

CHAPTER 23
UNIFORM CONSTRUCTION CODE

Authority

N.J.S.A. 52:27D-123, 123a, 123.2, 123.5, 123.8, 124, 124f and 133.4.

Source and Effective Date

R.2003 d.70, effective January 15, 2003.
See: 34 N.J.R. 351(a), 35 N.J.R. 1054(a).

Chapter Expiration Date

Chapter 23, Uniform Construction Code, expires on January 15, 2008.

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 Chapter 23, Uniform Construction Code, superseded N.J.A.C. 5:16, Standard Building Code and N.J.A.C. 5:20, Safety Glazing Materials, which were repealed by R.1978 d.360, effective October 6, 1978.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 Chapter 23, Uniform Construction Code, also superseded N.J.A.C. 5:21, Uniform Standards Code for Mobile Homes, which was repealed by R.1982 d.7, effective February 1, 1982.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, Tax Exemption for Solar Facilities, 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, Uniform Construction Code, 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).

Pursuant to Executive Order No. 66(1978), 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, Uniform Construction Code, 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, Uniform Construction Code, 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, Uniform Construction Code, was readopted as R.1997 d.409, effective September 9, 1997. As a part of R.1997 d.409, effective October 6, 1997, Subchapter 6, Tax Exemption, was repealed. See: 29 N.J.R. 2736(a), 29 N.J.R. 4281(a).

Subchapter 6, Rehabilitation Subcode, was adopted as R.1998 d.28, effective January 5, 1998. See: 29 N.J.R. 3603(a), 30 N.J.R. 129(a).

Subchapter 12A, Optional Elevator Inspection Program, was adopted as R.1998 d.480, effective September 21, 1998. See: 30 N.J.R. 1119(b), 30 N.J.R. 3461(a).

Subchapter 11, Playground Safety Subcode, was adopted as R.1999 d.351, effective October 18, 1999. See: 31 N.J.R. 1838(a), 31 N.J.R. 3082(a).

Subchapter 3A, State-Jurisdiction Subcodes, was adopted as R.2001 d.303, effective September 4, 2001. See: 33 N.J.R. 1991(a), 33 N.J.R. 2989(a).

Chapter 23, Uniform Construction Code, was readopted as R.2003 d.70, effective January 15, 2003. See: Source and Effective Date.

Cross References

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

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

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

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

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 5:23-1.1 Title; division into subchapters
- 5:23-1.2 Authority
- 5:23-1.3 Intent and purpose

- 5:23-1.4 Definitions
- 5:23-1.5 Effective date
- 5:23-1.6 Grace period
- 5:23-1.7 Validity

SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT; PROCESS

- 5:23-2.1 Title; scope; intent
- 5:23-2.2 Matter covered
- 5:23-2.3 Applicability
- 5:23-2.4 Alterations, replacements and damages
- 5:23-2.5 Concerning increase in size
- 5:23-2.6 Change of use
- 5:23-2.7 Ordinary maintenance
- 5:23-2.8 Installation of equipment
- 5:23-2.9 Variations and exceptions
- 5:23-2.10 Applications for variations
- 5:23-2.11 Review of variation applications
- 5:23-2.12 Final decision on variations
- 5:23-2.13 Authority to grant variations
- 5:23-2.14 Construction permits—when required
- 5:23-2.15 Construction permits—application
- 5:23-2.16 Construction permits—procedure
- 5:23-2.17 Demolition or removal of structures; abandoned wells
- 5:23-2.17A Minor work
- 5:23-2.18 Inspections
- 5:23-2.18A Utility load management device installation programs
- 5:23-2.18B Utility area lighting facility installation program
- 5:23-2.18C Use and occupancy of swimming pools, spas and hot tubs
- 5:23-2.19 Special technical services
- 5:23-2.20 Tests and special inspections
- 5:23-2.21 Construction control
- 5:23-2.22 Premanufactured construction
- 5:23-2.23 Certificate requirements
- 5:23-2.24 Conditions of certificate of occupancy
- 5:23-2.25 Establishment of fees
- 5:23-2.26 Plan review fees
- 5:23-2.27 Refunds
- 5:23-2.28 Volume computation
- 5:23-2.29 Entry
- 5:23-2.30 Violation, notice and orders
- 5:23-2.31 Compliance
- 5:23-2.32 Unsafe structures
- 5:23-2.33 Service of notice
- 5:23-2.34 through 5:23-2.37 (Reserved)
- 5:23-2.38 Departmental appeal
- 5:23-2.39 Automatic fire suppression systems

SUBCHAPTER 3. SUBCODES

- 5:23-3.1 Title; scope; intent
- 5:23-3.2 Matters covered; exceptions
- 5:23-3.3 Enforcement
- 5:23-3.4 Responsibility
- 5:23-3.5 Posting structures
- 5:23-3.6 Standards; accepted practice
- 5:23-3.7 Municipal approvals of nonconforming materials
- 5:23-3.8 Departmental approval of nonconforming materials
- 5:23-3.8A Products violating the Code
- 5:23-3.9 Interpretations and opinions
- 5:23-3.10 (Reserved)
- 5:23-3.11 Enforcement activities reserved to the Department
- 5:23-3.11A Public school facility plan review and inspections; Uniform Construction Code enhancements in public school facilities
- 5:23-3.11B Underground storage tank systems
- 5:23-3.12 Amended rules
- 5:23-3.13 State-sponsored code change proposals
- 5:23-3.14 Building subcode
- 5:23-3.15 Plumbing subcode
- 5:23-3.16 Electrical subcode
- 5:23-3.17 Fire protection subcode
- 5:23-3.18 Energy Subcode
- 5:23-3.19 Manufactured home subcode

- 5:23-3.20 Mechanical subcode
- 5:23-3.20A (Reserved)
- 5:23-3.21 One and two-family dwelling subcode
- 5:23-3.22 Fuel gas subcode

SUBCHAPTER 3A. STATE-JURISDICTION SUBCODES

- 5:23-3A.1 Scope
- 5:23-3A.2 Subcodes established

SUBCHAPTER 4. ENFORCING AGENCIES; DUTIES; POWERS; PROCEDURES

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

SUBCHAPTER 4A. INDUSTRIALIZED/MODULAR BUILDINGS AND BUILDING COMPONENTS

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

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

- 5:23-4B.1 Scope
- 5:23-4B.2 Applicability
- 5:23-4B.3 Standards
- 5:23-4B.4 Administration and enforcement

