. If encapsulation is used as a method of asbestos abatement the following maintenance procedures shall be employed:

(1) A periodic monitoring and maintenance program consisting of inspection at least annually to check for damage to all encapsulated surfaces;

(2) Maintenance of records by the building owner, on the locations and condition of the encapsulated material;

(3) The removal of encapsulated asbestos when conditions change, making encapsulation no longer an appropriate method of asbestos abatement.

iv. Sealants considered for use in encapsulation shall first be tested to ensure that the sealant is adequate for its intended use. A section of the asbestos-containing material shall be evaluated following this initial test application of the sealant to quantitatively determine the sealant's effectiveness in terms of penetrating and hardening the asbestos-containing material, its toxicity, its flammability, its tolerance to disturbance or abuse, its solubility (dissolvability) in water, its effects on the acoustical properties of the asbestos-containing material, and its tolerance to top-covering paints. The United States Environmental Protection Agency, Office of Toxic Substances, has developed guidelines for the use of encapsulants on asbestos-containing materials which discuss advantages and disadvantages of encapsulation. The American Society of Testing and Materials (ASTM) Committee E06.21.06E on Encapsulation of Building Materials has developed a guidance document to assist in the selection of an encapsulant once a decision to encapsulate has been made. When a choice of an encapsulant has been made, written justification of this choice (based on the characteristics of the encapsulant, the asbestos-containing material to be encapsulated, and the substrate surface underneath the asbestos-containing material) shall be included in the job specifications, and a copy of this justification shall be available for review at the job site.

v. Before encapsulation is performed, all loose and hanging asbestos-containing material shall be removed while damp, and disposed of in accordance with this subchapter.

vi. Filler material used to repair damaged and missing areas of asbestos-containing material shall contain no asbestos, shall adhere well to the substrate and shall provide an adequate base for the encapsulating agent.

vii. Encapsulated asbestos containing materials shall be identified by signs, labels, color coding or some other mechanism to warn persons who may be required to disturb the material that asbestos is present.

viii. Where encapsulants are sprayed on asbestos-containing materials:

(1) Low pressure airless spray shall be used. The airless spray gun shall have an appropriately sized tip which shall be tested by briefly spraying the encapsulant onto a surface from approximately 12 inches away. An appropriately sized tip will spray the encapsulant in a fan approximately eight inches wide; it will also distribute the encapsulant uniformly within the fan, giving even coverage.

(2) A suitable quantity of HEPA filtration units shall be used during the encapsulation process which shall have sufficient capacity to cause one complete air exchange every 30 minutes.

(3) At least three coats of the encapsulant shall be applied to the surface of the asbestos-containing material. Each coat shall be applied in a two-step procedure. The first step is to apply a light mist coat to moisten and seal any loose fibers and keep them from breaking away from the surface. This mist coat should be applied in three or four quick passes with the gun held 18 to 24 inches from the surface. After an area of 16 to 20 square feet has been given the mist coat, a heavier coating is applied, using 8 or 10 passes with the gun held 10 and 12 inches from the material. The gun should be kept in constant motion to create a smooth and even coat. This two-step application shall be considered one coat of encapsulant. Each subsequent coat shall be applied at a 90 degree angle to the direction of the preceding coat application, to ensure complete coverage of the asbestos-containing material. When questions rise regarding drying time, curing time, dilution, or use under different weather conditions, the manufacturer's recommendations and instructions shall be consulted.

(4) All other preparation, decontamination, and work requirements and procedures used in encapsulation projects shall be the same as those used in removal projects.

ix. Sealants used in the encapsulation shall not alter the existing fire rating and shall be flame resistant and meet the flame spread and smoke generation requirements of N.J.A.C. 5:23-3 of the Uniform Construction Code.

(b) Enclosure constitutes construction of a permanent (that is, for the life of the building), air-tight, impact-resistant, solid structure of new construction materials which must be built around the asbestos covered pipe or structure to prevent the release of asbestos-containing materials into the area beyond the enclosure and to prevent these materials from casual contact during future maintenance operations. The enclosure shall not alter the existing fire rating and shall be flame resistant and meet the flame spread and smoke generation requirements of N.J.A.C. 5:23-3 of the Uniform Construction Code.

1. The requirements of this section are set forth in order to prevent the contamination of the building environment which may be caused by improperly performed asbestos enclosure work. The following procedures shall be adhered to:

i. Before constructing the enclosure, all electrical conduits, telephone lines, recessed lights, and pipes in the area shall be moved to ensure that the enclosure will not have to be reopened later for routine or emergency maintenance. If for any reason, lights or other equipment cannot be moved, removal of the asbestos-containing materials rather than enclosure shall be the appropriate control method to use;

ii. Enclosure walls shall be made of tongue and groove boards, boards with spine joints, or gypsum boards having taped seams. All joints between the walls and ceiling of the enclosure shall be caulked to prevent the escape of asbestos fibers;

iii. The underlying structure must be able to support the weight of the enclosure. Suspended ceilings with laid-in panels do not provide air-tight enclosures and shall not be used to enclose structures covered with asbestos-containing materials;

iv. The surface of the asbestos-containing material which will be disturbed during the installation of hangers, brackets or other enclosure supports shall first be sprayed with amended water or a removal encapsulant using a low pressure airless spray:

v. Power drills or other tools which may disturb asbestos containing material shall be equipped with or used in conjunction with HEPA vacuum filters;

vi. Loose and hanging asbestos-containing materials shall be removed while damp and disposed of in accordance with this subchapter;

vii. After the installation of hangers, brackets or other supports and before the asbestos-containing material is enclosed, asbestos containing materials shall be repaired, using materials which do not contain asbestos;

viii. Enclosures for asbestos-containing materials shall be identified by signs, labels, color coding or some other mechanism to warn persons who may be required to disturb the enclosure that asbestos is present; and

ix. Enclosures shall be inspected at least annually to ensure their integrity.

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 8.12 as new 8.13. Section 8.13 was formerly "Glove bag technique".

In (a)1ix: added "shall not alter the existing fire rating and ..."

Deleted old (b) and added new (b) defining "enclosure".

Added new (b)1i-iii and recodified old i-vi as new iv-ix, with stylistic or no changes in text.

Recodified from 5:23-8.13 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, "Duties of the asbestos safety technician", recodified as 5:23-8.10(d).

5:23-8.17 Limited containment removals

(a) The following procedures shall be followed for the use of glove bags or other techniques or work practices approved by the Department which similarly contain asbestos fibers. The glove bag work area enclosure shall be either an enclosure, built out of polyethylene sheeting around the glove bag, or the entire room if no enclosure is built.

(b) The preparation of the work area for glove bag removal shall include the following:

1. A minimum of two persons shall perform a glove bag removal project. A third person may be required to conduct air monitoring or assist with supplies.
2. The work area where the technique is to be utilized shall be roped off and appropriate caution and/or danger signs posted on the perimeter to prevent unauthorized personnel from entering the work area.
3. All necessary materials and supplies shall be brought into the work area before any removal begins.
4. One air change every 15 minutes shall be provided in a glovebag work area enclosure.
5. If no mini-enclosure is established, then the contractor shall arrange for shutting down and sealing off all electrical, heating, cooling, and ventilating or other air handling systems.
 - i. If approved by the asbestos safety control monitor, the lighting and receptacles in the work area may be used if these are properly protected by ground fault circuit interruptors and can be adequately cleaned following abatement.

(c) The following is a list of equipment and tools for the removal of asbestos by the glove bag technique:

1. Glove bag(s) in suitable number, size and configuration for the specific abatement project. The glove bag is an air-tight, tear-resistant enclosure, designed to enclose an object from which asbestos-containing material is to be removed, constructed of a minimum of six mil polyethylene or other suitable material with inward projecting long-sleeve gloves, a tool pouch or other place where tools can be placed, and facilities for water application and a HEPA equipped vacuum attachment.
2. A pump-up sprayer (garden type) with a two or three gallon capacity;
3. Wetting agent: Amended water (water with a surfactant) or a removal encapsulant;
4. Six mil polyethylene disposal bags or leak-proof containers with the proper markings for asbestos waste;
5. A HEPA filtered vacuum with a capillary tube for insertion into the glove bag;
6. Tools such as a small scrub brush, a utility knife for cutting the insulation, a stapler, wire cutters, smoke tubes with aspirator bulb, a bone saw or other appropriate tool, tin snips, duct tape and wettable cloths;

7. A roll of six mil polyethylene; and
8. An encapsulant (tinted).

(d) Removal procedures shall be conducted as follows:

1. A visual inspection of the pipe where the work will be performed shall be made to determine if any damaged pipe covering (such as broken lagging, or hanging) exists. If there is damage, then the affected portion of the pipe shall be wrapped in polyethylene and fully secured with duct tape. This procedure will prevent excessive airborne fiber concentrations from occurring during the glove bag work caused by pipe lagging hanging several feet or even several yards away which may be jarred loose by the activity. All dust and debris on the floor and other surfaces which has accumulated due to the abatement project and which contains asbestos shall be cleaned up as necessary. If the pipe is undamaged, one layer of duct tape shall be placed around the pipe at each end where the glove bag will be attached. This permits a good surface to which to seal the ends of the glove bag, and it minimizes the chance of releasing fibers when the tape at the ends of the glove bag is peeled off at the completion of the project.

2. Slit the top of the glovebag open (if necessary) and cut down the sides to accommodate the size of the pipe (about two inches longer than the pipe diameter).

3. Place the necessary tools into the pouch located inside the glove bag. This will usually include the bone saw, utility knife, rags, scrub brush, wire cutters, tin snips and pre-cut wettable cloth. Cut out a donut shape in the cloth with the inner diameter one-half-inch smaller than the diameter of the pipe beneath the insulation. The outer diameter of the donut should be three inches longer than the diameter of the pipe insulation being removed. Finally, cut a slit in each of the two donuts so they can be slipped around the pipe. A piece of cloth that can be easily bent around the surface to be cleaned may be used instead of the donut-shaped cloth.

4. One strip of duct tape shall be placed along the edge of the open top slit of the glovebag for reinforcement.

5. Place the glove bag around the section of pipe to be worked on and staple the top together through the reinforcing duct tape. Staple at intervals of approximately one inch. Next, fold the stapled top flap back and tape it down with a strip of duct tape. This should provide an adequate seal along the top. Next, duct tape the ends of the glove bag to the pipe itself, previously covered with polyethylene or duct tape (see (d)1 above). The bottom seam of the glove bag shall be sealed with high quality duct tape or equivalent to prevent any leakage from the bag that may result from a defect in the bottom seam.

6. Before the commencement of the abatement work, but after the glove bag is attached, the contractor shall smoke test each glove bag to ensure that it does not leak. The asbestos safety technician shall personally witness the smoke testing of each of these glove bags. Using the smoke tube and aspirator bulb or other approved smoke generating device, place the tube into the wetting agent sleeve (two-inch opening to glovebag). Fill the bag with visible smoke. Remove the smoke tube and twist the wetting agent sleeve to close it. While holding the wetting agent sleeve tightly, gently squeeze the glovebag and look for smoke leaking out, especially at the top and ends of the glovebag. If leaks are found, they shall be taped closed using duct tape and the bag shall be re-tested.

i. Exception: If negative pressure is established and maintained at .02 inches w.c., smoke testing of glove bags is not required.

7. Insert the wand from the wetting agent sprayer through the wetting agent sleeve. Using duct tape, tape the wetting agent sleeve tightly around the wand to prevent leakage.

8. One person places his hands into the long-sleeved gloves while the second directs the wetting agent spray at the work.

9. If the section of pipe is covered with a protective jacket, this is removed first, using the wire cutters to cut any bands and the tin snips to remove the jacket. It is important to fold the sharp edges in to prevent cutting the bag when it is placed in the bottom. A box may be put in the bottom of the bag when the tools are placed in, and the metal placed in the box to further protect the bag from being cut.

10. With the insulation exposed, using the bone saw, cut the insulation at each end of the section to be removed. A bone saw is a serrated heavy-gauge wire with ring-type handles at each end. Throughout this process, wetting agent is sprayed on the cutting area to keep dust to a minimum.

