

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) BOCA National Building Code.

(2) BOCA National Plumbing Code.

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

(1) National Electrical Code.

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

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

New rule.

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

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

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

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

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

Substantially amended.

Amended by R.1987 d.14, effective January 5, 1987.

See: 18 N.J.R. 2083(a), 19 N.J.R. 63(a).

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

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

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

Model subcode revisions.

Amended by R.1988 d.270, effective June 20, 1988.

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

Added (a)3 and (c).

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

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

References to 1989 Supplement added; (c)1 and 3 added.

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

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

Text conformed to BOCA National Code/1990.

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

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

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

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

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

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

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

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

Amended by R.1995 d.120, effective March 6, 1995 (operative July 1, 1995).

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

5:23-3.20A Indoor air quality subcode

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

chapter in which mechanical ventilation is utilized. This standard is hereby adopted by reference as the indoor air quality subcode for New Jersey.

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

New Rule R.1992 d.183, effective April 20, 1992.
See: 24 N.J.R. 167(a), 24 N.J.R. 1475(b).

5:23-3.21 One and two-family dwelling subcode

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

1. Pursuant to authority of P.L. 1975, c.217, as modified by P.L. 1996, c.53, the Commissioner hereby adopts the model code of the Council of American Building Officials known as "The CABO One and Two Family Dwelling Code/1995" as the one and two-family dwelling subcode for New Jersey subject to the modifications stated in (c) below.

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

(b) The provisions of this subcode shall apply to the construction, alteration, repair or increase in size of detached one or two-family dwellings, or single family townhouses, of Use Group R-4, of type 5B construction not more than two stories or 35 feet in height and 4,800 square feet in area per floor. For the purpose of applying this section, a habitable attic shall not constitute a story. A habitable attic shall be an attic which has a stairway as a means of access and egress and in which the ceiling area at a height of 7 1/2 feet (2,235 mm.) above the attic floor is not more than one-third the area of the next floor below.

1. The use of the CABO Code for the construction of one or two family detached dwellings, as described in (b) above, in flood prone areas shall be permitted. The requirements of Section 3107.0 of the building subcode shall supplement the requirements of the One and Two-Family Dwelling Subcode when dwellings are built in flood prone areas as identified by the most recent Flood Insurance Rate Map published by the Federal Emergency Management Agency.

(c) The following chapters or sections of the one and two family dwelling subcode are modified as follows:

1. Chapter 1 entitled "General Administration" is deleted in its entirety.

2. Chapter 2, entitled "Building Definitions," is amended as follows:

i. The definition of the term "approved" is deleted. In lieu thereof substitute "approved by the building subcode official or other authority having jurisdiction in accordance with the regulations."

ii. The definition of the term "Approved Agency" is amended to add the phrase "or other authority having jurisdiction in accordance with the UCC" after the word "Official" on line 4.

iii. The definition of the term "Building Official" is deleted and is redefined herein and throughout the subcode as the "building subcode official" as defined in N.J.A.C. 5:23-1.4 unless indicated otherwise.

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

v. The definition of the term "Story" is amended to delete "except that the topmost story shall be that habitable portion of a building included between the upper surface of the topmost floor and ceiling or roof above."

3. Chapter 3, entitled "Building Planning" is amended as follows:

i. Section 301.2 is amended to modify Table 301.2a to read as follows:

Table No. 301.2a

CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA

Roof Snow Load (lbs./sq. ft.)	Wind Pressure (lbs./sq. ft.)	Seismic Condition by Zone	Subject to Damage from Weathering	Frost Line Depth	Subject to Damage from
20	see	see note 2	severe	2'-6"	Termite
see note 3	notes 4, 5, 6 and fig. 301.2d		see note 1	(Southern Area)	Yes
				3'-0"	Decay
				(Northern Area) See notes 1, 2 and 3	Yes

Notes:

