

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

COMMUNITY AFFAIRS

(a)

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

Standards for the Licensure of Residential Health Care Facilities

Proposed Amendments: N.J.A.C. 5:23-1.4, 2.15, 3.11, 4.3A, 4.5, 6.2, 6.7, and 6.8; and 5:27A-2.2

Authorized By: Lieutenant Governor Sheila Y. Oliver,
Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-124, 2G:2H-1, and 30:11A-1; and Reorganization Plan 002-2005.

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

Proposal Number: PRN 2020-042.

Submit written comments by June 19, 2020, to:

Geraldine Callahan
Department of Community Affairs
PO Box 800
Trenton, New Jersey 08625
Fax No. (609) 984-6696
Geraldine.callahan@dca.nj.gov

The agency proposal follows:

Summary

The proposed amendments encompass a number of unrelated changes to the Uniform Construction Code (UCC) and one change to the Standards for Licensure of Residential Health Care Facilities (RHCFs), N.J.A.C. 5:27A, in relation to the UCC. The proposed amendments correct a cross-reference, reassign jurisdiction, and clarify the rules. A section-by-section description of the amendments follows:

1. At N.J.A.C. 5:23-1.4, the proposed amendment would delete the definition of “small job.” The Department of Community Affairs (Department) received a comment on a recent rulemaking published at 50 N.J.R. 955(a), observing that there are no clear differences between the terms “small job,” “repair,” and “ordinary maintenance.” After a review of “small job,” the Department found that it is not used in the UCC. Although the concept of a “small job” had value when the UCC was initially promulgated, the development of the Rehabilitation Subcode, Subchapter 6 of the UCC, rendered the term obsolete.

2. At N.J.A.C. 5:23-2.15(f)4i, the proposed amendment would correct a cross-reference to another section of the UCC.

3. At N.J.A.C. 5:23-3.11(a)1, the proposed amendment would remove electrical substations from the Department’s sole plan review authority.

The regulation giving the Department sole plan review authority for these facilities dates back to the inception of the UCC. With the current definition of “process equipment,” there is very little review necessary for electrical substations. The proposed amendment would give authority for these facilities to the local enforcing agency.

4. At N.J.A.C. 5:23-4.3A(e)1, the proposed amendments would eliminate the requirement to submit plans to the Department for the installation or alteration of fire protection systems in class 1 or class 2 buildings because the local fire protection subcode officials are capable of reviewing such plans.

5. At N.J.A.C. 5:23-4.3A(f), amendments would remove an outdated reference to the Bureau of Code Services; the roster referenced in this section is now maintained by the Office of Regulatory Affairs.

6. At N.J.A.C. 5:23-4.5(b), the list of forms would be updated to include the Mechanical Inspection sticker. This sticker is used onsite and corresponds with the existing Mechanical Inspection form (F145). The names of forms would also be amended to remove the hyphen from form numbers because that notation is no longer used.

7. At N.J.A.C. 5:23-4.5(d), references to the UCCARS software would be deleted. The Department can no longer maintain and provide permitting software to local municipalities. The cost of maintenance far exceeds the benefit to the very limited number of towns utilizing this software.

8. At N.J.A.C. 5:23-6.2(g)6, the proposed amendments clarify that any work performed in a licensed health care facility must comply with the “Guidelines for Design and Construction of Health Care Facilities,” and specifies that, in the event of any conflict with the Rehabilitation Subcode, the more restrictive code provision governs. This is consistent with the current language at N.J.A.C. 5:23-3.2(b)1.

9. Proposed new N.J.A.C. 5:23-6.7(e)10 would add a section stipulating that a repair or renovation would require the grounding electrode system to be updated to the National Electrical Code (NEC), Article 250, Part III, as referenced in the electrical subcode of the UCC, for a reconstruction project. Many older buildings are deficient in their grounding electrode systems, which can result in fires and damage to equipment. This amendment would require that those systems be updated to prevent such damages.

10. At N.J.A.C. 5:23-6.8(b)4, the proposed amendment would delete the required use of quick-action sprinkler heads from the building and fire protection materials and methods section of the Rehabilitation Subcode. This would allow the design professional the option to use NFPA 13.

11. At N.J.A.C. 5:27A-2.2, the proposed amendments would eliminate the role of the Health Care Plan Review Unit, within the Bureau of Construction Plan review, from construction projects related to Residential Health Care Facilities. This amendment would, thus, assign responsibility for plan review to the local enforcing agency. Departmental jurisdiction for these facilities is not required by statute, and the local enforcing agency is capable of performing such reviews. A change is also

made to the Uniform Construction Code at N.J.A.C. 5:23-3.11(a)8 to remove residential health care facilities from the list of enforcement activities reserved to the Department.