UNIFORM CONSTRUCTION CODE

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

SUBCHAPTER 4C. ENFORCEMENT OF FEDERAL MANUFACTURED HOME STANDARDS

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

SUBCHAPTER 5. LICENSING OF CODE ENFORCEMENT OFFICIALS

- 5:23-5.1 Title; scope; intent
- 5:23-5.2 Licensing unit; hearings
- 5:23-5.3 Types of licenses
- 5:23-5.4 Licenses required
- 5:23-5.5 General license requirements
- 5:23-5.6 Construction official requirements
- 5:23-5.7 Subcode official requirements
- 5:23-5.8 Building inspector H.H.S. requirements
- 5:23-5.9 Building inspector I.C.S. requirements
- 5:23-5.10 Building inspector R.C.S. requirements
- 5:23-5.11 Electrical inspector H.H.S. requirements
- 5:23-5.12 Electrical inspector I.C.S. requirements
- 5:23-5.13 Fire protection inspector H.H.S. requirements
- 5:23-5.14 Fire protection inspector I.C.S. requirements
- 5:23-5.15 Fire protection inspector R.C.S. requirements
- 5:23-5.16 Plumbing inspector H.H.S. requirements
- 5:23-5.17 Plumbing inspector I.C.S. requirements
- 5:23-5.18 Inplant inspector requirements
- 5:23-5.19 Elevator inspector H.H.S. requirements
- 5:23-5.19A Mechanical inspector requirements
- 5:23-5.19B Amusement ride inspector I.C.S. requirements
- 5:23-5.19C Amusement ride inspector H.H.S. requirements
- 5:23-5.19D Boiler, pressure vessel and refrigeration inspector R.C.S. requirements
- 5:23-5.19E Boiler, pressure vessel and refrigeration inspector I.C.S. requirements
- 5:23-5.19F Boiler, pressure vessel and refrigeration inspector H.H.S. requirements
- 5:23-5.20 Standards for educational programs
- 5:23-5.21 Renewal of license
- 5:23-5.22 Fees
- 5:23-5.23 Examination requirements
- 5:23-5.23A Examination requirements for State-jurisdiction subcode technical licensure
- 5:23-5.24 Procedure for approving educational programs
- 5:23-5.25 Revocation of licenses and alternative sanctions

SUBCHAPTER 6. REHABILITATION SUBCODE

- 5:23-6.1 Introduction; using this subcode
- 5:23-6.2 Applicability and compliance
- 5:23-6.3 Definitions
- 5:23-6.4 Repairs
- 5:23-6.5 Renovations
- 5:23-6.6 Alterations
- 5:23-6.7 Reconstruction
- 5:23-6.8 Materials and methods
- 5:23-6.9 New building elements
- 5:23-6.10 Basic requirements and supplemental requirements—general
- 5:23-6.11 Basic requirements in all Use Groups
- 5:23-6.11A Supplemental requirements in all Use Groups
- 5:23-6.12 Basic requirements—Use Group A-1

- 5:23-6.12A Supplemental requirements—Use Group A-1
- 5:23-6.13 Basic requirements—Use Group A-2 Nightclubs
- 5:23-6.13A Supplemental requirements—Use Group A-2 Nightclubs
- 5:23-6.14 Basic requirements—Use Group A-2 other than Nightclubs, A-3 and A-4
- 5:23-6.14A Supplemental requirements—Use Groups A-2 other than Nightclubs, A-3 and A-4
- 5:23-6.15 Basic requirements—Use Group A-3 Churches
- 5:23-6.15A Supplemental requirements—Use Group A-3 Churches
- 5:23-6.16 Basic requirements—Use Group A-5
- 5:23-6.16A Supplemental requirements—Use Group A-5
- 5:23-6.17 Basic requirements—Use Group B
- 5:23-6.17A Supplemental requirements—Use Group B
- 5:23-6.18 Basic requirements—Use Group E
- 5:23-6.18A Supplemental requirements—Use Group E
- 5:23-6.19 Basic requirements—Use Group F
- 5:23-6.19A Supplemental requirements—Use Group F
- 5:23-6.20 Basic requirements—Use Group H
- 5:23-6.20A Supplemental requirements—Use Group H
- 5:23-6.21 Basic requirements—Use Group I-1
- 5:23-6.21A Supplemental requirements—Use Group I-1
- 5:23-6.22 Basic requirements—Use Group I-2 and I-4
- 5:23-6.22A Supplemental requirements—Use Group I-2 and I-4
- 5:23-6.23 Basic requirements—Use Group I-3
- 5:23-6.23A Supplemental requirements—Use Group I-3
- 5:23-6.24 Basic requirements—Use Group M
- 5:23-6.24A Supplemental requirements—Use Group M
- 5:23-6.25 Basic requirements—Use Group R-1
- 5:23-6.25A Supplemental requirements—Use Group R-1
- 5:23-6.26 Basic requirements—Use Group R-2 and R-4
- 5:23-6.26A Supplemental requirements—Use Group R-2 and R-4
- 5:23-6.27 Basic requirements—Use Groups R-3 and R-5
- 5:23-6.27A Supplemental requirements—Use Groups R-3 and R-5
- 5:23-6.28 Basic requirements—Use Group S
- 5:23-6.28A Supplemental requirements—Use Group S
- 5:23-6.29 Mixed use buildings
- 5:23-6.30 Special technical requirements—all use groups
- 5:23-6.31 Change of use
- 5:23-6.32 Additions
- 5:23-6.33 Historic buildings

SUBCHAPTER 7. BARRIER FREE SUBCODE

- 5:23-7.1 Applicability
- 5:23-7.2 Accessibility standard
- 5:23-7.3 Exceptions
- 5:23-7.4 Nonresidential buildings and buildings of Use Group R-1.
- 5:23-7.5 Residential buildings other than Use Group R-1
- 5:23-7.6 Exterior accessible route
- 5:23-7.7 Accessible building entrances
- 5:23-7.8 Interior accessible routes
- 5:23-7.9 Accessible parking
- 5:23-7.10 Requirements applicable to specific nonresidential use groups and Use Group R-1
- 5:23-7.11 Requirements applicable to all nonresidential use groups, including spaces other than guestrooms in Use Group R-1
- 5:23-7.12 Existing facilities
- 5:23-7.13 Variations
- 5:23-7.14 Enforcement
- 5:23-7.15 Recreation
- 5:23-7.16 Recreation: definitions
- 5:23-7.17 Recreation: exceptions
- 5:23-7.18 Recreation: route of travel
- 5:23-7.19 Recreation: pools
- 5:23-7.20 Recreation: swimming and skating areas
- 5:23-7.21 Recreation: boating areas
- 5:23-7.22 Recreation: fishing areas
- 5:23-7.23 Recreation: court games
- 5:23-7.24 Recreation: ice rinks and roller rinks
- 5:23-7.25 Recreation: playing fields
- 5:23-7.26 Recreation: golf facilities
- 5:23-7.27 Recreation: ski lifts, aerial tramways, and conveyors
- 5:23-7.28 Recreation: trails
- 5:23-7.29 Recreation: camping sites

