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NEW JERSEY REGISTER

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VOLUME 47, ISSUE 4

ISSUE DATE: FEBRUARY 17, 2015

RULE ADOPTIONS

**COMMUNITY AFFAIRS
DIVISION OF CODES AND STANDARDS**

47 N.J.R. 459(a)

Adopted Amendments: *N.J.A.C. 5:23-3.4, 3.11, 3.11A, 4.5, 5.2 through 5.5, 5.21, 5.22, and 5.25*

Uniform Construction Code

Enforcement Responsibilities for the Installation and Replacement of Mechanical Equipment; Plan Review Authority for Residential Health Care Facilities; School Project Plan Review; Conflict of Interest; and Certification of Special Inspectors

Proposed: July 7, 2014, at *46 N.J.R. 1507(a)*.

Adopted: December 3, 2014, by Richard E. Constable, III, Commissioner, Department of Community Affairs.

Filed: January 22, 2015, as R.2015 d.029, **with a non-substantial change** not requiring additional public notice and comment (see *N.J.A.C. 1:30-6.3*.)

Authority: *N.J.S.A. 52:27D-124*.

Effective Date: February 17, 2015.

Expiration Date: June 13, 2015.

Summary of Public Comments and Agency Responses:

Comments were received from: Eric DeGesero, Executive Vice President, Fuel Merchants Association of New Jersey; Eric DeGesero, Executive Director, Independent Electrical Contractors, New Jersey Chapter; Stanley A. Midose, Construction Official, City of Long Branch; Bill Cattell, Construction Official, Borough of National Park;

Joseph J. Pawlowicz, Jr., President, Joint Board of Fire Commissioners, Township of Brick; and J. M. Rowland, CPE, Secretary, South Jersey Electrical Inspectors' Association.

N.J.A.C. 5:23-3.4

1. COMMENT: The Fuel Merchants Association of New Jersey, which represents contractors who install and service heating and air conditioning equipment, supports the change to streamline the inspection process for the installation of HVAC systems.

RESPONSE: The Department thanks the commenter for this expression of support.

2. COMMENT: The New Jersey Independent Electrical Contractors supports the change to include the installation of residential generators and the accompanying change to streamline the inspection of mechanical equipment.

RESPONSE: The Department thanks the commenter for this expression of support.

3. COMMENT: The Fuel Merchants Association of New Jersey and the New Jersey Independent Electrical Contractors, while acknowledging that the Department sets standards for municipal fees, note that these fees are set by municipal ordinance, and express concern that municipalities might charge dramatically higher fees for mechanical equipment.

RESPONSE: See the Response to Comment 4 below.

4. COMMENT: The summary accompanying the rule proposal indicates that the mandatory appointment of a mechanical inspector will result in a reduction in permit fees for the homeowner. The commenter doubts that this will be the case and indicates that most towns will amend their fee schedules so that the mechanical permit fee will equal or exceed the cost previously charged. The commenter also states that most mechanical contractors build the highest permit fees charged in the towns where they work into the cost of the job so that any savings will be realized by the contractor and not by the homeowner.

RESPONSE: The municipal fee schedule is supposed to be set to cover the cost to the municipality of providing local code enforcement. Obviously, less time and effort is expended in sending only one inspector than would be the case if multiple employees are sent to inspect the same equipment. The Department disagrees that municipalities will increase the municipal fee schedule to impose a higher permit fee for mechanical equipment than was previously the case. Complaints about municipal fees may be made to the Department's Office of Regulatory Affairs. The question of whether the fee is built into the contractor's price and any savings would be realized by the contractor is a contractual matter between the homeowner and the contractor.

5. COMMENT: The Joint Board of Fire Commissioners of the Township of Brick objects to assigning the enforcement responsibility for mechanical equipment in existing buildings of Group R-3, R-4, or R-5 to the plumbing subcode official where there is no mechanical inspector. The Joint Board cites the consolidation of fire-related functions within the Bureau of Fire Safety to maximize fire protection for the Township's citizenry and businesses. The Joint Board points to the need to protect the public by assuring that the smoke and carbon monoxide detectors are operable and properly installed and argues that the assignment of enforcement responsibility should be a local prerogative.

RESPONSE: The purpose of the rule amendment is to increase the efficiency of inspection of replacement mechanical equipment in the identified residential buildings. The rule amendment makes the assignment of responsibility to the mechanical inspector or plumbing subcode official mandatory in response to complaints that a number of municipalities continue to send multiple inspectors for this purpose. Leaving the assignment of inspectors to local discretion has resulted in the continued inefficiencies cited and undermines one of the stated purposes of the Uniform Construction Code Act, "to eliminate unnecessary duplication of effort and fees in the review of construction plans and the inspection of construction." The Department shares the commenter's concern with fire safety, but

disagrees that the adoption of this rule compromises the safety of residents. Smoke alarms and carbon monoxide alarms are required in all dwellings and are listed in the rehabilitation subcode of Uniform Construction Code as part of every category of work. (See *N.J.A.C. 5:23-6*.)

