

COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

Adopted New Rule: N.J.A.C. 5:23-4.16

Adopted Amendments: N.J.A.C. 5:23-1.4, 2.17A, 2.18, 4.4, 4.5, 4.6, 4.7, 4.8, 4.12, 4.13, 4.14, 4.17, and 4.18

Proposed: August 7, 2023, at 55 N.J.R. 1595(a).

Adopted: March 6, 2024, by Jaqueline A. Suárez, Acting Commissioner, Department of Community Affairs.

Filed: March 7, 2024, as R.2024 d.028, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 52:27D-119 et seq.

Effective Date: April 1, 2024.

Expiration Date: February 9, 2029.

Summary of Public Comments and Agency Responses

Comments were received from Eric DeGesero, Fuel Merchants Association of New Jersey and New Jersey Independent Electrical Contractors Association; Dan Kennedy, NAIOP – Commercial Real Estate Development Association – New Jersey Chapter; Grant Lucking, New Jersey Builders Association; Mitchell Malec; Frank Marshall, New Jersey State League of Municipalities; Brian Miller, Municipal Construction Officials of New Jersey; Joseph Moschello; Dan O’Gorman; Richard Soltis Jr.; and Andy Wall, Mid Atlantic Solar and Storage Industries Association.

Comments Received From Eric DeGesero, Fuel Merchants Association of New Jersey and New Jersey Independent Electrical Contractors Association

1. COMMENT: The commenter states that the Fuel Merchants Association of New Jersey and the New Jersey Independent Electrical Contractors Association commend the Legislature and Department of Community Affairs (Department) for this rulemaking, and both support the proposed rules.

RESPONSE: The Department thanks the commenter for their commendation.

2. COMMENT: The commenter respectfully requests “in writing” be included at N.J.A.C. 5:23-2.17A(d)1 for consistency with the language at proposed N.J.A.C. 5:23-2.18(c)1. Additionally, the commenter questions if an email would constitute a written request pursuant to N.J.A.C. 5:23-2.18(c)1.

RESPONSE: These sections are intentionally worded differently. Due to the nature of minor work projects, which entail only a final inspection, N.J.A.C. 5:23-2.17A(d)1 states the required timeline in which the final inspection must be done. As the notice for minor work, addressed at N.J.A.C. 5:23-2.17A(b), allows for the initial notice to be either oral, or in writing, that same standard applies for the related inspections. Further, a request through email does constitute a written request.

3. COMMENT: The commenter requests clarification on whether “reserved to the State” at N.J.A.C. 5:23-4.16(a) means inspections that the State performs, such as schools, or if they are inspections that the State performs as a result of municipalities not having enforcement agencies.

RESPONSE: The language at N.J.A.C. 5:23-4.16(a) applies to all inspections that are reserved to the authority of the State pursuant to N.J.A.C. 5:23-3.11 and 3.11A. However, where the State is acting as the local enforcing agency, these regulations would apply in the event of a missed inspection. The Department has included a reference to these sections upon adoption to ensure clarity among code users.

4. COMMENT: The commenter notes that proposed N.J.A.C. 5:23-4.4(d)1iii(1) requires the plan submitted by the construction official provide details on when new staff would be hired. The commenter requests clarification concerning if new hires can perform inspection and enforcement duties on their first day or must they be trained prior to those responsibilities. The commenter recommends that if the new hires must be trained, the time required to do so should be included in the rulemaking.

RESPONSE: Persons responsible for performing inspections and enforcement duties shall have the required licenses and certifications pursuant to N.J.A.C. 5:23-5.4 and, thus, are generally able to undertake work upon hiring.

Comments Received From Dan Kennedy, NAIOP New Jersey

5. COMMENT: The commenter respectfully requests the Department amend the language at N.J.A.C. 5:23-2.17A(d)1 to ensure projects can proceed without risk of delay from minor work inspections. The commenter suggests adding language stating that in the event an enforcing agency cannot complete the inspection within three business days of the request, the owner, agent, or other responsible party in charge of work shall be entitled to the use of a private on-site inspection agency.

Additionally, the commenter states that if this language cannot be incorporated, then they request that the existing rule, which mandates the three-day inspection timeframe for minor work, be retained with an agreement to future discussions to enhance and modernize the definition and provisions relating to minor work.

6. COMMENT: The commenter notes that the proposed changes at N.J.A.C. 5:23-2.18 appear to be in conflict with the provisions at P.L. 2022, c. 139, which state, “The enforcing agency shall perform an inspection within three business days of the date which the inspection is requested.” The commenter requests that, to prevent conflict with P.L. 2022, c. 139, the first sentence at N.J.A.C. 5:23-2.18 should be amended to remove, “or other such time within 30 days, as agreed upon by the enforcing agency and the owner, agent, or other responsible person in charge of work.”

RESPONSE TO COMMENTS 5 AND 6: The Department agrees in part; upon adoption, the Department has retained the three-business day inspection requirement for minor work projects. The language allowing the enforcing agency and the owner, agent, or other responsible person in charge of work, to agree to a different time frame, is maintained, consistent with the language at P.L. 2022, c. 139.

7. COMMENT: The commenter notes issues at N.J.A.C. 5:23-4.16 due to the language stating, “an unforeseen circumstance, such as illness or accident, shall not be considered a missed inspection so long as the agency performs the inspection as soon as practicable.” The commenter states that an inspection the enforcing agency fails to perform, irrespective of if it’s foreseen or unforeseen, should still be considered a missed inspection. They provide additional points, such as the definition of practicable, which could mean a week, a month, or more, and that unforeseen

circumstances, as well as illness and accident are not defined and can include an unlimited number of situations.

The commenter requests the Department remove the language that creates the unforeseen circumstances exemption at N.J.A.C. 5:23-4.16, as owners, agents, and other responsible parties need predictability in the regulations, and the inclusion of this exemption flies in the face of the legislative intent at P.L. 2022, c. 139.

