

**COMMUNITY AFFAIRS**

**DIVISION OF CODES AND STANDARDS**

**Uniform Construction Code**

**Adopted Amendments: N.J.A.C. 5:23-2.35, 3.2, 3.8, 5.3, 5.19G, 5.23B, 6.2, 6.3A, 6.6, 6.7, 6.8, 6.9, 6.31, and 6.32**

Proposed: September 6, 2022, at 54 N.J.R. 1661(a).

Adopted: December 22, 2022, by Lt. Governor Sheila Y. Oliver, Commissioner, Department of Community Affairs.

Filed: February 1, 2023, as R.2023 d.030, **without change**.

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

Effective Date: March 6, 2023.

Expiration Date: February 9, 2029.

**Summary of Public Comments and Agency Responses**

Comments were received from Mitchell Malec, retired former employee of the Department of Community Affairs (Department).

1. COMMENT: The commenter notes that the Department is proposing to change “section” and “sections” to “Section” and “Sections,” and explains that this is not being completed throughout the regulations at this time. The commenter recommends that future amendments of this type are to be completed administratively so that their adoption is not delayed and to also correct areas that refer to “sections” or “Sections” that only reference a singular section.

RESPONSE: The Department continues to correct these references as they are found. These corrections are clarifying in nature and do not alter the meaning of the Uniform Construction

Code (UCC), thus they may be undertaken through administrative corrections or added into future rulemakings, as references are found.

2. COMMENT: The commenter, in reference to N.J.A.C. 5:23-3.8(d)1i and ii, states that in lieu of the Department's addition of "or equivalent standards;" to subparagraph (d)1i and ", or equivalent standards" to subparagraph (d)1ii, it is recommended that the sentences where these proposed amendments are to be added be deleted. In addition, the commenter recommends, amending subparagraph (d)1i to: "i. Wood paneling being used as an interior finish not in conformance with Section 803 of the building subcode." and to rewrite subparagraph (d)1ii to, "Carpeting used as an interior floor finish material not in conformance with Section 804 of the building subcode."

RESPONSE: The Department respectfully disagrees with the commenter. These sections are still valid within the UCC. Further, the Department disagrees with the proposed language provided by the commenter; these sections as written are not anticipated to cause confusion for code users.

3. COMMENT: The commenter recommends that the Department read N.J.A.C. 5:23-3.6 and 3.7 and UCC Bulletin 94-9, as they do not believe that the Department is allowed to change the prescriptive requirements of the adopted model codes at this time. The commenter would like the Department to provide a listing of equivalent standards to ASTM E84 and ASTM E648 and the names of the individual experts that have determined these listings.

RESPONSE: The Department respectfully disagrees with the commenter. The changes at N.J.A.C. 5:23-3.8 reflect the advancement in the model code and permits the other standards to

be used, as referenced by the sections noted within. When this section of the UCC was originally written, the BOCA National Building Code was the prevailing building subcode and ASTM E84 was the only option. The last BOCA code enforced in the State was the 1996 edition, and with the current building subcode being the 2021 edition of the International Building Code, it demonstrates how the code has advanced and permits other testing standards to reach the same conclusion. This was determined on the national level through the International Code Council model change hearings and the update to the UCC acknowledges this.

4. COMMENT: The commenter requests that the Department submit appropriate model code change proposals as ASTM E684 and NFPA 253 are referenced in Section 804 and if the Department's intention is for ANSI/UL723, NFPA 255, ASTM E136, UBC 8-1, ASTM E2768, CAN/ULC S102, CAN/ULC S102.2 and others to be recognized as equivalent to ASTM E84. The commenter would like the Department to recognize the differences of the standards and the variations in testing and recommends that the Department review N.J.A.C. 5:23-6.11(c) and revise the text.

RESPONSE: The Department respectfully disagrees with the commenter. As stated in the Response to Comment 3, the testing methods have been evaluated on the national level. There may be variations in the testing methods, but the conclusion remains the same. In addition, the 1996 BOCA code was the basis for N.J.A.C. 5:23-6.11(c) and with the advancement in model codes, this section will be updated in a future rulemaking to acknowledge the testing standard "classifications" change in nomenclature.