1. Weathering may require a higher strength concrete or grade of masonry than necessary to satisfy structural requirements of this code. The grade of masonry units shall be determined from the ASTM C34, C55, C62, C73, C90, C129, C145, C216, or C625 listed in Chapter 47. The frost line depth may require deeper footings than indicated in figure 403.1a.
2. New Jersey is divided into two zones: Zone one consists of Monmouth and Burlington Counties and all counties to the south. Zone 2 consists of Mercer and Middlesex Counties and all counties to the north.
3. The enforcing agency having jurisdiction may establish values other than the ones listed for "roof snow load," and "frost line depth" if warranted by documented local climatic and geographic conditions.
4. Wind speed for Atlantic, Cape May, Monmouth, and Ocean counties, and Bass River, Washington, and Woodland townships in Burlington County shall be 90 mph.
5. Wind speed for Bergen, Camden, Cumberland, Essex, Gloucester, Hudson, Mercer, Middlesex, Morris, Passaic, Salem, Somerset, Union, and Burlington (except for Bass River, Washington, and Woodland townships) counties shall be 80 mph.
6. Wind speed for Hunterdon, Warren and Sussex counties shall be 70 mph.

ii. Section 302.1, in the first and fourth lines, delete "3 feet" and substitute in lieu thereof, "5 feet."

iii. Sections 303.4 and 303.4.1 are deleted in their entirety.

iv. Section 303.6 "Required Heating" is deleted.

v. Section 309.1 Opening Protection—Delete and substitute in lieu thereof the following: "Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid core wood doors not less than 1¾ inches in thickness or approved equivalent. The sills of all door openings between garages and adjacent interior spaces shall be raised not less than 4 inches above the garage floor."

vi. Section 309.2—Separation Required—Delete and substitute in lieu thereof the following: "Private garages located beneath rooms shall have walls, partitions, floors and ceilings separating the garage from the adjacent interior spaces constructed with not less than 1 hour fire resistance rating. Attached private garages shall be completely separated from the adjacent interior spaces and the attic area by means of ½-inch gypsum board or equivalent applied to the garage side."

vii. Section 310.2.1—Minimum Size—In the second sentence, in the fourth line, delete "22 inches (559 mm)" and substitute in lieu thereof "24 inches (610 mm)."

viii. Section 312.1, under the second exception in the second line, delete "8¼ inches" and substitute in lieu thereof, "8 inches";

ix. Sections 314.1, 314.2, 314.2.1 and 314.3 are deleted and substitute in lieu thereof the text of Section R-213.1 of the 1992 CABO One and Two Family Dwelling Code as follows:

"R-213.1 General: When risers are closed, all treads may have a uniform projection not to exceed 1½ inches.

The greatest riser height within a flight of stairs shall not exceed the smallest by more than ¾ inch.

The greatest tread run within any flight of stairs shall not exceed the smallest by more than ¾ inch.

Stairways shall not be less than 3 feet clear width, and the headroom, rise and run shall conform to the following requirements from Figure No. R-213.1 of the 1992 CABO One and Two-Family Dwelling Code. As per this figure, tread depth is 9" minimum, riser height is 8¼" maximum and headroom is 6'8" minimum. Handrails may project from each side of a stairway a distance of 4½ inches into the required width."

x. Section 314.4 is amended to change "10 inches (254 mm)" in the third line to "9 inches (229 mm)."

xi. Section 314.6 is amended to change "10 inches (254 mm)" in the fourth line to "9 inches (229 mm)."

xii. Section 314.7 is deleted in its entirety;

xiii. Section 315.2 is deleted and substitute in lieu thereof the following text from Section R-214.1 of the 1992 CABO One and Two-Family Dwelling Code.

"The handgrip portion of the handrails shall not be more than 2 ⅝ inches in cross-sectional dimension, or the shape shall provide an equivalent gripping surface. The handgrip portion of handrails shall have a smooth surface with no sharp corners."

xiv. Section 316.1.1 entitled "Alterations, repairs and additions" is deleted in its entirety.

xv. In Section 317.2.4, after the words "foam filled doors" add the phrase "except for fire doors";

xvi. Section 324 is deleted in its entirety.

