

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

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

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

As amended, R.1984 d.481, eff. November 5, 1984.
See: 16 N.J.R. 2031(a), 16 N.J.R. 3006(a).

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

As amended, R.1984 d.523, eff. November 19, 1984.
See: 16 N.J.R. 2321(a), 16 N.J.R. 3197(a).

(c) added.

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

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

Amended by R.1991 d.325, effective July 1, 1991.
See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Stylistic changes.

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

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

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

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

(d) The on-site inspection agency shall report to the municipal construction official through their designated responsible official and shall be subject to the orders and directives of the municipal construction official and the

Department in matters relating to the enforcement of the regulations.

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

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

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

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

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

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

Text of (b), on private inplant inspection agencies, deleted.
Amended by R.1991 d.325, effective July 1, 1991.
See: 23 N.J.R. 805(a), 23 N.J.R. 2046(a).

Chain of responsibility specified at (e).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. To perform all required inspections and re-inspections.

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

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

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

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

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

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

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

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

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

2. This subsection shall not apply to:

i. The ownership of stock or other investment instrument in any corporation listed on any national stock exchange;

ii. Any such business or employment outside the State;

iii. Any business or employment which is not subject to the regulations.

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

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

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

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

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

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

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

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

i. Building subcode: 40 percent;

ii. Fire protection subcode: 20 percent;

iii. Plumbing subcode: 20 percent; and

iv. Electrical subcode: 20 percent.

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

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

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

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

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

Amended by R.1983 d.642, effective January 17, 1984.
See: 15 N.J.R. 1406(a), 16 N.J.R. 129(a).

Use of municipal subcode officials and inspectors further delineated.
Amended by R.1990 d.313, effective June 18, 1990.
See: 22 N.J.R. 691(a), 22 N.J.R. 1915(b).

Text of (b), on private inplant inspection agencies, deleted.
Amended by R.1992 d.243, effective July 6, 1992.
See: 24 N.J.R. 678(a), 24 N.J.R. 2422(a).

Conflict of interest provisions added.
 Amended by R.1994 d.323, effective July 5, 1994 (operative January 1, 1995).
 See: 25 N.J.R. 2162(a), 26 N.J.R. 2780(a).
 Amended by R.1996 d.273, effective June 17, 1996 (operative October 1, 1996).
 See: 28 N.J.R. 1586(c), 28 N.J.R. 3120(a).

5:23-4.15 Suspension and revocation

(a) General:

1. In addition to any other remedies provided by the regulations, the Department may suspend or revoke its authorization of any private on-site agency if the Department determines that the authorization or reauthorization was based on the submission of fraudulent or materially inaccurate information, or that the authorization or reauthorization was issued in violation of the regulations, or that a change of facts or circumstances make it unlikely that the inspection agency can continue to discharge its responsibilities under the regulations in a satisfactory manner, or that the inspection agency has violated the regulations.

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

(b) Notice:

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

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

(c) Revocation without suspension:

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

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

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

(e) In the case of the suspension or revocation of any on-site inspection agency, the department shall, upon the request of any municipality with an implementing contract with the suspended or revoked inspection agency, consult with such municipality to establish a temporary arrangement by which the municipality can continue to enforce the regulations until the suspension or revocation is lifted or an implementing contract entered into with another on-site inspection agency. For these purposes, the department may, at its discretion, discharge some or all of the responsibilities of an on-site inspection agency. The department may also approve any other temporary arrangement which the department determines would best promote the purposes of the act and these regulations under the circumstances.

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

Amended by R.1982 d.436, effective December 20, 1982.
 See: 14 N.J.R. 734(a), 14 N.J.R. 1449(a).

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

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

Text on inplant inspection agencies and temporary arrangements deleted.

Notice of Petition to amend section.

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

Amended by R.1997 d.409, effective October 6, 1997.
 See: 29 N.J.R. 2736(a), 29 N.J.R. 4281(a).

5:23-4.16 (Reserved)

Repealed by R.1987 d.374, effective September 21, 1987.
 See: 19 N.J.R. 1024(a), 19 N.J.R. 1720(b).

Section was "Fire limits".

5:23-4.17 Municipal enforcing agency fees

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

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