- 5:23-7.30 Recreation: equipment
- 5:23-7.31 Recreation: equestrian facilities

SUBCHAPTER 8. ASBESTOS HAZARD ABATEMENT SUBCODE

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

SUBCHAPTER 9. CODE INTERPRETATIONS

- 5:23-9.1 Interpretations: Plumbing Subcode
- 5:23-9.2 Interpretation: Construction Permit for a single family residence
- 5:23-9.3 Interpretation: Ordinary maintenance
- 5:23-9.4 (Reserved)
- 5:23-9.5 Interpretation: Records retention
- 5:23-9.6 Interpretations: Construction requirements for new and existing casinos
- 5:23-9.7 Interpretation: Manufacturing, production and process equipment
- 5:23-9.8 Interpretation: bed and breakfast guesthouses—change in use group requirements
- 5:23-9.9 Foundation systems for garden type utility sheds and similar structures

SUBCHAPTER 10. RADON HAZARD SUBCODE

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

APPENDIX 10-A. NEW JERSEY MUNICIPALITIES IN TIER 1

SUBCHAPTER 11. PLAYGROUND SAFETY SUBCODE

- 5:23-11.1 Subcode adopted
- 5:23-11.2 Definition
- 5:23-11.3 Enforcement of subcode
- 5:23-11.4 Compliance schedule

SUBCHAPTER 12. ELEVATOR SAFETY SUBCODE

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

- 5:23-12.11 Notice concerning accidents
- 5:23-12.12 Special safety equipment

SUBCHAPTER 12A. OPTIONAL ELEVATOR INSPECTION PROGRAM

- 5:23-12A.1 Title; scope; intent
- 5:23-12A.2 Qualified elevator device inspection firms
- 5:23-12A.3 Qualified elevator device inspector
- 5:23-12A.4 Enrollment of devices
- 5:23-12A.5 Permit process and monitoring
- 5:23-12A.6 Special inspection and compliance procedures

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.

- 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).

Amended by R.1999 d.424, effective December 6, 1999.

See: 31 N.J.R. 2428(a), 31 N.J.R. 4001(c).

Substituted references to ordinary maintenance for references to ordinary repairs throughout; and in (a), substituted a reference to permit applications for a reference to applications.

Case Notes

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

5:23-2.8 Installation of equipment

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

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

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

Stylistic changes.

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

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

5:23-2.9 Variations and exceptions

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

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

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

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

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

Added (b).

5:23-2.10 Applications for variations

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

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

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

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

5:23-2.11 Review of variation applications

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

5:23-2.12 Final decision on variations

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

5:23-2.13 Authority to grant variations

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

5:23-2.14 Construction permits—when required

(a) It shall be unlawful to construct, enlarge, repair, renovate, alter, reconstruct or demolish a structure, or change the use of a building or structure, or portion thereof, 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 subcode, in writing and obtaining the required permit therefor.

1. Exception: No permit shall be required for ordinary maintenance as defined in N.J.A.C. 5:23-1.4 and 2.7.

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

1. Ordinary maintenance as defined in 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 in accordance with N.J.A.C. 5:23-3.14(b)20ii. A temporary greenhouse meeting the criteria of N.J.A.C. 5:23-3.14(b)20ii(4) shall not require a permit except as otherwise provided in N.J.A.C. 5:23-3.14(b)20ii(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.

6. A permit shall not be required for a sign that meets all of the following conditions; provided, however, that the construction official shall have authority to require the removal of any sign that creates an unsafe condition or otherwise to require correction of any such condition:

i. It is supported by uprights or braces in or upon the ground surface;

ii. It is not served by an electrical circuit directly connected to the sign;

iii. It is not greater than 25 square feet in surface area (one side); and

iv. It is not more than six feet above the ground (mounted height).

7. Lead abatement work performed on a steel structure or other superstructure or in a commercial building.

8. A permit shall not be required for garden type utility sheds and similar structures, which are 100 square feet or less in area, 10 feet or less in height and accessory to buildings of Use Groups R-2, R-3 or R-4. Such garden type utility sheds and similar structures are required to comply with N.J.A.C. 5:23-9.9.

9. A permit shall not be required for fences six feet or less in height. This exception does not apply to barriers surrounding public or private swimming pools.

(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.

5:23-2.20 Tests and special inspections

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

(b) All special inspections, as provided in the building subcode, shall apply to Class I buildings. A special inspector shall be independent of the contractor and shall be responsible to the building owner or building owner's agent.

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

(d) The construction official may accept a Chimney Certification for Replacement of Fuel-Fired Equipment (Form F-370), signed by the contractor who installed the replacement fuel-fired equipment, in lieu of requiring the removal and reinstallation of the chimney vent connector for purposes of inspection of the chimney or vent. Certifications from homeowners shall not be accepted in lieu of the required inspection.

(e) The bonding and grounding certificate for swimming pools, spas and hot tubs, shall be issued by a recognized electrical testing agency or a New Jersey State licensed electrical contractor. This certificate shall verify the continuity and integrity of the bonding and grounding system. It shall be valid for five years from the date of issuance.

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

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

Special inspections added.

Amended by R.1995 d.249, effective June 5, 1995, (operative October 1, 1995).

See: 27 N.J.R. 619(a), 27 N.J.R. 2187(a).

Added (c).

Amended by R.1996 d.512, effective November 4, 1996.

See: 28 N.J.R. 3697(a), 28 N.J.R. 4782(a).

Amended by R.1997 d.376, effective September 15, 1997.

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

In (c), inserted "Form (F-370)", substituted "contractor" for "person" and added last sentence.

Amended by R.2000 d.47, effective February 7, 2000.

See: 31 N.J.R. 2314(a), 32 N.J.R. 443(a).

Added (d).

Amended by R.2003 d.187, effective May 5, 2003.

See: 34 N.J.R. 4248(a), 35 N.J.R. 1939(c).

Added a new (b); recodified former (b) through (d) as (c) through (e).

5:23-2.21 Construction control

(a) Responsibilities: The provisions of this section shall define the construction controls required for all buildings involving professional architecture/engineering services and delineate the responsibilities of such professional services

together with those services that are the responsibility of the contractor during construction.