11. Once the ends are cut, the section of insulation should be split from end to end using the utility knife. The cut should be made along the bottom of the pipe and the wetting agent continuously supplied. Again, care should be taken when using the knife not to puncture the bag. Some insulation may have wire to be clipped as well. Again, a box may be used as in (d)9 above to protect the bag from puncture.

12. Rinse all tools with wetting agent inside the bag and place back into pouch.

13. The insulation can now be lifted off the pipe and gently placed in the bottom of the bag, while the side of the insulation adjacent to the pipe is being thoroughly wetted.

14. Using the scrub brush, rags and water, scrub and wipe down the exposed pipe.

15. Wet the donut-shaped pieces of wettable cloth over the exposed ends of insulation remaining on the pipe.

16. Remove the wetting agent wand from the wetting agent sleeve and attach the small nozzle from the HEPA-filtered vacuum. Turn on the vacuum only briefly to collapse the bag.

17. Remove the vacuum nozzle and twist the wetting agent sleeve closed and seal with duct tape.

18. Remove all the tools and draw them out into one of the arm sleeves, twist the sleeve tightly, and seal with tape, and cut the sleeve away from the bag, cutting through the tape. In this manner, the contaminated tools may be placed directly into the next glovebag without being cleaned. Alternatively, the sleeve with the tools in it can be placed in a bucket of water, opened underwater and dried without releasing asbestos into the air. This water shall be handled as asbestos-contaminated waste. Rags and scrub brushes cannot be cleaned in this manner and should be discarded with the asbestos-contaminated waste. No more than one use of a glovebag shall be permitted.

19. With removed insulation in the bottom of the bag, twist the bag several times and tape it to keep the material in the bottom during removal of the glovebag from the pipe.

20. Slip a six mil disposal bag over the glovebag (still attached to the pipe). Remove the tape and open the top of the glovebag and fold it down into the disposal bag.

21. All surfaces in the work area should be cleaned using disposable cloths wetted with wetting agent. These cloths shall be disposed of or rinsed thoroughly to eliminate visible accumulation of debris. Then, when these surfaces have been allowed to dry, all surfaces shall be cleaned again using a HEPA filtered vacuum. If no mini-enclosure was built, then the entire room shall be cleaned.

22. Place any contaminated articles or debris into the bag with the waste.

23. Twist the top of the bag closed, fold this over, and seal with duct tape. Label the bag with labels prescribed by 40 CFR Part 61, Subpart M of the USEPA, 29 CFR 1926 of OSHA and 49 CFR—Parts 100-199 of the US DOT Hazardous Waste Hauling regulations.

24. Asbestos-containing waste material shall be disposed of as specified in N.J.A.C. 5:23-8.22.

25. Air sampling shall be conducted after completion of glovebag projects pursuant to N.J.A.C. 5:23-8.21 to determine if undetected leakage occurred. Once the area has been found to be safe for re-entry by unprotected personnel, the barriers may be removed.

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.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Recodified old 8.13 as new 8.14. Section 8.14 was formerly "Disposal of asbestos waste."

In (b)1: changed "are required to" perform to "shall" perform and changed "and" assist to "or" assist.

In (d)1: added text to specify removal procedures.

In (d)5: added text regarding the handling of the glove bag.

In (d)24: changed "8.14" to "8.15".

Recodified from 5:23-8.14 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, "Coordination with other permits", recodified as 5:23-8.6.

5:23-8.18 Demolition

(a) In buildings undergoing partial demolition and in buildings to be reoccupied by persons other than workers wearing appropriate NIOSH-approved respiratory protection, all friable asbestos or asbestos-containing material that will become friable during demolition must be properly removed.

(b) The removal of asbestos shall require a construction permit in accordance with N.J.A.C. 5:23-8.5. Additionally, a demolition permit must be obtained pursuant to N.J.A.C. 5:23-2.

(c) Asbestos abatement shall be done in accordance with all applicable provisions of this subchapter.

(d) Air monitoring samples during the removal phase and final air samples after removal shall be required for an asbestos abatement project.

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).

(e) substantially amended and results of .02 fibers change to .020. 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 8.21 as new 8.22.

In (a): added "Friable" to describe asbestos.

In (a)1i.: added text to specify accreditation requirements for asbestos hazard assessors.

Deleted old (c)1ii(1)-(4) regarding plans and specifications, added new (1) and recodified (5) and (6) as new (2) and (3), with no change in text.

Changed throughout "administrative authority having jurisdiction" to "asbestos safety control monitor".

In (e)1: changed "0.2 fibers/cc" from "0.20" and added "by phase contrast microscopy (PCM)".

Recodified from 5:23-8.22 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, "Asbestos safety control monitor", recodified as 5:23-8.11.

5:23-8.19 Abatement in occupied buildings

(a) The requirements of this section are intended to prevent contamination and exposure of building occupants to asbestos fibers.

(b) The building owner shall notify building occupants in writing 20 business days prior to the commencement of an asbestos abatement project. The building owner shall outline in writing any procedures and/or precautions that are deemed necessary in order to protect the health, safety and welfare of the occupants. This notification shall include, but not be limited to: relocation plans, if any; entrances and exits that may temporarily be blocked and alternate routes to be used; the name and telephone number of the owner's representative for the occupant to call in case of an emergency or to answer any questions with regard to the project. This notification shall accompany the application for a construction permit for asbestos abatement and shall be filed with the enforcing agency.

1. This notification shall be posted seven days prior to the preparation of the work area, in visible locations, for the benefit of the affected occupants of the work place, and in areas immediately adjacent to the asbestos abatement project. It shall be the owner's responsibility to ensure that these postings are maintained throughout the project.

2. When circumstances require immediate removal of asbestos-containing material, notification shall be provided to the building occupants as soon as possible.

3. Nothing in this section shall be interpreted as prohibiting the building owner from providing additional notification.

4. The asbestos safety control monitor firm shall notify the Department in writing 10 days prior to the commencement of an abatement project in an occupied building.

(c) A building or structure or part thereof may be occupied during an asbestos abatement project when all of the following conditions are met:

1. Isolation conditions include a requirement that the work area be physically separated from occupied areas by separation barriers of rigid construction consisting of nominal two inch by four inch studs spaced 16 inches on center and covered with a minimum of one-half inch plywood or comparable metal framing and ½ inch gypsum board covering. All seams shall be caulked to render the barrier air tight before two layers of polyethylene sheeting are applied on both sides. The polyethylene sheeting shall overlap at the seams. All penetrations around conduits, pipes, ducts or other openings between the work area and adjacent spaces shall be sealed, using materials determined to be suitable in accordance with the applicable subcode. In buildings required by the Uniform Construction Code to be of noncombustible construction, all materials used to construct separation barriers shall meet the Uniform Construction Code, building subcode requirements for that building and all plastics used shall be flame resistant. A separate means of egress for abatement personnel, materials and equipment shall be maintained. Adequate fire evacuation routes shall exist for all building occupants at all times.

i. Whenever the building in which this work area is located exceeds four stories in height and when stair, elevator or similar shafts lie within or adjacent to the separation barriers or the work area, then special seals shall be installed. Such seals shall be constructed in the same manner as the separation barriers and shall create a space not less than three inches in depth in front of the entire access area which space is sealed on both sides and positively pressurized with HEPA filtered air so that the pressure in the sealed space is .05 inches w.c. greater than that in the work area or the shaft.

ii. All HVAC systems located in the work area shall be shut down. If HVAC equipment is located in the work area and must be operated to service other areas of the building, then the HVAC equipment shall be isolated from the remainder of the work area by an enclosure constructed in a manner similar to the separation barriers and the space between the equipment and the seal shall be positively pressurized with HEPA filtered air to at least .05 inches w.c. greater than the work area.

iii. Where return air ductwork which must be kept operating is located within the work area, then it shall be isolated from the work area by an enclosure forming an annular space around the duct which is positively pressurized with HEPA filtered air to at least .02 inches w.c. greater than the work area. The enclosure shall be constructed in a manner similar to that required for separation barriers.

iv. All electrical systems in the work area shall be shut down. Their use may be approved by the asbestos safety control monitor if they are properly protected by ground fault circuit interruptors, they are cleanable, and provided that such other precautions as may be necessary are taken to ensure the safety of all who are in the work area.

2. Engineering controls shall be implemented as follows:

i. The asbestos safety technician shall verify exhaust capacity through appropriate field measurement and record these results in writing. The verification of exhaust flow rate via use of devices for monitoring pressure drop across filters on air filtration devices shall not be a substitute for appropriate field measurement. All exhaust from the work area shall be directed to the exterior of the building. If exhaust to the exterior of the building is not feasible, exhaust from the work area shall be directed into a second set of in-line air filtration devices, which, then, shall be permitted to be discharged into designated spaces approved by the asbestos safety control monitor.

ii. The contractor shall install a sufficient number of HEPA filter equipped air filtration units to cause a complete air change or total air filtration within the

work area at least once every 15 minutes. (Nothing in this subchapter shall be construed to limit the maximum exhaust capacity from the work area or to prohibit additional air changes per hour.) The exhaust capacity from the work area shall be sufficient to establish a pressure differential between the work area and all adjacent spaces greater than or equal to 0.05 inches w.c. (Nothing in this subchapter shall be construed to limit the maximum pressure differential established between the work area and occupied spaces.)

(1) Make up air shall not be drawn through openings in the separation barriers in buildings greater than four stories in height, unless those openings are equipped with systems or devices which will not permit air flow except toward the work area and the air filtration and exhaust units located in the work area.

3. Work area protection shall be assured as follows:

i. Floors shall be covered with two layers of polyethylene sheeting which shall overlap at the seams and which shall be applied to the floor, individually sealed. The first layer shall extend up the wall at least 12 inches. The second floor layer shall be installed and extend up sidewalls at least 24 inches.

ii. Walls shall be covered with one layer of polyethylene sheeting individually sealed to the wall. The layer shall hang straight down overlapping the second layer of floor sheeting on the wall by at least 18 inches.

iii. Sheeting shall be sized to minimize the number of seams. No seams shall be located at the joints between walls and floors. As a minimum, no seam shall stop within 12 inches of a corner and sheeting shall overlap at least 12 inches between seams of adjacent layers.

iv. When a strippable coating is used in place of polyethylene sheeting, it shall be used in accordance with N.J.A.C. 5:23-8.15(f)7 and the product shall be applied during periods of minimal occupancy as determined by the owner and included in the approved plan.

4. Monitoring shall be conducted as follows:

i. Air sampling shall be done as follows:

(1) At a minimum, one sample at the beginning of each work shift, one every four hours thereafter, and one at the end of the contractor's work day for every 10,000 square feet of occupied space adjacent to the work area shall be collected and analyzed. Air samples shall be taken in areas where the greatest potential for fiber migration exists. In addition to the requirements noted above, air samples shall be taken at the entrance(s) to the work area and any other interior spaces from which make-up air is drawn. Additional samples shall be taken for all areas such as stairwells, communicating shafts, elevators, penums, ducts which pass through the work area and

which are in service, and unusual room and building configurations. If air levels exceed the permitted fiber count, the applicable requirements of the contingency plan in (c)5 below shall be followed.

(A) At least one air sample shall be collected and analyzed during the work shift inside the work area. The results of this test will not, however, trigger the requirements of the contingency plan.

(2) A secure chain of custody for air samples shall be established in writing as part of the approved plan by the asbestos safety control monitor firm. The final disposition of samples (whether they should be retained or disposed of after analysis and if retained, who keeps them) shall be determined prior to the commencement of asbestos abatement.

(3) The services of a testing laboratory, as delineated in N.J.A.C. 5:23-8.21(a)1 and 2, shall include a microscope and laboratory technician at the project site or the capacity to obtain results within four hours from start of sample. The laboratory technician shall be listed in the Asbestos Analyst Registry of the American Industrial Hygiene Association for PCM analysis or qualified by other programs recognized by the Department as equivalent. If the laboratory technician is on site, the owner shall provide a safe and clean space for the analysis of samples separate and distinct from the work area. Air samples are to be analyzed via NIOSH 7400 and verbal results made available for a determination regarding continued occupancy. A written record of test results shall be kept at the job site and included in the final report.