RESPONSE: The Department respectfully disagrees that removal of the unforeseen circumstance is necessary. The Department has established this requirement using its rulemaking authority to address situations beyond the control of the inspector. The reason the term is not defined is because there must be a level of discretion in determining what is unforeseen; for example, an accident or illness befalling an individual inspector could be an unforeseen circumstance. The Department does not anticipate that municipalities will abuse this provision; however, the rulemaking also establishes a procedure for reporting repeatedly missed inspections to the Department at N.J.A.C. 5:23-4.16(h).

Comments Received From Grant Lucking, New Jersey Builders Association

8. COMMENT: The New Jersey Builders Association (NJBA) strongly supports the Department's proposed amendments to the Uniform Construction Code and are appreciative for the significant work and support on this initiative from Governor Phil Murphy, the late Lieutenant Governor Sheila Oliver, legislative leadership, and Department staff.

RESPONSE: The Department thanks the commenter for their appreciation.

9. COMMENT: The commenter, in reference to N.J.A.C. 5:23-2.17A and 2.18, appreciates the Department's intent to allow local enforcing agencies more flexibility by giving them 30 days to conduct minor work inspections; however, P.L. 2022, c. 139, requires all inspections to take place within three days, unless otherwise agreed upon by both the enforcing agency and the owner, agent, or other responsible person in charge of work. The commenter is concerned that some applicants requiring minor work inspections may be unable to and should not be forced to wait 30 days for an inspection.

RESPONSE: See the Response to Comment 5.

Comments Received From Mitchell Malec

10. COMMENT: In reference to proposed amendment at N.J.A.C. 5:23-1.4, the commenter asks if a supplemental private on-site inspection agency only performs inspections, then why does the agency need to be authorized pursuant to N.J.A.C. 5:23-4 to act in lieu of a subcode official. The commenter notes that the agency only needs authorization to act in lieu of an inspector pursuant to N.J.A.C. 5:23-4 and with individuals licensed as inspectors pursuant to N.J.A.C. 5:23-5. The commenter recommends "in lieu of a subcode" be deleted for clarity and "act in lieu of an inspector" be included.

RESPONSE: The Department respectfully disagrees that "in lieu of a subcode" be deleted. In accordance with N.J.A.C. 5:23-4.16, supplemental private on-site inspection agencies are authorized pursuant to N.J.A.C. 5:23-4.12, which states that private on-site inspection agencies act in the place of a subcode official or inspector.

11. COMMENT: The commenter notes that, in their understanding of P.L. 2022, c. 139, the supplemental on-site inspection agency only performs inspections and may or may not be a subset of a private on-site inspection and plan review agency that performs both inspections and plan reviews. The commenter asks if the Department is only allowing authorized private on-site inspection and plan review agencies to be supplemental private on-site inspection agencies. The commenter states that clarification appears needed.

RESPONSE: Supplemental private on-site inspections agencies are a subset of private on-site inspections agencies. To be authorized to perform supplemental private on-site inspections, agencies must be authorized pursuant to rules governing private on-site inspections agencies at N.J.A.C. 5:23-4.12.

12. COMMENT: The commenter notes that the Department's proposed amendment requires the registration of supplemental private on-site agencies as businesses in the State of New Jersey. The commenter recommends mirroring this requirement in the definition of private on-site inspection agency. In addition, the commenter suggests including the definition of shared service.

REPOLSE: The Department respectfully disagrees with mirroring the requirement in the definition of private on-site inspection agency because pursuant to N.J.A.C. 5:23-4.12(b), the Department may request any information in the application for authorization. As such, the application for authorization for supplemental private on-site inspection agencies requires a copy of the certificate of incorporation as a business in the State of New Jersey due to the function of supplemental private on-site inspections agencies being different from the function of private on-site inspection agencies. Additionally, the Department respectfully disagrees with including the

definition of shared service, as it is already defined in the Uniform Shared Services and Consolidation Act, P.L. 2007, c. 63.

13. COMMENT: The commenter notes a brief discussion in the Code Advisory Board (CAB) minutes regarding increasing the three-business day inspection timeframe for minor work. The commenter states that P.L. 2022, c. 139, is clear and that the enforcing agency shall perform an inspection within three business days of the date that the inspection is requested and allow for oral notice for inspections of minor work projects. The commenter also mentions that they cannot find anything at P.L. 2022, c. 139, that allows the Department to change the three-business-day requirement for inspection of minor work. The commenter requests that the provisions at P.L. 2022, c. 139, be reflected accurately in the regulations.

RESPONSE: See the Response to Comment 5.

14. COMMENT: The commenter states that the Department appears to be establishing a 30-day maximum time at N.J.A.C. 5:23-2.17A and 2.18, which an inspection must occur once requested; the commenter questions why the Department made this determination. The commenter also notes that P.L. 2022, c. 139, does not have this requirement, and they question what problems could arise by scheduling inspections 45 days out from when they are requested. The commenter requests that the Department provide an example of a situation in which the inspection of minor work within 30 days would be a problem.

RESPONSE: See the Response to Comment 5. Additionally, so as to not delay inspections longer than is feasible, a maximum time frame was established to ensure that inspections are undertaken within a reasonable timeframe. Additionally, the Department declines to provide

hypothetical examples of inspections, because it cannot speculate on what each individual inspection may look like.

15. COMMENT: The commenter states that N.J.A.C. 5:23-2.17A and 2.18 require revision to reflect P.L. 2022, c. 139. They request clarification regarding the language stating that the, “enforcing agency shall inspect any such work,” to determine if it can mean that an owner’s contracted supplemental private on-site inspection agency can perform the inspection.

RESPONSE: The Department respectfully disagrees that N.J.A.C. 5:23-2.17A and 2.18 need revision to reflect P.L. 2022, c. 139. The provisions at P.L. 2022, c. 139, are reflected at proposed N.J.A.C. 5:23-4.16, as it authorizes owners, agents, or other responsible persons in charge of work to contract with supplemental private on-site inspection agencies to perform inspections pursuant to N.J.A.C. 5:23-2.17A and 2.18.

16. COMMENT: The commenter states that the proposed amendments at N.J.A.C. 5:23-4.4(d) do not need to include “or that supplemental arrangements are in place pursuant to (e) below” and the new “and.” The commenter questions if the Department intends for the municipality to ensure the enforcing agency has adequate staff to review plans, applications, specifications, and to schedule and perform inspections in a timely manner, which may include supplemental arrangements pursuant to N.J.A.C. 5:23-4.4(e).