(b) Professional architecture or engineering services:

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

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

1. Verification of all controlled materials per building subcode requirements of testing, certification and identification;

2. Special inspection of critical construction components;

3. Submission of amended plans and specifications whenever substantial deviations are necessary or desired, or when required to do so pursuant to N.J.A.C. 5:23-2.15(e)4v; and

4. The responsible person in charge of work shall perform the necessary services and be present on the construction site on a regular and periodic basis to determine that, generally, the work is proceeding in accordance with the code and any conditions of the construction permit.

(d) Reporting: At the completion of the construction, the responsible person in charge of work shall submit to the construction official a report as to the satisfactory completion and the readiness of the project for occupancy and shall certify that, to the best of the responsible person's knowledge and belief, such has been done substantially in accordance with the code and with those portions of the plans and specifications controlled by the code, with any substantial deviations noted.

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

1. Execution of work in accordance with the regulations;

2. Execution and control of all methods of construction in a safe and satisfactory manner;

3. Execution of all work in accordance with the code and those portions of the plans and specifications controlled by the code;

4. In general, render all such construction services as required to effect a safe and satisfactory installation of the project;

5. Upon completion of the construction, the contractor shall certify to the best of the contractor's knowledge and belief that such has been done substantially in accordance with the code and with those portions of the plans and specifications controlled by the code, with any substantial deviation specifically noted.

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

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

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

Amended by R.2003 d.216, effective May 19, 2003.

See: 35 N.J.R. 16(a), 35 N.J.R. 2203(a).

Rewrote the section.

5:23-2.22 Premanufactured construction

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

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

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

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

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

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

See: 25 N.J.R. 5388(a), 26 N.J.R. 1073(a).

5:23-2.23 Certificate requirements

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

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

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

(c) Building hereafter reconstructed: A building or structure, or portion thereof, hereafter reconstructed shall not be used until a certificate of occupancy shall have been issued for the entire building or structure or the portion being reconstructed, as the case may be, by the construction official, certifying that the work has been completed in accordance with the provisions of the code, except as otherwise provided in these rules.

(d) Building hereafter extended: No addition which increases the height or area of an existing building or structure shall be used until a certificate of occupancy shall have been issued by the construction official certifying that the work has been completed in accordance with the provisions of the code, except as otherwise provided in these rules.

(e) Existing buildings: Upon request of the owner of an existing building or structure, the construction official, with the approval of the subcode officials, shall issue a certificate of continued occupancy provided that there are not violations of law or orders of the construction official pending and it is established after inspection and investigation of available municipal records that the alleged use of the building or structure has lawfully existed. The certificate of continued occupancy shall evidence only that a general inspection of the visible parts of the building has been made, and that no violations of N.J.A.C. 5:23-2.14 have been determined to have occurred and no unsafe conditions violative of N.J.A.C. 5:23-2.32(a) have been found. Nothing in this subsection shall prevent the continued lawful use and occupancy of any such lawfully existing building or structure.

(f) Change of use: After a change of use has been made in a building or structure, the reestablishment of a prior use is prohibited unless the building complies with the provisions of N.J.A.C. 5:23-6, Rehabilitation Subcode, for the prior use.

(g) Temporary certificate of occupancy: Upon the written request for a temporary certificate of occupancy by the holder of a permit, the construction official shall issue, and may renew, a temporary certificate of occupancy for a building or structure or part thereof when the work covered by the permit shall have been substantially completed, provided that such portion or portions may be occupied safely prior to full completion of the building or structure without endangering health or safety.

1. The temporary certificate of occupancy and each subsequent renewal shall be valid for a reasonable period of time to complete the work, but not less than 60 days. The municipal tax assessor shall be notified when the temporary certificate of occupancy is issued.

2. The request for a temporary certificate of occupancy may be denied when there are outstanding fees or penalties, when the required warranties, licenses or registrations are not in place, or the conditions of prior approvals affecting health and safety of the building occupants have not been met.

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

1. The name and address of the owner or his agent;
2. The location of the building or structure;
3. If a change of use is contemplated, the current and proposed use groups;

4. The statement by the responsible person in charge of work, that to the best of his or her knowledge all work has been completed in accordance with the permit and the regulations;

5. A statement of the final cost of construction work, including the basic structure, all on-site improvements, built-in furnishings and fixtures and all integral equipment exclusive of process or manufacturing equipment;

6. A set of amended drawings, if required by the construction official and the appropriate subcode official(s), when the dimensions, lay out or appearance of the building or structure deviates substantially from the released plans and specifications filed with the construction permit application; and

7. A test and balance report for mechanically ventilated Class I and II buildings of Use Groups B and E submitted by a licensed professional engineer or by a test and balance professional certified by the Associated Air Balance Council or the National Environmental Balancing Bureau. The signed report shall include:

- i. Minimum quantity of outdoor air required by code;
- ii. Minimum quantity of outdoor air specified in the design;

iii. Actual measured outdoor cubic feet/minute (CFM) or a derived quantity, if actual measurement is not possible; and

iv. Actual measured total CFM.

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

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

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

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

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

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

1. High pressure boilers: 12 months;
2. Refrigeration systems: 12 months;
3. Pressure vessels: 12 months;
4. Backflow preventers used to isolate high hazard sources of contamination as defined in the plumbing subcode: 12 months.
5. Swimming pools, spas and hot tubs: 12 months.

(l) Certificate of Approval: A certificate of approval shall be issued for all work that requires a construction permit but does not require a certificate of occupancy. No application shall be required for a certificate of approval.

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

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

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

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

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

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

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

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

5. When lead abatement work has been performed on a steel structure or other superstructure or in a commercial building, no lead abatement clearance certificate shall be required.

Amended by R.1984 d.120, effective April 16, 1984.
See: 16 N.J.R. 179(a), 16 N.J.R. 873(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Elevators wholly within R-2 residences exempt.

Amended by R.1993 d.421, effective September 7, 1993.

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

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

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

Amended by R.1994 d.434, effective September 6, 1994 (operative January 1, 1995).

See: 26 N.J.R. 1911(a), 26 N.J.R. 3706(b).

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

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

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 (j).

Amended by R.1997 d.302, effective July 21, 1997 (operative September 24, 1997).

See: 29 N.J.R. 2202(a), 29 N.J.R. 3242(b).

Added (m)5.

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

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

Amended (b); added new (c) and (d); recodified existing (c) as (e); recodified existing (d) as (f) and amended it to include reference to N.J.A.C. 5:23-6; recodified existing (e) through (m) as (g) through (o).

Amended by R.2000 d.47, effective February 7, 2000.

See: 31 N.J.R. 2314(a), 32 N.J.R. 443(a).

