

**COMMUNITY AFFAIRS**

**DIVISION OF CODES AND STANDARDS**

**Uniform Construction Code**

**Adopted Amendments: N.J.A.C. 5:23-1.1, 2.2, 2.22, 3.12, 4.1, and 6.8**

**Adopted Repeals: N.J.A.C. 5:23-3.19, 4B, and 4C**

Proposed: January 7, 2019, at 51 N.J.R. 3(a).

Adopted: June 19, 2019, by Lt. Governor Sheila Y. Oliver, Commissioner, Department of Community Affairs.

Filed: July 9, 2019, as R.2019 d.083, **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-124.

Effective Date: August 5, 2019.

Expiration Date: March 25, 2022.

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

Comments were received from Jane Chady, Executive Director, New Jersey Manufactured Housing Association; John J. Drucker Jr., Building, Fire Protection, and Electrical Subcode Official; Mitchell Malec, a retired former employee of the Department of Community Affairs (Department); and David T. Phelan.

1. COMMENT: One commenter expressed support for the proposed rulemaking.

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

2. COMMENT: One commenter first provided context for the rulemaking by explaining the current enforcement process and the proposed change to remove the Department's status as a State Administrative Agency for the Federal Department of Housing and Urban Development (HUD). The commenter then expressed that it would be in the best interest of the consuming public and the manufactured housing industry in the State if the municipal inspections were continued. The commenter stated that the integrity of the licensed inspectors is beneficial for members of the industry, the public, and utility companies because the inspectors are not contractors under the Federal program. The commenter suggested the Department retain jurisdiction over electrical and gas connections and that those connections continue to be inspected by municipal inspectors. The commenter requested that those sections of the current regulations governing gas and electric inspections remain in effect.

RESPONSE: Beginning in May of 2016, HUD asserted jurisdiction for the installation of manufactured homes in New Jersey. Currently, installers are required to meet both the requirements under the New Jersey Uniform Construction Code, as well as complying with the Federal program. While this arrangement is allowed under Federal law, HUD declined to recognize the State's inspection procedures as equivalent to the Federal standards. This has resulted in a duplication of effort that increases the cost of installation. This rulemaking removes the Department's status as a State Administrative Agency for HUD. The Federal government will be responsible for oversight of the installation of manufactured homes in the State of New Jersey. Because the Department is discontinuing the State's role as a State Administrative Agency for HUD, it is not possible to retain the sections of the UCC that govern gas and electrical connections and inspections. These items fall under the initial installation of a manufactured home, and will be under HUD's jurisdiction.

3. COMMENT: One commenter asked how the installation of on-site water, gas, electrical, and sewer connections are to be addressed. The commenter assumed that UCC permits and approvals would continue to be required in these instances, and stated that the rules should specify that information. The commenter suggested the Department review 24 CFR 3285.903 and 904. The commenter further questioned how requirements not within HUD regulations, including carbon monoxide detection and fire extinguishers, would be handled.

RESPONSE: Under the rulemaking, the Department would not have any jurisdiction over the initial installation of a manufactured home, including the utility connections. A change has been made upon adoption at N.J.A.C. 5:23-2.22(b) to clarify that utility connections are a part of installation; this is added to ensure user clarity and is not a change in requirements. Therefore, the recommended practices cited in 24 CFR 3285.903 and 3285.904 would apply for cases where there is a utility with no local administrative agency having jurisdiction. Because the Department does not have jurisdiction, the carbon monoxide detector and fire extinguisher requirements would not be enforced at the time of installation.

4. COMMENT: One commenter expressed concern about the lack of Departmental oversight. The commenter suggested that the Department issue clear guidance to municipalities and local authorities stating that code officials are to continue to assert jurisdiction over the permitting and inspection of manufactured home foundations and installations. The commenter stated that the guidance needs to provide clear recognition of Federal authority and the relinquishment of State and local jurisdiction.

