

i.-ii. (No change.)

iii. Installation of communications wiring [for communications wiring] **within a dwelling unit or** in a Class 3 structure, provided that the rearrangement does not involve penetration of a fire-rated assembly and is not in a hazardous location as defined in Chapter 5 of the electrical subcode;

(1) For the purposes of applying these provisions, communications wiring shall mean any wiring covered by Chapter 8 of the electrical subcode, such as telephone, radio antenna, or coaxial cable TV wiring. Communications wiring shall also include data circuits between computers/information technology equipment, which may be classified as "communications circuits," in accordance with Article 725 of the electrical subcode; and

iv.-v. (No change.)

4.-6. (No change.)

(a)

DIVISION OF CODES AND STANDARDS

Uniform Construction Code Industrialized/Modular Buildings and Building Components

**Proposed Amendments: N.J.A.C. 5:23-4A.1 through
4A.6**

**Proposed Repeals: N.J.A.C. 5:23-4A.7, 4A.8, and
4A.9**

**Proposed Recodifications with Amendments:
N.J.A.C. 5:23-4A.10, 4A.11, and 4A.12 as 4A.7,
4A.8, and 4A.9**

Authorized By: Richard E. Constable, III, Commissioner,
Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124, 135, and 136 and 32:33-1 et seq.

Calendar Reference: See Summary below for explanation of
exception to calendar requirement.

Proposal Number: PRN 2013-008.

Submit written comments by March 8, 2013 to:

Gabrielle Gallagher
Department of Community Affairs
PO Box 800
Trenton, New Jersey 08625
Fax No. (609) 984-6696
gabrielle.gallagher@dca.state.nj.us

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 5:23-4A, Industrialized/Modular Buildings and Building Components, would update the subchapter to agree with the current rules and regulations of the Interstate Industrialized Building Commission (IBC). The IBC is the organization responsible for carrying out the activities of the Interstate Compact on Industrialized/Modular Buildings (the Compact). The IBC's rules and regulations, called the Model Rules and Regulations (Model Rules), are written so that each member state of the Compact can adopt them and thereby make the rules consistent across the membership. Consequently, the Model Rules assure compliance with each member state's construction codes while concurrently retaining the cost-savings of factory construction/manufacture. The legislation that made New Jersey a party to the Compact (N.J.S.A. 32:33-1 et seq.) affirms the need for consistency between participating states. The proposed amendments and repeals update the subchapter to agree with the current Model Rules and fulfill the intent of New Jersey's legislation making the State part of the Compact.

As stated above, the proposed amendments and repeals make the Uniform Construction Code (UCC) consistent with the current edition of the IBC's Model Rules. The update to the Model Rules in 2007 resulted in the transfer of a large and detailed technical section on compliance

assurance to the IBC's Uniform Administrative Procedures (the Procedures). The Procedures are referenced in the UCC and contain the procedures that manufacturers, third parties, and local officials use to construct and approve code-compliant, industrialized modular buildings. N.J.A.C. 5:23-4A.6(b) is proposed for deletion because New Jersey makes amendments to the adopted codes without the use of the state-sponsored code change process due to changes to the New Jersey Uniform Construction Code Act. N.J.A.C. 5:23-4A.7 is proposed for repeal as the text is proposed to be moved to N.J.A.C. 5:23-4A.5(a). The changes in text at N.J.A.C. 5:23-4A.5(a) are proposed to match the language used in the Model Rules and Regulations of the Industrialized Building Commission. Because the compliance assurance section was removed from the Model Rules, the same section in the UCC (N.J.A.C. 5:23-4A.9) is proposed for repeal. Also, N.J.A.C. 5:23-4A.8 on product control and identification is proposed for repeal. This section was deleted from the Model Rules because it too was moved to the IBC's Procedures.

No other significant changes were made to the Model Rules and consequently the subchapter. Numerous small additions and changes to the earlier version were made for full understanding and clarity of meaning. For example, the Internet web pages for the IBC and the Procedures were added, a few typographical errors were corrected, and some language was clarified.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments and repeals are being made for consistency in modular regulations between New Jersey and the other states that participate in the Compact. While the amendments only address the location of rule sections and the Model Rules' style rather than substantive content, it remains a benefit to have the rules read in a consistent manner with those of other participating states. Without such amendments, manufacturers could be confused and think that New Jersey's rules are different than those of the other states in the Compact.