In (k), inserted references to installations throughout, inserted "and no installation shall be opened for use or occupancy" following "operation" and substituted "issued" for "reissued" at the end of the last sentence of the introductory paragraph, and added 5.

Amended by R.2000 d.166, effective April 17, 2000.

See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).

Rewrote k(4).

Amended by R.2001 d.347, effective October 1, 2001.

See: 32 N.J.R. 3218(a), 33 N.J.R. 3430(a).

Rewrote (g).

Amended by R.2003 d.216, effective May 19, 2003.

See: 35 N.J.R. 16(a), 35 N.J.R. 2203(a).

In (h), neutralized the gender reference and deleted "the approved plans" following "the permit" in 4 and rewrote 6; substituted "code" for "approved permit" throughout.

Law Review and Journal Commentaries

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

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

Case Notes

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

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

Penalties could not be imposed on condominium vendor for failure to obtain temporary certificates of occupancy. *Department of Community Affairs, Div. of Housing and Urban Development v. Atrium Palace Syndicate*, 259 N.J.Super. 578, 614 A.2d 1069 (A.D.1992).

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

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

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

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

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

5:23-2.24 Conditions of certificate of occupancy

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

1. That the completed project meets the conditions of the construction permit, and all prior approvals and has been done substantially in accordance with the code and with those portions of the plans and specifications controlled by the code;
2. That all required fees have been paid in full;
3. That all necessary inspections have been completed and that the completed project meets the requirements of the regulations;
4. That all violations have been corrected and that any assessed penalties have been paid;
5. That all protective devices and equipment required to be installed by the regulations will continue to be operational as required by the regulations.

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

ipation, required pursuant to N.J.A.C. 5:25-5.5, and proof of payment of the warranty premium.

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

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

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

(f) No certificate of occupancy shall be issued for any building containing one or more elevators unless all of the elevators in the building have been registered with the Department in accordance with N.J.A.C. 5:23-12.

(g) No certificate of occupancy or certificate of approval shall be issued for any building or project that includes a vapor delivery liquefied petroleum gas installation that is greater than 250 gallons, but not more than 2,000 gallons, except after filing by the owner with the construction official of a photocopy of a notice of LP gas installation filed, pursuant to N.J.A.C. 5:18-6.4(a), with the New Jersey Department of Community Affairs, Division of Codes and Standards, Bureau of Code Services, PO Box 816, Trenton, New Jersey 08625-0816.

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

Amended by R.1991 d.509, effective October 7, 1991.
See: 23 N.J.R. 2236(a), 23 N.J.R. 3001(a).

Text added at (f).

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

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

Rewrote (f).

Amended by R.2001 d.141, effective May 7, 2001.

See: 32 N.J.R. 3917(a), 33 N.J.R. 746(a), 33 N.J.R. 1399(d).

Added new (g); recodified former (g) as (h).

Amended by R.2003 d.216, effective May 19, 2003.

See: 35 N.J.R. 16(a), 35 N.J.R. 2203(a).

Rewrote (a)1.

Amended by R.2003 d.200, effective May 19, 2003.

See: 35 N.J.R. 7(a), 35 N.J.R. 2187(a).

In (g), amended the N.J.A.C. reference and substituted "Bureau of Code Services" for "Bureau of Boiler and Pressure Compliance".
Administrative correction.

See: 35 N.J.R. 3608(a).

Case Notes

Citation to former N.J.A.C. 5:23-2.7; municipal requirement for payment of property taxes before permit issuance invalid as preempted by legislation. *Home Builders League of South Jersey, Inc. v. Evesham Twp.*, 174 N.J.Super. 252, 416 A.2d 81 (Law Div.1980).

5:23-2.25 Establishment of fees

The municipality, in accordance with this chapter, shall establish by ordinance enforcing agency fees for the following activities: plan review; construction permits; certificate of occupancy; elevator device inspections and tests; demolition permit; moving of building permit; lead abatement clearance certificate; annual electrical inspection of swimming pools, spas and hot tubs; and sign permit. The fee shall be collected prior to the issuance of the permit or certificate. A schedule of such fees shall be posted in the office of the construction official and shall be accessible to the public.

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

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

Elevator activities added.

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

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

Administrative correction.

See: 29 N.J.R. 2267(a).

Administrative correction.

See: 29 N.J.R. 3721(a).

Deleted reference to certificate of compliance and certificate of approval.

Amended by R.2000 d.47, effective February 7, 2000.

See: 31 N.J.R. 2314(a), 32 N.J.R. 443(a).

Inserted a reference to annual electrical inspection of swimming pools, spas and hot tubs in the first sentence.

Case Notes

Citation to former N.J.A.C. 5:23-4.8 fee standards; municipal requirement for payment of property taxes before permit issuance invalid as preempted by legislation. *Home Builders League of South Jersey, Inc. v. Evesham Twp.*, 174 N.J.Super. 252, 416 A.2d 81 (Law Div.1980).

5:23-2.26 Plan review fees

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

5:23-2.27 Refunds

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

5:23-2.28 Volume computation

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

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

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

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

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

(f) No fee shall be required for commercial farm buildings, or portions of, constructed of pre-engineered systems specified in N.J.A.C. 5:23-3.2(d)3. A fee shall be required, unless exempted, for commercial farm building work performed at the site.

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

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

(e) added.

Amended by R.1995 d.603, effective November 20, 1995 (operative March 20, 1996).

See: 27 N.J.R. 2655(a), 27 N.J.R. 4699(a).

5:23-2.29 Entry

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

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

Elevators wholly within R-2 residences exempt.
Amended by R.1992 d.183, effective April 20, 1992.

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

Enforcement of indoor air quality subcode assigned to building subcode official.

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

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

Added subsection (j); deleted "Allocation of enforcement" from heading.

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

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

Amended by R.1995 d.143, effective March 20, 1995 (operative July 1, 1995).

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

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).

Amended by R.2000 d.166, effective April 17, 2000.

See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).

In (b)2, changed Chapter 21 and Chapter 31 through 33 references in the Building Subcode, and inserted Chapter 12 reference in the Mechanical Subcode; and in (d)2, deleted a former Chapter 21 reference in the Building Subcode, and changed Chapter 12 reference in the Mechanical Subcode.

Amended by R.2001 d.141, effective May 7, 2001.

See: 32 N.J.R. 3917(a), 33 N.J.R. 746(a), 33 N.J.R. 1399(d).

In (b)1 and (b)2, deleted "as follows: (All except M-801.2)" following "Chapter 8" in the Mechanical Code; in (d)1, deleted "Chapter 8 as follows: M-801.2" in the Mechanical Code; in (d)2, deleted "3007.3" following "413.5.2", inserted "3305.0" following "414.5", and deleted "408.3.1", "3305.0" and "414.5" at the end of the Building Subcode, and deleted "Chapter 8 as follows: M-801.2" in the Mechanical Subcode.

