

**CHAPTER 23**  
**UNIFORM CONSTRUCTION CODE**

**Authority**

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

**Source and Effective Date**

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

**Executive Order No. 66(1978) Expiration Date**

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

**Chapter Historical Note**

Chapter 23, Uniform Construction Code, was adopted pursuant to N.J.S.A. 52:27D-119 et seq. as R.1976 d.344, d.345, d.346 and d.347, effective January 1, 1977 and codified as Subchapter 1, General Provisions; Subchapter 2, Administration and Enforcement Process; Subchapter 3, Subcodes, and Subchapter 4, Enforcing Agencies: Duties, Powers, Procedures. See: 8 N.J.R. 216(b), 319(a), 370(d), 414(a); 8 N.J.R. 546(a). The Uniform Construction Code superseded N.J.A.C. 5:16 (Chapter 16, Standard Building Code) and N.J.A.C. 5:20 (Chapter 20, Safety Glazing Materials), which were repealed by R.1978 d.360, effective October 6, 1978. See: 10 N.J.R. 377(a), 10 N.J.R. 470(a). The UCC also superseded N.J.A.C. 5:21 (Chapter 21, Uniform Standards Code for Mobile Homes), which was repealed by R.1982 d.7, effective February 1, 1982. See: 13 N.J.R. 717(a), 14 N.J.R. 142(a). See, also, respective Chapter Historical Notes.

Subchapter 4A, Industrialized/Modular Buildings and Building Components, was adopted as R.1990 d.313, effective June 18, 1990, (operative July 1, 1990). See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).

Subchapter 5, Licensing of Code Enforcement Officials, was adopted as R.1977 d.304, effective October 1, 1977. See: 9 N.J.R. 257(b), 9 N.J.R. 413(b).

Subchapter 6, Tax Exemption for Solar Facilities, was adopted as R.1978 d.334, effective September 18, 1978. See: 10 N.J.R. 222(b), 10 N.J.R. 418(a). Pursuant to Executive Order No. 66(1978), Subchapter 6 was readopted as R.1980 d.303, effective July 1, 1980. See: 12 N.J.R. 249(c), 12 N.J.R. 452(c).

Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1983 d.144, effective April 26, 1983. See: 14 N.J.R. 1247(a), 15 N.J.R. 803(c).

Subchapter 7, Barrier Free Subcode, was adopted as R.1986 d.448, effective November 3, 1986. See: 18 N.J.R. 757(a), 18 N.J.R. 2194(a).

Subchapter 8, Asbestos Hazard Abatement Subcode, was adopted as Emergency New Rule R.1985 d.362, effective June 18, 1985 (to expire August 17, 1985). See: 17 N.J.R. 1782(a). The provisions of R.1985 d.362 were readopted as R.1985 d.472, effective August 16, 1985. See: 17 N.J.R. 2249(a).

Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1988 d.168, effective March 22, 1988. N.J.A.C. 5:23-6.1, 6.2 and 6.3, concerning tax exemption for solar facilities, were not readopted and expired on April 1, 1988. See: 20 N.J.R. 223(a), 20 N.J.R. 893(a).

Subchapter 9, Code Interpretations, was adopted as R.1988 d.195, effective May 2, 1988. See: 20 N.J.R. 224(a), 20 N.J.R. 977(a).

Subchapter 10, Radon Hazard Subcode, was adopted as R.1990 d.226, effective May 7, 1990. See: 21 N.J.R. 3696(a), 22 N.J.R. 1356(a).

Subchapter 11, Indoor Air Quality Standards and Procedures for Buildings Occupied by Public Employees, was adopted as R.1992 d.33, effective January 21, 1992. See: 23 N.J.R. 1730(b), 24 N.J.R. 229(c).

Subchapter 12, Elevator Safety Subcode, was adopted as R.1991 d.325, effective July 1, 1991. See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1993 d.106. See: Source and Effective Date. See, also, section annotations.

**Cross References**

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

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

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

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

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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 N.J.A.C. 5:23A.

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

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

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

“Department” means the Department of Community Affairs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Zoning;
2. Soil erosion and sediment control;
3. Highway curb cuts;
4. Water and sewer treatment works approvals;
5. Coastal areas facilities review;
6. Compliance of underground storage tank systems with N.J.A.C. 7:14B;

i. An approval granted by either the Department of Environmental Protection and Energy or the construction official by authority of N.J.A.C. 7:14B shall be deemed to be a prior approval;

7. Pinelands review; and

8. Compliance of abandoned wells with N.J.A.C. 7:9-9.

i. Compliance with N.J.A.C. 7:9-9.1 shall be evidenced by a certification issued by a well driller licensed by the Department of Environmental Protection and Energy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Definition for "Facility" added.

