

CHAPTER 23

UNIFORM CONSTRUCTION CODE

Authority

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

Source and Effective Date

R.1997 d.409, effective September 9, 1997.
See: 29 N.J.R. 2736(a), 29 N.J.R. 4281(a).

Executive Order No. 66(1978) Expiration Date

Chapter 23, Uniform Construction Code, expires on September 9, 2002.

Chapter Historical Note

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 Chapter 23 superseded N.J.A.C. 5:16, Standard Building Code and N.J.A.C. 5:20, Safety Glazing Materials, which were repealed by R.1978 d.360, effective October 6, 1978.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 Chapter 23 also superseded N.J.A.C. 5:21, Uniform Standards Code for Mobile Homes, which was repealed by R.1982 d.7, effective February 1, 1982.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

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

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

Pursuant to Executive Order No. 66(1978), Chapter 23 was readopted as R.1993 d.106, effective February 3, 1993. See: 24 N.J.R. 1420(b), 25 N.J.R. 920(a). Subchapter 4B, Manufactured Homes and Manufactured Home Add-On Units Not Subject to Federal Regulation, and Subchapter 4C, Enforcement of Federal Manufactured Home

Standards, were adopted as R.1994 d.96, effective February 22, 1994. See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a). N.J.A.C. 5:23-7.1 through 7.99 were repealed and 7.100 through 7.116 were recodified as 7.2 through 7.18 by R.1995 d.144, effective March 20, 1995 (operative July 1, 1995). See: 26 N.J.R. 2698(a), 26 N.J.R. 2524(a), 27 N.J.R. 1180(a). Subchapter 11, Indoor Air Quality Standards and Procedures for Buildings Occupied by Public Employees, was repealed by R.1995 d.612, effective December 4, 1995 (operative July 1, 1995). See: 27 N.J.R. 3518(a), 27 N.J.R. 4885(a).

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

Cross References

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

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

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

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

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SUBCHAPTER 1. GENERAL PROVISIONS

5:23-1.1 Title; division into subchapters

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

(b) The chapter consists of the following subchapters:

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

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

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

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

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

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

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

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

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

9. "Rehabilitation Subcode" 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. "Playground safety subcode" which may be cited throughout this chapter 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.

See: 26 N.J.R. 4872(a), 27 N.J.R. 1179(b).

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

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

In (g), deleted reference to exception to exclusive authority provided in N.J.A.C. 5:23-3.11(h).

Amended by R.1997 d.418, effective October 6, 1997.

See: 29 N.J.R. 3402(a), 29 N.J.R. 4286(a).

In (f), inserted reference to (j); and added (j)1.

Amended by R.1998 d.28, effective January 5, 1998.

See: 29 N.J.R. 3603(a), 30 N.J.R. 129(a).

Inserted (k) stating responsibility for the enforcement of the rehabilitation subcode.

Repeal and New Rule, R.1998 d.332, effective July 6, 1998.

See: 30 N.J.R. 1377(a), 30 N.J.R. 2421(b).

Section was "Responsibility".

Amended by R.1999 d.259, effective August 16, 1999.

See: 31 N.J.R. 825(a), 31 N.J.R. 2330(a).

In (d)1 and (d)2, under "MECHANICAL SUBCODE", added references to N.J.A.C. 5:23-3.20(c).

5:23-3.5 Posting structures

(a) Posted use and occupancy: Every building and structure and part thereof designed for business, factory and industrial, high hazard, mercantile, or storage use, (use groups B, F, H, M and S) as defined in article 2 of the building subcode shall be posted on all floors by the owner with a suitably designed placard in a form designated by the building subcode official, which shall be securely fastened to the structure in a readily visible place, stating the use group and the live load and occupancy load.

(b) Posted occupancy load: Every building and structure and part thereof designed for use as a place of public assembly or as an institutional building for harboring people

for penal, correctional, educational, medical or other care or treatment (use groups A, E and I) shall be posted with an approved placard designating the maximum occupancy load.