RESPONSE: Because the Department is discontinuing the State's role as a State Administrative

Agency for HUD, there will be no Departmental oversight, and code officials will not have the authority to assert jurisdiction over the permitting and inspection of manufactured home installations. The Department will issue guidance to that effect upon adoption of this rulemaking.

5. COMMENT: One commenter suggested that, in conjunction with this rulemaking, the Department update Uniform Construction Code (UCC) Bulletin 07-1 and create an “Alert” on the Division’s webpage. The commenter also suggested the Department amend N.J.A.C. 5:23-4.1(c).

RESPONSE: A change is made upon adoption to delete references to Subchapters 4B and 4C at N.J.A.C. 5:23-4.1(c). The Department will revise or rescind any UCC bulletins that reference manufactured homes and will also issue guidance upon adoption of this rulemaking.

6. COMMENT: One commenter noted that HUD asserted jurisdiction for the installation of manufactured homes in May 2016, and questioned why the Department has taken so long to propose this rulemaking. The commenter asked whether the Department and local enforcing agencies have been collecting UCC fees for the cost of manufactured homes under HUD jurisdiction and suggested that such fees would be in violation of HUD’s preemption authority at 24 CFR 3282.11(a) and (b). The commenter asked if those fees would be reimbursed retroactively. The commenter asked whether the Department and local enforcing agencies have stopped enforcement of these rules and, if not, when enforcement would stop.

RESPONSE: When HUD asserted jurisdiction for the installation of manufactured homes, the Department contacted HUD to request recognition of the requirements in the Uniform Construction Code as equivalent to HUD’s installation requirements; throughout this ongoing communication, both the State and Federal rules and regulations were in effect. Because the State rules were still in

effect, permits were issued and inspections were performed. Upon adoption of this rulemaking, enforcement of the UCC and related fee collection by State or local enforcing agencies will stop.

7. COMMENT: One commenter asked whether manufactured homes (modular homes) that are certified by the manufacturer pursuant to 24 CFR 3282.12(c) are within the scope of the UCC. The commenter also suggested that the regulations be clarified to address the issuance or non-issuance of a UCC Certificate of Occupancy for manufactured homes under HUD jurisdiction and the collection of surcharge training fees.

RESPONSE: The term “manufactured homes” as defined in the Uniform Construction Code refers exclusively to HUD units. Manufacturers that opt out of the Federal program under 24 CFR 3282.12(c) are excluded from coverage of the National Manufactured Housing and Construction Standards Act (42 U.S.C. §§ 5401 et seq.). Pursuant to the UCC, manufactured homes, by definition, are units covered by 42 U.S.C. §§ 5401 et seq. Units exempt from the National Manufactured Housing and Construction Standards Act would be covered by Subchapter 4A of the UCC. Because manufactured homes are not under the jurisdiction of the UCC, no Certificate of Occupancy will be issued. In addition, the Department will not collect any training fees. The Department believes that it is sufficiently clear that because manufactured homes (HUD-approved units) are not under the scope of the UCC, Certificates of Occupancy and permit fees, including the training surcharge fee, are also not applicable.

8. COMMENT: One commenter stated that, as proposed, the UCC would not apply to the installation of any new manufactured home. The commenter questioned how a Certificate of Occupancy would be issued for a completed installation and who would be authorized to issue the

Certificate. The commenter stated that the municipal construction official would not have the authority to issue or deny the Certificate. The commenter expressed concern that this rulemaking would leave the municipality without a mechanism to track the completion and occupancy of new residential structures for the purpose of tax assessments.

RESPONSE: As stated in the Response to Comment 7, Certificates of Occupancy will not be issued for manufactured homes. As a result, municipalities will have to establish a different method to track completion of these homes for the purpose of tax assessments.

9. COMMENT: One commenter stated that by removing new manufactured homes from the permitting and inspection process of the UCC, the rulemaking has a number of unintended consequences. The commenter stated that while the UCC governs the construction, permitting, and inspection processes, it also establishes how a building becomes occupied, remains fit for occupancy, and whether a building needs to be vacated or demolished. The commenter suggested that the rulemaking would prevent the application of the UCC to a new manufactured home that becomes damaged or uninhabitable.