4. Chapter 4, entitled "Foundations," is amended as follows:

i. Section 404.1, Concrete and Masonry, is amended to delete the exception.

ii. Section 404.2 is deleted and replaced with the following text from the 1992 edition of the CABO One and Two-Family Dwelling Code, Section R-304.4: "Foundation walls subject to lateral pressure from soils having an equivalent fluid weight of greater than 30 pounds per cubic foot (4.72 kN/m³) shall be designed in accordance with accepted engineering practices."

iii. In Section 405.1 the exception is amended to delete the text and substitute the following language from the 1992 edition of the CABO One and Two-Family Dwelling Code, Section R-305.1: "A dedicated disposal system is not required when the foundation is installed on well-drained ground or sand-gravel mixture soils."

iv. Section 407 of the 1995 CABO One and Two-Family Dwelling Code entitled "Foundation Insulation" is deleted in its entirety.

v. Add new section 410 "Pile Foundation," as follows: "Pile foundations utilized in buildings under the scope of this subcode shall be regulated by Chapter 18 of the building subcode."

5. Chapter 5, entitled "Floors," is amended as follows:

i. In Section 501.1, replace the phrase "Section 108" with the phrase "N.J.A.C. 5: 23-3.6 and 3.7."

ii. In Section 501.2, delete the words "imposed according" from line three.

iii. In Section 502.4, replace the word "approval" with "approved."

iv. In Section 505.2.2, delete the exception and replace it with the following text: "Except where required by the radon subcode, a base course is not required when the concrete slab is installed on well-drained or sand-gravel mixture soils."

v. In Section 505.2.3, exception, insert the phrase "Where permitted by the radon subcode," at the beginning of line one.

6. Chapter 6, entitled "Wall Construction," is amended as follows:

i. In Section 601.1, delete the words "Section 108" and in lieu thereof insert "N.J.A.C. 5:23-3.6 and 3.7";

ii. Delete Section 604.1.1.

7. Chapter 7, entitled "Wall Covering," is amended as follows:

i. In Section 701.1, delete the words "Section 108" and in lieu thereof insert "N.J.A.C. 5:23-3.6 and 3.7";

8. Chapter 8, entitled "Roof Ceiling Construction," is amended as follows:

i. In Section 801.1, delete the words "Section 108" and in lieu thereof insert "N.J.A.C. 5:23-3.6 and 3.7."

9. Chapter 9, entitled "Roof Coverings," is amended as follows:

i. In Section 901.1, delete the words "Section 108" and in lieu thereof insert "N.J.A.C. 5:23-3.6 and 3.7";

ii. In Section 901.3, "Roof Covering Materials," on line three, delete the phrase "in areas . . . 3 feet" and replace with the phrase: "when the edge of the roof is less than 6 feet (1829 mm)";

iii. Section 910.1 is amended to delete the words "Sections 117 and" and substitute the word "Section" and to delete the sentence "When the repair . . . for the new roofing."

10. Chapter 10, entitled "Chimneys and Fireplaces," is amended as follows:

i. Section 1001.7 is amended to add the following phrase after "1800°F": "and embedded in medium duty refractory mortar complying with ASTM C105." Delete the Exception.

ii. Section 1002 is amended to add the sentence: "Factory-built chimneys shall conform to UL 103 and be installed in accordance with their listing."

iii. In Section 1003.4, in the last line, change "10 inches" to "12 inches."

iv. In Section 1003.7, in the second line, change "2 inches (51 mm) thick" to "4 inches (102 mm) solid masonry or equivalent."

v. In Section 1003.9, in the second and fifth lines, change "2 inches (51 mm)" to "4 inches (102 mm)" and add the sentence "The minimum clearance to combustibles from the exterior surface of the smoke chamber shall be 2 inches (51 mm)."