(c) Replacement of posted signs: All posting signs shall be furnished by the owner and shall be of permanent design; they shall not be removed, or defaced and, if lost, removed or defaced, shall be immediately replaced.

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

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

Amended by R.1989 d.555, effective November 6, 1989.

See: 21 N.J.R. 2783(a), 21 N.J.R. 3460(a).

Added reference to E Use Group (educational facilities) at (b).

Amended by R.1990 d.507, effective October 15, 1990.

See: 22 N.J.R. 2208(a), 22 N.J.R. 3214(a).

Text conformed to BOCA National Code/1990.

5:23-3.6 Standards; accepted practice

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

(b) When this chapter and the subcodes, national standards and appendices it adopts by reference are silent, a manufacturer's recommendations for the installation of any material or assembly may be considered to be accepted engineering practice; provided, however, that a manufacturer's recommendations shall not be read to overrule this chapter or any subcode, national standard or appendix which it adopts by reference.

New Rule, R.1988 d.283, effective June 20, 1988.

See: 20 N.J.R. 699(a), 20 N.J.R. 1343(c).

Old text repealed and new text substituted.

Amended by R.1998 d.28, effective January 5, 1998.

See: 29 N.J.R. 3603(a), 30 N.J.R. 129(a).

Case Notes

Contractor not liable for injuries caused by failure of subcontractor to provide and install material in conformance with State building code. *Miltz v. Borroughs—Shelving, a Div. of Lear Siegler, Inc.*, 203 N.J.Super. 451, 497 A.2d 516 (App.Div.1985).

5:23-3.7 Municipal approvals of nonconforming materials

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

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

(b) Research and investigations: The appropriate subcode official shall require that sufficient technical data be submitted to substantiate the proposed use of any material or assembly, and if it is determined that the evidence submitted is satisfactory proof of performance for the use intended, he may approve its use subject to the requirements of the regulations. The cost of all tests, reports and investigations required under these provisions shall be paid by the applicant.

(c) Research reports: The appropriate subcode official may accept, as supporting data to assist in this determination, duly authenticated research reports from approved authoritative sources for all materials or assemblies proposed for use which are not specifically provided for in the regulations.

Amended by R.1992 d.390, effective October 5, 1992.

See: 24 N.J.R. 1844(a), 24 N.J.R. 3515(b).

Reference to exception in 3.8 added.

5:23-3.8 Departmental approval of nonconforming materials

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

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

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

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

Amended by R.1992 d.390, effective October 5, 1992.

See: 24 N.J.R. 1844(a), 24 N.J.R. 3515(b).

Exception added at (d).

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

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

5:23-3.8A Products violating the Code

(a) The Department shall, after public hearing and in accordance with the Administrative Procedure Act (P.L. 1968, c.410, as amended), establish and distribute to all enforcing agencies a list of items, devices and materials the regular and intended use of which would violate any provision of the State Uniform Construction Code. A list of such items is set forth in (d) below.

(b) Upon determining that any manufacturer or distributor in the State is selling or offering for retail sale any product on the list which does not have a regular and intended use that does not violate the Code, or any product which may have one or more such non-violative regular and intended use but which is being advertised or promoted for a use that does violate the Code, the Department or any enforcing agency having jurisdiction shall give written notice of the violation of N.J.S.A. 52:27D-138a(5) to such seller. Such notice shall forbid the further sale or offering for retail sale of such product within the State and shall specify a date

and time by which such product shall be removed from display to customers.

(c) Any person who, having received a notice of violation pursuant to this section, continues to sell or offer for retail sale products specified in such notice, shall be deemed to be knowingly selling or offering the product for sale in violation of the Code and shall be subject to penalty as provided by statute, in accordance with the procedures set forth in N.J.A.C. 5:23-2.31.