RESPONSE: The Department respectfully disagrees that the language does not need to be included, as the proposed amendments provide supplemental arrangements for municipalities to ensure inspections are completed in accordance with statutory requirements. In accordance with P.L. 2022, c. 139, municipalities are required to ensure the enforcing agency has adequate staff

to review plans, applications, specifications, and to schedule and perform inspections in a timely manner, which may also include supplemental arrangements.

17. COMMENT: The commenter mentions the Department's plan to contain details by each code discipline on Form FXXX. In addition, the commenter notes that the Department needs to include Form FXXX at N.J.A.C. 5:23-4.5 due to specific placement (paragraph (b)2 versus paragraph (b)3) being dependent on whether equivalent forms may be utilized. Lastly, the commenter recommends including the form title at proposed N.J.A.C. 5:23-4.4(d)1i when it is established.

RESPONSE: The Department thanks the commenter for their recommendation. Upon promulgation of the form, the title will be included within the Uniform Construction Code.

18. COMMENT: The commenter notes that consistent terminology and clear definitions are needed in the amendments at N.J.A.C. 5:23-4.4(d)1ii and iii. Shared service, on-site inspection and plan review agency, supplemental private on-site inspection agency, private on-site inspection agency, and supplemental shared service are all terms used in these sections and are not clearly defined. The commenter would like the Department to provide a listing of all the possible ways that terms can be arranged with a description or definition for each.

RESPONSE: The Department respectfully disagrees. Many of the listed terms are defined within the UCC at N.J.A.C. 5:23-1.4, and “shared service” and “shared service agreement” are defined at N.J.S.A. 40A:65-1. Further, the terminology used throughout the rules is consistent and clear based on its context within the rules.

19. COMMENT: The commenter asks if supplemental inspections are automatically allowed if a municipality has a contract with a private on-site inspection and plan review agency or a private on-site inspection agency. Additionally, the commenter requests the Department revise onsite at N.J.A.C. 5:23-4.21 to on-site.

RESPONSE: The Department thanks the commenter for their recommendation. As the Department did not amend N.J.A.C. 5:23-4.21 in this rulemaking, the comment is beyond the scope of this rulemaking. However, the Department will review that section and make changes, if determined to be necessary. Additionally, supplemental private on-site inspections are required to adhere to the processes outlined at N.J.A.C. 5:23-4.16(g) and are not automatically allowed.

20. COMMENT: The commenter notes that N.J.A.C. 5:23-4.4(d) refers to N.J.A.C. 5:23-4.4(e) and includes the language stating which supplemental arrangements are authorized. However, N.J.A.C. 5:23-4.4(e) states, "Authorized processes include, but are not limited to, ..." The commenter questions how many other authorized processes there are and recommends listing all authorized processes in this section.

RESPONSE: There are a number of hypothetical processes that appropriately establish a supplemental arrangement. Due to of this, the language at N.J.A.C. 5:23-4.4(e) is appropriate as written, and there is no need to provide a listing of further potential processes.

21. COMMENT: The commenter states that N.J.A.C. 5:23-4.5(b)3 is redundant and is not needed because N.J.A.C. 5:23-4.5(a)3 states, "The files and records of the municipal enforcing agency shall be open to Department review and audit during normal business hours." The commenter recommends deletion of the proposed text; however, if the Department decides to

include the proposed amendment at N.J.A.C. 5:23-4.5(b)3, then it should also be included at paragraphs (b)2, (b)4, and (c)1. This is to ensure consistency of standardized forms, additional forms, and standardized logs with summary statement #4 in the Department's Summary.

RESPONSE: The Department respectfully disagrees that the changes proposed by the commenter are necessary. The Department finds that the sections read clearly as written.

22. COMMENT: The commenter notes that the proposed amendments at N.J.A.C. 5:23-4.5(j)5, mirror existing conflict-of-interest provisions already established. They further state that supplemental private on-site inspection agencies, to their understanding, can only perform inspections, unlike a construction official or subcode official, with enforcement powers. The commenter recommends that N.J.A.C. 5:23-4.5(j) should have "or enforcement procedure" deleted in the four locations and that the Department should consider only retaining paragraph (j)5 without subparagraphs (j)5i or ii. The commenter states that a supplemental private on-site inspection agency should never be allowed to perform inspections where conflicts exist or are perceived to exist. The commenter notes that if a situation of this nature happens, the Department should carry out the inspection.

RESPONSE: The Department respectfully disagrees that changes are needed to the conflict of interest provisions applicable to supplemental private on-site inspection agencies, which may be cited as violations during inspections. Citing violations would be considered an enforcement action; thus, the language in the rulemaking is necessary to appropriately convey what entails a conflict of interest. Although the existing provisions at N.J.A.C. 5:23-4.5(j) and 4.14(f) do appropriately address conflicts of interest and could apply to a supplemental private on-site inspection agency, the decision to draft a separate subsection was intentional; the Department

wanted to ensure that it is clear that supplemental private on-site inspection agencies are subject to the conflict of interest provision and the provision covers all potential kinds of conflicts that may arise when utilizing a supplemental private on-site inspection agency. Further, the Department respectfully disagrees that it should take on inspections when a conflict of interest is present.

23. COMMENT: The commenter notes that the Department's amendment of interlocal enforcing to shared service appears needed due to the repeal of the Interlocal Services Act and its replacement by the Uniform Shared Services and Consolidation Act. The commenter recommends that the Department further review these regulations and other Department regulations and appropriately reflect this needed revision, such as those at N.J.A.C. 5:23-4.1(c), 4.3(a)1, 4.8(b), and 4.17(e), and 5:10, 5:23A, and 5:30.

RESPONSE: The Department thanks the commenter for their suggestion. The sections referenced by the commenter are not subjects of this rulemaking and, thus, they are beyond the scope of this rulemaking; however, the Department will determine whether further changes for consistency with the Uniform Shared Services and Consolidation Act are needed.