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

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

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

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

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

Industrialized/modular buildings added to definition of premanufactured system.

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

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

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

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

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

Definitions added for Class I, II and III structures.

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

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

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

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

Administrative Correction.

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

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

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

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

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

Amended by R.1996 d.190, effective April 15, 1996.

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

Added "construction documents".

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

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

#### 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; extensions

(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 operative 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 operative date of the code revision, the construction official shall, upon request of the applicant, for a period of six months after the operative date of the code revision, issue a permit to construct such project pursuant to the code in force immediately prior to the operative date of the code revision.

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

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

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

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

New (c) added.

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

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

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

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

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

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

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

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

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

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

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

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

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

Hardwired smoke detectors added.

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

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

#### Case Notes

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

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

#### 5:23-2.6 Change in use group

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Case Notes

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

#### 5:23-2.7 Ordinary repairs

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

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

1. The cutting away of any wall, partition or portion thereof;

2. The removal or cutting of any structural beam or bearing support;

3. The removal or change of any required means of egress, or rearrangement of parts of a structure affecting the exitway requirements;

4. Any work affecting structural or fire safety;

5. Any work that will increase the nonconformity of any existing building or structure with the requirements of the regulations;

6. Addition to, or alteration, replacement or relocation of:

i. Any standpipe;

ii. Water supply, sewer, drainage, gas, soil, waste, vent or similar piping;

iii. Electrical wiring, other than wiring for a low voltage communication system in a one- or two-family dwelling; or

iv. Mechanical or other work affecting public health or general safety; or

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

Amended by R.1993 d.487, effective October 4, 1993.

See: 25 N.J.R. 2159(a), 25 N.J.R. 4592(a).

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

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

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

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

#### Case Notes

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

#### 5:23-2.8 Installation of equipment

When the installation, extension, 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.

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

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

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

Added (b).

#### 5:23-2.10 Applications for variations

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

1. A statement of the requirements of the subcode from which a variation is sought;

2. A statement of the manner by which strict compliance with said provisions would result in practical difficulties;

3. A statement of the nature and extent of such practical difficulties; and

4. A statement of feasible alternatives to the requirements of the subcode which would adequately protect the health, safety and welfare of the occupants or intended occupants and the public generally.

Administrative Correction to (a): Changed "set" to "state".

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

#### 5:23-2.11 Review of variation applications

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

#### 5:23-2.12 Final decision on variations

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

#### 5:23-2.13 Authority to grant variations

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

#### 5:23-2.14 Construction permits—when required

(a) It shall be unlawful to construct, enlarge, alter or demolish a structure, or change the occupancy of a building or structure requiring greater strength, exitway or sanitary 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 procedures for providing training at Department seminars on construction codes on a regular basis for at least one, but not more than three, individuals per subcode.

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. Training for annual permits shall be provided at the seminars for code officials.

i. The facility shall provide a list of at least one, but not more than three, individuals per subcode who are required to complete five hours of continuing education per year.

ii. The Department shall maintain the training records for each annual permit. The annual permit shall not be renewed unless the facility completes the training for each issued subcode.

iii. The Department shall notify the construction official who issued the permit if the training has not been completed.

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).

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

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

Rewrote (c)6 and (e)10.

### 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:

- ii. Alteration to construction at top of hoistways (1201.1c) and at bottom of hoistways (1201.1d);
- iii. Alteration to hoistways which affects control of smoke and hot gases (1201.1e);
- iv. Construction and alteration of machine room and machinery spaces (1201.2, 1203.1b);
- v. Installation and alteration of electrical equipment, wiring, pipes and ducts in hoistway and machine rooms (1201.3, 1203.1c);
- vi. Alteration to pits (1201.6, 1203.1f);
- vii. Alteration to bottom and top car and counterweight clearances and runbys (1201.7, 1203.1g);
- viii. Alteration to horizontal car and counterweight clearances (1201.8, 1203.1h);
- ix. Additions, alterations or replacements of hoistway entrances (1201.10, 1203.1j);
- x. Installation or alteration of hoistway door locking devices, access switches, parking devices and unlocking devices (1201.11, 1203.1k);
- xi. Alteration or addition of power operation of hoistway doors (1201.12, 1203.1m);
- xii. Alteration of spring buffers and bumpers (1202.2, 1203.2b);
- xiii. Alteration of counterweights (1202.3; 1203.1d and 1203.2c);
- xiv. Alteration of car frames and platforms (1202.4a, 1203.2d);
- xv. Alteration of car enclosures, car doors, gates, and illumination of cars (1202.5 except installation of new cars, 1203.2e);
- xvi. Use of freight elevators to carry passengers, hydraulic elevators only (1203.2j);
- xvii. Relocation of power unit (1203.3f);
- xviii. Replacement of tanks (1203.6);
- xix. Addition or alteration of top-of-car operating devices (1202.12a, 1203.8a);
- xx. Addition or alteration or car-leveling or truck-zoning devices (1202.12b, 1203.8b);
- xxi. Alteration of anti-creep leveling devices (1203.8c);
- xxii. Change of power supply, hydraulic elevators only (1203.8d);
- xxiii. Addition of rope equalizers (1202.14c, 1203.9c);
- xxiv. Addition of auxiliary rope-fastening devices (1202.14d);