(4) Ten percent of all abatement samples shall be re-analyzed within 24 hours at a laboratory for quality control purposes.

(5) Daily occupancy shall be allowed when the results of all the air samples are less than or equal to 0.010 fibers/cc by Phase Contrast Microscopy. If air levels exceed 0.010 fibers/cc, the contingency plan during abatement in (c)5 below shall be followed.

(6) In the case of reoccupancy and final clearance, all air samples used to determine reentry shall be analyzed by an accredited laboratory.

ii. Pressure monitoring shall be carried out as follows:

(1) Pressure differential shall be monitored by digital manometers with continuous printout or other approved low pressure monitoring devices. Sensor tubes used for monitoring shall be placed so that the air filtration devices shall not cause false readings. The asbestos safety technician shall zero and level the gauges each time a reading is taken.

(2) One or more separate pressure monitoring systems shall be installed by the asbestos safety control monitor firm near the entrance(s) to the work area and between the work area and any interior spaces from which make-up air is drawn.

(3) Written documentation of pressure differential shall be provided by the asbestos safety technician either by continuous printout devices. The asbestos safety technician and the contractor supervisor will ensure, prior to the completion of the work shift, the integrity of the containment site before workers depart.

(4) The pressure differential shall be greater than or equal to 0.05 inches w.c. at the pre-commencement inspection (at the time of approval immediately prior to the start of abatement work).

(A) In addition to providing a pressure differential greater than or equal to 0.5 inches w.c. for the pre-commencement inspection, a smoke test shall be conducted to demonstrate that the work area has been isolated properly and that pressure differentials have been established to prevent fiber migration from the work area.

(5) Daily Occupancy shall be allowed when the pressure differential is equal to or exceeds 0.05 inches w.c. If the air pressure differential drops below 0.05 inches w.c., the contingency plan during abatement in (c)5 below shall be followed.

5. Contingency plan during abatement shall be implemented as described below. These are the minimum requirements which shall be enforced by asbestos safety control monitors. These requirements shall not limit the asbestos safety control monitors from instituting additional requirements, if necessary, for the protection of the building occupants.

i. If the pressure differential drops below 0.05 inches w.c., the following procedures shall be implemented:

(1) The asbestos safety technician and the contractor supervisor shall investigate and evaluate the engineering controls to determine the source of the pressure loss.

(2) The contractor shall institute corrective action such as: additional sealing, critical barrier maintenance and construction, changing of exhaust unit filters, adjustment of make-up air, operation of additional exhaust units or other necessary measures to reestablish an acceptable pressure differential.

ii. If the pressure differential drops below 0.01 inches w.c., the following procedures shall be implemented:

(1) The contractor shall cease abatement activity in the work area.

(2) The asbestos safety control monitor shall notify the building owner to evacuate the pressurized space(s). The pressurized space(s) shall include all space outside the work area which is pressurized to maintain the required pressure differential relative to the work area and is isolated from the rest of the building in terms of air flow. The pressurized space may include the entire building exclusive of the work area or any part of the building that is pressurized to isolate it from the work area.

(3) The asbestos safety technician and the contractor supervisor shall investigate and evaluate the engineering controls and determine the source of the pressure loss.

(4) The contractor shall institute corrective action such as: additional sealing, critical barrier maintenance and construction, changing of exhaust unit filters, adjustment of make-up air, operation of additional exhaust units or other necessary measures to reestablish an acceptable pressure differential.

(5) Reoccupancy shall not be permitted in any area unless a pressure differential of 0.05 inches w.c. or greater is reestablished.

(6) If a pressure differential of 0.05 inches w.c. or greater is not reestablished within 24 hours of the first reading below 0.01 inches w.c., then the building shall be evacuated.

iii. If air levels exceed 0.010 f/cc, the following procedures shall be implemented:

(1) The asbestos safety technician and the contractor supervisor shall investigate and evaluate the engineering controls to determine the source of the high air level.

(2) An additional/second PCM air sample shall be taken at each place at which a high air level was obtained. The additional/second PCM sample may be split, and if the result of the air sample is less than or equal to 0.010 f/cc the contingency plan is terminated. If the result of the air sample exceeds 0.010 f/cc, the contractor, in consultation with the asbestos safety control monitor, shall choose the option of cleaning and retesting by PCM analysis or analyzing the split sample by TEM analysis. If the result of the TEM analysis exceeds 0.010 f/cc, then cleaning shall be undertaken.

(3) The decision as to the timing of the cleaning activity shall be made by the asbestos safety control monitor firm in consultation with the building owner and the contractor.

(4) Cleaning shall include, but not be limited to, wet wiping and misting the air. Cleaning the affected area shall be continued outside of containment and PCM sampling shall also be continued until the

result in the area is equal to or less than 0.010 f/cc by either PCM or TEM analysis.

(5) If laboratory analysis of air samples does not yield a reading less than or equal to 0.010 f/cc within 24 hours of receipt of the first test result above 0.010 f/cc, then the building shall be evacuated.

(6) Reoccupancy shall not be permitted in any area where PCM analysis reveals results greater than 0.010 f/cc, unless TEM results indicate asbestos fibers are equal to or less than 0.010 f/cc. In the case of reoccupancy, all air samples used to make the determination to allow reentry shall be analyzed by an accredited laboratory.

iv. If a power outage occurs during active abatement work, the building occupants shall be evacuated until the air samples determine that the occupied spaces are safe, and power has been restored. If a power outage occurs when the building is unoccupied, occupancy will not be permitted until air samples determine that the spaces to be occupied are safe and power has been restored.

6. Security shall be required as follows:

i. In high risk areas, the owner shall provide a 24 hour security guard to ensure protection against damage or vandalism to separation barriers, engineering systems, monitoring devices, or other equipment.

ii. The owner shall provide continuous unlimited access for the asbestos safety technician in all occupied spaces for installation, maintenance, and data collection from monitoring systems.

iii. The asbestos safety control monitor firm shall include provisions in the plan and the asbestos safety technician shall ensure that filters are changed as necessary and that pressure differential is maintained around the clock until the project is completed.

7. Waste removal shall be accomplished as follows:

i. The waste removal route of travel is to be designated on the abatement plans and shall be separate and distinct from the normal route of travel used by building occupants. Waste removal shall occur during the time of least amount of building occupancy. If the route of travel is to be used the following day by building occupants, air monitoring must be performed, and if the results of air levels exceed 0.010 f/cc, then the waste removal route is to be wet wiped using amended water, HEPA vacuumed and retested until an acceptable air level is achieved prior to allowing occupancy of the area.

ii. The waste removal process shall be closely monitored visually and through air sampling by the asbestos safety technician.

iii. No dumpster shall remain on the premises overnight unless the dumpster is locked and labeled to indicate that it contains asbestos-contaminated waste.

8. A written statement shall be signed by the asbestos safety control monitor denoting that an asbestos abatement will occur during building occupancy and verifying that the above requirements will be maintained. This written statement shall accompany the application for a construction permit for asbestos abatement and shall be filed with the enforcing agency. This statement shall include the areas to be occupied during the abatement and the number of occupants.

Recodification and New Rule, 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, "Asbestos safety technician; certification requirements", recodified as 5:23-8.10(a)-(c).

5:23-8.20 Removal of non-friable asbestos-containing material

(a) This section applies to all non-friable, miscellaneous asbestos-containing material.

1. When the removal method will cause the building environment to become contaminated with airborne asbestos fibers caused by a combination of mechanical and manual tasks, such as grinding the surface of vinyl asbestos floor tiles, then complete separation of the worksite from the rest of the building shall be required and the precautions and procedures as delineated in N.J.A.C. 5:23-8.15 or 8.19, as appropriate, shall be followed. A construction permit for asbestos abatement pursuant to this subchapter shall be required.

2. When the removal method will not contaminate the building environment with airborne asbestos fibers, such as when an electric heating appliance is used to loosen vinyl asbestos floor tiles or when the "Recommended Work Practices for the Removal of Resilient Floor Coverings" (latest edition) by the Resilient Floor Covering Institute are followed in removing floor tile, sheet vinyl flooring and the associated adhesives, then general isolation of the work area from the surrounding environment by the closing of doors and windows in the removal areas, when feasible, safe work practices and proper clean-up procedures shall be required.

(b) The disposal of non-friable asbestos-containing material and/or asbestos-contaminated waste shall conform to the New Jersey Department of Environmental Protection and Energy requirements specified in N.J.A.C. 7:26.

(c) Exception: This section shall not apply to non-friable asbestos-containing material found on the exterior of the building such as asbestos siding, transite and asbestos cement board, asbestos roof shingle, felts and build up roofing materials. Safe work practices shall be employed to minimize asbestos fiber exposure during the tear-off period. A construction permit shall be obtained if required pursuant to N.J.A.C. 5:23-2. Disposal of this waste shall be in accordance with regulations for the disposal of such material adopted by the New Jersey Department of Environmental Protection and Energy.

Recodified from 5:23-8.24 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, "Application of asbestos", recodified as 5:23-8.12.

5:23-8.21 Air monitoring methodology

(a) Air sampling specified in this section shall be performed by the asbestos safety technician in accordance with the procedures specified in this subchapter and shall be analyzed by a laboratory pursuant to 40 CFR 763.90.

1. For phase contrast microscopy (PCM) analysis, laboratories shall be currently enrolled in the American Industrial Hygiene Association Proficiency Analytical Testing Program or an equivalent recognized program.

2. Analysis by PCM shall use the NIOSH 7400 method delineated in "Fibers" publication in the NIOSH Manual of Analytical Methods, 3rd edition, 2nd supplement, August 1987 or the latest edition. Maximum turnaround time from sample collection through data reporting shall be 24 hours.

3. For transmission electron microscopy (TEM) analysis, laboratories shall participate in the National Institute of Standards and Technology—National Voluntary Laboratory Accreditation Program (NIST-NVLAP) and shall certify that the analysis they performed was according to the protocol listed in Appendix A to Subpart E of 40 CFR 763. Maximum turnaround time from sample collection through data reporting shall be 72 hours.

4. All pumps shall be calibrated prior to initial sampling using a primary standard. Pumps shall be recalibrated with a minimum of a secondary standard before and after each sample is collected. Protocols shall be established for periodic calibration, using a primary standard. The frequency of primary recalibration checks shall be initially high, until experience is accumulated to show that it can be reduced while maintaining the required sampling accuracy. Records shall be kept of all calibrations and shall be part of the daily log.

(b) Air sampling while abatement is in progress shall comply with the following procedures:

1. A minimum of three samples per eight hour shift shall be collected (one at the beginning of each shift, one every four hours thereafter, and one at the end of the contractor's work day). One stationary sample shall be collected within the clean room of the decontamination unit and two samples collected adjacent to the work area but remote from the decontamination unit entrance. In the selection of adjacent areas to be monitored, preference shall be given to rooms adjacent to critical barriers and/or work area. Testing results shall not indicate that concentrations above 0.01 fibers per cubic centimeter have occurred outside the containment barrier or above 0.02 fibers per cubic centimeter within the clean room of the decontamination chamber during the abatement project.

2. For abatement projects in occupied buildings, additional samples shall be taken in spaces adjacent to the work area and inside the work area and analyzed by PCM as required by N.J.A.C. 5:23-8.19(c)4. The contingency plan in N.J.A.C. 5:23-8.19(c)5 shall be followed if test results indicate that this is necessary.

(c) Post abatement visual inspections and air monitoring shall comply with the following procedures:

1. Within 48 hours after clean-up for post-removal air testing, and before the removal of critical barriers, a thorough and complete visual inspection and a subsequent final air test shall be performed. This test is required to establish safe conditions for the removal of critical barriers and to permit the beginning of reconstruction activity, if required. Sufficient time following clean-up activities shall be allowed so that all surfaces shall be dry during monitoring. Air pressure differential filtration units shall be in use during this monitoring. Post removal testing shall begin when all work area surfaces are completely dry.