RESPONSE: The Department disagrees with the commenter. This rulemaking would discontinue the State's jurisdiction over the initial installation of a manufactured home. The authority to issue Notices of Unsafe Structure after the manufactured home has been installed remains.

10. COMMENT: One commenter asked at what point a new manufactured home would ever become subject to the UCC, not including a relocation or alteration. The commenter questioned how a municipal construction official should address events that render the home as damaged or unsafe for occupancy and how N.J.A.C. 5:23-2.32, Unsafe structures, is to be enforced.

RESPONSE: This rulemaking would discontinue the State's jurisdiction over the initial installation of a manufactured home. The authority to issue Notices of Unsafe Structure after the manufactured home has been installed remains.

11. COMMENT: One commenter stated that the rulemaking exempts the installation of a new manufactured home from the requirements for the protection of adjoining properties at N.J.A.C. 5:23-2.34. The commenter provided a brief explanation of the intent of these regulations to protect existing structures from possible damage caused by work on another building. The commenter stated that this rulemaking will make these public safeguard regulations unenforceable. The commenter noted that this is troubling, considering clusters of manufactured homes exist in close proximity to each other, and the installation of a new manufactured home may require access to adjacent properties or cause interruptions to existing power utilities and other services.

RESPONSE: The Department agrees that the provisions set forth at N.J.A.C. 5:23-2.34 will no longer be enforceable. The Department understands the commenter's concern; however, inasmuch as the State's rules were not deemed to be equivalent to the Federal law, the Federal law preempts the State procedure.

12. COMMENT: One commenter suggested that the Department reconsider the proposed rulemaking and instead provide a specific permitting and inspection exemption process for new manufactured homes while still preserving the other administrative provisions and subchapters of the UCC.

RESPONSE: The Department disagrees with the commenter. The administrative provisions of the UCC support the permitting process. If a permit is not issued, the administrative provisions cannot

be applicable.

13. COMMENT: One commenter suggested that the Department reconsider the deletion of N.J.A.C. 5:23-1.1(b)6 and 4B. The commenter noted that N.J.A.C. 5:23-1.1(b)6 includes manufactured homes and manufactured homes with add-on units **not** subject to the Federal regulations (emphasis added). The commenter stated his understanding that the intent of this rulemaking is that when HUD has jurisdiction, the UCC is not applicable, and when HUD does not have jurisdiction, the UCC applies. This commenter asked why the Department would delete N.J.A.C. 5:23-1.1(b)6 and Subchapter 4B, considering the sections contain provisions that address items not subject to Federal regulations. The commenter also suggested that the Department reconsider the deletion of N.J.A.C. 5:23-1.1(b)7 and 4C. The commenter requested that the Department consider retaining these sections and revise them to address enforcement and issues relating to manufactured homes that are not subject to HUD jurisdiction.

RESPONSE: The commenter is correct that N.J.A.C. 5:23-1.1(b)6 and 4B apply to both manufactured homes that are regulated by the Federal Government and manufactured home add-on units that are not. The Department is proposing the deletion of N.J.A.C. 5:23-1.1(b)6 and 4B in their entirety because manufactured home add-on units are not being produced. The Department has not issued a label for a manufactured home add-on unit for more than 20 years. In addition, because manufactured home add-on units are required to meet the requirements of the UCC, they can be approved under the rules for industrialized/modular buildings and components covered under N.J.A.C. 5:23-4A. N.J.A.C. 5:23-4C relates to the enforcement of N.J.A.C. 5:23-4B; N.J.A.C. 5:23-4B is being repealed, it is also appropriate to repeal N.J.A.C. 5:23-4C.