24. COMMENT: The commenter questions why "on a project-specific basis" is included at N.J.A.C. 5:23-4.6(c). The commenter states that this language is confusing and recommends deletion. The commenter questions if the Department's intent was that a supplemental shared services agreement to conduct on-site inspections be limited and not cover all inspections.

RESPONSE: The Department respectfully disagrees, the language is consistent with other sections of the proposed rulemaking, such as, proposed N.J.A.C. 5:23-4.16(d). The use of

supplemental shared services is limited to a project-specific basis and cannot be used to perform all inspections within the contracted municipalities.

25. COMMENT: The commenter notes that the Department's proposed amendment at N.J.A.C. 5:23-4.12(a) allows private on-site inspection and plan review agencies to provide supplemental private on-site inspections. However, the commenter questions if independent supplemental private on-site inspection agencies or individuals can perform inspections. They state that the intent of P.L. 2022, c. 139, is to have inspectors authorized to perform supplemental private on-site inspections. They question that if a duly licensed inspector is authorized to perform supplemental private on-site inspections, would a local enforcing agency or owner's hourly contract with the individual(s) meet the intent at P.L. 2022, c. 139.

RESPONSE: Private on-site inspection agencies authorized pursuant to N.J.A.C. 5:23-4.12 are permitted to perform inspections in accordance with the rules, and this includes independent agencies and individuals. Additionally, a duly licensed inspector would be required to be authorized pursuant to N.J.A.C. 5:23-4.12 in order to perform the supplemental private on-site inspections.

26. COMMENT: The commenter questions if all private on-site inspection agencies are considered specialized services, not just supplemental private on-site inspection agencies, or is the Department only recognizing supplemental private on-site inspection agencies as specialized services. The commenter recommends the Department review competitive bidding versus public bidding requirements and revise these amendments, if needed. In addition, the commenter recommends the Department review proposed N.J.A.C. 5:23-4.16(d)1.

RESPONSE: Private on-site inspections agencies acting pursuant to N.J.A.C. 5:23-4.16 shall be considered supplemental private on-site inspection agencies and, as such, they are considered specialized services when acting in that capacity.

27. COMMENT: The commenter questions if the proposed amendment at N.J.A.C. 5:23-4.14(d) means that the collection of fees shall not apply to private on-site inspection agencies performing supplemental private on-site inspections for an owner or designated agent pursuant to N.J.A.C. 5:23-4.16. The commenter states, as proposed, the allowance is only for supplemental private on-site inspection agencies.

RESPONSE: The collection of fees stated at N.J.A.C. 5:23-4.14(d) shall apply to private on-site inspection agencies performing supplemental private on-site inspection duties. Private on-site inspection agencies are supplemental private on-site inspection agencies, if performing supplemental inspections pursuant to N.J.A.C. 5:23-4.16.

28. COMMENT: The commenter notes language in the proposed amendment at N.J.A.C. 5:23-4.14(g) states that fees may be established pursuant to N.J.A.C. 5:23-4.18. They question if the “may” should be changed to “shall” or if this allows for the establishment of fees in other ways. The commenter requests the Department provide examples of establishing supplemental private on-site inspection fees for inspections such as, but not limited to, rough plumbing and electrical inspections.

RESPONSE: The Department respectfully disagrees that “may” should be changed to “shall,” as N.J.A.C. 5:23-4.14(g) also allows for the minimum fee to be established pursuant to N.J.A.C. 5:23-4:20(c)2, rather than N.J.A.C. 5:23-4.18. Further, the Department declines to provide an

example of the establishment of fees, which are established by the local enforcing agency or the inspection agency and may vary based on the requirements set forth at N.J.A.C. 5:23-4.18.

29. COMMENT: The commenter questions if a percentage of the permit fee is allocated to plan review and if a percentage is allocated to inspections. Additionally, they request the cost of fees for Department authorization of a supplemental private on-site inspection agency and how fee reconciliation is calculated. Lastly, the commenter asks if the contracted supplemental private on-site inspection fee can be greater than the permit fee for the specific item being inspected and based on an hourly rate and to please provide examples.

RESPONSE: Fees are established pursuant to N.J.A.C. 5:23-4.18. N.J.A.C. 5:23-4.18(a)1 states that “[t]he fee for plan review, computed as a percentage of the fee for a construction permit, shall be paid at the time of submission of an application for a permit.” The Department notes that the reconciliation will vary on a case-by-case basis depending on the fees established by the local enforcing agency and the inspections that the enforcing agency did not perform. Further, the fees charged by the supplemental private on-site inspection agency to the applicant are not governed by the Uniform Construction Code; as such, no hypothetical cost examples can be provided.

30. COMMENT: The commenter notes that the proposed amendment at N.J.A.C. 5:23-4.14(k) could be rephrased as an exception. The commenter asks if there are any limitations or control on the fees to ensure that a supplemental private on-site inspection agency acting pursuant to N.J.A.C. 5:23-4.16 does not have to charge the fees set forth at N.J.A.C. 5:23-4.20, but a private enforcing agency providing supplemental on-site inspections does.

RESPONSE: The Department respectfully disagrees with making the proposed amendment an exception. Additionally, a private on-site inspection agency utilizing N.J.A.C. 5:23-4.16 is exempt from charging the fees set forth at N.J.A.C. 5:23-4.20 pursuant to N.J.A.C. 5:23-4.14(k). A private on-site inspection agency is a supplemental private on-site inspection agency, when acting pursuant to N.J.A.C. 5:23-4.16.

31. COMMENT: In reference to N.J.A.C. 5:23-4.16(a), the commenter notes their confusion by the Department's statement that the section shall not apply for any inspection responsibilities reserved to the State. They request clarification if the intent of the section shall not apply to facilities and installations for which the Department is the sole enforcing agency. The commenter questions if this would include the Department acting as the local enforcing agency for a municipality, thereby prohibiting the use of supplemental private on-site inspection agencies.

RESPONSE: See the Response to Comment 3.