Amended by R.2001 d.196, effective June 18, 2001.

See: 33 N.J.R. 6(a), 33 N.J.R. 2090(a).

In (a)1, (a)2, (b)1, (b)2, (d)1 and (d)2, rewrote Mechanical Subcode and inserted Fuel Gas Subcode.

Amended by R.2001 d.244, effective July 16, 2001 (operative January 16, 2002).

See: 33 N.J.R. 1241(a), 33 N.J.R. 2471(a).

In "ENERGY SUBCODE" categories of (a) through (c), listed specific sections of Chapters 5 and 6, relating to building subcode official responsibility.

Administrative correction.

See: 33 N.J.R. 3308(a).

Amended by R.2002 d.6, effective January 7, 2002.

See: 33 N.J.R. 2570(a), 33 N.J.R. 3883(a), 34 N.J.R. 268(a).

In (a), inserted "ELECTRICAL SUBCODE" in categories 1 and 2, and updated references to officials in "ENERGY SUBCODE" category 1; in (c)1 and 2, updated "ELECTRICAL SUBCODE" chapter references.

Amended by R.2003 d.240, effective June 16, 2003.

See: 34 N.J.R. 3045(a), 35 N.J.R. 2637(c).

In (c)2, added "N.J.A.C. 5:23-3.16(c) Automatic rain sensor device".

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) Posted hydraulic system data plate: In lieu of the nameplate of the referenced NFPA standard(s), fire sprinkler system contractors are required to identify hydraulically designed fire sprinkler systems by affixing a permanently marked weatherproof metal or rigid plastic sign at the alarm valve. The nameplate shall contain information relative to the design parameters of the system as indicated on Form No. F380. The plate shall be secured at the alarm valve with corrosion resistant wire, chain, or other approved means.

(e) Identifying emblems for structures with truss construction: Identifying emblems shall be permanently affixed to the front of structures with truss construction as required by N.J.A.C. 5:70-2.20.

1. The emblem shall be of a bright and reflective color, or made of reflective material. The shape of the emblem shall be an isosceles triangle and the size shall be 12 inches horizontally by six inches vertically. The following letters, of a size and color to make them conspicuous, shall be printed on the emblem:

- i. "F" to signify a floor with truss construction;
- ii. "R" to signify a roof with truss construction; or
- iii. "F/R" to signify both a floor and roof with truss construction.

2. The emblem shall be permanently affixed to the left of the main entrance door at a height between four and six feet above the ground and shall be installed and maintained by the owner of the building.

3. Detached one and two-family residential structures with truss construction that are not part of a planned real estate development shall be exempt from the require-

ments of (e) above, unless required by municipal ordinance.

4. Individual structures and dwelling units with truss construction that are part of a planned real estate development shall not be required to have an identifying emblem if there is an emblem affixed at each entrance to the development.

(f) Swimming pools, spas and hot tubs: A valid electrical certificate of compliance and a bonding and grounding certificate shall be posted by the owner in a conspicuous place in or around the pool pump house or equipment control room.

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.
Amended by R.2000 d.47, effective February 7, 2000.
See: 31 N.J.R. 2314(a), 32 N.J.R. 443(a).

Added (f).
Amended by R.2000 d.166, effective April 17, 2000.
See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).

Rewrote (d) and (e).

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. Ap-

proval 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)li 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. 5:2-2.

(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).

Administrative correction.

See: 31 N.J.R. 4259(a).

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(b), 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.

5:23-4.4 Municipal enforcing agencies—organization

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

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

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

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

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

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

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

i. Only an individual licensed as a construction official may be appointed as an acting construction official and only an individual licensed as a subcode official in a particular subcode may be appointed as an acting

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

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

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

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

7. The municipality shall provide the construction official, each subcode official and each inspector with personal identification which includes at least the name of the municipality, and the name, title and photograph of the individual. The identification shall be validated by the municipality.

8. A municipality may, in its discretion, employ a mechanical inspector to perform plan review and mechanical inspections, with oversight by a designated subcode official, for Use Group R-3 or R-4 structures.

9. Provisions concerning reappointment of construction and subcode officials in non-civil service municipalities are as follows:

i. At least 30 days prior to the expiration of the statutory four-year term of office of a construction or subcode official, the appointing authority shall give written notice to the official indicating whether or not he or she is going to be reappointed.

ii. In the event that the official is neither reappointed, nor given written notice that he or she is not being reappointed, prior to the date of expiration of the statutory four-year term of office, the official shall be deemed to have been appointed to serve in an acting capacity for a period of not more than 60 days, in accordance with (a)6 above. The municipality is not relieved of the obligation, pursuant to (a)6 above, to notify the Department within seven days any time any acting appointment will exceed 30 days.

iii. In the event that the official is neither reappointed, nor given written notice that he or she is not being reappointed, prior to the expiration of the 60-day period following the date of expiration of the prior statutory four year term of office, the Department, in such circumstance, shall not extend any such acting appointment and the official shall be deemed to have been reappointed, such reappointment being effective retroactively to the date of expiration of the prior statutory four-year term.

(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).

Amended by R.1996 d.387, effective August 19, 1996 (operative November 1, 1996).

See: 28 N.J.R. 2434(a), 28 N.J.R. 3923(a).

In (a) added provisions relating to reappointment of construction and subcode officials in non-civil service municipalities.

Case Notes

Municipal construction code official's appearance for work for 11 days after his four-year term expired did not confer tenure on him on basis of appointment to second consecutive term. *Cutler v. Borough of Westwood*, 295 N.J.Super. 344, 685 A.2d 44 (A.D.1996).

