

**COMMUNITY AFFAIRS**

**DIVISION OF CODES AND STANDARDS**

**Emergency Shelters for the Homeless**

**Adopted Amendments: N.J.A.C. 5:15-1.5, 3.8, and 4.2**

Proposed: August 15, 2022, at 54 N.J.R. 1644(a).

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

Filed: September 26, 2022, as R.2022 d.136, **without change**.

Authority: N.J.S.A. 55:13C-2.3

Effective Date: November 7, 2022.

Expiration Date: November 15, 2024.

The Department of Community Affairs (Department) is readopting amendments to the Emergency Shelters for the Homeless rules at N.J.A.C. 5:15 that were concurrently proposed as part of an emergency adoption on July 27, 2022. The emergency adoption and concurrent proposal was published on August 15, 2022. The comment period closed on September 14, 2022.

**Summary of Public Comments and Agency Responses:**

The Department received comments from Mitchell Malec, a retired former employee of the Department.

1. COMMENT: The commenter supports the Department's intention of this emergency adoption and concurrent proposal to allow for greater use of structures as emergency shelters for the

homeless. However, the commenter believes that the current provisions of the Uniform Construction Code (UCC), Uniform Fire Code (UFC), and these rules without modifications, provide the means for all types of buildings to be used as emergency shelters without undue hardship.

RESPONSE: The Department respectfully disagrees. This rulemaking is necessary to allow for the expanded use of structures to meet the need of programs of the Office of Refugee Resettlement (ORR) in the United States Department of Health and Human Services.

2. COMMENT: The commenter notes the Department's justification, in the Summary statement for this new amendment, is based on the fact that Group I-1 structures are similar in terms of construction type, fire protection, and egress to emergency shelters designated as residential Group R-1 or R-2. Additionally, he notes that the Department implies that owners of Group I-1 are not utilizing these structures as emergency shelters due to the requirements for going through the change of use process. The commenter believes that because of this, the proposed amendments circumvent the UCC requirements at N.J.A.C. 5:23-6.31 and should not be adopted. He states that the question that the Department needs to answer is not what the similarities are, but what are the differences and determinations if upgrades or modifications are needed to allow a Group I-1 to be converted to an emergency shelter and be allowed this exception from a certification of occupancy. The commenter recommends that the Department utilize N.J.A.C. 5:23-6.31 and determine the changes that would be required to allow a Group I-1 to become an emergency shelter.

RESPONSE: The Department respectfully disagrees. As these Group I-1 facilities are designed stricter standards than R-1 and R-2, there is no need to undergo a change of use nor undertake

any work in order to be utilized as an emergency shelter. As such, there is no need to follow any change of use requirements within the Uniform Construction Code.

3. COMMENT: The commenter recommends that the Department consider establishing a dual certificate of occupancy similar to N.J.A.C. 5:23-6.31(a)7, so that facilities can retain their group and serve as emergency shelter when the need arises.

RESPONSE: The Department respectfully disagrees. Group I-1 buildings are group homes for more than 16 persons; as such, there is no reason for a dual certificate of occupancy to utilize such structures as emergency shelters. Additionally, because the use of emergency shelters entails consecutive overnight stays, the requirements for a dual certificate of occupancy would not be applicable.

4. COMMENT: The commenter states that the text of the amendment refers to the use of a Group I-1 structure as a Class III shelter and notes that the text at N.J.A.C. 5:15-1.5(c)1, 2, 3, and 4 does not reference a group. The commenter recommends the text be revised. He would also like confirmation and explanation on why a conversion from a hotel to an emergency shelter of 21 residents does not get the exception from getting a new or amended certificate of occupancy.

RESPONSE: The Department respectfully disagrees that the other exceptions at N.J.A.C. 5:15-1.5 need amendment. The intent of this rulemaking is to allow for a specific use group as emergency shelters; this is because not all buildings classified under Group I would be appropriate for the operation of emergency shelters. In addition, conversions from hotels to emergency shelters for the homeless are outside the scope of this rulemaking and do not need to be addressed at this time. N.J.A.C. 5:15-1.5(c)3 allows for hotels to be converted into emergency

shelters, as long as the intended occupancy remains unchanged. This exception has been in place since the initial adoption of these rules and has appropriately served the regulated community.

5. COMMENT: The commenter would like confirmation and explanation on why a Group I-1 conversion to a Class I shelter does not get the exception from a new or amended certificate of occupancy. The commenter states that if it is acceptable as a Class III shelter, logically it would seem reasonable to allow a Group I-1 to be a Class I or a Class II shelter to have this exception from the certification of occupancy.

RESPONSE: The Department does not anticipate that there would be a need for Class I or Class II shelters to operate in a Group I-1 structure. Due to the urgency needed to respond to ORR programs, this rulemaking was focused on expanding allowances for Class III shelters.