14. COMMENT: One commenter suggested that N.J.A.C. 5:23-2.2(a)2 be revised. The commenter pointed out a Department mistake. The Department cited 24 CFR Part 3480; the correct citation is 24 CFR Part 3280. The commenter further stated that the term “manufactured housing” is not defined in the UCC, and 24 CFR Parts 3280 and 3285 apply only to manufactured homes used as a single-family dwelling. The commenter questioned why the Department did not use the term “manufactured home” or “manufactured homes.” The commenter suggested that the Department’s reference to only two parts of the Federal regulations is incomplete because other Federal provisions apply. The commenter suggested revised wording for the section.

RESPONSE: The Department has made two changes upon adoption: the first change is to correct the mistake in the Federal citation; the second change is to replace “manufactured housing” with “manufactured homes” to ensure consistency and proper use of terms throughout the rules. Further, the Department believes the two Federal CFR Parts referenced in this section are sufficient because the section is referencing only those sections of the Federal rules that are applicable to construction and installation of manufactured homes. 24 CFR Part 3280 contains the requirements for the construction of manufactured homes, and 24 CFR Part 3285 contains the requirements for the installation of manufactured homes. The section make it clear that the construction and installation of manufactured homes are not under the jurisdiction of the UCC. Relocation or rehabilitation of manufactured homes are under the scope of the UCC.

15. COMMENT: One commenter suggested the Department revise the proposed language at N.J.A.C. 5:23-2.2(a)2 to clearly state the intended exemption for the initial construction, permitting, and inspection, while still retaining other critical regulations, and suggested the following language:

“2. The installation of new manufactured homes under CFR Parts 3280 and 3285,

respectively, is exempted from the permitting, inspection, and certificate requirements of the Uniform Construction Code.

i. Manufactured homes and manufactured home installation sites are subject to the enforcement for unsafe structures (2.32) and protection of adjoining properties (2.34).

ii. The relocation or rehabilitation of manufactured homes is within the scope of the Uniform Construction Code.”

RESPONSE: The Department disagrees that this change is necessary; the rule is clear as currently written. In addition, the language the commenter suggested is not possible because the provisions set forth at N.J.A.C. 5:23-2.34 are not enforceable.

16. COMMENT: One commenter stated that the rulemaking creates a narrow scope of circumstances. Manufactured homes are subject to the UCC only when they are relocated or subject to alteration. The commenter stated that the term alteration is clearly defined in the UCC and in the Rehabilitation Subcode (N.J.A.C. 5:23-6) and would allow repair, renovation, additions, and reconstruction work to be performed without UCC oversight.

RESPONSE: Upon adoption, at N.J.A.C. 5:23-2.2(a), “alteration” has been replaced with “rehabilitation.” Because this rulemaking only discontinues the State’s jurisdiction over the initial installation of manufactured homes, the Department’s intent was to capture all categories of rehabilitation work in this rulemaking.

17. COMMENT: One commenter suggested the Department reconsider deleting the references to N.J.A.C. 5:23-4B and 4C in N.J.A.C. 5:23-2.22(a), in line with Comment 7. The commenter asked

if the Department will continue to label manufactured home add-ons. The commenter stated that the amendments at N.J.A.C. 5:23-2.22(b) would not be necessary if N.J.A.C. 5:23-2.2(a)2 was revised as suggested in Comment 14.

RESPONSE: Because the Department is repealing N.J.A.C. 5:23-4B and 4C, the references must be deleted from N.J.A.C. 5:23-2.22(a). The Department believes that, even though N.J.A.C. 5:23-2.2(a)2 reads clearly as proposed, the additional language at N.J.A.C. 5:23-2.22(b) is necessary to ensure clarity amongst code users. The Department will not continue to label manufactured home add-on units. Such units would be labeled under the criteria listed in N.J.A.C. 5:23-4A.

18. COMMENT: One commenter stated that the repeal of N.J.A.C. 5:23-3.19 would mean that there is no subcode for manufactured homes not under the jurisdiction of HUD. The commenter recommended that N.J.A.C. 5:23-3.19 be retained and rewritten to address manufactured homes outside the jurisdiction of HUD. The commenter suggested that, alternatively, N.J.A.C. 5:23-3.19(c) be retained, and the remainder of the section be repealed.