(d) The Commissioner has determined that the following materials and supplies are not in conformance with the State Uniform Construction Code:

1. Building materials and supplies:

i. Wood paneling being used as an interior finish not in conformance with section 803.2 of the building subcode. This section specifies that finish shall be classified in accordance with ASTM E84;

ii. Carpeting used as an interior floor finish material not in conformance with section 805.2 of the building subcode. This section specifies that interior floor finish shall be classified in accordance with ASTM E648; and

2. Electrical materials/supplies:

i. As stated in the National Electric Code (sections 90-7, 110-2, 110-3, and 100), only products listed, labeled, approved, and identified are acceptable. Approval is to be based on tests and listings of testing laboratories such as Underwriters Laboratories Inc. (UL), Factory Mutual (FM), or Canadian Standards Association/Nationally Recognized Testing Laboratory (CSA/NRTL), etc.

3. Plumbing materials/supplies:

i. All purpose solvent cement, except transition glues permitted in the plumbing subcode;

ii. Clear PB piping;

iii. Flexible traps and tailpieces;

iv. Sheet and tubular copper and brass trap and tailpiece fittings less than B & S 17 gauge (.045 in.);

v. Water closets requiring in excess of an average of 1.6 gallons per flush, that either have a manufacturer's date stamp of July 1, 1991 or later or were not purchased by the distributor prior to July 1, 1991;

vi. Plumbing fixtures that do not meet the standards listed in the plumbing subcode.

4. Miscellaneous materials and supplies:

i. Portable unvented natural gas, liquified petroleum gas and kerosene heaters when offered for sale for use in buildings for human occupancy, unless they are tested, listed, labeled and certified by a nationally recognized testing laboratory such as the American Gas Association Laboratories (AGA), Underwriters Laboratories, Inc. (UL) or Factory Mutual (FM);

ii. Urea formaldehyde foam insulation, unless offered for sale for use elsewhere than in buildings.

R.1983 d.296, effective August 1, 1983.

See: 15 N.J.R. 587(a), 15 N.J.R. 1247(a).

Amended by R.1985 d.38, effective February 19, 1985.

See: 16 N.J.R. 3074(a), 17 N.J.R. 421(a).

(d) added.

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

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

(d)1i and ii: 904.2 was 1404.2; 904.3 was 1404.3.

Amended by R.1990 d.507, effective October 15, 1990.

See: 22 N.J.R. 2208(a), 22 N.J.R. 3214(a).

Text conformed to BOCA National Code/1990.

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

See: 23 N.J.R. 3602(a), 24 N.J.R. 405(a).

Low volume water closet exception added at (d)4iii.

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

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

Amended by R.1997 d.508, effective December 1, 1997.

See: 29 N.J.R. 3762(a), 29 N.J.R. 5062(a).

In (d)2i, added reference to CSA/NRTL standards; in (d)3i, added the exception for transition glues; and inserted (d)3vi.

5:23-3.9 Interpretations and opinions

(a) Whenever the commissioner shall, in accordance with applicable provisions of the Administrative Procedure Act, make any rule constituting an interpretation of any provision of the regulations, such shall be binding provided, however, that such interpretations shall be prospective in nature. Such interpretations shall not alter the ruling of a subcode official already rendered in a specific instance relating to a specific permit or structure. Requests for interpretations shall be in the form, and submitted in accordance with the procedure, set forth in N.J.A.C. 5:29.

(b) In response to a written inquiry or request setting forth a specific factual situation, or upon its own initiative, the Construction Code Element may issue a formal technical opinion to clarify provisions of the adopted subcodes. Such formal technical opinion shall be signed by the Assistant Director of the Element and shall be binding upon the Element and upon other code enforcement agencies and licensed officials. Formal technical opinions shall be prospective in nature, shall be based upon adopted subcodes or upon authoritative test results or standards incorporated by reference into an adopted subcode and shall not alter the ruling of a licensed official already rendered in a specific instance relating to a specific permit or structure, except that any such formal technical opinion may be considered in the context of an appeal from any such ruling.