xxv. Alteration of handrails on escalators and moving walks (1207.6, 1208.6);

xxvi. Alteration or addition of lighting and access to interiors and related electrical work (1207.14, 1208.14); and

xxvii. Alteration of entrances or egresses on escalators (1207.15).

(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 the request for inspection;

2. The construction official shall issue a certificate of approval 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 approval 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).

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

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

Rewrote (d).

Amended by R.1995 d.564, effective November 6, 1995 (operative March 1, 1996).

See: 27 N.J.R. 2829(a), 27 N.J.R. 4281(b).

N.J.A.C. 5:23-2.17A(c)6xxv through xxvii, as added by R.1995 d.564, operative May 1, 1996.

### 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)1iv.

#### **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.

(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)1iii 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)1i 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)1ii 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)1iv 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 or her acceptance or rejection of the terms of the order. Such person may seek review before the Construction Board of Appeals within 15 days of receipt of the notice.

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

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

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

(b) Emergency measures:

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

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

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

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

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

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

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

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

C.O. required prior to reoccupancy.

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

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

**Law Review and Journal Commentaries**

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

**Case Notes**

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

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

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

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

**5:23-2.33 Service of notice**

Except as is specifically provided for by the act with respect to stop construction orders, service of notices and

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

#### 5:23-2.34 (Reserved)

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

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

Section was "Construction board of appeals".

#### 5:23-2.35 (Reserved)

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

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

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

#### 5:23-2.36 (Reserved)

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

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

Section was "Procedure of the board".

#### 5:23-2.37 (Reserved)

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

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

Section was "Decision of the board".

#### 5:23-2.38 Departmental appeal

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

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

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

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

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

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

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

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

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

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

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

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

Added (b).

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

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

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

### SUBCHAPTER 3. SUBCODES

#### 5:23-3.1 Title; scope; intent

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

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

(c) This subchapter shall control matters relating to:

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

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

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

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 on-site 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;

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

Substantially amended.

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

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

Section substantially amended.

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

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

Substantially amended.

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

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

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

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

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

Substantially amended.

Administrative Correction to (a).

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

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

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

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

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

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

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

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

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

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

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

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

Added (d)2.

Administrative Correction.

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

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

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

### 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.

(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 licensed has obtained it by fraud or misrepresentation;
3. Has aided or abetted in practice as a licensed code enforcement official any person not authorized to practice as a licensed code enforcement official under the provisions of these regulations;
4. Has fraudulently or deceitfully practiced as a licensed code enforcement official;
5. Has been grossly negligent or has engaged in misconduct in the performance of any of his duties;
6. Has failed, over a period of time, to maintain a minimally acceptable level of competence;
7. Has been found to have failed to report an offer or bribe or other favor in a proceeding under this act or other appropriate law of this or any other state or jurisdiction;
8. Has failed to comply with any order issued by the department;

9. Has made a false or misleading written statement, or has made a material omission in any submission to the department;

10. Has engaged in any conduct which demonstrates incompetency or dishonesty; or

11. Has failed to enforce the Uniform Construction Code Act or regulations.

(b) The Department, in addition or as an alternative, as the case may be, to revoking or suspending a license, or assessing a penalty, may issue a letter of warning, reprimand, or censure with regard to any conduct which, in the judgment of the Department, warrants a letter of warning, reprimand or censure. Such letters, in addition to any other filing of requirements, shall be made a part of the licensing file of the individual.

(c) Conviction of a crime, or conviction of an offense in connection with one's performance as a licensed code enforcement official or inspector, 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).