2. Aggressive air sampling shall be employed using propeller-type fans and leaf blowers as follows:

i. The fans shall be placed in each room to be sampled so as to cause settled fibers to rise and enter the air.

ii. Prior to air monitoring, floors, ceilings, and walls shall be swept with the exhaust of a one-horsepower leaf blower. The areas which would be subject to dead-air conditions shall be swept clean.

iii. The fans used shall be capable of creating a minimum air velocity of 500 feet per minute. These fans may be of the oscillating type.

iv. The sampling pump and sampling media shall be placed in the abatement area on a random basis to provide unbiased and representative samples. Stationary fans shall be placed in locations which will not interfere with air monitoring equipment. Fan air shall be directed toward the ceiling.

v. One fan shall be used for each 10,000 cubic feet of the work area.

vi. The leaf blower and its use must meet the criteria set forth in EPA document 560/5-85-024, "Guidance for Controlling Asbestos-Containing Materials in Buildings," appendix section M.1.5, or any replacement criteria set forth by the EPA. Their use should be restricted to general occupancy areas that are contained, and they should not be used in any space with an open dirt, sand or gravel floor.

vii. The work site shall be kept free of non-asbestos abatement debris that would render aggressive air sampling impractical.

(d) Post abatement sampling and analysis for an asbestos hazard abatement project shall be performed as per EPA 40 CFR 763.90i. Samples collected within the affected work area shall be analyzed by TEM.

(e) Post abatement sampling and analysis for an asbestos hazard abatement project utilizing the glovebag technique and encapsulation shall be as follows:

1. One sample per 10,000 square feet of work area with a minimum of five samples shall be required. Samples collected within the affected work area may be analyzed by PCM to confirm completion of an asbestos abatement project using the methodology specified in NIOSH 7400.

(f) For TEM analysis, the project shall be considered complete when the results of samples collected in the affected work area comply with 40 CFR 763.90 and Appendix A to Subpart E. Maximum turnaround time from sample collection through data reporting shall be 72 hours.

(g) For PCM analysis, the project shall be considered complete when the results of samples collected in the affected work area show that the concentration of fibers for each of the five samples is less than or equal to 0.01 fibers per cubic centimeter.

(h) When the air analysis results for projects covered by this subchapter show asbestos fiber concentrations above the acceptance criteria, then clean-up shall be repeated until compliance is achieved by re-cleaning all surfaces using wet methods and operating all HEPA equipped air pressure differential units to filter the air.

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.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Recodified old 8.20 as new 8.21. Section 8.21 was formerly "Demolition".

Recodified from 5:23-8.23 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, "Appeals", repealed.

5:23-8.22 Disposal of asbestos waste

(a) The disposal of friable/non-friable asbestos-containing material and asbestos-contaminated waste from the project site shall be in accordance with New Jersey Department of Environmental Protection and Energy requirements specified in N.J.A.C. 7:26 and 40 CFR Part 61, Subpart M.

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 8.13 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.

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 8.14 as new 8.15, no change in text. Section 8.15 was formerly "Duties of the asbestos safety technician".

Recodified from 5:23-8.15 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 section, "Demolition", recodified as 5:23-8.18.

SUBCHAPTER 9. CODE INTERPRETATIONS

5:23-9.1 Application of the Plumbing Subcode to certain mobile homes

(a) Chapter 18 of the Plumbing Subcode (National Standard Plumbing Code) is not applicable to permanently installed mobile homes meeting the Federal Manufactured Home Construction and Safety Standards, 24 C.F.R. Part 3280.

(b) An approved structure placed on a site for use as a permanent dwelling shall meet the requirements of the State Plumbing Subcode, excluding Chapter 18 of the Plumbing Subcode (National Standard Plumbing Code), or, if applicable, the Federal Manufactured Home Construction and Safety Standards.

5:23-9.2 Interpretation: Construction Permit for a single family residence

(a) Any application for a construction permit for a single family residence shall be accompanied by at least two copies of plans drawn to scale, with sufficient clarity and detailed dimensions to show the nature and character of the work to be performed. Plans submitted shall not be required to show more detail or include more information than is reasonably necessary to assure compliance with the requirements of the Uniform Construction Code and rules in this chapter.

(b) Plans containing the following information shall be considered to meet the requirements of (a) above:

1. Site diagram consisting of a site plan showing size and location of all new and existing construction on the site with distances from lot lines and indicating new building services, location and size.
2. Construction plans consisting of a scale drawing showing foundation, floor plans, and elevations, including structural framing notes for all floors, ceilings and roofs. Only girders and columns need be identified and located on the plan. Included on the drawings shall be a loading schedule indicating the live loads for which the structure is designed.
3. The following details shall be required:
 - i. A cross section through one typical wall showing construction details from footing to and including roof framing. This section shall indicate all construction materials used including roofing, vapor barriers, sheathing type and thickness, insulation type and thickness, windows, glazing type if other than standard window glazing is used, interior finish material, floor type and thickness, structure, foundation and footings. Decorative material shall not be required to be shown unless it contributes to the structural integrity of the section.

- ii. Electrical details indicating lighting; receptacles; motors and equipment; smoke detectors; service entrance locations; size and type (overhead or underground); panel size, location; number of proposed circuits. A symbol legend shall be included.

- iii. Plumbing details indicating the locations of fixtures and a notice or table listing water and drainage pipe sizes. A note stating if sewage disposal is to public sewer or individual septic system shall be included.

- iv. Mechanical details indicating the type of heating system; location, size and type of heating unit, noting the distribution method and indicating design rates, location of fire dampers and safeguards; and location, type and size of flue.

4. The drawings shall bear the seal and signature of an architect or engineer who prepared the plans and is registered in the State of New Jersey. The seal and signature shall appear on each sheet of each copy of the plans submitted.

- i. The construction official shall waive the requirements for sealed plans in the case of a single family home owner who prepares his or her own plans for the construction, alteration or repair of a structure used or intended to be used exclusively as the owner's private residence, and which is to be constructed by the owner, providing that the owner shall submit an affidavit attesting to the fact that he has prepared the plans and that the plans are, in the opinion of the construction official and appropriate subcode officials, legible and complete for the purpose of ensuring compliance with the regulations.

- ii. Plumbing plans, electrical plans and mechanical plans may be prepared by licensed plumbers, licensed electrical contractors and mechanical contractors, respectively, in accordance with these regulations.

5. Construction plans, and electrical, plumbing, and mechanical details may be shown on more than one drawing.

6. Where a prototype plan has been approved pursuant to existing regulations, only a site diagram and reference to the approved prototype plan shall be required. This site diagram must be signed and sealed by a registered architect or licensed professional engineer.

7. The Construction Official, upon the advice of the appropriate subcode official, may waive any or all of the requirements for plans in (b)1 through 6 above when the work is of a minor nature.

5:23-9.3 Interpretation: ordinary repairs

(a) The following items are ordinary repairs and shall be treated as such by every enforcing agency. No permits for, inspections of, or notice to the enforcing agency of ordinary repairs shall be required. This is not an all-inclusive listing of ordinary repairs.

1. Ordinary building repairs include:

- i. Exterior and interior painting;
- ii. Installation, repair or replacement of any interior finishes of less than 25 percent of the wall area in any given room, in a one or two family dwelling. This shall include plastering and drywall installation;
 - (1) Vinyl wall covering of any amount is an ordinary repair;
 - (2) Paneling shall not be considered an ordinary repair;
- iii. Wall papering at any location;
- iv. The replacement of glass in any window or door. However, the replacement glass shall be of a type and quality that complies with the minimum requirements of the code;
- v. The installation and replacement of any window or door, including garage doors, in the same opening without altering the dimensions or framing of the original opening. This shall include storm windows and storm doors. The installation and replacement of means of egress and emergency escape windows and doors may be made in the same opening without altering the dimensions or framing of the original opening, and shall not reduce the required height, width or net clear opening of the previous window or door assembly;
- vi. The repair of any non-structural member such as a partition railing or kitchen cabinet;
- vii. The repair or replacement of any interior or exterior trim, decoration or moldings;
- viii. The replacement or installation of any flooring material, except carpeting, with a new material. However, installation of carpeting in one and two family dwellings will be permitted under ordinary repairs;
- ix. The repair of existing roofing material not exceeding 25 percent of the total roof area within any 12 month period;
- x. The repair of existing siding with like material not exceeding 25 percent of the total building exterior wall area within any 12 month period;
- xi. The repair or replacement of any part of a porch or stoop which does not structurally support a roof above;
- xii. The replacement or installation of screens;
- xiii. The installation of any roll or batt insulation when installed adjacent to or not more than one and a half inches from an interior finish; and
- xiv. Replacement of exterior rain water gutters and leaders.

2. Ordinary plumbing repairs include:

- i. Replacement of hose bib valves in single family dwellings. Replacement hose bib valves shall be provided with an approved atmospheric vacuum breaker;
- ii. Refinishing of existing fixtures. Relining of fixtures shall not be considered to be an ordinary repair;
- iii. Replacement of ball cocks. Replacement ball cocks must be an approved anti-siphon type;
- iv. Repair of leaks involving the replacement of piping between two adjacent joints only;
- v. Clearance of stoppages;
- vi. Replacements of faucets or working parts of faucets;
- vii. Replacements of working parts of valves;
- viii. Replacement of traps except for traps on culinary sinks in food handling establishments;
- ix. Replacement of a water closet or lavatory or kitchen sink in a single family dwelling with an approved similar fixture provided that no change in the piping arrangement is made. Replacement water closets bearing a date stamp of July 1, 1991 or later must use an average of 1.6 gallons or less of water per flushing cycle; and
- x. Replacement of domestic clothes washers and dishwashers.

3. Ordinary electrical repairs include:

- i. The replacement of any receptacle, switch, or lighting fixture rated at 20 amps or less and operating at less than 150 volts to ground with a like or similar item. Replacement of receptacles in locations where ground-fault circuit interrupter protection is required in the electrical subcode, shall not be considered ordinary electrical repairs;
- ii. Repairs to any installed electrically operated equipment such as doorbells, communication systems, and any motor operated device. Provided, however, that if fire protection systems are interrupted for repairs the fire official shall be notified in accordance with the building subcode;
- iii. Installation of communications wiring as covered by article 800 of the electrical subcode in one and two family dwellings, or the alteration/rearrangement of existing communications wiring in other occupancies provided however that the rearrangement does not involve penetration of a fire rated assembly and is not in a hazardous location as defined in chapter 5 of the electrical subcode; and
- iv. Replacement of domestic dishwashers; and
- v. Replacement of kitchen range hoods in single family dwellings.