(c) The Construction Code Element may issue bulletins to provide advice to code enforcing agencies, builders, and designers. Bulletins may be issued when the Element finds that an issue that is in need of clarification is adequately dealt with by existing rules and that rulemaking is therefore not appropriate or necessary. Consultation with the Code Advisory Board shall be required prior to the issuance of any bulletin.

(d) In response to a written or oral inquiry or request setting forth a specific factual situation, a staff member of the Construction Code Element may issue an informal opinion as to the proper application of the regulations if the issue is one with which he has authority to deal. Such informal opinion shall only be in writing if it is issued in response to a written inquiry or request and shall not be binding upon the Element or any other party.

Amended by R.1981 d.454, effective December 7, 1981.

See: 13 N.J.R. 561(a), 13 N.J.R. 886(a).

Section substantially amended.

Administrative Correction: Name change.

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

Amended by R.1995 d.340, effective June 19, 1995.

See: 27 N.J.R. 1512(a), 27 N.J.R. 2388(a).

Redesignated (c) as (d) and added a new (c).

5:23-3.10 (Reserved)

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

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

Substantially amended.

Amended by R.1990 d.507, effective October 15, 1990.

See: 22 N.J.R. 2208(a), 22 N.J.R. 3214(a).

Text conformed to BOCA National Code/1990.

Recodified to 5:23-4.3A by R.1992 d.272, effective July 6, 1992.

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

Section was "Enforcing agency classification".

5:23-3.11 Enforcement activities reserved to the Department

(a) Except as otherwise provided in N.J.A.C. 5:23-3.11A(c) and (d), the Department of Community Affairs shall be the sole plan review agency for the following structures:

1. Electrical generating stations and substations, including nuclear;
2. Incineration plants;
3. Solid waste disposal plants;
4. Class I and Class II structures where required in accordance with N.J.A.C. 5:23-4.3A and N.J.A.C. 5:23-4.24(a)2ii;
5. Casino hotels;
6. Public mausoleums, vaults, crypts and other structures intended to hold or contain human remains;
7. All premanufactured systems for Class I and Class II structures, other than those authorized to be approved by an inplant inspection agency licensed to perform Class I and Class II plan review as provided in N.J.A.C.

5:23-4A.10, and all on-site installation of Class I and Class II premanufactured construction within the jurisdiction of a local enforcing agency that is not a Class I or Class II agency, as the case may be.

8. Health care facilities, as defined in N.J.A.C. 5:23-1.4; and

9. Public school facilities, as defined in N.J.A.C. 5:23-1.4.

(b) The Department of Community Affairs shall be the sole plan review agency for elevators, escalators, and moving walks in Use Groups other than R-3, R-4, or R-2 structures in which the elevator devices are wholly within dwelling units and not accessible to the general public, in all buildings and structures other than those that:

1. Are in a municipality that has an elevator subcode official; and

2. Are otherwise within the plan review jurisdiction of the local enforcing agency.

(c) A permit shall not be issued until the required plans for the building or structure have been released by the department. The department shall insure that the municipal enforcing agency receives a copy of the approved plans.

(d) The department may perform field inspections for any of the above projects when it deems such activity appropriate. However, such action shall not relieve the municipality of the obligation to perform field inspections for any project for which the municipality has granted a permit.

(e) Whenever the department shall determine that there exists a violation of these regulations, it shall take appropriate action and shall provide the municipality with copies of all notices, orders, and other applicable information. The department and any municipality may consolidate or take other steps to expedite any matter of which they jointly complain, but in no event shall the owner of any building subject to the act be sanctioned twice for the same violations.

(f) In any case where the department shall notify a municipality that a violation exists, no certificate of occupancy may issue until the department notifies the municipality that the violation has been abated.

(g) The Department of Community Affairs shall be the sole agency for the enforcement of the Barrier Free Recreation Standards (N.J.A.C. 5:23-7.2 through 7.18). Any complaint of noncompliance with these rules shall be forwarded to the Department.