**5:23-8.6 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 numbers, and their range of salaries and other compensation;

v. The policies and procedures of the applicant for the hiring, training, education, and supervision of all technical personnel involved in the supervision and performance of duties pursuant to this subchapter;

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

vii. The capability of the applicant to review plans and specifications and to inspect asbestos abatement work to ensure that the completed work is in compliance with this subchapter;

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 reinspections 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.

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)lix: 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.

(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.

(f) No permit shall be issued for work to be performed on an existing device if that device is not registered as required by this section.

(g) Each construction official shall review the list of the registered buildings/devices provided by the Department, and shall notify the Department of any changes that need to be made.

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

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

Added (f) and (g).

**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 on new, and altered elevator devices 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 performing inspections of minor work 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; |
| 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).

Amended by R.1995 d.564, effective November 6, 1995 (operative March 1, 1996).

See: 27 N.J.R. 2829(a), 27 N.J.R. 4281(b).

### 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, minor work, 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 alteration provisions applicable to the whole structure and/or calculations in N.J.A.C. 5:23-2 shall not be applied to individual elevator devices.

(b) For purposes of this subchapter, alteration of an elevator device means any change to equipment other than minor work and ordinary repair, as defined in N.J.A.C. 5:23-2.17A and 5:23-9.3. When work that includes the alteration of an elevator device has a total cost of less than 50 percent of the physical value of the building, the alteration of the elevator device shall comply only with the applicable requirements of Part XII (Alterations, Repairs, Replacements and Maintenance) of the most recent edition of ASME A17.1 referenced in the building subcode.

Amended by R.1995 d.564, effective November 6, 1995 (operative March 1, 1996).  
See: 27 N.J.R. 2829(a), 27 N.J.R. 4281(b).

### 5:23-12.9 Certificate of compliance requirements

(a) A device shall be granted a certificate of compliance by the construction official for the time period specified based upon N.J.A.C. 5:23-12.3. No device shall be operated unless a valid certificate of compliance has been issued except for the initial period after work under a permit has been completed as per (f) below. Any violation shall be corrected before a new certificate of compliance may be issued.

(b) A temporary certificate of compliance may be issued by the construction official for a device in order to keep the device in operation on which work, as a result of violations, is 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, even if the device is inspected on an annual basis.

(c) The elevator subcode official shall provide written notice to the construction official whenever a temporary certificate of compliance or certificate of compliance is granted by the construction official.

(d) No certificate of compliance shall be issued for any elevator device in use on or before July 1, 1992 that is subject to these rules and is not registered with the Department in accordance with N.J.A.C. 5:23-12.4, except 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.

(e) No certificate of compliance or temporary certificate of compliance shall be issued for any elevator device, as required by this section, which has been approved to operate during the initial period, after a permit, in accordance with (f) below if the device has not been registered pursuant to this subchapter by its first routine inspection, even if a

certificate of occupancy, temporary certificate of occupancy or certificate of approval has been issued.

(f) Except as otherwise provided in (e) above, a new device or an existing device which has had work done under a permit shall be issued a certificate of compliance under the first cyclical inspection based on the following:

1. A device has been approved following the inspection and witnessing of an acceptance test as required by N.J.A.C. 5:23-12.2, by the application of an Inspection Sticker Approval for Elevator (F-225) and a recommendation by the elevator subcode official on (F-150) Elevator Subcode Technical Section for a certificate of occupancy or approval as the case may be. The date of the approval shall begin the cycle of inspections and tests for new devices in a new building and for new devices in an existing building which did not have elevator devices previously. The date of the approval of an existing device in an existing building shall not change the device's existing cycle of inspections and tests. The cycle shall remain consistent with the inspection cycle in the building, except the device shall not be subject to the five year test before it is due as long as the acceptance test performed under the permit was a full five year test.

2. A device has been approved following the inspection process as required for minor work by N.J.A.C. 5:23-2.17A(d)2 and 12.2, by the application of an Inspection Sticker Approval for Elevator (F-225) and a recommendation by the elevator subcode official on (F-150) Elevator Subcode Technical Section for a certificate of approval. The device may operate under the approval given under the permit until the next cyclical inspection, as determined by the inspection cycle of the building, and then shall be subject to a routine or periodic inspection the same as all other elevator devices in the building.

New Rule, R.1995 d.476, effective September 5, 1995 (operative January 1, 1996).  
See: 27 N.J.R. 1846(a), 27 N.J.R. 3325(b).  
Amended by R.1995 d.564, effective November 6, 1995 (operative March 1, 1996).  
See: 27 N.J.R. 2829(a), 27 N.J.R. 4281(b).