vi. Section 1004.1, item #4 is amended to add the following after the word "opening": "for a fireplace having an opening of less than 6 square feet. The hearth of a fireplace with a larger opening shall extend a minimum of 20 inches (508 mm) beyond the face of the fireplace opening and a minimum of 12 inches (305 mm) on each side of the fireplace opening." Also, in item #5 of Section 1004.1, delete the text and substitute in lieu thereof: "Factory-built fireplaces shall be listed, labeled and tested according to UL 127, and installed according to their listing."

vii. Section 1005.1 is amended to add "Factory-built fireplace stoves shall be tested according to UL 737." to the end of the section.

11. Chapter 11 entitled, "Mechanical Administration" is amended as follows:

i. Section 1101.2 is deleted;

ii. Section 1103 is deleted.

12. Chapter 12, entitled "Mechanical Definitions," is amended as follows:

i. In Section 1202.0, the term and definition "Unusually tight construction" are deleted.

13. Chapter 13 entitled, "General Mechanical System Requirements" is amended as follows:

i. Section 1304.1 is amended to add the sentence, "This section shall not preclude the employees of a natural gas utility from converting existing liquefied petroleum installations to natural gas without permits."

ii. Section 1307.1 is amended to delete the last sentence.

iii. Section 1307.4 is deleted.

14. Chapter 14, entitled "Heating and Cooling Equipment," is amended as follows:

i. Section 1401.3 is deleted.

15. Chapter 15 entitled, "Electric Resistance Heating" is amended as follows:

i. Section 1501.1 is amended to delete the words "Chapters 39-46 of this code" and substitute in lieu thereof "the requirements of the electrical subcode."

ii. Section 1502.1 is amended to delete the words "Chapters 39-46 of this code" and substitute in lieu thereof "the requirements of the electrical subcode."

iii. Section 1502.2 is amended to delete the words "Chapters 39-46 of this code" and substitute in lieu thereof "the requirements of the electrical subcode."

iv. Section 1503.1 is amended to delete the words "Chapters 39-46 of this code" and substitute in lieu thereof "the requirements of the electrical subcode."

16. Chapter 21 entitled, "Chimneys and Vents" is amended as follows:

i. Section 2101.3 is amended to replace the words "cleaned and free of obstructions." with the words "inspected in accordance with the chimney certification program as provided for in N.J.A.C. 5:23-2.20(c)."

17. Chapter 25 entitled, "Hydronic Piping" is amended as follows:

i. Section 2501.3 is amended to delete the words "Chapter 29-38 of this code" and substitute in lieu thereof "the requirements of the plumbing subcode."

ii. Section 2501.4 is amended to delete the words "the provisions listed in Section 3402" and substitute in lieu thereof "the requirements of the plumbing subcode."

18. Chapter 26 entitled, "Fuel-Gas Piping" is amended as follows:

i. Section 2602 is deleted;

ii. Section 2603.1 is deleted;

iii. Section 2603.2 is deleted;

iv. Section 2603.3 is deleted;

v. Section 2608.9 is amended to delete the words "Chapters 39-46 of this code" and substitute in lieu thereof "the requirements of the electrical subcode."

19. Chapters 29 through 46 are deleted.

20. Appendices A through F are deleted.

New Rule, R.1985 d.324, effective July 1, 1985.

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

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

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

Model subcode revisions.

Amended by R.1988 d.388, effective August 1, 1988.

See: 20 N.J.R. 1130(a), 20 N.J.R. 2073(b).

Added (c).

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

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

References to 1989 Supplement added; (b)lii(5), 2, 4, 8 and 9 amended; (b)5, 6 and 7 added; (c) deleted; Table R-201.2 added.

Amended by R.1991 d.571, effective November 18, 1991.

See: 23 N.J.R. 2619(a), 23 N.J.R. 3444(b).

Added new (c).

Amended by R.1992 d.208, effective May 18, 1992.