Economic Impact

The amendments and repeals being proposed would not change the impact of the original subchapter and would not result in any additional costs, or any savings, to manufacturers, consumers, or government.

Federal Standards Statement

No Federal standards analysis is required because these amendments and repeals are not being proposed in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements. It should be noted that one of the original purposes of the Industrialized Buildings Commission was to "provide to Congress assurances that would preclude the need for a voluntary preemptive Federal regulatory system for industrialized/modular housing, as outlined in Section 572 of the Housing and Community Development Act of 1987."

Jobs Impact

The Department does not anticipate that the proposed amendments and repeals would result in the creation or loss of any jobs.

Agriculture Industry Impact

The Department does not anticipate that the proposed amendments and repeals would impact the agriculture industry.

Regulatory Flexibility Statement

The proposed amendments and repeals would neither impose any new compliance, reporting, or recordkeeping requirements upon manufacturers of modular buildings qualifying as "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., nor require them to hire any additional professional services. The proposed amendments relocate existing requirements but do not impose any new requirements on any of the regulated businesses.

Housing Affordability Impact

Inasmuch as the proposed amendments and repeals only concern non-substantive changes to rules concerning implementation of an interstate

compact on regulation of industrialized construction, there is an extreme unlikelihood that they would have any effect upon housing production costs or affect affordability.

Smart Growth Development Impact

Inasmuch as the proposed amendments and repeals only concern non-substantive changes to rules concerning implementation of an interstate compact on regulation of industrialized construction, there is an extreme unlikelihood that they would evoke a change in housing production within Planning Areas 1 and 2 or within designated centers under the State Development and Redevelopment Plan.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:23-4A.7, 4A.8, and 4A.9.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

5:23-4A.1 Purpose

(a) The purpose of this subchapter is to implement P.L. 1991, c.457, which made New Jersey a party to the Interstate Compact on Industrialized/Modular Buildings, **the commission of which is known as the Interstate Industrialized Building Commission (IBC)**. The adoption of this subchapter, which is identical in content to [implementing] **the** rules adopted by the other states participating in the compact, will [result in] **create** uniformity in [state] **the** compliance requirements[,] **of individual states**; [thereby promoting] **promote** the use of new technologies, techniques, and materials and [increasing] **increase** the availability of safe, decent, and affordable [construction, both for] housing and [non-housing uses] **other building occupancies**.

(b) No approval, ruling, action, order, or notice issued in accordance with rules in effect prior to [the effective date of the adoption of this subchapter] **July 1, 1990** shall be rendered invalid or unenforceable by reason of **either** the adoption of this subchapter or the repeal of rules superseded by this subchapter. Any approval issued in accordance with rules in effect prior to [the effective date of the adoption of this subchapter] **July 1, 1990** shall continue in effect for the period for which it was granted, but any subsequent approval shall be in accordance with this subchapter.

5:23-4A.2 Findings; functions of the Commission

(a) The Department, as the administrative agency for the State of New Jersey under the Interstate Compact on Industrialized/Modular Buildings, finds that:

1.-2. (No change.)

3. Regulation by multiple jurisdictions imposes additional costs[, which] **that** are ultimately borne by the owners and users of industrialized/modular buildings, [and which] **that** restrict market access and **that** discourage the development and incorporation of new technologies.

(b) The Industrialized Buildings Commission (**IBC**) shall:

1. Provide the states [regulating] **that regulate** the design and construction of industrialized/modular buildings and building components with a system [for coordinating] **to coordinate** and uniformly administer[ing] their rules and regulations for such buildings, all in a manner that will assure mutual acceptance of industrialized/modular buildings and building components; and

2. Provide to Congress assurances that would preclude the need for a voluntary preemptive Federal regulatory system for industrialized/modular housing, as outlined in Section 572 of the Housing and Community Development Act of 1987, including development of model standards for industrialized/modular housing construction, such that design and performance will insure quality, durability and safety[.]; will be in accordance with cost-effective energy conservation standards; and will promote the lowest total construction and operating costs over the life of such housing.

5:23-4A.3 Scope

(a) This subchapter [shall govern] **applies to** the design, manufacture, handling, storage, delivery, and installation of industrialized/modular buildings and building components intended for installation in this State. Industrialized/modular buildings or building components certified pursuant to this subchapter may be sold for, delivered to, or installed on[.]

building sites located in the State. Industrialized/modular buildings that are not required to be labeled or **to** comply with code approval under this chapter are exempt from the requirements of this subchapter.