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 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
F100	Construction Permit Application
F110	Building Subcode Technical Section
F120	Electrical Subcode Technical Section
F130	Plumbing Subcode Technical Section
F140	Fire Subcode Technical Section
F145	Mechanical Inspector Technical Section
F150	Elevator Subcode Technical Section
F-155	Elevator Subcode Multiple Devices
F-160B	Application for a Variation
F170	Construction Permit, Required Inspection
F180	Construction Permit Notice
F190	Permit Update
F211	Notice of Violation and Order to Terminate
F212	Notice and Order of Penalty

F221	Inspection Sticker Approval for Building
F-222A	Inspection Sticker Approval for Electric
F223	Inspection Sticker Approval for Plumbing
F-224A	Inspection Sticker Approval for Fire Protection
F-225	Inspection Sticker Approval for Elevator
F-230B	Inspection Sticker Approval—Not Approved
F241	Notice of Unsafe Structure
F242	Notice of Imminent Hazard
F-245A	Unsafe Structure Notice
F250	Stop Construction Order
F-255A	Stop Construction Notice
F260	Certificate
F270	Application for Certificate
F310	Elevator Inspection
F-320A	Elevator Notice
F-325	Notice of Elevator Device Sealed Out of Operation
F326	Accident/Incident Report
F-350B	Cut-In Card
F-360	Denial of Permit
F-370	Chimney Certification for Replacement of Fuel Fired Equipment
F380	Hydraulic System Data Plate

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
F375	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
L700	Permit Fee Log
L-710A	Inspection Log
L720	Certificate Log
L730	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
R-811B	Municipal Monthly Activity 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
R840	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 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 any close relative or household member, or his or her superior within the enforcing agency or any close relative

or household member of such superior, has an economic interest. For purposes of this paragraph, "close relative" shall mean and include a spouse, sibling, ancestor or descendant, or the spouse of any of them.

i. Where an inspection or enforcement procedure is necessary or required in any such property or business, and there is no other person employed by the enforcing agency who is qualified, pursuant to this chapter, to perform the inspection or enforcement procedure and who is not a subordinate of the person with the direct or indirect economic interest in 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.

ii. A separate log shall be maintained by the enforcing agency of all inspections and enforcement procedures performed, when permitted in accordance with (j)1i above, with regard to any properties or businesses in which any persons employed by the enforcing agency have a direct or indirect economic interest.

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.

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.

Amended by R.1996 d.512, effective November 4, 1996.

See: 28 N.J.R. 3697(a), 28 N.J.R. 4782(a).

Amended by R.1997 d.64, effective February 18, 1997 (operative May 19, 1997).

See: 28 N.J.R. 4695(a), 29 N.J.R. 550(a).

In (b)2, amended form references.

Amended by R.1997 d.378, effective September 15, 1997.

See: 29 N.J.R. 2742(a), 29 N.J.R. 4103(a).

In (b)2 and (c)1, amended form designations and in (b)2 deleted form F-330A and F-340A.

Amended by R.1997 d.419, effective October 6, 1997.

See: 29 N.J.R. 3406(a), 29 N.J.R. 4287(a).

In (j)1, inserted “, or his or her superior within ... any such superior.”; in (j)1i inserted “, and there is no other person ... property or business.”; and added (j)1ii.

Amended by R.2000 d.166, effective April 17, 2000.

See: 31 N.J.R. 4151(a), 32 N.J.R. 1376(a).

In (b)2, inserted a reference to Form No. F380.

Amended by R.2000 d.413, effective October 16, 2000.

See: 32 N.J.R. 2278(a), 32 N.J.R. 3783(a).

In (j)1, substituted references to close relatives or household members for references to members of the immediate family, and added the second sentence; and deleted former (j)7.

Amended by R.2003 d.363, effective September 15, 2003.

See: 35 N.J.R. 2426(a), 35 N.J.R. 4281(a).

In (b), added forms F211, F212, F241, F242 and deleted form F240; deleted the revision dates of the referenced forms throughout.

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).

Monetary penalty against builder for code violations was not reduced for financial hardship, but was reduced by half to secure prompt compliance. *Bureau of Housing Inspection v. Regency Village Apartments*, 95 N.J.A.R.2d (CAF) 37.

Fraud and deceit while practicing as a licensed code enforcement official or inspector warranted license revocation. *Regulatory Affairs v. Zieniuk*, 95 N.J.A.R.2d (CAF) 15

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).



(d) Post abatement sampling and analysis for an asbestos hazard abatement project shall be performed as per EPA 40 CFR 763.90i. Samples collected within the affected work area shall be analyzed by TEM.

(e) Post abatement sampling and analysis for an asbestos hazard abatement project utilizing the glovebag technique and encapsulation shall be as follows:

1. One sample per 10,000 square feet of work area with a minimum of five samples shall be required. Samples collected within the affected work area may be analyzed by PCM to confirm completion of an asbestos abatement project using the methodology specified in NIOSH 7400.

(f) For TEM analysis, the project shall be considered complete when the results of samples collected in the affected work area comply with 40 CFR 763.90 and Appendix A to Subpart E. Maximum turnaround time from sample collection through data reporting shall be 72 hours.

(g) For PCM analysis, the project shall be considered complete when the results of samples collected in the affected work area show that the concentration of fibers for each of the five samples is less than or equal to 0.01 fibers per cubic centimeter.

(h) When the air analysis results for projects covered by this subchapter show asbestos fiber concentrations above the acceptance criteria, then clean-up shall be repeated until compliance is achieved by re-cleaning all surfaces using wet methods and operating all HEPA equipped air pressure differential units to filter the air.

New Rule R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Amended by R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Recodified old 8.20 as new 8.21. Section 8.21 was formerly "Demolition".

Recodified from 5:23-8.23 by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior text at section, "Appeals", repealed.

5:23-8.22 Disposal of asbestos waste

(a) The disposal of friable/non-friable asbestos-containing material and asbestos-contaminated waste from the project site shall be in accordance with New Jersey Department of Environmental Protection and Energy requirements specified in N.J.A.C. 7:26 and 40 CFR Part 61, Subpart M.

Amended by R.1986 d.143, effective May 5, 1986.

See: 18 N.J.R. 378(a), 18 N.J.R. 949(a).

Recodified from 8.13 and substantially amended.

Amended by R.1987 d.525, effective December 21, 1987.

See: 19 N.J.R. 902(a), 19 N.J.R. 2389(a).

Substantially amended.

Amended by R.1989 d.342, effective July 3, 1989.

See: 20 N.J.R. 1130(b), 21 N.J.R. 1844(b).

Recodified old 8.14 as new 8.15, no change in text. Section 8.15 was formerly "Duties of the asbestos safety technician".

Recodified from 5:23-8.15 and amended by R.1993 d.198, effective June 7, 1993.

See: 24 N.J.R. 1422(a), 25 N.J.R. 2519(b).

Prior section, "Demolition", recodified as 5:23-8.18.

SUBCHAPTER 9. CODE INTERPRETATIONS

5:23-9.1 Interpretations: Plumbing Subcode

(a) Application of the Plumbing Subcode to certain manufactured homes:

1. Chapter 18 of the Plumbing Subcode (National Standard Plumbing Code) is not applicable to permanently installed manufactured homes meeting the Federal Manufactured Home Construction and Safety Standards, 24 C.F.R. Part 3280.