6. COMMENT: Uniform Construction Code (UCC) Form F-145, the mechanical inspector technical section, requires a subcode official to sign off for issuance of a permit and for issuance of a certificate of approval or certificate of occupancy. The rules do not address which subcode official functions in this capacity, and there is no mechanical subcode official mentioned in *N.J.A.C. 5:23-5.7(a)*.

RESPONSE: The Department will review the sign off on the mechanical technical section (Form F-145) and will propose a rule amendment, issue a clarification, or update the form, as needed.

7. COMMENT: The responsibilities of the mechanical inspector are not currently defined in the rules and the amendments do nothing to clarify these responsibilities. The fact that the responsibilities of the mechanical inspector have always been vague is the reason few towns use a mechanical inspector.

RESPONSE: The mechanical inspector, where one is assigned, is to inspect all installations of mechanical equipment or systems listed in the rules. The Department disagrees that the listed responsibilities are vague.

8. COMMENT: One commenter questions why the responsibility is assigned to the plumbing subcode official where no mechanical inspector is appointed. The commenter notes that plumbing inspectors currently are difficult to find and states that the relaxation of the conflict of interest provisions will not provide much relief. The commenter posits that adding more responsibilities for the plumbing subcode official will compound the problem.

RESPONSE: The Department disagrees. In many towns, the plumbing subcode official already is doing this work. In any case, the plumbing [page=460] subcode official or inspector already working for the municipality can do the mechanical inspection. It should not be necessary for a town to hire an additional inspector for this purpose.

9. COMMENT: Individually-owned dwelling units in Group R-2 should be included within the scope of this change as the HVAC systems serving these units typically are of the same type as those used in structures of Group R-3, R-4, or R-5.

RESPONSE: Extending this rule to similar HVAC equipment in individual dwelling units in Group R-2 is outside the scope of this rulemaking. The Department will consider such an amendment in the future.

10. COMMENT: The responsibilities of the plumbing subcode official and the mechanical inspector should be the same as those proposed in *N.J.A.C. 5:23-3.4(d)1*.

RESPONSE: The responsibilities of the plumbing subcode official are the same as those that may be assigned to a mechanical inspector. (See *N.J.A.C. 5:23-3.4(d)* and (d)1.)

11. COMMENT: The responsibilities listed in *N.J.A.C. 5:23-3.4(d)1* should include water heaters and hot water boilers. A number of homeowners are replacing both their HVAC systems and water heaters with high efficiency direct vent furnaces and direct vent water heaters. This replacement requires three subcode permits (electrical, mechanical, or fire and plumbing), resulting in additional costs for the owner and additional inconvenience because the owner needs three separate final inspections.

RESPONSE: The Department shares the commenter's concerns. Water heaters and boilers are included in the definition of mechanical equipment. For the sake of clarity, a revision is made upon adoption to retain the language proposed for deletion. Because the commenter thought that water heaters and boilers would no longer be considered mechanical equipment with the proposed deletion, others might have drawn the same conclusion. Therefore, the existing language is retained.

12. COMMENT: The Department should consider expanding the responsibilities of the mechanical inspector to include electrical inspections related to the mechanical installations.

RESPONSE: Including the electrical work goes beyond the scope of the current proposal. At this time, the Department has decided that the responsibilities currently assigned to the electrical subcode official must continue to be performed by an inspector licensed in this discipline.

13. COMMENT: The Department should consider the impact of the construction official assigning additional responsibilities to the plumbing subcode official without additional compensation.

RESPONSE: The compensation of municipal employees is not a matter regulated under the Uniform Construction Code. However, it should be noted that the language allowing assignment of the plumbing subcode official has been in the Uniform Construction Code and plumbing subcode officials have been inspecting mechanical equipment for years.

N.J.A.C. 5:23-4.5

14. COMMENT: The South Jersey Electrical Inspectors' Association objects to the change to the conflict of interest provisions and states that the prohibition on employees performing "construction-related activities" within the municipality in which they are employed should remain in place. In exigent circumstances, such as Superstorm Sandy, the need for additional code enforcement personnel should be handled through the Governor's declaration of a state of emergency, and even then, should be limited to adjacent municipalities and should not apply to the municipality in which the code enforcement official is employed. The Association argues that revising the proposed amendment to as described is necessary to preserve the public's trust and confidence in a fair and impartial code enforcement agency.

RESPONSE: The conflict of interest rules, as amended, do continue to prohibit work in the municipality in which someone is employed in code enforcement. The Department shares the commenter's concern with maintaining the integrity of the local code enforcement agency. This integrity is not compromised by the adopted amendment.