32. COMMENT: The commenter notes the language at N.J.A.C. 5:23-4.16(d) refers to private on-site inspection agencies, while N.J.A.C. 5:23-4.16(d)1 refers to supplemental private on-site inspection agencies. The commenter questions if the Department's intent was for private on-site inspection agencies to perform supplemental private on-site inspections and if those agencies are considered a private on-site agency subset. The commenter says it will add confusion to competitive contracting by having N.J.A.C. 5:23-4.16(d)1 refer to N.J.S.A. 40A:11-4.1. The commenter notes that private on-site inspection agencies are considered specialized services allowing for the use of competitive contracting pursuant to N.J.S.A. 40A:11-4.1.

RESPONSE: Supplemental private on-site inspection agencies are authorized pursuant to N.J.A.C. 5:23-4.12, as such, they are a subset of private on-site inspection agencies. The Department respectfully disagrees that the terminology used in this section will cause confusion.

33. COMMENT: In reference to N.J.A.C. 5:23-4.16(e), the commenter asks, pursuant to P.L. 2022, c. 139, if the owner's contract is allowed to be with a private on-site inspection agency or with a supplemental private on-site inspection agency or does the contract need to be specific to supplemental private on-site inspections only. The commenter questions if the Department's intent is to recognize all private on-site inspection, and plan review agencies as automatically authorized as supplemental private on-site inspection agencies or is there is another fee.

RESPONSE: P.L. 2022, c. 139, does not include provisions concerning terminology on contracts. Supplemental private on-site inspections agencies are established pursuant to the private on-site inspection rules at N.J.A.C. 5:23-4.12, as such, they are considered private on-site inspection agencies. Private on-site inspection agencies are considered supplemental private on-site inspection agencies depending on the application of their use. Additionally, there is not a separate fee for this authorization.

34. COMMENT: The commenter questions if a municipality's contracted private on-site inspection agency is unable to provide the owner's requested inspections, can the owner contract with a different private on-site inspection agency to perform the inspections.

RESPONSE: Provided the municipality's contracted private on-site inspection agency is unable to perform a requested inspection pursuant to N.J.A.C. 5:23-2.17A or 2.18, the owner may elect to contract with a supplemental private on-site inspection agency.

35. COMMENT: The commenter asks if municipalities can allow owners to contract for cyclical inspections, such as for public swimming pools or elevator devices, even if the municipality is able to perform the inspections. They note that, “an enforcing agency may, at its discretion,” seems to allow for the municipality to be the deciding factor in allowing or not allowing an owner to contract out the inspections. The commenter recommends this section be clarified so that it is uniformly regulated.

RESPONSE: The Department respectfully disagrees that the section requires clarification.

Pursuant to N.J.A.C. 5:23-4.16(e), the enforcing agency may, at its discretion, authorize owners, agents, or other responsible persons in charge of work to perform all inspections on a specific project, this includes cyclical inspections.

36. COMMENT: The commenter questions if Department approval for the use of a supplemental private on-site inspection agency should be a prerequisite.

RESPONSE: The Department respectfully disagrees because private on-site inspection agencies are authorized by the Department; thus, there is no need for a second level of approval to utilize these services. Further, use of authorized supplemental private on-site inspection agencies is determined by the municipal enforcing agency and owners, agents, or other responsible persons in charge of work.

37. COMMENT: The commenter notes that the Department’s proposed new sentence at N.J.A.C. 5:23-4.14(g) seems incorrect. The commenter questions if the Department’s intent is for enforcing agencies who utilize supplemental private on-site inspection agencies pursuant to

N.J.A.C. 5:23-4.16, to have fees established pursuant to N.J.A.C. 5:23-4.18. The commenter recommends that the Department review N.J.A.C. 5:23-4.18, specifically, 4.18(j).

RESPONSE: The Department respectfully disagrees that N.J.A.C. 5:23-4.14(g) is incorrect because it is the Department's intent that enforcing agencies who utilize supplemental private on-site inspection agencies have fees established pursuant to N.J.A.C. 5:23-4.18.

38. COMMENT: The commenter notes, as written, N.J.A.C. 5:23-4.18(j) appears to allow supplemental private on-site inspection agencies to carry out subcode official responsibilities. They state that this appears incorrect and requires revision. Additionally, the commenter states that the proposed section does not address when a supplemental private on-site inspection agency is only carrying out inspector responsibilities.

RESPONSE: The Department respectfully disagrees that it is incorrect and requires revision. Supplemental private on-site inspection agencies are permitted to carry out specified subcode official responsibilities in accordance with N.J.A.C. 5:23-4.12(a).

39. COMMENT: The commenter doubts that the Department's proposed amendments will resolve the issues raised at P.L. 2022, c. 139, and states that, as of February 2023, the Department has only authorized eight private on-site inspection and plan review agencies. The commenter further explains that of those eight authorized agencies; five are elevator inspection agencies, one does not perform building inspections, and the two remaining perform all inspections. The commenter requests the Department provide authorized inspection agency information.

RESPONSE: Information regarding authorized private on-site inspection agencies may be provided upon request to the Department. As stated by the commenter, there are currently eight authorized agencies.

40. COMMENT: The commenter references N.J.A.C. 5:23-4.21 and notes that, if the fee for authorization is the private on-site inspection fee of \$2,800 for each subcode, and subsequently \$1,400 plus two percent of gross income, then there does not appear to be an incentive for others to join the currently authorized agencies if they are only providing supplemental inspection services. The commenter questions the amount of errors and omissions insurance coverage required. Additionally, the commenter recommends that the Department consider the authorization of UCC licensed inspectors acting as supplemental private on-site inspection agencies through contract to perform only supplemental private on-site inspections.

RESPONSE: The Department respectfully disagrees that there is no incentive to be an authorized private on-site inspection agency, which would enable individuals to perform supplemental private on-site inspections. Further, pursuant to N.J.A.C. 5:23-4.14(e), private on-site inspection agencies are required to maintain liability insurance of at least \$1,000,000 for each person and each occurrence, to satisfy claims or judgements. Finally, the Department respectfully disagrees that any licensed official should be able to perform supplemental private on-site inspections, because the authorization process provides additional necessary oversight for individuals undertaking such work.