2. An approved structure placed on a site for use as a permanent dwelling shall meet the requirements of the State Plumbing Subcode, excluding Chapter 18 of the Plumbing Subcode (National Standard Plumbing Code), or, if applicable, the Federal Manufactured Home Construction and Safety Standards.

(b) Use of common water service and sewer lines under Sections 1.2 and 2.19 of the Plumbing Subcode:

1. Common water services shall be permitted to serve attached single family dwellings in groups of three or more where the common water service is located within property subject to an association easement or on common property and there is a homeowners' association or other entity responsible for maintenance and upkeep.

2. Common building sewers shall be permitted to serve attached single family dwellings in groups of three or more where the common sewer is located within property subject to an association easement or on common property and there is a homeowners' association or other entity responsible for maintenance and upkeep.

Amended by R.1995 d.647, effective December 18, 1995 (operative March 18, 1996).

See: 27 N.J.R. 3517(a), 27 N.J.R. 5012(a).

Amended by R.2002 d.319, effective October 7, 2002.

See: 33 N.J.R. 4185(a), 34 N.J.R. 3497(b).

Rewrote the section.

5:23-9.2 Interpretation: Construction Permit for a single-family residence

(a) Any application for a construction permit for a single family residence shall be accompanied by at least two copies of plans drawn to scale, with sufficient clarity and detailed dimensions to show the nature and character of the work to be performed. Plans submitted shall not be required to show more detail or include more information than is reasonably necessary to assure compliance with the requirements of the Uniform Construction Code and rules in this chapter.

(b) Plans containing the following information shall be considered to meet the requirements of (a) above:

1. Site diagram consisting of a site plan showing size and location of all new and existing construction on the site with distances from lot lines and indicating new building services, location and size.

2. Construction plans consisting of a scale drawing showing foundation, floor plans, and elevations, including structural framing notes for all floors, ceilings and roofs. Only girders and columns need be identified and located on the plan. Included on the drawings shall be a loading schedule indicating the live loads for which the structure is designed.

3. The following details and submissions shall be required:

i. A cross section through one typical wall showing construction details from footing to and including roof framing. This section shall indicate all construction materials used including roofing, vapor barriers, sheathing type and thickness, insulation type and thickness, windows, glazing type if other than standard window glazing is used, interior finish material, floor type and thickness, structure, foundation and footings. Decorative material shall not be required to be shown unless it contributes to the structural integrity of the section.

ii. When roof or other truss systems are used, the details required by N.J.A.C. 5:23-2.15(e)1ii(1)(A) shall be shown.

iii. Electrical details indicating lighting; receptacles; motors and equipment; smoke detectors; service entrance locations; size and type (overhead or underground); panel size, location; number of proposed circuits. A symbol legend shall be included.

iv. Plumbing details indicating the locations of fixtures and a notice or table listing water and drainage pipe sizes. A note stating if sewage disposal is to public sewer or individual septic system shall be included.

v. Mechanical details indicating the type of heating system; location, size and type of heating unit, noting the distribution method and indicating design rates, location of fire dampers and safeguards; and location, type and size of flue.

vi. Energy subcode compliance shall be demonstrated with either detailed calculations, Energy Star compliance documentation, the submission of printouts from software recognized by the Department, such as RES Check, or the prescriptive packages described in Bulletin 03-2. RES Check software is available from the Department of Community Affairs, Division of Codes and Standards, PO Box 802, Trenton, New Jersey 08625 or from the U.S. Department of Energy at www.energycodes.gov.

4. The drawings shall bear the seal and signature of an architect or engineer who prepared the plans and is registered in the State of New Jersey. The seal and signature shall appear on each sheet of each copy of the plans submitted.

i. The construction official shall waive the requirements for sealed plans in the case of a single family home owner who prepares his or her own plans for the construction, alteration or repair of a structure used or intended to be used exclusively as the owner's private residence, and which is to be constructed by the owner, providing that the owner shall submit an affidavit attesting to the fact that he has prepared the plans and that the plans are, in the opinion of the construction official and appropriate subcode officials, legible and complete for the purpose of ensuring compliance with the regulations.

ii. Plumbing plans, electrical plans and mechanical plans may be prepared by licensed plumbers, licensed electrical contractors and mechanical contractors, respectively, in accordance with these regulations.

5. Construction plans, and electrical, plumbing, and mechanical details may be shown on more than one drawing.

6. Where a prototype plan has been approved pursuant to existing regulations, only a site diagram and reference to the approved prototype plan shall be required. This site diagram must be signed and sealed by a registered architect or licensed professional engineer.

7. The Construction Official, upon the advice of the appropriate subcode official, may waive any or all of the requirements for plans in (b)1 through 6 above when the work is of a minor nature.

Amended by R.2003 d.216, effective May 19, 2003.

See: 35 N.J.R. 16(a), 35 N.J.R. 2203(a).

In (b)3, inserted "and submissions" following "details" in the introductory paragraph, added new ii, recodified former ii through iv as iii through v and added vi.

Administrative correction.

See: 35 N.J.R. 2865(a).

5:23-9.3 Interpretation: ordinary maintenance

(a) The following items are ordinary maintenance and shall be treated as such by every enforcing agency. No permits for, inspections of, or notice to the enforcing agency of ordinary maintenance shall be required. This is not an all-inclusive listing of ordinary maintenance.

1. Ordinary building maintenance shall include:

i. Exterior and interior painting;

ii. Installation, repair or replacement of any interior finishes of less than 25 percent of the wall area in any given room, in a one or two family dwelling. This shall include plastering and drywall installation;

(1) Vinyl wall covering of any amount is an ordinary repair;

(2) Paneling shall not be considered an ordinary repair;

iii. Wall papering at any location;

iv. The replacement of glass in any window or door. However, the replacement glass shall be of a type and quality that complies with the minimum requirements of the code;

v. The installation and replacement of any window or door, including garage doors, in the same opening without altering the dimensions or framing of the original opening. This shall include storm windows and storm doors. The installation and replacement of means of egress and emergency escape windows and doors may be made in the same opening without altering the dimensions or framing of the original opening,

and shall not reduce the required height, width or net clear opening of the previous window or door assembly;

vi. The repair of any non-structural member such as a partition railing or kitchen cabinet;

vii. The repair or replacement of any interior or exterior trim, decoration or moldings;

viii. The replacement or installation of any flooring material, except carpeting, with a new material. However, installation of carpeting in one and two family dwellings will be permitted under ordinary repairs;

ix. The repair of existing roofing material not exceeding 25 percent of the total roof area within any 12 month period;

x. The repair of existing siding with like material not exceeding 25 percent of the total building exterior wall area within any 12 month period;