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

Social Impact

It is anticipated that the proposed amendments would have a positive social impact by clarifying the requirements of the Uniform Construction Code. Proposed amendments to the rehabilitation subcode at N.J.A.C. 5:23-6.7(e)10 to require that the grounding electrode system be updated in a reconstruction project would further ensure the health and safety of residents throughout the State.

Economic Impact

The proposed amendments at N.J.A.C. 5:23-1.4, relating to definitions; at N.J.A.C. 5:23-2.15(f)4i, to correct a cross-reference; at N.J.A.C. 5:23-6.2(g)6, relating to work performed in a licensed health care facility; and N.J.A.C. 5:23-6.8(b)4, relating to the use of quick-action sprinkler heads, improve the consistency and usability of the Code and, therefore, are not expected to have a direct economic impact.

The proposed amendments to reassign jurisdiction to local enforcing agencies at N.J.A.C. 5:23-3.11(a)1 relating to electrical substations; at N.J.A.C. 5:23-4.3A(e)1, relating to installation or alteration of a fire protection system in class 1 or class 2 buildings; and at N.J.A.C. 5:27A-2.2, relating to construction projects in residential health care facilities are not expected to have a direct economic impact, though the local enforcing agency will receive the revenue from plan review and inspection for such projects.

The amendments to the rehabilitation subcode at N.J.A.C. 5:23-6.7(e)10 to require that the grounding electrode system be updated in a reconstruction project could impose an additional cost to the average homeowner. The cost is expected to be approximately \$150.00; such cost is minimal compared to the benefits of having a safe and functional grounding system.

Federal Standards Statement

No Federal standards analysis is required because the amendments are not being proposed in order to implement, comply with, or participate in any program established under Federal law or a State statute that incorporates or refers to Federal law, standards, or requirements.

Jobs Impact

The proposed amendments to correct a cross-reference, reassign jurisdiction, and clarify the rules are not expected to have an impact on the creation or loss of jobs.

Agriculture Industry Impact

The Department does not anticipate that the proposed amendments, which correct a cross-reference, reassign jurisdiction, and clarify the rules will impact the agriculture industry.

Regulatory Flexibility Statement

The proposed amendments, which correct a cross-reference, reassign jurisdiction, and clarify the rules, are not expected to impose any new compliance, reporting, or recordkeeping requirements on "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq., nor do the proposed amendments create a need for other professional services.

Housing Affordability Impact Analysis

The proposed amendments correct a cross-reference, reassign jurisdiction, and clarify the rules. It is not anticipated that these corrections to the Uniform Construction Code would have any impact on the cost of housing. Only the proposed amendment to require the grounding electrode system to be upgraded in certain renovation projects will have any cost. The cost is so low that it will not impact housing affordability.

Smart Growth Development Impact Analysis

The proposed amendments correct a cross-reference, reassign jurisdiction, and clarify the rules. Because the proposed amendments do not impact zoning or what may be built in a given location, it is not anticipated that the proposed amendments will have any impact upon

housing production within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

CHAPTER 23 UNIFORM CONSTRUCTION CODE

SUBCHAPTER 1. GENERAL PROVISIONS

5:23-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

...

["Small job" means construction work requiring no prior approvals and the total cost of which is under \$5,000. A "small job" may involve more than one trade and may require plan review.]

...

SUBCHAPTER 2. ADMINISTRATION AND ENFORCEMENT; PROCESS

5:23-2.15 Construction permits--application

(a)-(e) (No change.)

(f) Plans, plan review, plan release:

1.-3. (No change.)

4. Plan review:

i. Department review: When a review and release of plans by the Department is required pursuant to N.J.A.C. 5:23-3.11 or requested for a prototype plan intended for use Statewide, the owner or agent of the owner shall file an application for construction plan release for each project, along with three sets of plans (two sets for prototypes), specifications, and such other supporting information as the Department may require on forms obtained from the Department. The plans, specifications, and other supporting information shall conform to the requirements of [(e)] **(f)** above.

(1)-(5) (No change.)

ii.-vii. (No change.)

SUBCHAPTER 3. SUBCODES

5:23-3.11 Enforcement activities reserved to the Department

(a) Except as otherwise provided [in] **at** N.J.A.C. 5:23-3.11A(b), the Department of Community Affairs shall be the sole plan review agency for the following structures, plans, and equipment:

1. Electrical generating stations [and substations], including nuclear;

2.-7. (No change.)