Federal Standards Statement

No Federal standards analysis is required because these amendments are not being adopted under the authority of, or in order to implement, comply with or participate in, any program established under Federal law or any State statute that incorporates or refers to any Federal law, standard, or requirements.

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus***):

(**Agency Note:** The text of *N.J.A.C. 5:23-5.22* published below reflects an amendment adopted effective October 6, 2014 (see *46 N.J.R. 2024(a)*.)

5:23-3.4 Responsibilities

(a)-(c) (No change.)

(d) Any mechanical inspector employed by the Department or by a municipality, and so assigned by the construction official, shall have the responsibility for enforcement of the provisions of the code, except electrical, relating to the installation of mechanical equipment, such as refrigeration, air conditioning or ventilating apparatus, gas piping or heating systems, or stand-by power generators, in Group R-3, R-4, or R-5 structures.

1. When no mechanical inspector is assigned, the construction official shall assign the plumbing subcode official, who shall have the responsibility for the enforcement of provisions of the code, except electrical, for the installation and replacement of ***heating or cooling equipment or water heaters or other*** mechanical equipment in existing

buildings, such as refrigeration, air conditioning or ventilating apparatus, gas piping or heating systems, or stand-by power generators, in existing buildings of Group R-3, R-4, or R-5. A plumbing subcode official need not be a mechanical inspector to perform these inspections.

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, plans, and equipment:

1.-7. (No change.)

8. Health care facilities, as defined in *N.J.A.C. 5:23-1.4*, and residential health care facilities licensed pursuant to *N.J.A.C. 5:27A*;

9.-12. (No change.)

(b)-(j) (No change.)

5:23-3.11A Public school facility plan review and inspections; Uniform Construction Code enhancements in public school facilities

(a) Plan review shall be performed by the Department of Community Affairs. A Department of Education approval shall be submitted prior to the release of plans for projects subject to the Department of Education review pursuant to *N.J.A.C. 6A:26-3*.

1. Plan review for the construction of a new school shall always be the responsibility of the Department. For projects other than the construction of a new school, the local enforcing agency may review the plans in accordance with (b) below.

(b) In lieu of obtaining construction code plan review and release from the Department of Community Affairs, a school district may secure construction code plan review and release from a municipal code enforcing agency, pursuant to P.L. 1990, c.23.

1.-6. (No change.)

(c)-(d) (No change.)

5:23-4.5 Municipal enforcing agencies--administration and enforcement

(a)-(i) (No change.)

(j) Conflict of interest:

1. (No change.)

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, whether directly or indirectly, be engaged in ownership of, or employment by, or contracting to provide goods or services to, any business furnishing labor, materials, products, or services for the construction, alteration, or demolition of buildings or structures, or for the maintenance of any equipment or building component the maintenance of which is regulated pursuant to this [page=461] chapter, that is

engaged in any such activity within any municipality in which he is so employed by an enforcing agency.

3.-6. (No change.)

(k) (No change.)

5:23-5.2 Licensing unit; hearings

(a) (No change.)

(b) The unit shall have the following responsibilities in addition to all others provided in this subchapter:

1. To issue such licenses or certifications as may be called for herein when warranted;
2. To keep accurate records of all applications for a license or certification and any official action thereon and to make such records available for inspection by the public at all reasonable times;
3. To suspend or revoke a license or certification provided for herein upon the establishment of good cause.

(c) (No change.)

5:23-5.3 Types of licenses and certifications

(a) Rules concerning code enforcement licensure and certification categories are:

1.-4. (No change.)

5:23-5.4 Licenses and certifications required

(a)-(f) (No change.)

(g) Violations:

1. It shall be a violation of these regulations for any construction or subcode official or technical inspector to represent himself or herself to be qualified for a position that the person does not currently hold, or to use a title or otherwise represent himself or herself to be qualified for a position that the person does not currently hold, or to use a title or otherwise represent himself or herself as licensed or authorized to act under the code if that person does not possess the required license or certification. In addition to any other remedy available under law, such shall be deemed a violation of this section subject to a penalty of not more than \$ 2,000 for each offense.

2. It shall be a violation of these rules for any person to hold or perform the duties of an office for which a license or certification is required herein, or for any person to represent himself or herself as qualified for such position, or to use any title or otherwise represent himself or herself as licensed, certified, or authorized to act under the code if the person does not possess that license or certification. In addition to any other remedy available under law, such action shall be deemed a violation of this section and subject to a penalty of not more than \$ 2,000 for each offense.

3.-4. (No change.)

5:23-5.5 General license requirements

(a) A candidate for a license or certification of any type issued pursuant to this subchapter shall submit an application to the Licensing Unit, Bureau of Code Services, accompanied by the required nonrefundable application fee established in *N.J.A.C. 5:23-5.22*. The application shall include such information and documentation as the Commissioner may require pursuant to this subchapter.