4. Ordinary fire protection repairs include:

- i. The replacement of any sprinkler or smoke detector or heat detector head with a like device; and
 - ii. The repair or replacement of any component of a fire alarm or smoke and heat detection equipment.
5. Ordinary heating ventilation and air conditioning repairs shall include:
- i. Replacement of motors, pumps and fans of the same capacity;
 - ii. Repair and replacement of heating, supply and return piping and radiation elements, which does not require rearrangement of the piping system;
 - iii. Repair and replacement of duct work;
 - iv. Repair of air conditioning equipment and systems; and
 - v. Repair or replacement of control devices for heating and air conditioning equipment; and
 - vi. Replacement of kitchen range hoods in single family dwellings.
6. Ordinary elevator repairs include:
- i. The following work on elevator brakes:
 - (1) Installation of new linings;
 - (2) Replacement of brake switches, brake stand pivot bushings, and bearings or the reaming out and use of oversized pins. Replacement or repair of brake magnets, magnet coils and/or core sleeves;
 - (3) Renewal of phase splitting coils; and
 - (4) Re-babbiting of brake pin holes (gearless), and realigning of brake stands to pulleys.
 - ii. The following controller/selector repairs:
 - (1) Installation of overload relays and potential switches, and installation or replacement of reverse phase relays;
 - (2) Replacement of damaged resistance tubes, grids, broken controller panel sections, main power or brake rectifiers, power and light transformers, and microprocessor printed circuit boards. Replacement or reconditioning of dash pots and retarders. Replacement of a controller with a like or with the state of the art controller when only those features which are available on the existing controller will be made functional;
 - (3) Renewal of switch bases, armatures, hinge pins, coils, contacts and shunt leads; and
 - (4) Adjustment of controller to original design specifications.
 - iii. The following work on motor generators:

(1) Installation of four stem brush rigging on exciter, installation or renewal of bearing oil gauges, and renewal of sleeve or ball bearings;

(2) Replacement of generator armatures, commutators, commutator brushes, and turning down and undercutting of commutators;

(3) Rewinding of generator armatures, stators and field controls;

(4) Removal for testing on a work bench, reinsulating, banding and reinstallation of motor generators; and

(5) Repair of solid state drives and adjustments of generator compounding.

iv. The following work on hoist motors:

(1) Installation or renewal of bearing oil gauges, renewal of sleeve or ball bearings, and re-babbiting of sleeve bearings (gearless);

(2) Replacement of motor armatures, rotors, motor collector rings, commutators, commutator brushes, and turning down and undercutting of commutators;

(3) Rewinding of stators, armatures, and field coils; and

(4) Removal for testing on a work bench, reinsulation, banding and reinstallation of hoist motors and realignment of motors to worm shafts.

v. The following work on machines:

(1) Installation of new demountable drive sheave rims, new drive shafts, new integral drive sheaves, split couplings;

(2) Replacement of worms, gears, worm shaft housings, thrust bearings, thrust housings, external ring gears and pinions, machine drums, solid drive sheaves with demountable drive sheaves, and sheave bearing. Replacement or repair of stop motion switches, slack cable switches, replacement of drive sheave linings. Regrooving of drive sheaves;

(3) Re-babbiting of main bearings, external gears and bearings, and worm shaft housings;

(4) Renewal of sleeve bearings, drum buffers, and drum shafts;

(5) Re-securing of loose brake pulleys and realignment of brake pulleys, with motor gear shaft; and

(6) Removal of bearing shims.

vi. The following work on hoist ropes, compensating ropes and compensating chains:

(1) Replacement or re-socketing of hoist ropes and replacement of compensating ropes or chains, governor ropes, and hitches; and

(2) Shortening of hoist ropes due to a rope stretch.

vii. The following work on governors:

(1) Re-calibration, sealing, and reconditioning of governors, or replacement of governors with like equipment; and

(2) Replacement or reconditioning of governor rope tension sheaves.

viii. The following work on overhead, deflector, car and counterweight sheaves:

(1) Replacement or repair of sheaves, sheave bearings and sheave shafts; and

(2) Re-babbiting of sheave bearings.

ix. The following work on hoistways:

(1) Replacement of traveling cables and other hoistway wiring;

(2) Repair of counterweights, hoistway switches, hydraulic pistons, oil lines in the pit, and repacking of packing glands; and

(3) Repair or replacement of hoistway door equipment, rollers relating cables, gibs, hall buttons, lanterns, position indicator stations, and all existing related equipment, selector tapes, cables, dust covers, toe guards and hoistway fascia, and repair or replacement of all existing pit equipment with like equipment.

x. The following work on rails and guides:

(1) Realignment or replacement of main or counterweight rail sections with like products; and

(2) Repair or replacement of guide shoe liners or car and counterweight guides with like product.

xi. The following work on cabs:

(1) Installation or replacement of main and auxiliary car operating panels, emergency lighting, communication devices, door protective and reopening devices, car position indicators, and in-car lanterns;

(2) Repair or replacement of operating station on top of cars, door operating devices, motors, linkages, hangers, etc., hoistway door drive mechanisms, clutches, etc., side emergency exit latching devices and electrical switches, floor leveling and selector drive devices, terminal slow down and limiting devices, load weighing devices (on top of car and under car isolation), keyless entry and security devices, top of car intrusion devices, closed-circuit TV surveillance devices, lighting fixtures in the car on top of the car and under the car; and

(3) Replacement of ceilings with code approved materials, and of door saddles, cab flooring, walls and

panels with materials equivalent to those being replaced in respect to weight and fire resistance.

New Rule, R.1993 d.487, effective October 4, 1993.
See: 25 N.J.R. 2159(a), 25 N.J.R. 4592(a).

5:23-9.4 (Reserved)

New Rule, R.1990 d.490, effective October 1, 1990.
See: 22 N.J.R. 592(a), 22 N.J.R. 3148(a).
Repealed by R.1995 d.121, effective March 6, 1995 (operative July 1, 1995).
See: 26 N.J.R. 4875(a), 27 N.J.R. 894(c).
Formerly "Seismic Zones".

5:23-9.5 Records retention

(a) A construction official shall maintain, for the life of each structure wholly or partially within its jurisdiction copies of the following documents: construction application, permit(s), any update(s), notice of unsafe structure, certificate of occupancy, ongoing inspection control card, elevator inspection, decision of the construction board of appeals, cut-in card and the inspection and certificate logs (F-100B, F-110B, F-120B, F-130B, F-140B, F-150, F-170C and D, F-190B, F-240A, F-260B, F-290A, F-310B, F-340A, L-710A, L-720B).

(b) Copies of additional documents may be retained at the discretion of the construction official.

(c) A construction office shall retain copies of plans for Class I and Class II structures for at least the life of the structures and copies of plans for Class III structures for at least 10 years.

New Rule, R.1990 d.364, effective August 6, 1990.
See: 22 N.J.R. 1455(a), 22 N.J.R. 2275(a).
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).

5:23-9.6 Fixed central pedestal seating (stools) in casinos

(a) Fixed central pedestal seating (stools) shall be allowed within major aisles and cross-aisles in casinos for gaming patrons who use standard size slot machines or other similar machines, within these aisles, provided the following requirements are met:

1. Schematic drawings shall be submitted to the Department for review and approval which indicate the dimensions and locations of the stools, and the distances from adjacent fixtures, walls or other fixed objects;

2. Stool placement shall not result in any reduction of the required aisle accessway width when measured from the stool and any other adjacent obstacle, including, without limitation, other stools in back-to-back seating arrangements;

3. Stools that swivel and have a back rest shall be restricted so as to rotate in only one direction, operate in series, and be self-centering; and

4. A minimum clearance of eight inches, measured from the face of the gaming machine base at knee height, shall be provided between the gaming machine and the stool and a minimum clearance of 10 inches, measured from seat edge to seat edge, shall be provided between adjacent stools, in order to ensure discharge clearances.

New Rule, R.1991 d.61, effective February 19, 1991.
See: 22 N.J.R. 3610(a), 23 N.J.R. 406(a).

5:23-9.7 Manufacturing, production and process equipment

(a) Manufacturing, production and process equipment is not under the jurisdiction of the Uniform Construction Code. Manufacturing, production, and process equipment is defined as all equipment employed in a system of operations for the explicit purpose of the production of a product.

(b) Manufacturing, production, and process equipment shall include, but is not limited to, the following:

1. Electrical generation equipment, such as turbines, condensers, generators, and the like;
2. Electrical transmission equipment such as transformers, capacitors, regulators, switchgears, and the like;
3. Air pollution equipment, such as scrubbers;
4. Metal working equipment, such as castings, screen machines, grinders, lathes, presses, drills, welders, and the like;
5. Material handling equipment, such as rollers, control belts, and the like;
6. Packaging equipment, such as bottling machines;
7. Process drying equipment, such as ovens, kettles, fans, and the like;
8. Finishing equipment, used for such purposes as heat treatment, plating, painting, and the like;
9. Petrochemical refinery/plant equipment used for distillation, conversion, treatment and blending;
10. Electric, steam, pneumatic- or hydraulic-actuated equipment, such as motors, pumps, compressors, and the like;
11. Tanks which constitute part of a controlled industrial process, including those tanks containing flammable and combustible liquids, together with the dikes surrounding the tanks;
12. All piping used to transport products to and between industrial processes; any piping connected to the potable water supply downstream of an appropriate back-flow prevention device; any piping located upstream of the first joint at the outlet of the equipment or upstream of the indirect connection to the sanitary or storm sewer;

13. Pipe racks, hangers, and the like that support the process piping and the storage racks for the raw materials and finished products. Building structural systems supporting the racks, hangers, storage loads, and the like are excluded from the definition of process equipment, except that pipe support units that include a foundation and support steel shall be included as process equipment when they do not transfer loads to structures whose main function is other than supporting process pipe;

14. Boilers, pressure vessels, furnaces and the like used exclusively for industrial process;

15. Pre-wired and/or pre-engineered (bearing name plate) electro-mechanical equipment or machinery used exclusively for an industrial process;

16. Electrical work which forms a part of the power or control system of industrial process equipment, up to the point where that work connects to the plant electrical distribution system. Such a point shall be considered a suitable junction box, panel board, disconnect switch, or a terminal box which constitutes the final connection to the factory-installed equipment wiring. Where these items are not supplied as a part of the equipment, they shall be subject to local enforcing agency jurisdiction; and

17. (Reserved)

New Rule, R.1993 d.132, effective April 5, 1993.
See: 24 N.J.R. 3458(a), 25 N.J.R. 1512(b).

SUBCHAPTER 10. RADON HAZARD SUBCODE

5:23-10.1 Title, scope; intent

(a) This part of the regulations, adopted pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217, as amended and as supplemented by P.L. 1989, c.186 (N.J.S.A. 52:27D-119 et seq.), and entitled Radon Hazard Subcode, shall be known, and may be cited throughout the regulations as, N.J.A.C. 5:23-10 and, when referred to in this subchapter, may be cited as "this subchapter".

1. This subchapter is intended to complement rules adopted by the New Jersey Department of Environmental Protection at N.J.A.C. 7:28-27 which provide for certification of persons who sell radon or radon progeny devices, test for radon or radon progeny, or mitigate radon in buildings.

- i. Copies of N.J.S.A. 26:2D-70 et seq. and N.J.A.C. 7:28-27 may be obtained from the New Jersey Department of Environmental Protection, CN 411, Trenton, NJ 08625.

(b) This subchapter pertains to the construction of all buildings in Use Groups E and R, as defined in the building subcode, within recognized radon prone areas defined as tier one by the New Jersey Department of Environmental Protection and shall control matters relating to construction techniques to minimize radon gas and radon progeny entry and facilitate any subsequent remediation that might prove necessary.

(c) This subchapter seeks to protect and ensure public safety, health and welfare insofar as it is affected by radon entry into schools and residential buildings.

1. It is the purpose of this subchapter to establish standards and procedures to ensure that construction techniques that minimize radon entry and that facilitate any post-construction radon removal that is required shall be incorporated in the construction of all buildings in Use Groups E and R in tier one areas and are permitted to be incorporated elsewhere in New Jersey.

2. Radon is a colorless, odorless, tasteless, radioactive gas that occurs naturally in soil gas, underground water, and outdoor air. Prolonged exposure to elevated concentrations of radon and its progeny (that is, substances formed as a result of the radioactive decay of radon) has been associated with increases in the risk of lung cancer. An elevated concentration is defined as being at or above the guideline of 4 pCi/L or 0.02 WL average annual exposure.

3. Inasmuch as it is deemed to be more cost effective to build schools and residential buildings that resist radon entry than to remedy a radon problem after construction, design and construction techniques shall be employed, in tier one areas, to minimize pathways for soil gas to enter and features shall be incorporated during construction in tier one areas that will facilitate radon removal after completion of the structure if prevention techniques prove to be inadequate.

4. The installation of radon mitigation systems in existing portions of buildings shall not be subject to the construction technique requirements set forth in N.J.A.C. 5:23-10.4.

Amended by R.1994 d.609, effective December 19, 1994 (operative April 1, 1995).
See: 26 N.J.R. 2704(a), 26 N.J.R. 5007(b).

5:23-10.2 Definitions

The following words, terms and abbreviations, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Foundation pipe drain” means a drain placed around the perimeter of a foundation that utilizes a perforated pipe. An “interior foundation pipe drain” is one placed around the internal perimeter of a foundation. An “exterior foundation pipe drain” is one placed around the external perimeter of a foundation.