6. COMMENT: The commenter would like to note that the Department, in the Summary statement, referred to Chapter 10, Means of Egress, Table 1006.2.1, and advised similar provisions for exit access from spaces where one exit exists. The commenter questions if a Group I-1 converted to a Class III shelter is allowed to increase the occupant load to 20 from such spaces or is the limit of 10 occupants retained. Additionally, the commenter asks why all institutional groups are not included. The commenter notes that they would expect a Group I-3 to be considered similar, if not better, for construction, fire protection, and egress as a residential Group R-1 or R-2.

RESPONSE: Pursuant to Table 1006.2.1, Spaces with one exit or exit access doorway, a Group I-1 shelter where there is only one exit would not be allowed to increase the occupant load from 10 to 20. If at least two exits are provided, the 10-occupant limit does not apply. In addition, not

all Institutional Groups are included in this rulemaking because all use groups are not appropriate for use as a Class III emergency shelter. The purpose of this rulemaking is to expand the use of home-like facilities that may be used to accommodate ORR programs. Group I-1 buildings are group homes; however, Group I-3 buildings are correctional facilities. Occupants under restraint or security would be inappropriate in a shelter environment. Other Institutional Groups include medical care centers and child and adult day care centers, which also would not be appropriate for use as Class III emergency shelters.

7. COMMENT: The commenter questions why Group R-4 is not included within this exception. He refers to the DCA UCC Bulletin 15-3 and explain that logically it would seem reasonable to allow the exception to a Group R-4 to be used as an emergency shelter.

8. COMMENT: The commenter recommends that the Department revise the text of the adopted and proposed amendment at N.J.A.C. 5:15-1.5(c)5 to include an amendment for Group R-4 or eliminate this amendment since the commenter asserts that the Department's justification is lacking. The commenter states that in his opinion, there is more justification for Group R-4 than Group I-1.

RESPONSE TO COMMENTS 7 AND 8: Group R-4 is not included in this rulemaking because it is not anticipated that these emergency shelters will be utilized for 16 or fewer persons, which is the occupant limit for Group R-4 classifications.

9. COMMENT: The commenter notes that the adopted and proposed text at N.J.A.C. 5:15-1.5(c)5 is slightly different than the text at existing N.J.A.C. 5:15-1.5(c)1, 2, 3, and 4. The commenter questions that, as written, if this is a total conversion of the Group I-1 structure to an

emergency shelter or an unlimited use of any area within a Group I-1 to an emergency shelter.

The comment suggests that it may be beneficial to include occupancy limits or to indicate that it be occupied by no more than the designed occupant load.

RESPONSE: The Department respectfully disagrees that further changes are needed. The occupancy requirements of any use group will always be applicable for that structure; thus, any Class III shelters of Group I-1 use must meet the requirements for Group I-1 structures.

10. COMMENT: The commenter questions if all occupant criteria of the Group I-1 or Group R-4 are also included. The commenter explains that he assumes it would if compliance with the Group I-1 provisions is mandated and he recommends that it might be beneficial for it to be reflected in the rules, or if it is not required, stated as such.

RESPONSE: See the Response to Comment 9; the building must be in compliance with the requirements for a Group I-1 structure.

11. COMMENT: The commenter would like to know if amended N.J.A.C. 5:15-3.8(b)4 is referring to the Unaccompanied Children Program and the Unaccompanied Refugee Minors Program of the Federal Office of Refugee Resettlement (ORR) at the U.S. Department of Health and Human Services. Additionally, the commenter questions what Federal, State, or local programs would be applicable, and in the case of a Federal policy, who is responsible to ensure that the facility is in compliance.

RESPONSE: Yes, this rulemaking directly references ORR programs. As such, in addition to meeting the requirements for licensure pursuant to N.J.A.C. 5:15, the building must also be in

compliance with any requirements of the ORR, which is administered through the U.S. Department of Health and Human Services.

12. COMMENT: The commenter suggests that additional amendments need to be included that clarify when a child may be housed in an emergency shelter facility or reference the applicable guidelines when there is no parent or legal guardian in the U.S. to provide care and physical custody. The commenter notes he has difficulty in understanding N.J.A.C. 5:15-3.8(b)4. The commenter questions if the text explains that it is acceptable for an unaccompanied minor to occupy the facility provided that the facility is in compliance with ORR programs, as ORR may initially have had custody of the minor, however, he believes the State providers assume responsibility when the child is in their custody.

RESPONSE: The Department respectfully disagrees that further amendments are necessary. N.J.A.C. 5:15-3.8(b)4 provides that ORR has custody of the minor until a permanent home is found.