(h) The Department of Community Affairs shall be the sole agency having authority to grant variations from the requirements of the Asbestos Hazard Abatement Subcode, pursuant to N.J.A.C. 5:23-8.4.

(i) The Department of Community Affairs shall be the sole agency for the enforcement of the Playground Safety Subcode (N.J.A.C. 5:23-11) with regard to all matters not within the scope of a construction permit issued by a local enforcing agency; provided, however, that this subsection shall not be construed as prohibiting the Department of Education from including review of compliance with applicable playground requirements in its ongoing district monitoring process.

Amended by R.1981 d.455, effective December 7, 1981.

See: 13 N.J.R. 561(b), 13 N.J.R. 886(b).

Correction: Codification error and (a)6 was missing.

See: 16 N.J.R. 1621(a).

Administrative Change: This section has been divided into 3.11 and 3.11A administratively.

See: 18 N.J.R. 1842(a).

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

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

Added (f).

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

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

Industrialized/modular buildings requirements added to (a)7.

Amended by R.1990 d.507, effective October 15, 1990.

See: 22 N.J.R. 2208(a), 22 N.J.R. 3214(a).

Text conformed to BOCA National Code/1990.

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

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

Enforcement of elevator, moving walk and escalator requirements for other than R-3 and R-4 reserved to Department.

Amended by R.1992 d.147, effective April 6, 1992.

See: 24 N.J.R. 170(a), 24 N.J.R. 1397(a).

Elevators wholly within R-2 residences exempt.

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

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

Enforcement of public employees' indoor air quality subcode assigned to DCA.

Amended by R.1994 d.28, effective January 18, 1994.

See: 25 N.J.R. 4546(b), 26 N.J.R. 352(a).

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

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

Amended by R.1997 d.377, effective September 15, 1997.

See: 29 N.J.R. 2741(b), 29 N.J.R. 4102(b).

In (g), amended N.J.A.C. references; deleted (g)1; and substantially amended (h).

Amended by R.1997 d.417, effective October 6, 1997.

See: 29 N.J.R. 3387(a), 29 N.J.R. 4285(a).

In (a), inserted "Except as otherwise provided ... and (d),"; added (a)8 and 9; and in (g), amended N.J.A.C. references.

Amended by R.1999 d.351, effective October 18, 1999.

See: 31 N.J.R. 1838(a), 31 N.J.R. 3082(a).

Added (i).

Case Notes

Delaware River Port Authority was not subject to Construction Code or anti-discrimination laws. Eastern Paralyzed Veterans Ass'n, Inc. v. City of Camden, 111 N.J. 389, 545 A.2d 127 (1988).

5:23-3.11A Enforcement activities reserved to other State agencies; alternative public school facility plan review; Uniform Construction Code enhancements in public school facilities

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

1. Amusement rides;
2. Ski lifts;

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

(b) Prior to the release of plans for the following types of projects, the Department of Education shall ensure that the plans meet the standards for educational adequacy set forth in N.J.A.C. 6:22:

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

(c) In lieu of obtaining construction code plan review approval from the Department, a school district, upon notice to the Department, may secure construction code plan review approval from any municipal code enforcing agency, pursuant to P.L. 1990, c.23.

1. The municipal code enforcing agency providing construction code plan approval must agree to perform the review and must be appropriately classified for the proposed project in accordance with this chapter.
2. When a review for educational adequacy is necessary, such review and approval shall be obtained from the State Department of Education prior to obtaining a construction code plan review, whether this construction code plan review is performed by the Department or by a municipal code enforcing agency.

3. The municipal code enforcing agency performing the construction code plan review may require the payment of any municipal plan review fees.

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

5. The municipal code enforcing agency within the jurisdiction of which the facility is located shall be respon-

sible for construction permit issuance, construction inspection and certificate of occupancy issuance.