“French drain” or “channel drain” means a path used to assist with water drainage which is installed in basements of some structures during initial construction, which consists of a gap (typically one-half to one and one-half inch in width) between the basement block wall and the concrete floor slab around the entire inside perimeter of the basement.

“Picocurie per Liter (pCi/L)” means 2.2 disintegrations per minute of radioactive material per liter. It may be used as a measure of the concentration of radon gas in air. One picocurie is equivalent to 10-12 Curies.

“Radon” means the radioactive noble gas radon-222.

“Radon progeny” means the short-lived radionuclides formed as a result of the decay of radon-222, including polonium-218, lead-214, bismuth-214 and polonium-214.

“Sump” means a pit or hole in or through a basement floor slab designed to collect water, and from which such water is drained by means of a vertical-lift or sump pump.

“Sump pump” means a pump used to move collected water out of the sump to an above grade discharge remote from the structure.

“Working level (WL)” means that concentration of short-lived radon decay products that will result in 130,000 million electron volts of potential alpha-particle energy per liter of air. Working level is a measure of radon decay product concentration in air.

5:23-10.3 Enforcement

(a) The provisions of this subchapter shall be enforced by the enforcing agencies having responsibility for the enforcement of this chapter.

(b) Enforcement responsibility shall be divided among subcode officials in the following manner:

1. For new structures and additions:

i. Except as otherwise indicated in (b)1ii below, plan review and inspection with regard to compliance with N.J.A.C. 5:23-10.4(b) shall be the responsibility of the building subcode official;

ii. Plan review and inspection with regard to work performed under N.J.A.C. 5:23-10.4(b) that is otherwise subject to the plumbing, electrical or fire protection subcode shall be the responsibility of the plumbing, electrical or fire protection subcode official, respectively.

2. For existing structures:

i. Construction enforcement responsibility for verification that radon mitigation work in all structures, other than detached one and two family dwellings, is in conformance with the adopted subcodes shall be as set forth in N.J.A.C. 5:23-3.4(a), (c), (d) and (f).

ii. In existing detached one and two family dwellings, the building subcode official shall be responsible for verification that all construction aspects of radon mitigation work are in conformance with the adopted subcodes, except that the electrical subcode official shall be responsible for those construction aspects that are subject to the electrical subcode.

Amended by R.1991 d.429, effective August 19, 1991.

See: 23 N.J.R. 1487(a), 23 N.J.R. 2501(a).

In (b), added 5 and 6.

Amended by R.1994 d.609, effective December 19, 1994 (operative April 1, 1995).

See: 26 N.J.R. 2704(a), 26 N.J.R. 5007(b).

5:23-10.4 Construction techniques

(a) Tier one radon hazard areas shall be identified in accordance with the county/municipal radon listing established by the Department of Environmental Protection. The current list of municipalities in tier one areas is set forth in Appendix 10-A of this subcode.

(b) The construction techniques set forth in this subsection shall be the minimum radon hazard protective features required to be incorporated into construction of buildings in Use Groups E and R in tier one areas, and may be incorporated elsewhere, in order to minimize radon and radon progeny entry and facilitate any post-construction radon removal that may be required. Enumeration of these construction techniques is not intended to preclude voluntary use of additional or more extensive techniques. Full compliance with these construction techniques is not required for additions; however, those construction techniques that are feasible shall be incorporated.

1. A continuous vapor barrier not less than six-mil (.006 inch; .152 mm) polyvinyl chloride or polyethylene with any seams overlapped not less than 12 inches (305 mm), or other approved materials, shall be installed under the slab in basement and slab-on-grade construction and on the soil in crawl space construction.

2. Floors of basements and slab on grade construction shall be placed over a base course, not less than four inches (102 mm) in thickness, consisting of gravel or crushed stone containing not more than 10 percent of material that passes through a No. 4 sieve.

3. Basement slabs with interior foundation pipe drains installed shall have a solid three-inch minimum diameter vent pipe section installed in conjunction with this drainage system and be connected to an independent vent stack pipe terminating at an approved location on the exterior of the building.

4. Basement slabs which do not have an interior foundation pipe drain, and slab on grade construction (excluding non-habitable spaces such as garages), shall be provided with one three-inch minimum solid vent pipe section with a "T" pipe fitting for every 1,500 square feet, or portion thereof, of slab area, this vent pipe section to be installed into the sub-slab aggregate. The horizontal openings of the "T" pipe fitting shall be placed in the sub-slab aggregate. The vertical portion of the "T" pipe fitting shall be connected to an independent vent stack pipe terminating at an approved location on the exterior of the building. Where more than one vent pipe section is provided, interconnection of these sections into a single independent vent stack is permitted.

5. Basement slabs with French drains or channel drains shall not be allowed unless interior foundation pipe drains as described in this section are installed.

6. Joints in foundation walls and floors, including, without limitation, control joints between slab sections poured separately, and between foundation wall and floor (except for French drains or channel drains), as well as penetrations of the foundation walls and floor including, but not limited to, utility penetrations, shall be substantially sealed by utilizing a non-cracking polyurethane or similar caulk, or equivalent, in order to close off the soil gas entry routes. Any openings or penetrations of the floor over the crawl space shall be substantially sealed in order to close off the soil gas entry routes.

7. Untrapped floor drains shall be provided with removable stoppers which substantially close off the soil gas entry routes.

8. A sump cover which substantially closes off the soil gas entry routes shall be provided for all sump installations. If foundation pipe drains terminate at a sump installation and provisions are made for venting from the sump installation, the three-inch diameter solid vent pipe section requirement of (b)3 above need not be provided.

9. Any ductwork that is routed through a crawl space or beneath a slab shall be properly taped or sealed.

10. Sealant materials that substantially close off the soil gas entry routes shall be installed on any doors or other openings between basements and adjoining crawl spaces that are vented to the exterior.

11. The tops of foundation walls, including, without limitation, interior ledges, that are constructed of hollow masonry units shall be capped or the voids shall be completely filled.

12. The independent vent stack pipe provided in accordance with (b)3, 4 or 8 above shall be an adequately supported, gas tight, three-inch minimum diameter solid pipe, through any enclosed portions of the building. The pipe shall be routed in a manner that makes it accessible for the installation of a future in-line vent pipe fan in a non-conditioned (not heated or cooled) space, including, without limitation, an attic space, but excluding a basement or crawl space, and installed in a configuration, and supported in a manner, that will ensure that rain water or condensate accumulation within the pipes will drain downward into the ground beneath the slab or vapor barrier. The vent stack pipe shall meet the following termination requirements:

- i. Vent pipes shall terminate at least 12 inches above the roof, measured from the highest point where the vent intersects the roof. When a vent pipe extension terminates on an occupiable roof the vent pipe shall extend at least seven feet above the roof surface. Exception: Buildings more than three stories in height shall be allowed to extend vent pipe terminals through a wall provided that the termination is at least 20 feet above grade and is effectively screened.

ii. No vent terminal shall be located directly beneath any door, window, or other ventilating opening of the building or of an adjacent building nor shall any such vent terminal be within 10 feet horizontally of such an opening unless it is at least two feet above the top of such opening.

iii. No vent terminal shall be closer than 10 feet horizontally from any lot line. Where this 10 foot horizontal distance is not possible due to lot width, the vent terminal shall be placed as remote from the lot line as practicable.

13. Radon vent pipes shall be identifiable and clearly labeled at intervals of not more than 25 feet in concealed locations, not more than 50 feet in exposed locations and not less than once in any room or space.

14. Electrical junction boxes shall be installed near the provided area, such as an accessible attic space, where a future in-line vent pipe fan and system failure alarms may be installed.

15. In combination basement/crawl space or slab-on-grade/crawl space buildings a three-inch minimum solid vent pipe shall be provided between the areas and interconnected into the independent vent stack to permit use of a single in-line vent pipe fan if activation of the system is desired.

16. In order to reduce stack effect, air passages that penetrate the conditioned envelope of the building, such as attic access openings, or other openings installed in top-floor ceilings, shall be closed, gasketed or otherwise sealed with materials approved for such applications.

Amended by R.1994 d.609, effective December 19, 1994 (operative April 1, 1995).
See: 26 N.J.R. 2704(a), 26 N.J.R. 5007(b).

County	Municipality	
Monmouth	Allentown	Marlboro
	Colts Neck	Rumson
	Freehold Borough	Shrewsbury Borough
	Freehold Township	Tinton Falls
	Holmdel	Upper Freehold
	Little Silver	
Morris	Boonton Town	Morris
	Chester Borough	Morristown
	Chester Township	Mount Arlington
	Denville	Mount Olive
	Dover	Passaic
	Harding	Randolph
	Jefferson	Rockaway Borough
	Kinnelon	Rockaway Township
	Mendham Borough	Roxbury
	Mendham Township	Victory Gardens
	Mine Hill	Washington
	Morris Plains	Wharton
Passaic	Pompton Lakes	West Milford
Salem	Alloway	Woodstown
Somerset	Bedminster	Millstone
	Bernardsville	Montgomery
	Bernards	Peapack & Gladstone
	Branchburg	Rocky Hill
	Bridgewater	Somerville
	Far Hills	Warren
	Hillsborough	Watchung
	Franklin	
Sussex	All municipalities	
Union	Scotch Plains	
Warren	All municipalities	

Public Notice.

See: 23 N.J.R. 3745(a).

Revised Tier I list issued.

Administrative Change.

See: 26 N.J.R. 3707(b).

APPENDIX 10-A

New Jersey Municipalities in Tier 1

County	Municipality	
Bergen	Edgewater	
Burlington	Chesterfield	Mansfield
Camden	Laurel Springs	Runnemede
	Magnolia	
Cumberland	Bridgeton	
Gloucester	Deptford	Harrison
	East Greenwich	Swedesboro
	Franklin	Wenonah
	Greenwich	
Hunterdon	All municipalities except Kingswood	
Mercer	Ewing	Pennington
	Hopewell Borough	Princeton Borough
	Hopewell Township	Princeton Township
	Lawrence	
Middlesex	Helmetta	Piscataway
	Highland Park	Plainsboro
	North Brunswick	South Brunswick

SUBCHAPTER 11. INDOOR AIR QUALITY STANDARDS AND PROCEDURES FOR BUILDINGS OCCUPIED BY PUBLIC EMPLOYEES

5:23-11.1 Title; scope; intent

(a) This subchapter, adopted pursuant to authority of the State Uniform Construction Code Act and the Public Employees Occupational Safety and Health Act (N.J.S.A. 34:6A-25 et seq.), and entitled "Indoor Air Quality Standards and Procedures for Buildings Occupied by Public Employees," shall be known and may be cited throughout the rules as subchapter 11, and when referred to in subchapter 11 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) This subchapter shall control matters relating to indoor air quality in existing buildings occupied by public employees during their regular work hours, including procedures for reporting and responding to complaints of indoor air quality in accordance with the Public Employees Occupational Safety and Health Act (PEOSHA).

(d) This subchapter seeks to provide an efficient administrative framework for reporting and responding to complaints of indoor air quality, and for the enforcement of indoor air quality standards. Additionally, this subchapter provides a uniform standard through the adoption of nationally-recognized standards.

5:23-11.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the content indicates otherwise.

"Building-related problems" means complaints regarding such conditions as temperature, humidity and ventilation.

"Department" means both the Department of Community Affairs and the Department of Health, unless the context clearly indicates otherwise.

"Designated smoking area" shall mean an area in a building where smoking is permitted and which is physically separated from non-smoking areas and which nonsmokers do not need to enter or pass through.

"Employee" means any public employee as defined in the Public Employees Occupational Safety and Health Act. For purposes of this subchapter, "employee" shall be deemed to include "employee's representative."

"Employer" means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of the State, or any department, division, bureau, board, council, agency or authority of the State, except any bi-state agency; or any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purposes district created pursuant to law.

"Facility manager" means the person employed by the building owner and charged with the care and maintenance of the building.