RESPONSE: The Department disagrees that this section should be retained or revised. By definition, manufactured homes are always under the jurisdiction of HUD. Other types of premanufactured construction must comply with the Uniform Construction Code and are covered by N.J.A.C. 5:23-4A.

19. COMMENT: One commenter stated that the proposed amendment to N.J.A.C. 5:23-3.21(c)3x1 appears to be using the text of the IRC/2009 rather than the IRC/2015 as adopted and suggested the Department revise it appropriately.

RESPONSE: The Department disagrees that outdated text was used. N.J.A.C. 5:23-3.21(c)3x1

amends the IRC/2015 to delete the phrase “replacement” in Section R322.1.9, Manufactured homes, of the New Jersey edition of the IRC/2015. This rulemaking would also delete the word “new” from the text of the IRC/2015 in the New Jersey edition and insert “relocated” in its place; this ensures that Section R322.1.9 of the New Jersey IRC/2015, as adopted in N.J.A.C. 5:23-3.21, applies only to relocated manufactured homes.

20. COMMENT: One commenter is opposed to the amendments at N.J.A.C. 5:23-6.8(k). The commenter stated that the continuation of allowing manufactured homes materials and methods to be completed in accordance with 24 CFR Part 3280 is illogical. The commenter asks why an existing manufactured home undergoing rehabilitation is allowed to use older versions of standards cited in the Federal regulations while a stick-built home undergoing rehabilitation needs to comply with UCC’s updated standards of subcodes referenced in the rehabilitation subcode.

RESPONSE: The Department disagrees that the rulemaking is illogical. The Department believes that because of the special construction techniques associated with manufactured homes, using those same construction techniques for rehabilitation of manufactured homes is reasonable and appropriate.

### **Federal Standards Statement**

The adopted amendments and repeals would discontinue New Jersey’s role as a State Administrative Agency for manufactured housing that is constructed or placed in New Jersey. The adopted amendments make the Federal Department of Housing and Urban Development (HUD) responsible for overseeing the manufacture and installation of manufactured homes within the State.

Therefore, the adopted amendments do not exceed Federal requirements; but shift the sole responsibility for the enforcement of the Federal requirements to the Federal Government.

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

## SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT; PROCESS

### 5:23-2.2 Matter covered

(a) The provisions of the regulations shall apply to all buildings and structures and their appurtenant construction, including vaults, area and street projections, and accessory additions; and shall apply with equal force to municipal, county, State, and private buildings, except where such buildings are otherwise specifically provided for by the regulations.

1. (No change)

2. Manufactured **\*[housing]\*** **\*homes\*** constructed and installed under 24 CFR Parts **\*[3480]\*** **\*3280\*** and 3285, respectively, is not under the jurisdiction of the Uniform Construction Code. The relocation or **\*[alteration]\*** **\*rehabilitation\*** of manufactured homes is under scope of the Uniform Construction Code.

(b) – (e) (No change.)

### 5:23-2.22 Premanufactured construction

(a) (No change from proposal.)

(b) The appropriate subcode officials shall inspect the installation of any premanufactured unit or assembly other than the initial installation of manufactured homes **\*[and all work installed or**

completed on site]\* to determine compliance with the regulations and the approved plans.

**\*Installation includes all utility connections and all work installed or completed on site.\***

#### SUBCHAPTER 4. ENFORCING AGENCIES; DUTIES; POWERS; PROCEDURES

5:23-4.1 Title; scope; intent

(a) – (b) (No change.)

(c) This subchapter and N.J.A.C. 5:23-4A\*[, 4B, 4C]\* shall control matters related to: the structure, organization, and procedures of municipal, State, and interlocal enforcing agencies; their interrelationships; the structure, organization, and procedures of boards of appeal; the approval of premanufactured construction; private enforcing agencies; and the establishment of fees.

(d) (No change.)