(b) After receipt of the required nonrefundable fee, the Department shall determine, by examination of the application and review of the supporting documents, including substantial evidence of acceptable experience, successful test results, training and/or education submitted, whether an applicant is qualified for a license or certification of the type and specialty for which the application has been made. If the application is satisfactory, the Commissioner shall issue a license or certification to the applicant. This license or certification will show that the person has met the established requirements and is eligible to be employed in this State in accordance with the provisions of this chapter.

1. The Commissioner may deny or refuse to issue a license or certification to an applicant if the application is incomplete or upon proof that there has been any act or omission which would constitute grounds for revocation under this subchapter, or if an application was denied within the prior three years by reason of any act or omission that would constitute grounds for revocation.

2.-3. (No change.)

4. Only test results for test modules or other examination requirements specified in *N.J.A.C. 5:23-5.23A* and *5.23B* passed within three years prior to, or at the time of, application shall be accepted toward fulfilling the requirement for the license or certification sought.

5. Only those approved courses completed within a five-year period immediately preceding the time of application for a license or certification shall be considered acceptable toward fulfilling the requirements for the technical or administrative license or certification sought.

i. (No change.)

6.-8. (No change.)

(c)-(d) (No change.)

5:23-5.21 Renewal of license or certification

(a)-(c) (No change.)

(d) Continuing education requirements are as follows:

1. The following continuing education requirements are based upon the type(s) of license(s) or certification(s) held, and not upon employment positions held. Continuing Education Units (CEUs) will be subject to approval by the Bureau of Code Services. One CEU equals 10 contact hours. CEUs will be awarded both for technical and administrative licenses or certifications.

i.-iv. (No change.)

2.-6. (No change.)

(e) Lapsed license and/or certification renewal requirements are as follows:

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1. Where the holder of a license and/or certification has allowed the license or certification to lapse by failing to renew the license or certification as provided for in (b) above, a new application and license or certification shall be required. If such application is made within three years of the license or certification having lapsed, then application may be made in the same manner as a renewal application.

2. (No change.)

3. Additionally, the licensee or certified individual must make up or meet the annual continuing education training requirement for each active and expired year as specified herein.

4. Where a license or certification has lapsed for a period exceeding three years, a new application shall be required in accordance with *N.J.A.C. 5:23-5.5*, and the applicant must meet all current licensure or certification requirements.

(f) After revocation of a license or certification upon any of the grounds set forth in these rules, the Licensing Unit may not renew or reinstate such license or certification; however, a person may file a new application for a license or certification with the Department, subject to (g) below.

(g) The Department shall not issue a new license or certification to an applicant whose license or certification was previously revoked unless and until the following conditions are met:

1. At least three years shall have passed since the effective date of the revocation of the previous license or certification;

2. If the applicant was convicted of a crime related in any way to code enforcement, the Department shall have determined in light of the factors set forth in *N.J.S.A. 2A:168A-2*, that the applicant has been fully rehabilitated and that licensing or certifying the applicant would not be detrimental to the public welfare;

3. The applicant shall have made full restitution to any person who sustained a loss as a result of the act or omission for which the previous license or certification was revoked; and

4. (No change.)

5:23-5.22 Fees

(a) No application for a license or certification shall be acted upon unless said application is accompanied by a non-refundable fee as specified in this subsection.

1.-2. (No change.)

3. Persons rejected for one or more licenses, or certifications, and who subsequently reapply, are subject to the fee schedule as defined in (a)1 above, as applicable.

4.-6. (No change.)

[page=462] 5:23-5.25 Revocation of licenses and certifications and alternative sanctions

(a) The Department may revoke or suspend a license or certification, and/or assess a civil penalty in accordance with *N.J.A.C. 5:23-2.31*, if the Department determines that the person involved, at any time during the preceding 10-year period:

1. (No change.)

2. Has obtained a license or certification by fraud or misrepresentation, or the person named in the license or certification has obtained it by fraud or misrepresentation;

3. Has aided or abetted in practice as a licensed code enforcement official or certified special inspector any person not authorized to practice as a licensed code enforcement official or certified special inspector under the provisions of these regulations;

4. Has fraudulently or deceitfully practiced as a licensed code enforcement official or certified special inspector;

5.-11. (No change.)

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

(c) Conviction of a crime, or conviction of an offense in connection with one's performance as a licensed code enforcement official or inspector or certified special inspector, or a determination by the Department that a licensee or certified person has engaged in conduct constituting a conflict of interest under *N.J.A.C. 5:23-4.5(j)2* or 4.14(f), shall constitute grounds for revocation of a license or certification.

(d)-(e) (No change.)