See: 24 N.J.R. 680(a), 24 N.J.R. 1879(a).

Code provisions applicable to flood hazard zones clarified.

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

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

Amended by R.1998 d.332, effective July 6, 1998.

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

Rewrote the section.

SUBCHAPTER 4. ENFORCING AGENCIES; DUTIES; POWERS; PROCEDURES

5:23-4.1 Title; scope; intent

(a) This subchapter, adopted pursuant to authority of the State Uniform Construction Code Act and entitled "Enforcing agencies; duties; powers; procedures", shall be known and may be cited through the regulation as N.J.A.C. 5:23-4," and when referred to in this part of the regulations, may be cited as "this subchapter".

(b) Unless otherwise specifically provided, all references to article or section numbers or to provisions not specifically identified by number, shall be construed to refer to such article, section or provision of this subchapter.

(c) This subchapter and N.J.A.C. 5:23-4A, 4B, 4C shall control matters related to: the structure, organization, and procedures of municipal, State, and interlocal enforcing agencies; their interrelationships; the structure, organization, and procedures of boards of appeal; the approval of premanufactured construction; private enforcing agencies; and the establishment of fees.

(d) This subchapter seeks to provide an efficient administrative structure for enforcing agencies and boards of appeal, through which delay in the construction process can be reduced, uniformity of systems and procedures encouraged, and the public health and safety protected. Such intent

shall be given full effect in the construction of any specific provision of this subchapter.

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

Reference to subchapter 4A added to (c).

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

Law Review and Journal Commentaries

Municipal employees—Construction Code Officials. Judith Nallin, 135 N.J.L.J. No. 14, 50 (1993).

Case Notes

Citation to former N.J.A.C. 5:23-2.9 on enforcement. Newark Health Welfare Dept. v. Rogers, 179 N.J.Super. 389, 432 A.2d 135 (Ch.Div.1981).

City must proceed against property through its own ordinances rather than seek common law public nuisance injunction where no local board of health established and nuisance not proven. Newark Health & Welfare Dept. v. Rogers, 179 N.J.Super. 389, 432 A.2d 135 (Ch.Div. 1981).

5:23-4.2 Matters covered; exceptions

(a) Except as otherwise provided in subsection (b) below, the provisions of this subchapter shall apply to all agencies with an enforcement responsibility under the act and regulations.

(b) Rules concerning exceptions are:

1. Interstate agencies: This subchapter shall not apply to agencies created by Interstate Compact. Such agencies shall administer and enforce the subcodes, under such rules and regulations as they may develop, pursuant to authority of the State Uniform Construction Code Act, and any other applicable law of this State.

2. Department of Education:

i. When final plans for the construction or alteration of a public school facility have been submitted to the Department of Education, and approved under the standards for educational adequacy set forth at N.J.A.C. 6:22, and have been submitted for review to, and released by, either the Department or a construction official of an enforcing agency, such plans shall be filed with the enforcing agency of the municipality in which the public school facility is located.

ii. The enforcing agency shall inspect any construction or alteration of a public school facility in the same manner as any other building or structure subject to the code for the purpose of determining if there are any violations of the educational enhancement requirements set forth at N.J.A.C. 5:23-3.11A(d) or any other provision of the State Uniform Construction Code. Any notice or order issued by the enforcing agency shall be binding upon the district board of education, except that the district board of education shall have the right to appeal any notice or order issued by a local enforcing agency to the construction board of appeals having jurisdiction and the right to appeal any notice or order issued by the Department in accordance with N.J.A.C. 5:23-2.38.

(c) Rules concerning matters not specifically provided for are:

1. Any type or class of enforcing agency or board of appeals, the procedures of which are developed in this subchapter, may individually adopt further rules for their internal governance, not inconsistent with any specific provision of this subchapter, or with its stated intent.

Amended by R.1991 d.309, effective June 17, 1991.

See: 23 N.J.R. 1084(a), 23 N.J.R. 1922(a).