5. COMMENT: In reference to N.J.A.C. 5:23-6.2(c), the commenter notes that in the

Department's proposed amendment, "as of (insert adoption date of the national model codes update)" needs clarification. The commenter questions if the Department's intent is to address the UCC grace period. The commenter states that the Department needs to recognize that there may be more than one adoption date and recommends that in references to standards in the subchapter that do not have a year or edition identified, that the Department includes a year or edition to these standards or adds the reference of the applicable subcodes.

RESPONSE: The Department respectfully disagrees with the commenter. Upon adoption, the Department has included the adoption dates of the relevant model code. This is intended to show code users at the outset of Subchapter 6 what codes are referenced throughout and is not anticipated to cause undue confusion.

6. COMMENT: The commenter is concerned with the references to ICC/ANSI A117.1 and NFPA 72 and the lack of updating of standards such as ASME A17.1. The commenter requests explanation of the varied references of ASME A17.1 and the status of "PRN 2022-034" in the New Jersey Register that refers to ASME A17.1 -2016. The commenter states that the Department should not adopt these provisions without fully evaluating the impacts and allowing further review and public comment as the modification of the year or edition of a standard may have as great of an impact as updating the edition or the year of an adopted model code.

RESPONSE: The Department respectfully disagrees with the commenter. There is a hierarchy for deciding which provisions would govern and by operation of law, the provisions of a statute supersede the provisions of an administrative rule. Further down the hierarchy, the provisions of the rules supersede the provisions of the model code and the provisions of the model code have authority over the referenced standard, and those referenced standards have authority over the

manufacturer's instructions. When a conflict arises between two adopted model codes, the provisions of the model code that is the primary subcode for the subject in question would govern.

7. COMMENT: In reference to N.J.A.C. 5:23-6.6(e)4i(1) and 5i, 6.7(e)4i(1) and 5i, and 6.32(g)1, the commenter states that the Department's amendments to the sections to change 50 percent to 60 percent for replacement doors and steps should not be adopted. The comments explains that the Department's proposed change is undermining the intent of the rehab subcode. The commenter notes that if a building with two public entrances where only one entrance is accessible is now required to make the second accessible would not be reasonable, especially if no accessible route exists. The commenter states that just because the code was updated to 60 percent, it does not mean it is an adequate justification to require existing buildings to comply and that requirements for accessibility are different than life safety issues.

RESPONSE: The Department respectfully disagrees with the commenter. The 60 percent update was new for the State pursuant the adoption of the 2015 International Building Code for new construction. With the incorporation of the 2021 code references, the change aligns the threshold in both subcodes for new and existing structures.

8. COMMENT: In reference to N.J.A.C. 5:23-6.9(a)2i, the commenter recommends that the Department's addition of "(R300)" to this section not be adopted. The commenter recommends that the section be rewritten as: "i. Stories or habitable attics within buildings of Group R-5 shall comply with Section R300 of the one- and two-family dwelling subcode." or "i. Stories or habitable attics within buildings of Group R-5 shall comply with Section R300 (N.J.A.C. 5:23-

3.21(c)3i) of the one- and two-family dwelling subcode.” The commenter explains that the first recommended version is consistent with the way other sections are written and the second recommended version should be considered if the Department is going to add references to other subcode regulation provisions along with the adopted model code section in the future. The commenter’s recommendation is to adopt the first rewritten version without the reference of “(N.J.A.C. 5:23-3.21(c)3i).”

RESPONSE: The Department recognizes there are a number of ways to write a provision in the regulations, and respectfully declines to utilize the language the commenter recommends. The language the Department proposed is clear as written.

### **Federal Standards Statement**

No Federal standards analysis is required for the adopted amendments because the 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 under a State law that incorporates or refers to Federal law, standards, or requirements.

**Full text** of the adoption follows:

TEXT