(b) (No change.)

(c) Except as otherwise specifically [provided] **indicated**, this subchapter shall not apply to requirements concerning land use and zoning, building set-backs, side and rear yards, **and** property lines [and] – **generally, this subchapter shall not apply to requirements concerning** on-site development, construction, and inspection [;] provided[, however,] that such requirements [shall] **are** not [be] more stringent than those imposed on other types of buildings in the same zone or area.

5:23-4A.4 Definitions

The following words and terms, when used in this subchapter, shall have the [following] meanings **given**, unless **a different meaning is clearly indicated by** the context [clearly indicates otherwise]:

“Act” means the State Uniform Construction Code Act, P.L. 1975, c.217, as supplemented by P.L. 1991, c.457 and the **ratification of the Interstate Compact on Industrialized/Modular Buildings** [ratified thereby].

“Building component” means any subsystem, sub-assembly or other system of closed construction that is designed for use in, or as part of, a structure. [“Building component”] **The component** may include structural, electrical, mechanical, plumbing, and fire protection systems and other systems affecting health and safety.

“Building system” means [a] **the** method of constructing a type of industrialized/modular building or building component that is described by plans, specifications, and other documentation that together establish a set of limits meeting the requirements of this subchapter for that type of industrialized/modular building or building component. [This] **The system** may include structural, electrical, mechanical, plumbing, [and] fire protection, [systems] and other systems affecting health and safety.

“Certification” means the process whereby participating states and local building inspection agencies are assured that elements of closed construction, [that it is] **which are** not practical to inspect at [the] building sites, conform to [the] applicable codes.

“Closed construction” means any building, building component, assembly, or system [manufactured in] **that is made or assembled in manufacturing facilities off the building site for installation, or assembly and installation, on the building site** such [a manner] that concealed parts or processes of manufacture cannot be inspected at the building site without disassembly, damage, or destruction. This definition shall not include products, such as structural, electrical, and plumbing fixtures and equipment, that are tested, listed, labeled, and certified by a nationally recognized testing laboratory.

“Compliance assurance program” means the policies and procedures [that assure] **assuring** that industrialized/modular buildings and building components, including their manufacture, storage, delivery, assembly, handling, and installation, conform with this subchapter and with the **IBC’s** Uniform Administrative Procedures.

“Independence of judgment” means not being affiliated with[,] or influenced or controlled by[,] building manufacturers [or] **by** producers, suppliers, or vendors of products or equipment used in industrialized/modular buildings and building components, in any manner [that] **which** is likely to affect capacity to render reports and findings objectively and without bias.

“Industrialized/modular building” means any building of closed construction, including, but not limited to, modular housing that is factory-built single-family and multi-family housing (including closed-wall, panelized housing) [and] **as well as** other modular, nonresidential buildings. [“Industrialized/modular building”] does not include any structure subject to the requirements of the National Manufactured Home Construction and Safety Standards Act of 1974.

“Installation” means the process of affixing, or assembling and affixing, industrialized/modular buildings or building components on [the] a building site.

“Interim reciprocal agreement” means a formal reciprocity agreement as defined in P.L. 1991, c.457, which is the New Jersey statute ratifying the Interstate Compact on Industrialized/Modular Buildings.

“Participating state” means any compacting state or any non-compacting state that is acting under an interim reciprocal agreement.

5:23-4A.5 Standards

(a) No person/agency shall be allowed to deliver, sell, lease, or install any industrialized/modular building or building component in the participating state unless such industrialized/modular building or building component is certified in accordance with the requirements of this subchapter.

[a] (b) (No change in text.)

[b] (c) Alternates: The provisions of this subchapter are not intended to prevent the use of any technologies, techniques, or materials not specifically prescribed by the codes, standards, specifications, and requirements in this subchapter, provided any such alternate has been approved.

1. (No change.)

2. The evaluation agency may approve any such alternate[,] provided that it determines that the proposed design is satisfactory and that the material, method, or work offered is, for the purpose intended, consistent with the adopted codes and standards as to quality, strength, effectiveness, fire resistance, durability, and safety. The evaluation agency shall require that sufficient evidence or proof be submitted to substantiate any claim that may be made regarding the use of any such alternate. The evaluation agency shall notify the applicant of the determination. If the application is denied, the notification shall state the reasons for the denial.