"Health-related problems" means any complaint that involves a symptom such as headaches, nausea, dizziness, etc.

"Lease management officer" shall mean the person or office who signs the lease on behalf of the employer or who is designated by the employer with responsibility for the lease.

"Retrofit" means to bring a building or portion thereof which exhibits indoor air quality deficiencies into compliance with the standards adopted in this subchapter.

5:23-11.3 Adoption of standards

(a) Pursuant to the authority granted under P.L. 1975, c.217, as amended, the Commissioner hereby adopts and incorporates herein by reference the nationally-recognized standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., known as ASHRAE 55-1981 (Thermal Environmental Conditions for Human Occupancy) and ASHRAE 62-1989 (Ventilation for Acceptable Indoor Air Quality), including all subsequent revisions and amendments thereto, as the standard for evaluating indoor air quality in all buildings or portions of buildings subject to this subchapter.

1. Copies of these standards may be obtained from the sponsor at: ASHRAE Publication Sales Department, 1791 Tullie Circle, NE, Atlanta, GA 30329.

2. In addition to the provisions of the standards adopted above, the air from designated smoking areas shall not be recirculated to non-smoking areas in buildings covered by this subchapter.

3. Laboratories and/or industrial locations which comply with Permissible Exposure Levels established pursuant to the Occupational Safety and Health Act (OSHA) shall be deemed to be in compliance with the requirements of this subchapter for contaminant levels.

(b) Where the Department, upon investigation, has reason to believe that a building or a portion of a building does not provide for an adequate level of indoor air quality when measured against the nationally recognized standards adopted in this subchapter, then the Department may require the building owner or employer to perform a comprehensive ventilation and temperature evaluation in accordance with those standards. The Department may additionally require the building owner or employer to obtain and furnish to the Department, at the building owner's expense, a report from a licensed engineer or registered architect or certified industrial hygienist or other person with similar qualifications, education, or experience who can demonstrate the ability to perform indoor air quality evaluations. The report must outline appropriate corrective measures to the building or portions of the building under investigation. Where retrofit is found to be necessary it shall be performed in accordance with the standards adopted in this subchapter.

(c) Except as required by (b) above, nothing in this subchapter shall be interpreted as requiring the retrofit of all buildings subject to this chapter in conformity with the adopted standards. These standards are adopted in order to provide a nationally recognized objective measurement tool for the evaluation and retrofit of buildings or portions of buildings which exhibit indoor air quality deficiencies.

5:23-11.4 Enforcement

(a) The Department of Health shall be the sole agency for investigating complaints and initiating enforcement of standards for health-related problems.

(b) The Department of Community Affairs shall be the sole agency for investigating complaints and enforcing standards for building-related problems.

(c) The Department of Labor shall be the sole agency for the enforcement of orders resulting from investigations initiated by the Department of Health.

5:23-11.5 Initial complaint to employer

(a) The employee or employee's representative shall submit the complaint in writing to the employer or to the employee relations officer, unless otherwise specified in writing by the employer.

(b) Within five working days of receipt the employer shall acknowledge receipt of the complaint and shall outline the planned response action in writing to the employee. The response may include any combination of the following:

1. A description of any remedial action already taken;
2. An outline of any response action planned but not yet taken with a timetable for completion; and/or
3. An order for study of the problem with a timetable for completion.

(c) In a leased building, the employee shall submit the complaint to the employer. In such buildings managed and maintained by the building owner and not the employer, the complaint shall be forwarded by the employer to the lease management officer or to the person designated by the building owner to receive such complaints who, in turn, shall forward it to the building owner for corrective action pursuant to the terms of the lease and this subcode.

(d) Where a response action is planned or a study ordered, it shall be initiated as soon as possible. The employer shall report the results in writing to the employee within 10 working days of completion.

5:23-11.6 Formal complaint to State agency

(a) If the condition persists or if the employer fails to respond to the complaint, the employee may request further action by notifying the Department of Health or the Department of Community Affairs in writing.

(b) Health-related complaints shall be reported to the Department of Health.

(c) Building-related complaints shall be reported to the Department of Community Affairs.

(d) Within five working days following receipt of the complaint, the Department of Health or the Department of Community Affairs shall notify the employer that a complaint has been filed.

1. If the employer has had an opportunity to respond as outlined in N.J.A.C. 5:23-11.5(a), the enforcing agency shall proceed to its investigation.

2. If the employee files the complaint directly with the Department of Health or the Department of Community Affairs, the enforcing agency shall give the employer the opportunity to respond as outlined in N.J.A.C. 5:23-11.5.

5:23-11.7 Formal complaint procedure; health-related complaint

(a) Health-related complaints shall be reported to the Department of Health as follows:

1. The employee or employee's representative shall notify the Department of Health in writing of the grounds for the complaint. All relevant documents shall accompany the complaint.

2. Within five working days from receipt of the complaint, the Department of Health shall notify the employer that a complaint has been filed.

i. Upon request of the employee or the employee's representative filing the complaint, the employee's name shall be withheld from the notice to the employer.

ii. Where the employee exercises this right, the Department of Health shall notify the employer who, in turn, shall respond to the Department.

3. The Department of Health shall determine the extent of the problem.

4. If the extent of the problem indicates, the Department of Health shall determine or shall order the employer to have a qualified expert determine whether at least one of the following three conditions exists. The investigation for contaminants shall be conducted in accordance with the standards adopted in N.J.A.C. 5:23-11.3.

- i. Known contaminants are clearly present;
- ii. A definite point source of contamination exists; or
- iii. Physical evidence indicates contaminants although exact identification has not been made.

5. If the study is contracted for by the building owner or employer, the building owner or employer shall report the results in writing to the Department of Health within five working days of its receipt.

6. If remedial action is indicated by the investigation, the Department of Health shall ensure that such remedial action is completed, provided this action relates to removal of identified source(s) of contamination or modification/abatement of work practices which generate air contaminants. Any remedial action involving repairs or modifications to the general ventilation system shall be referred to the Department of Community Affairs for enforcement.

7. A complete record of this investigation shall be kept by both the Department of Health and the employer for five years. The employer shall provide the employee bringing the complaint with copies of studies undertaken, if any, and with written reports of work planned and completed to abate the problem.

8. If, in the course of the investigation, the Department of Health discovers that the complaint includes a building-related problem which will not be corrected by the remedial action undertaken, the Department of Health shall refer that problem to the Department of Community Affairs for investigation in accordance with N.J.A.C. 5:23-11.8. If health symptoms reported are determined to be due to building renovation or construction activities as outlined in Section 3019 of the BOCA National Building Code, 1990 edition, then the Department of Health shall refer the matter to the Department of Community Affairs for enforcement.

9. If any corrective action requires a construction permit under the Uniform Construction Code, the permit shall be obtained from the enforcing agency having jurisdiction.

5:23-11.8 Formal complaint procedure; building-related complaints

(a) Building-related complaints shall be reported to the Department of Community Affairs as follows:

1. The employee or the employee's representative shall notify the Department of Community Affairs in writing of the grounds for the complaint. All relevant documents shall accompany the complaint.

2. Within five working days from the receipt of the complaint, the Department of Community Affairs shall notify the employer that a complaint has been filed.

i. Upon the request of the employee or the employee's representative filing the complaint, the employee's name shall be withheld from the notice to the employer.

ii. Where the employee exercises this right, the Department of Community Affairs shall notify the employer who, in turn, shall respond to the Department.

3. The Department of Community Affairs shall investigate and determine the nature and extent of the problem. The investigation shall be conducted in accordance with the standards adopted in N.J.A.C. 5:23-11.3.

4. Where the Department, in its sole discretion, determines that an engineering evaluation of the building or portion of a building and its mechanical systems is warranted, then the building owner or employer shall, at its expense, provide for such engineering evaluation as the Department determines is necessary and shall report the results in writing to the Department within five working days of receipt.

i. The comprehensive evaluation shall include, but not be limited to, monitoring of building air intake and exhaust flows, room temperatures, room air supply and return flows, and calculation of amount of outdoor air per occupant.

ii. Since the environmental parameters of temperature, radiation, humidity and air movement necessary for thermal comfort depend upon the occupant's clothing and activity level, the evaluation mentioned in (a)4i above shall take these items into consideration as recommended in the indoor air quality subcode. If humidity can be controlled by existing equipment in the building, it shall be evaluated in accordance with the indoor air quality subcode.

iii. The results of the ventilation and temperature evaluation, along with a plan for remediation of the indoor air quality, shall be submitted to the Department for review and approval. The remediation plan shall include target dates for the following:

(1) Evaluation of engineering control options;

(2) Selection of optimum control methods and completion of design;

(3) Procurements, installation and operation of selected control measures; and

(4) Testing and acceptance or modification or design of controls.

5. If remedial action is indicated by the investigation, the Department of Community Affairs shall ensure that such remedial action is undertaken and successfully completed.

6. A complete record of this investigation shall be kept by the Department of Community Affairs and the employer for five years. The employer shall provide the employee bringing the complaint with copies of studies undertaken, if any, and with written reports of work planned and completed to abate the problem.

7. If, in the course of the investigation, the Department of Community Affairs discovers that the complaint includes the existence of air contaminants which will not be corrected by any remedial action undertaken, the Department of Community Affairs shall refer the complaint to the Department of Health for investigation in accordance with N.J.A.C. 5:23-11.7.

8. If any corrective action requires a construction permit under the Uniform Construction Code, the permit shall be obtained from the enforcing agency having jurisdiction.

5:23-11.9 Renovation work/cleaning operations

(a) Renovation work, new construction and/or cleaning operations that results in the diffusion of dust, stone and other small particles, toxic gases or other harmful substances in quantities hazardous to health shall be safeguarded by means of local ventilation or other protective devices to insure the safety of the public and shall be performed in accordance with the requirements of the building subcode. Renovation areas in occupied buildings shall be isolated and dust and debris shall be confined to the renovation or construction area. Following the completion of construction or renovation work, the employer should ensure that appropriate measures are taken to allow materials to offgas prior to employee occupancy.

(b) Before use of paints, adhesives, sealants, solvents, or installation of insulation, particle board, plywood, floor coverings, carpet backing, textiles, or other materials in the course of renovation or construction, the employer or the employer's hired contractor shall check product labels or seek and obtain information from the manufacturers of those products on whether or not they contain volatile organic compounds such as solvents, formaldehyde or isocyanates that could be emitted during regular use. This information shall be used to select products and to determine necessary measures to be taken to comply with this section.

5:23-11.10 Equipment maintenance

(a) The facility manager shall establish and follow a preventive maintenance schedule in accordance with the manufacturer's recommendations or with accepted practice for the following equipment and/or systems:

1. HVAC System. Scheduled maintenance of the HVAC system shall include checking and/or changing air filters, checking and/or changing belts, lubrication of equipment parts, checking the functioning of motors and confirming that all equipment is in operating order. Damaged or inoperable components shall be replaced or repaired as appropriate. Additionally, any reservoirs or parts of this system with standing water shall be checked for microbial growth.

2. Any other building systems equipment not listed above that requires routine maintenance in accordance with the manufacturer's instructions or, where there are no manufacturer's recommendations, with accepted maintenance practice.

(b) The maintenance schedule shall be updated to show all maintenance performed on equipment. The schedule shall include the date that such maintenance was performed and the name of the person or company performing the work.

(c) The maintenance schedule shall be made available upon request to any representative of an enforcing agency.

(d) Porous building materials contaminated with microbial growth shall be replaced or disinfected.

5:23-11.11 Penalties

(a) For noncompliance with the provisions of this subchapter with regard to building-related problems, orders shall be issued and penalties shall be assessed in accordance with N.J.A.C. 5:23, the Uniform Construction Code, of which this subchapter is a part, by the enforcing agency having jurisdiction.

(b) For noncompliance with the provisions of this subchapter with regard to health-related problems, orders shall be issued and penalties shall be assessed by the Department

of Labor in accordance with the Public Employees Occupational Safety and Health Act.