41. COMMENT: The commenter notes that a supplemental private on-site inspection appears to be only an independent verification by a qualified person rendered to the local construction code

office. They state that this appears to be similar to special inspections performed by certified special inspectors and they recommend that the Department look for a less bureaucratic means to accomplish this rulemaking and not adopt these regulations as proposed.

RESPONSE: The Department thanks the commenter for their recommendation; however, the proposed amendments are mandated by the statutory requirements at P.L. 2022, c. 139. Further, the process established within this rulemaking provides for necessary checks and balances in the authorization of private on-site inspection agencies in the State.

42. COMMENT: The commenter asks if these proposed amendments are also applicable to municipalities where the Department is the enforcing agency, and if not, the Department should consider inclusion of some, if not all, of these provisions to allow for supplemental private on-site inspections.

RESPONSE: Please see the Response to Comment 3.

43. COMMENT: The commenter states that based upon their review of the proposed new rules and amendments and because excessive revision and clarification appears needed, they should not be adopted.

RESPONSE: The Department thanks the commenter for their suggestion and will continue to review and revise to ensure the proposed new rules and amendments are consistent, accurate, and comply with P.L. 2022, c. 139. However, the Department respectfully disagrees that the rules should not be adopted, as they provide the necessary requirements to implement P.L. 2022, c. 139.

44. COMMENT: The commenter notes that in reviewing the Code Advisory Board (CAB) minutes of April 14, 2023, a motion was made to deny the proposal until rewritten and was 11 in favor, one opposed. The commenter questions what revisions were made to the proposal based on the CAB and the various Subcode Committees' review and comments.

RESPONSE: The actions of the Uniform Construction Code Advisory Board are outside the scope of this rulemaking.

45. COMMENT: The commenter requests clarification on the actions, in the proposed regulations, that the Department can take if an enforcing agency fails to meet their inspection obligations.

RESPONSE: The Department maintains discretion when taking action against an enforcing agency; the actions available to the Department are within the Uniform Construction Code at N.J.A.C. 5:23-5.25 for licensed officials.

46. COMMENT: The commenter recommends the Department rescind this proposed new rule and amendments and re-propose new rules and amendments that reflect P.L. 2022, c. 139, and address the numerous concerns. The commenter notes that with their comments and the CAB and the Subcode Committees' assistance, the Department should be able to easily accomplish these suggestions in a timely manner that addresses all concerns. Additionally, the commenter suggests the Department form a task force.

RESPONSE: The Department thanks the commenter for their suggestions; however, the Department has reviewed the proposed amendments and new rule extensively to ensure the

proposed rulemaking accurately reflects P.L. 2022, c. 139. Accordingly, the Department does not envision the need for a task force.

Comments Received From Frank Marshall, New Jersey State League of Municipalities

47. COMMENT: The commenter explains that N.J.A.C. 5:23-2.18 includes amendments stating requests for inspections “shall be considered received on the next business day after it was sent if outside of normal business hours.” The commenter notes their appreciation for the clarification; however, they recommend the language be amended to include, “requests for inspection shall be considered received on the next business day after it was sent if the request was sent outside of the enforcing agency’s normal business hours.” The commenter explains that this recommendation is similar to provisions found elsewhere at P.L. 2022, c. 139, and helps clarify the meaning of normal business hours.

RESPONSE: The Department thanks the commenter for the suggestion. It should be noted that N.J.A.C. 5:23-4.4(b) requires municipalities to determine the enforcing agency’s business hours. That said, there are some agencies that are only open part time, and for those agencies, three business days could translate to two weeks of time for the applicant, which could be a substantial delay. With this in mind, the Department respectfully disagrees that a further change to this section is needed, but will monitor any issues in scheduling that may arise.

48. COMMENT: The commenter states that N.J.A.C. 5:23-4.4(e) requires the municipality to establish a process for ensuring that inspections are performed pursuant to N.J.A.C. 5:23-2.17A or 2.18, and that this requirement for the municipality is almost identical to the requirement for construction offices. The commenter explains that it is duplicative to require a municipality and

enforcing agency to each create a plan and that clarification is requested. The commenter suggests that the municipality should review and endorse the plan adopted by the construction office, as this will eliminate an unnecessary duplication of efforts, but maintain the same goals.

RESPONSE: The Department respectfully disagrees that it is duplicative, N.J.A.C. 5:23-4.4(e) is unique to supplemental shared service agencies and supplemental private on-site inspection agencies.

49. COMMENT: The commenter notes that N.J.A.C. 5:23-4.16(g) provides that the owner, agent, or other responsible person in charge of work shall notify the enforcing agency of any choice to utilize an authorized private on-site inspection agency. The commenter states that notification of an on-site inspection agency alone is not enough and respectfully requests that this notice provide additional information regarding the selected on-site inspection agency. They explain that, at a minimum, the notice should include the name of the agency, a point of contact for the agency, and certification from the agency confirming no conflict of interest provision in accordance with these rules.

Additionally, the notice should be required to be submitted to the enforcement agency within 24 hours of the selection of an agency. The commenter states that these suggested amendments provide the enforcement agency with enough information to ensure the selected on-site agency is qualified and can be contacted should the need arise.

RESPONSE: The Department respectfully disagrees with the suggested change. The enforcing agency will be made aware of the supplemental private on-site inspection agency during the course of the project pursuant to N.J.A.C. 5:23-4.14(e). Further, the agency can always confirm

with the Department that there are no conflicts between the applicant and the authorized supplemental private on-site inspection agency.

50. COMMENT: The commenter, in reference to N.J.A.C. 5:23-4.16(h), respectfully requests that this section be further amended to require an owner, agent, or other responsible person to provide contemporaneous notice to the enforcing agency and the municipality when an owner, agent, or other responsible person in charge of work believes an enforcing agency has demonstrated a repeated inability to conduct inspections for a construction project within the required timelines. The commenter states that contemporaneous notice is the only way an enforcing agency or municipality can properly answer charges found in such a request to the Department.

RESPONSE: The Department respectfully disagrees that the suggested change is necessary. The Department will make the municipality aware of the report upon receipt, and will allow for the enforcing agency to provide an answer to the charges sent to the Department within the report.