5:23-4A.6 Amendments

[a] The Department may amend these rules pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

[b] Any proposed amendments to national codes adopted by reference in these regulations shall be undertaken pursuant to N.J.A.C. 5:23-3.13, State-sponsored code change proposals.]

5:23-[4A.10]4A.7 Uniform Administrative Procedures

(a) (No change.)

(b) Copies of the Uniform Administrative Procedures may be obtained from the Industrialized Building Commission, Suite 210, 505 Huntmar Park Drive, Herndon, VA 22070. Copies are also available on the IBC’s website, www.interstateibc.org.

(c) The Department shall approve [those] evaluation or inspection agencies that the Commission designates as meeting the requirements of Part VI, Section 1, of the Uniform Administrative Procedures and that the Commission finds otherwise qualified to perform the functions delegated to [it] the agencies.

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

5:23-[4A.11]4A.8 Appeals

(a) Any person, firm, or corporation [acting on behalf of itself or a class adversely affected] aggrieved by any [notice, order, ruling.] decision or action[of any evaluation and inspection agency or of the Commissioner] undertaken pursuant to this subchapter may file an appeal.

(b) [An application for a hearing must be filed within 20 business days of receipt by the applicant of the notice, order, decision or action complained of.] The appellant shall file the appeal within 30 calendar days after receipt of the decision or action that is the basis of the appeal.

(c) The [notice of] appeal may be filed either in person or by mail and shall be addressed to the Hearing Coordinator, Division of Codes and [Subcodes] Standards, PO Box 802, Trenton, New Jersey 08625-0802.

(d) [The application shall be in writing and shall set forth the rule under which the appeal is being brought and the facts and circumstances of the case.] The appeal shall be in writing and shall contain sufficient information as set forth in (e) below to apprise the Department of the

decision or action being appealed and the facts and circumstances surrounding the decision or action.

(e) The [application] appeal shall include, where [appropriate] applicable, the following information and documentation:

1. A copy of the [notice, order, ruling,] decision or action that is the subject of the appeal;

[2. A copy of the building system, compliance assurance program or other document involved;]

[3.] 2. A description of the industrialized/modular building or building component affected and, if available, a copy of the building system plans or design, compliance assurance program, or other document involved;

[4.] 3. (No change in text.)

[5.] 4. If the Commission has made a prior decision or completed another action on this appeal (or one like it) and a hearing has already been conducted pursuant to the Uniform Administrative Procedures, the appellant shall include a copy of the prior decision or information on the other action with this appeal. In the event of an appeal from an action or decision of an evaluation and inspection agency, the application shall contain a copy or, if that is unavailable, a written statement[,] of the prior decision or other action of the agency being appealed.

[6. In the event of any appeal from an action or decision of the Commission where a hearing has already been conducted pursuant to the Uniform Administrative Procedures the application shall contain a copy of the prior decision or other action of the Commission on such appeal.]

5:23-[4A.12]4A.9 [Conduct of hearings] Hearings

Hearings in contested cases shall be conducted by the Office of Administrative Law pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules (UAPR), N.J.A.C. 1:1. A proprietary version of the UAPR may be accessed at <http://nj.gov/oal>.

EDUCATION

(a)

COMMISSIONER OF EDUCATION

Charter Schools Streamline Tenure

Proposed New Rules: N.J.A.C. 6A:11-6.2, 6.3, and 6.4

Authorized By: Christopher D. Cerf, Commissioner, New Jersey

Department of Education.

Authority: N.J.S.A. 18A:36A-14.e.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2013-005.

Submit written comments by March 8, 2013 to:

Evo Popoff, Chief Innovation Officer
New Jersey Department of Education
River View Executive Plaza
Building 100, P.O. Box 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

The Department of Education (Department) proposes new rules at N.J.A.C. 6A:11-6.2, 6.3, and 6.4 as noted in this Summary. The proposed new rules were developed to align with N.J.S.A. 18A:36A-14.e, which provides the Commissioner with the authority to promulgate guidelines for awarding streamline tenure to charter school employees. They also were developed to provide charter school boards with increased autonomy and flexibility to administer faculty and staff in a manner that is consistent with their mission and that ensures the greatest benefit to their students. The proposed new rules are aligned with the Department’s mission and the State Board of Education’s strategic plan as they will