13. COMMENT: The commenter questions if a foster home or group home can be used as an emergency shelter for children in the case of a disaster or does the facility have to be in compliance with the New Jersey Department of Children and Families (DCF), Children Protection and Permanency rules. The commenter recommends that the Department read and consider the Federal Policy and State Licensing Standards for the Operation of Facilities Housing Unaccompanied Migrant Children. The Children's Equity Project. Meak, S., Edyburn, K., & Smith, C. (2021) to recognize where New Jersey-licensed emergency shelters for the homeless fall short in meeting ORR program policies. Additionally, the commenter suggests

consultation with DCF to revise the rules to ensure emergency shelters are safe for, and provide adequate care to, unaccompanied minors. It is in the commenter's opinion that, for unaccompanied minors, New Jersey emergency shelters should at least meet DCF requirements. The commenter also recommends that an approval of some type from DCF should be required and included in the rules when unaccompanied minors or adjudicated children, including those who are dependent, neglected, abandoned, or runaways are placed in the facility.

RESPONSE: This rulemaking is not intended to address foster care situations; rather, it is intended to expand the use of structures as Class III emergency shelters in order to accommodate ORR programs. DCF has indicated that it cannot operate these shelters pursuant to its statutory requirements; thus, the Department is the appropriate entity for licensure of these shelters.

14. COMMENT: The commenter asserts that clarification is needed at amended N.J.A.C. 5:15-4.2(b). The commenter states that the newly added text refers to N.J.A.C. 5:15-1.5(c), which deals with specific conversions and use of facilities and does not include group designations, although it is implied. The commenter notes that N.J.A.C. 5:15-4.2(b) refers to "group designation" and not "use group designation." In addition, the commenter asks if Group R-4 is included and questions the value of referencing the UFC if Group R-4 is not within it. The commenter notes that, as written, when a vacant Group I-1 building is used as a shelter, the building must be completely in compliance with UFC Group I-1 even though it may be easier to comply with UFC Group R-1 or R-2 requirements. He additionally states that N.J.A.C. 5:15-1.5(c)4 complicates the issue, and provides an example to this point, such as if a gymnasium within a Group E facility is used as a Class II emergency shelter and questions if the shelter area needs to conform to the UFC Group A or E or I-1 or R-1 or R-2.



RESPONSE: The Department respectfully disagrees that clarification is needed. Group R-4 is not included in this rulemaking. In addition, any Group I-1 structure that will be utilized as a shelter will have to comply with any applicable UCC or UFC requirements for Group I-1 structures. This would be true regardless of whether the structure was utilized as a shelter. N.J.A.C. 5:15-1.5(c)4 is outside the scope of this rulemaking and does not complicate the rulemaking. That exception relates to gymnasiums within a Group E structure that operates as a Class II shelter. Class II shelters provide shelter only during night-time hours; so, no change of use is required for that exception.

15. COMMENT: The commenter believes the Department's intent is that any newly built building in compliance with the UCC subcode provisions for Group R-1, R-2, R-4, I-4, I, or an existing structure modified to one of these groups, or groups with some added conversions per Rehabilitation Subcode change of use (N.J.A.C. 5:23-6.31), are able to become emergency shelters. The commenter states that the added text, "except as provided within the change of use exceptions at N.J.A.C. 5:15-1.5(c)5," adds confusion. The commenter states that N.J.A.C. 5:15-1.5(c)5 contains an exception, not exceptions. Additionally, the commenter questions how this reference to N.J.A.C. 5:15-1.5(c)5 addresses the current exception at N.J.A.C. 5:15-1.5(c)4 when a Group E or Group A building's auditorium is used as a Class II shelter. He notes that, as expressed in the Department's Summary statement, "though emergency shelters were previously required to be designated as either Residential Group R-1 or R-2 structures, depending on the length of occupancy," it appears, this requirement is still applicable. The commenter recommends that the Department rewrite the appropriate subsections at N.J.A.C. 5:15-4.2(a) and (b) and others to address these issues.

RESPONSE: The Department respectfully disagrees that a cross-reference to the exceptions listed at N.J.A.C. 5:15-1.5 is cause for confusion. The Department respectfully disagrees that further amendments are needed at this time to incorporate other use groups into these rules, as the intention of the rulemaking was to provide a limited exception in specific circumstances. The current uses, with the addition of this rulemaking to expand capacity for Class III shelters, appropriately serves the regulated community.

### **Federal Standards Statement**

No Federal standards analysis is required for the adopted amendments because the amendments are not being adopted in order to implement, comply with, or participate in any program established pursuant to Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements. This adoption allows Class III shelters to accept unaccompanied minors where the Federal government is acting as a custodian pursuant to United States Department of Health and Human Services, Office of Refugee Resettlement programs. The Office of Refugee Resettlement is an office in the United States Department of Health and Human Services. Among its portfolio of responsibilities, the Office of Refugee Resettlement places unaccompanied children in the least restrictive setting that is in the best interests of the child.

**Full text** of the adoption follows:

TEXT