5:23-11.12 Appeals of Department decisions

(a) Whenever the Department of Community Affairs shall act as the enforcing agency, appeals may be made to the Division of Housing and Development. Whenever the Department of Health shall act as the enforcing agency, orders shall be issued by and appeals may be made to the Department of Labor, Division of Workplace Standards. The case shall be adjudicated before the Office of Administrative Law and the final decision shall be issued by the Commissioner of the department involved. 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).

(b) Appeals may be made by the employee, the employer or the building owner or manager.

(c) The application for appeal shall be taken within 20 business days of the receipt of written notice of the decision of the department involved.

(d) The application for appeal shall be in writing, briefly setting forth the appellant's position. Such application shall state the name and address of the appellant, the address of the building or site in question and shall reference the specific sections of the rules in question, and the extent and nature of the appellant's reliance on them. The appellant may append to his written application any data or information that he may deem appropriate to his cause.

1. The department involved shall make available to the Office of Administrative Law the full record of the complaint which is the subject of the appeal.

SUBCHAPTER 12. ELEVATOR SAFETY SUBCODE

5:23-12.1 Title; scope; intent

(a) This subchapter of the rules adopted pursuant to the authority of the Uniform Construction Code Act, entitled "Elevator Safety Subcode," shall be known and cited throughout this chapter as subchapter 12 or N.J.A.C. 5:23-12, and when referred to in this subchapter may be cited as "this subchapter."

(b) Unless otherwise specifically provided, all references to paragraphs, sections, or to provisions not specifically identified, shall be construed to refer to such paragraph or section or provision of this subchapter.

(c) This subchapter shall control all matters relating to administration of tests and inspections of elevator devices as defined in (e) below.

(d) It is the purpose of this subchapter to enhance the public safety, health and welfare by ensuring that elevator devices as defined in this subchapter are periodically inspected and maintained in accordance with nationally recognized, referenced standards.

(e) For purposes of this subchapter, "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, without limitation, 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 Standard for Belt Manlifts).

1. This definition shall not apply to any conveyor devices that are process equipment.

5:23-12.2 Referenced standards

(a) Periodic, routine and acceptance tests and inspections, if applicable, shall be required on all new and existing power elevators, escalators, dumbwaiters, moving walks, wheelchair lifts, manlifts and stairway chairlifts in accordance with the most recent edition of ASME A17.1 referenced in the building subcode. This subsection shall not apply to elevators in structures in Use Groups R-3 or R-4, or to any elevator located wholly within a dwelling unit in an R-2 structure that is not accessible to the general public.

(b) All operating and electrical parts and accessory equipment or devices for elevator devices shall be maintained in safe operating condition. The maintenance of elevators, dumbwaiters and escalators shall conform to the most recent edition of ASME A17.1 referenced in the building subcode.

(c) (Reserved)

(d) If, upon inspection of any elevator device subject to the requirements of this subchapter, the equipment is found to be in a dangerous condition, or if there is an immediate hazard to persons riding on or using any such device, or if the design, or the method of operation in combination with the design, of the device is determined to be inherently dangerous by the elevator subcode official, the elevator subcode official shall so advise the construction official so that a notice of unsafe structure may be issued pursuant to N.J.A.C. 5:23-2.32.

(e) Inspection and testing procedures for equipment within the scope (section 1) of the ASME A17.1 Safety Code for Elevators and Escalators shall be performed in accordance with the latest edition of ASME A17.2.

(f) Any education, experience or training requirements included or cited in reference standards shall not be binding in this State.

Amended by R.1993 d.662, effective December 20, 1993.
See: 25 N.J.R. 3891(a), 25 N.J.R. 5918(a).

5:23-12.3 Inspection and test schedule

(a) Routine, periodic and acceptance inspections and tests of elevators shall be conducted as follows:

1. Routine and periodic inspections shall be made at intervals of not more than six months for all manlifts, and at intervals not exceeding those set forth in ASME A17.1 referenced in the most recent edition of the building subcode for elevators, escalators and dumbwaiters and moving walks. Stairway chairlifts and wheelchair lifts shall be inspected at intervals not exceeding one year.

2. Routine tests shall be made and periodic tests shall be witnessed at intervals not exceeding those set forth in the most recent edition of ASME A17.1 referenced in the building subcode.

3. Routine and periodic inspections, including any applicable acceptance inspections, shall be made by the elevator subcode official or elevator inspector. Routine tests shall be made and periodic tests, including any applicable acceptance tests, shall be witnessed by the elevator subcode official or elevator inspector.

5:23-12.4 Registration of elevator devices

(a) On or before July 1, 1992, and thereafter as required by (e) below, the owner of every existing structure containing one or more elevator device, other than a structure in Use Group R-3 or R-4, or other than an elevator device wholly within a dwelling unit in an R-2 structure that is not accessible to the general public, shall register each elevator device with the Department on a form provided by the Commissioner.

(b) The owner of every new structure containing one or more elevator devices; other than a structure in Use Group R-3 or R-4, shall register each elevator device with the Department, on a form provided by the Commissioner, prior to the issuance of a certificate of occupancy.

(c) Each filed registration form shall contain the following information for each elevator device:

1. The identification or code number for each individual device;
2. The name of the device's owner or the owner's representative;

3. The mailing address and phone number of the person listed in (c)2 above;

4. The street address of the building or structure, including lot and block number, where the device is located;

5. The type of device;

6. The vertical travel of the device in number of feet and stories, or horizontal feet of travel of the walk or other device;

7. The rating load of the device in pounds;

8. The occupancy load in number of persons;

9. The speed of the elevator in feet per minute;

10. The manufacturer of the device;

11. The date of installation, if known, and date of last inspection performed; and

12. Special devices, such as, but not limited to, oil buffers, counterweights, governors and safeties, and auxiliary power generators.

(d) Each construction official shall provide the Department with the following information concerning each device within the municipality:

1. The name and mailing address of the owner or owner's representative of each device; and

2. The street address, including lot and block number, where the device is located.

(e) If the ownership of a structure containing one or more elevator devices, other than a structure in Use Group R-3 or R-4, or a device in an R-2 structure exempted under (a) above, is transferred, whether by sale, gift, assignment, interstate succession, testate devolution, reorganization, receivership, foreclosure or execution process, the new owner shall file a notice of change of ownership, with the appropriate re-registration fee, with the Department within 60 days of the date of transfer. A device in an R-2 structure exempted by (a) above, which, because of alterations in design or changes in ownership or management, is no longer wholly within one residential unit, or which otherwise becomes accessible to the general public, shall be registered within 60 days of its change in status.

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.

5:23-12.5 Registration fee

The initial registration fee for each elevator device in any structure that is not in Use Group R-3 or R-4 or that is not in an exempted R-2 structure shall be \$54.00. A re-registration fee of \$54.00 shall be required for each structure containing one or more elevator devices, upon change of ownership.

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.392, effective October 5, 1992.

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

Fees increased by \$4.00.

5:23-12.6 Test and inspection fees

(a) The Department fees for witnessing acceptance tests and performing inspections shall be as follows:

1. The basic fees for elevator devices in structures not in Use Group R-3 or R-4, or in an exempted R-2 structure, shall be as follows:

i. Traction and winding drum elevators:

(1) One to 10 floors \$243.00;

(2) Over 10 floors \$405.00;

ii. Hydraulic elevators \$216.00;

iii. Roped hydraulic elevators \$243.00;

iv. Escalators, moving walks \$216.00;

v. Dumbwaiters \$ 54.00;

vi. Stairway chairlifts, inclined and vertical wheelchair lifts and manlifts \$ 54.00.

2. Additional charges for devices equipped with the following features shall be as follows:

i. Oil buffers (charge per oil buffer) \$ 43.00;

ii. Counterweight governor and safeties \$108.00;

iii. Auxiliary power generator \$ 81.00.

3. The Department fee for elevator devices in structures in Use Group R-3 or R-4, or otherwise exempt devices in R-2 structures, shall be \$162.00. This fee shall be waived when signed statements and supportive inspection and acceptance test reports are filed by an approved qualified agent or agency in accordance with N.J.A.C. 5:23-2.19 and 2.20.

4. The fee for witnessing acceptance tests of, and performing inspections of, alterations shall be \$54.00.

(b) The Department fees for routine and periodic tests and inspections for elevator devices in structures not in Use group R-3 or R-4, or otherwise exempt devices in R-2 structures, shall be as follows:

1. The fee for the six month routine inspection of elevator devices shall be as follows:

i. Traction and winding drum elevators:

(1) One to 10 floors \$151.00;

(2) Over 10 floors \$194.00;

ii. Hydraulic elevators \$108.00;

iii. Roped hydraulic elevators \$151.00;

iv. Escalators, moving walks \$151.00.

2. The fee for the one year periodic inspection and witnessing of tests of elevator devices, which shall include a six month routine inspection, shall be as follows:

i. Traction and winding drum elevators:

(1) One to 10 floors \$216.00;

(2) Over 10 floors	\$259.00;
ii. Hydraulic elevators	\$162.00;
iii. Roped hydraulic elevators	\$216.00;
iv. Escalators, moving walks	\$346.00;
v. Dumbwaiters	\$ 86.00;
vi. Manlifts, stairway chairlifts, inclined and vertical wheelchair lifts	\$130.00.

3. Additional yearly periodic inspection charges for elevator devices equipped with the following features shall be as follows:

i. Oil buffers (charge per oil buffer)	\$ 43.00;
ii. Counterweight governor and safeties	\$ 86.00;
iii. Auxiliary power generator	\$ 54.00.

4. The fee for the three year or five year inspection of elevator devices shall be as follows:

i. Traction and winding drum elevators:	
(1) One to 10 floors (five year inspection)	\$367.00;
(2) Over 10 floors (five year inspection)	\$410.00;
ii. Hydraulic and roped hydraulic elevators:	
(1) Three-year inspection	\$270.00;
(2) Five-year inspection	\$162.00.

(c) When the Department is the enforcing agency, the fees set forth in (b) above shall be paid annually in accordance with the following schedule, which is based on the average of the fees to be collected over a five year period:

1. Basic annual fee as follows:

i. Traction and winding drum elevators:	
(1) One to 10 floors	\$400.00;
(2) Over 10 floors	\$486.00;
ii. Hydraulic elevators	\$292.00;
iii. Roped hydraulic elevators	\$324.00;
iv. Escalators, moving walks	\$497.00;
v. Dumbwaiters	\$ 86.00;
vi. Stairway chairlifts, inclined and vertical wheelchair lifts, manlifts	\$130.00.

2. Additional charges for devices equipped with the following features as follows:

i. Oil buffers (charge per oil buffer)	\$ 43.00;
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ii. Counterweight governor and safeties	\$ 86.00;
iii. Auxiliary power generator	\$ 54.00.

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.392, effective October 5, 1992.

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

Fees increased.

Administrative Correction.

See: 27 N.J.R. 321(a).

5:23-12.7 Licensing

(a) All elevator subcode officials and inspectors shall be licensed according to N.J.A.C. 5:23-5.5.

(b) Any person aggrieved by any decision of the Department under these rules shall be entitled to a hearing pursuant to N.J.A.C. 5:23-5.2.

(c) A licensed elevator subcode official or inspector shall be responsible for completing any continuing educational requirements imposed by the Department pursuant to this chapter prior to license renewal pursuant to N.J.A.C. 5:23-5.

5:23-12.8 Alterations, replacements, damages, increases in size, changes in use group, ordinary repairs

(a) In complying with this chapter, calculations concerning alterations, replacements, damages, increases in size and changes in use group, in N.J.A.C. 5:23-2, shall be performed using data for entire structures. The calculations in N.J.A.C. 5:23-2 shall not be applied to individual elevator devices.

(b) Alterations of elevator devices are those defined in the current ASME A17.1 standard or other applicable standard referenced in the State Uniform Construction Code. Alteration provisions applicable to whole structures in accordance with N.J.A.C. 5:23-2 shall not be applied to elevator devices.

(c) Alteration of elevator devices shall be deemed to be "minor work" within the meaning of N.J.A.C. 5:23-2.17A.