Comments Received From Brian Miller, MUNCO Chairman

51. COMMENT: The commenter states that the Municipal Construction Officials of New Jersey has consistently opposed P.L. 2022, c. 139, for a number of reasons and that a vast majority of their member's enforcing agencies comply with the longstanding statutory requirements regarding permit processing and inspections. The commenter notes that ensuring that the local enforcing agency is adequately staffed and funded is paramount to fulfilling the mandate to which they are held.

The commenter, as a representative of MUNCO, respectfully requests the Jobs Impact statement on the notice of proposal be revised due to its contradictory assessment. MUNCO association members work tirelessly to ensure agencies are adequately staffed with highly trained and competent individuals and cannot afford to see their staff seek employment elsewhere simply because of the allure of better wages or benefits.

RESPONSE: The Department thanks the commenter for their suggestion; however, disagrees that the Jobs Impact statement needs revision. This rulemaking implements statutory requirements, and concerns with the statute are outside the purview of the rulemaking. Further, these rules only apply when a municipality is delayed in its inspection duties, and should not impact agencies that are able to meet their statutory deadlines for inspections.

52. COMMENT: The commenter states their appreciation for the consideration to allow 30 days to inspect work classified as minor work in lieu of three business days. The commenter notes that the proposed change will allow their members to effectively manage their offices and prioritize inspections based on current or future staffing levels.

RESPONSE: The Department thanks the commenter for their appreciation; however, as a result of the concerns raised by other commenters regarding this section of the regulations, the Department is retaining the three-business day inspection requirement for minor work projects.

53. COMMENT: The commenter states that they will encourage their association members to enter into supplemental shared services agreements with adjacent municipalities. They explain that many of their association members have provisions to accommodate conflict of interest

projects and that they believe expanding these arrangements will provide the necessary assistance to comply with these new regulations.

RESPONSE: The Department thanks the commenter for their input.

Comments Received From Joseph Moschello

54. COMMENT: The commenter notes that N.J.A.C. 5:23-4.3(f) provides the Department with the ability to hold accountable the local enforcement agency when it has reasonable cause that it is not carrying out its functions. Additionally, the commenter notes that there are tools currently in place to hold local enforcement agencies accountable for failing to comply with N.J.A.C.

5:23-2.18(c), pertaining to notice for inspections. The commenter states that this rulemaking is unnecessary and that towns should anticipate the necessary staffing and scale accordingly based upon projected construction forecasts. Finally, the commenter states that the Office of Regulatory Affairs should be properly staffed and enforce the existing regulations as written.

RESPONSE: The Department thanks the commenter for their input. The proposed rules are a result of the statutory requirements at P.L. 2022, c. 139, and the rulemaking is necessary and required to implement P.L. 2022, c. 139.

Comments Received From Dan O’Gorman

55. COMMENT: The commenter commends the Department staff for performing their due diligence in reviewing, clarifying, and posting this proposed rule in a fair and reasonable time frame.

RESPONSE: The Department thanks the commenter for their support.

56. COMMENT: The commenter recommends adding the following language from N.J.A.C. 5:23-2.29, “all inspection pursuant to the act and the regulations shall be between the hours of 9:00 A.M. and 5:00 P.M. on business days,” to anywhere N.J.A.C. 5:23-2.17A or 2.18 is referenced in the proposed rules and amendments.

REPOSE: The Department thanks the commenter for their suggestion; however, there is a recognized need for flexibility, and the Department wants to keep the language open to allowing for inspections outside of business hours upon agreement between the local enforcing agency and the applicant.

57. COMMENT: The commenter recommends the Department include language at N.J.A.C. 5:23-4.4(d)1 stating that the construction official and chief financial officer shall prepare and submit a plan to the Division of Codes and Standards documenting the means the enforcing agency will use to meet the expected demand for service. As currently proposed, the section only references the construction official.

RESPONSE: N.J.A.C. 5:23-4.17 already requires consultation with the municipal finance officer regarding receipts and expenditures through the local enforcing agency. N.J.A.C. 5:23-4.4(d)1 establishes a requirement to submit a plan to meet the expected demand for service and is not a financial report. As such, the Department respectfully disagrees that consultation with the municipal finance officer is necessary for the expected demand of service plan.

58. COMMENT: The commenter recommends adding the number of open permits to the analysis set forth at N.J.A.C. 5:23-4.4(d)1i. The commenter notes their justification is because the municipalities do not collect taxes until a permit is closed with a certificate of occupancy and

that open permits cost municipalities thousands of dollars every year in uncollected property taxes.

RESPONSE: The report established at N.J.A.C. 5:23-4.4(d) includes a review of all open permits, but does not require the municipality to provide the number of permits. This is because it is not necessary information for the Department, and not all open permits are addressed within one year. As such, the Department respectfully disagrees that the suggested change is necessary.

59. COMMENT: The commenter recommends including language at N.J.A.C. 5:23-4.16 to mandate training and notification for chief financial officers, mayors, municipal clerks, managers and administrators, and municipal attorneys.

RESPONSE: The commenter did not provide any specific suggestion for the nature of the training. That said, no specific training is established pursuant to this rulemaking, but should the Department issue any guidance, it would be made available to any municipal employee that may benefit from it. Further, P.L. 2022, c. 139, does not provide authority to mandate training for the municipal officials as suggested.

60. COMMENT: The commenter recommends adding language in the proposed rules and amendments stating that each municipality shall post their fee schedule on their website and at the counter of the construction office.

RESPONSE: Municipalities are already required to post their fee schedules in the construction office pursuant to N.J.A.C. 5:23-2.25. The manner of posting is left to the discretion of the municipality, because there are a multitude of appropriate options.

61. COMMENT: The commenter stated that the dedication by rider provisions are not working because some municipalities do not use the Uniform Construction Code enforcement fees in accordance with the regulations. The commenter further notes the municipal dedication by rider have millions of dollars in reserve, and construction departments continue to have underpaid and low staffing.

RESPONSE: The Department thanks the commenter for their input. Additionally, if the municipality is not properly following the provisions at N.J.A.C. 5:23-4.17(c)2, please contact the Office of Regulatory Affairs at (609) 984-7672.