8. Health care facilities, as defined [in] **at** N.J.A.C. 5:23-1.4[, and residential health care facilities licensed pursuant to N.J.A.C. 5:27A];

9.-12. (No change.)

(b)-(k) (No change.)

SUBCHAPTER 4. ENFORCING AGENCIES; DUTIES; POWERS; PROCEDURES

5:23-4.3A Enforcing agency classification

(a)-(d) (No change.)

(e) Departmental plan review shall not be required for class 3 work. Departmental plan review[s] prior to the issuance of a permit shall be required for class 2 work, unless the municipal enforcing agency is classified as class 2. Departmental plan review prior to the issuance of a permit shall be required for class 1 work unless the municipal enforcing agency is classified as class 1.

1. Reconstruction, changes of use[, or additions to[, or the installation or alteration of fire protection systems in] class 1 or class 2 buildings shall

be submitted to the Department when the municipal enforcing agency is not appropriately classified as per (e) above. The Department may, at its discretion, review such plans, or may return such plans to the municipality for review.

2. (No change.)

(f) The Department shall issue a roster of enforcing agencies and their classification upon request. Copies may be obtained by contacting the [Licensing Section, Bureau of Code Services] **Office of Regulatory Affairs**, PO Box [816] **818**, Trenton, New Jersey [08625-0816] **08625-0818**.

5:23-4.5 Municipal enforcing agencies—administration and enforcement

(a) (No change.)

(b) Forms:

1. (No change.)

2. The following standardized forms established by the Commissioner are required for use by the municipal enforcing agency:

Form No.	Name
...	
[F-145] F145	Mechanical [Inspector] Inspection Technical Section
[F-155] F155	Elevator Subcode Multiple Devices
[F-160] F160	Application for a Variation
...	
[F-222] F222	Inspection Sticker Approval for Electric
...	
[F-224] F224	Inspection Sticker Approval for Fire Protection
[F-225] F225	Inspection Sticker Approval for Elevator
F226	Inspection Sticker Approval for Mechanical
[F-230] F230	Inspection Sticker Approval--Not Approved
...	
[F-245] F245	Notice to Vacate
...	
[F-255] F255	Stop Construction Notice
...	
[F-320] F320	Elevator Notice
[F-325] F325	Notice of Elevator Device Sealed Out of Operation
[F-350] F350	Cut-In Card
[F-360] F360	Denial of Permit
[F-370] F370	Chimney Verification for Replacement of Fuel Fired Equipment
...	

3. The following standardized forms established by the Commissioner are optional for use by the municipal enforcing agency; provided, however, that where they are not used, equivalent forms or mechanisms are used by the enforcing agency to accomplish the same purpose:

Form No.	Name
[F-200] F200	Inspection Notice
[F-280] F280	T.C.O. Control Card
[F-290] F290	Ongoing Inspections Control Card
[F-300] F300	Ongoing Inspections Schedule
...	

4. (No change.)

5. Printing of forms: The municipal enforcing agency shall arrange for the printing of all forms to be used in the office and application forms to be used by the public. Other interested persons may also arrange for the printing of forms or may purchase and use forms printed by others. The municipal enforcing agency may provide for the inclusion of its name and other appropriate identifying information on the forms it has printed. However, the municipal enforcing agency shall accept forms not having municipal identification and shall, in any such case, insert the name of the municipality. All required forms shall be exact replicas of the forms required by the Commissioner, conforming in content, size, format, and colors, except that all multi-part forms may be printed with an additional copy, so long as the additional copy shall be in a color distinct from those specified by the Commissioner. Forms [F-110, F-120, F-130 and F-140] **F110, F120, F130, and F140** may have the Subcode Technical Sections

printed in any color or colors of ink as desired and Form [F-310] **F310** (Elevator Inspection) may be printed as a multipart form on separate pages with up to four copies of each page.

(c) Logs:

1. The following standardized logs established by the Commissioner are required to be maintained by the municipal enforcing agency:

Log No.	Name
...	
[L-710] L710	Inspection Log
...	

2. (No change.)

(d) Monthly reports:

1. The following standardized report forms established by the Commissioner are required to be completed by the municipal enforcing agency and transmitted to the Department by the tenth business day following the end of each calendar month:

Report No.	Name
[R-811] R811	Municipal Monthly Activity Report Certificates
[R-812] R812	Municipal Monthly Activity Report Permits

2. Municipalities currently submitting monthly reports electronically shall continue to do so. Municipalities that do not already submit monthly reports electronically [using UCCARS I] shall begin to do so according to the following schedule:

i.-iv. (No change.)