Rule conformed to P.L. 1990 c.23; reference to N.J.A.C. 6:22 added.

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

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

In (b)2i, substituted "educational adequacy" for "facility adequacy", inserted "either the Department or" preceding "a construction official"; and substantially amended (b)2ii.

5:23-4.3 Municipal enforcing agencies—establishment

(a) Notice of intention to establish:

1. Any municipality seeking to establish and operate an enforcing agency, pursuant to the act and the regulations, shall first notify the department of its intent to establish such an agency by registered and certified mail, return receipt requested, not later than one month prior to the effective date of the regulations. Such notice, in the form of a resolution of the governing body, shall state that enforcement will be carried out either by the municipal enforcing agency or by interlocal agreement. The resolution shall also state the extent to which the municipality anticipates that private on-site agencies will be utilized. The resolution shall state the address of the enforcing agency and the board of appeals, if different. Such resolution shall additionally state whether a board of appeals will be appointed within the municipality, whether an intermunicipal joint board of appeals will be established or whether appeals will be left to the jurisdiction of the county.

2. Any municipality which shall not choose to establish and operate an enforcing agency pursuant to the act and the regulations shall notify the department of this intent by registered or certified mail, return receipt requested, not later than one month prior to the effective date of the regulations. Such notice, in the form of a resolution of the governing body, shall state that the governing body requests that the department assume the task of administration and enforcement.

3. A municipality may, by resolution, provide for the employment of an elevator subcode official, licensed in accordance with N.J.A.C. 5:23-5, to perform inspections and witness tests within its jurisdiction. If a municipality fails to employ such an official by July 1, 1992, the Department shall have exclusive jurisdiction to review plans and witness tests for, and inspect elevators within, the municipality. Thereafter, a municipality may acquire such jurisdiction by enacting the necessary resolution and employing an elevator subcode official, but the transfer of jurisdiction to the municipality shall not be effective until 120 calendar days after a certified copy of the resolution is received by the Department.

(b) Remedies:

1. Whenever the department shall not have received the notice as described in (a)1 of this section, at least one month prior to the effective date of the regulations, it shall forward by certified or registered mail, return receipt requested, to the governing body of any such municipality, a notice of failure to comply with these regulations, a statement detailing the implications of such failure, and a statement of intention to seek the order of a court of competent jurisdiction requiring that the municipality declare its intention with respect to enforcement pursuant to (a)1 of this section or in the alternative that the department be established as the enforcing agency in such municipality.

2. The department may seek an order pursuant to this subsection after the expiration of 10 days from the mailing of such notice.

(c) Term; transfer:

1. Whenever a municipality pursuant to (c)2 below, having relinquished its jurisdiction for the administration and enforcement of the code to the department, shall seek to reestablish such jurisdiction, it may do so upon the passage of an ordinance establishing an enforcement agency in accordance with the regulations; provided however, that such ordinance shall not take effect until the expiration of 120 calendar days from the date of certified

copy of the ordinance is received by the department in order to give the department sufficient time to reallocate staff assignments.

2. Whenever a municipality having accepted responsibility for administration and enforcement of the regulations shall seek to relinquish such authority to the department, it may do so upon the passage of an ordinance repealing the functions and duties of the enforcing agency and transferring same to the department; provided however, that such ordinance shall not take effect until the expiration of 120 calendar days from the date a certified copy of the ordinance is received by the department, in order to give the department sufficient time to hire any necessary staff and to integrate the municipality's enforcing agency functions within its overall inspection program; provided further that whenever the commissioner shall determine that the interest of public health, safety and welfare cannot be accommodated within this period, the commissioner may notify the municipality that the department will not accept jurisdiction for an additional period to be specified. During this period the municipality shall continue to enforce the regulations.

i. Whenever the commissioner shall seek to delay acceptance of jurisdiction pursuant to this section beyond 120 days, such shall be upon notice and opportunity to be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14.B-1 et seq.;