62. COMMENT: The commenter recommends adding salaries to the first sentence at N.J.A.C. 5:23-4.4(d)2i and ii.

RESPONSE: Salary information is already incorporated in the enforcing agency's requirements set forth at N.J.A.C. 5:23-4.17 for the establishment of the fee schedule, which must take into account salaries and employee benefits. As such, there is no need to include the salary information in the report established at N.J.A.C. 5:23-4.4(d).

Comments Received From Richard Soltis Jr.

63. COMMENT: The commenter questions whether the private on-site inspection agency subcode inspector or the local municipality subcode official signs off on the subcode technical inspection when a private on-site inspection agency performs an inspection.

RESPONSE: Pursuant to N.J.A.C. 5:23-4.14(e)2, private on-site inspection agencies have the responsibility to act in place of the municipal subcode official or inspector. Accordingly, the

private on-site inspection agency shall sign off on the subcode technical inspection for inspections that they perform.

64. COMMENT: The commenter questions if a private on-site inspection agency is required to complete the remainder of the required inspections for a given subcode after they have performed an inspection.

RESPONSE: As stated at N.J.A.C. 5:23-4.16(g)2, “[t]he owner, agent, or other responsible person in charge of work may choose to utilize the supplemental private on-site inspection agency for the remainder of the inspections for the unit or units affected by the inspection delay.” This also applies to any specific subcode where there was a delay; the owner, agent, or other responsible person in charge of work may choose to utilize the supplemental private on-site inspection agency for the remainder of the inspections under that subcode.

65. COMMENT: The commenter asks if private on-site inspection agencies are required to comply with a timeframe to complete a requested inspection. Additionally, the commenter questions if the Department is required to comply with the municipal timeframe for scheduling inspections.

RESPONSE: When utilizing a supplemental private on-site inspection agency, the timeframe for inspections will be determined by the contract between the supplemental private on-site inspection agency and the owner, agent, or other responsible person in charge of work. This means there could be instances where the timeframes differ from those required of the local enforcing agency. If the supplemental private on-site inspection agency is acting as a result of a contract with a municipality, the municipal timeframe will apply. The Department is required to

comply with the municipal timeframe for scheduling inspections pursuant to N.J.A.C. 5:23-4.11(a).

66. COMMENT: The commenter notes that the notice of proposal explanatory statements explain this will not increase the cost of work and will decrease the timeframe for buildings to be market ready. The commenter disagrees and explains that the cost of work will increase because the property owner will have to pay the private on-site inspection agency for the inspection and that there will be a time delay due to having to contact a private on-site inspection agency to perform the inspection. The commenter does not see these rules as a real solution because there are only a few private on-site inspection agencies in New Jersey.

RESPONSE: The Department thanks the commenter for their input. The proposed rules are a result of the statutory requirements at P.L. 2022, c. 139. Additionally, the Department anticipates that the proposed rules may provide the opportunity to increase the number of private on-site inspection agencies in New Jersey.

Comments Received From Andy Wall, Mid Atlantic Solar and Storage Industries Association

67. COMMENT: The commenter requests amendments to clarify N.J.A.C. 5:23-2.18(c)1 by including language stating that notification by email or an online portal shall be considered "in writing." Additionally, the commenter requests that N.J.A.C. 5:23-2.18(c)1 be amended to remove, "[t]he request shall be considered received on the next business day after it was sent if the request was sent outside of normal business hours." The commenter notes that the inclusion

of this sentence makes the timing of the requirement unclear and if the response from the enforcement agency is due at the precise instant business hours begin.

RESPONSE: As noted in the Response to Comment 1, email or digital correspondence is considered notification in writing. Additionally, the Department respectfully disagrees that the proposed language at N.J.A.C. 5:23-2.18(c)1 is unclear. Pursuant to N.J.A.C. 5:23-2.18(c)2, notification of inspection from the enforcing agency to the owner, agent, or other responsible person in charge of work will be performed within 24 hours of notice.

68. COMMENT: The commenter recommends further amendment at N.J.A.C. 5:23-2.18(c)2 to delete, “or other such time within 30 days, as agreed upon by the owner, agent, or other responsible person in charge of work.” The commenter states that this is redundant as it is described at N.J.A.C. 5:23-4.16(f).

RESPONSE: The Department respectfully disagrees with the commenter. While the two sections do address the same topic, in this case the language ensures clarity among code users.

69. COMMENT: The commenter recommends an amendment at N.J.A.C. 5:23-4.16(g)1 to include, “The owner, agent, or other responsible person in charge of work may elect to use any authorized private on-site inspection agency.” The commenter notes that the inclusion of this amendment is necessary to ensure no undue restrictions are placed on the owner’s ability to obtain a timely inspection and to adhere to the statute's intent.

RESPONSE: The Department respectfully disagrees; the recommended change is currently reflected at proposed N.J.A.C. 5:23-4.16(g), which states that the owner, agent, or other responsible person in charge of work may choose an authorized private on-site inspection agency

if the enforcing agency is unable to perform the inspection pursuant to N.J.A.C. 5:23-2.17A or 2.18.

Federal Standards Statement

No Federal standards analysis is required for the adopted amendments and new rule because the amendments and new rule are not being adopted in order to implement, comply with, or participate in any program established pursuant to Federal law or pursuant to a State law that incorporates or refers to Federal law, standards, or requirements.

Full text of the adoption follows (additions to the proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

5:23-2.17A Minor Work

(a) – (c) (No change.)

(d) Inspection of minor work:

1. Inspections shall be required for minor work and the enforcing agency shall inspect any such work within ***[30]* *three business*** days of the request for inspection, or other such time within 30 days, as agreed upon by the enforcing agency and the owner, agent, or other responsible person in charge of work;

i. (No change.)

2. (No change.)

5:23-4.16 Supplemental private on-site inspection agencies

(a) This section shall not apply for any inspection responsibilities reserved to the State

***pursuant to N.J.A.C. 5:23-3.11 and 3.11A*.**

(b) – (i) (No change from proposal.)