[3. As long as funding permits, the Department shall provide the UCCARS I software, training, and technical support for the system free of charge to municipalities. Municipalities may submit monthly reports electronically using an alternative system compatible with UCCARS as determined by the Department and capable of transmitting a monthly report based on UCCARS specifications.

4. Municipalities, at their option, may choose to add UCCARS II and III systems to their UCCARS I Systems and may obtain them, at no cost, from the Department, when available.]

(e) (No change.)

(f) The following standardized report form established by the Commissioner is optional for use by the municipal enforcing agency:

Report No.	Name
[R-800] R800	Inspector's Report

(g)-(k) (No change.)

SUBCHAPTER 6. REHABILITATION SUBCODE

5:23-6.2 Applicability and compliance

(a)-(f) (No change.)

(g) Relationship of this subcode to other codes, rules, and ordinances, shall be as follows:

1.-5. (No change.)

6. [The repair, renovation, alteration, reconstruction or change of use of] **Any work performed in a licensed health care [facilities] facility** shall be in accordance with [this code and with] the "Guidelines for Design and Construction of Health Care Facilities," Facilities Guidelines Institute, current edition. All health care facilities shall comply with National Fire Protection Association (NFPA) 101, the Life Safety Code, as referenced in the rules promulgated by the Centers for Medicare and Medicaid Services. In the event of any conflict **with this subcode**, the more restrictive code provision shall govern.

(h)-(j) (No change.)

5:23-6.7 Reconstruction

(a)-(d) (No change.)

(e) The following products and practices shall be required, when applicable:

1.-9. (No change.)

10. Any repair or replacement to the electrical service equipment shall require that the grounding electrode system be updated to the

requirements of NEC Article 250 Part III, as referenced in the electrical subcode (N.J.A.C. 5:23-3.16). (Electrical)

- Recodify existing 10.-21. as 11.-22. (No change in text.)
- (f)-(l) (No change.)

5:23-6.8 Materials and methods

- (a) (No change.)

- (b) Building and Fire Protection Materials and Methods:

The following sections of the building subcode (N.J.A.C. 5:23-3.14) shall constitute the building and fire protection materials and methods requirements for this subchapter:

- 1.-3. (No change.)

4. All of Chapter 9 entitled "Fire Protection Systems," except Sections 902, 903.2, **903.3.2**, 904.2, 905.3, 906.1, 907.2, 908, 910.2, 911, 916.1;

- 5.-20. (No change.)

- (c)-(l) (No change.)

CHAPTER 27A

STANDARDS FOR LICENSURE OF RESIDENTIAL HEALTH CARE FACILITIES NOT LOCATED WITH, AND OPERATED BY, LICENSED HEALTH CARE FACILITIES

SUBCHAPTER 2. LICENSURE PROCEDURES

5:27A-2.2 Newly constructed, renovated, or expanded facilities

[(a) Any residential health care facility with a renovation, expansion, or construction program shall submit plans to the Health Care Plan Review Unit, Division of Codes and Standards, New Jersey Department of Community Affairs, PO Box 815, Trenton, New Jersey 09625-0815, for review and approval prior to the initiation of renovation, expansion, or construction.

(b) The licensure application for a newly constructed, renovated, or expanded facility shall include written approval of final construction of the physical plant by the Health Care Plan Review Unit, Division of Codes and Standards, New Jersey Department of Community Affairs, in accordance with this chapter.]

(a) A construction project in a residential health care facility shall comply with the Uniform Construction Code, N.J.A.C. 5:23, and with the space requirements of N.J.A.C. 5:27A-3 or 3A, as applicable.

[(c)] **(b) A copy of the certificate of occupancy issued by the local [municipality] enforcing agency shall be submitted to [the Health Care Plan Review Unit and to] the DCA, Division of Codes and Standards, Bureau of Rooming and Boarding House Standards, Post Office Box 804, Trenton, New Jersey 08625 ATTN: Residential Health Care Licensure Program, prior to the licensure or approval of newly constructed, renovated, or expanded residential health care facilities.**

HEALTH

(a)

**PUBLIC HEALTH SERVICES BRANCH
DIVISION OF EPIDEMIOLOGY, ENVIRONMENTAL
AND OCCUPATIONAL HEALTH
AND CONSUMER, ENVIRONMENTAL AND
OCCUPATIONAL HEALTH SERVICE
SANITATION IN RETAIL FOOD ESTABLISHMENTS,
FOOD AND BEVERAGE VENDING MACHINES,
AND COTTAGE FOOD OPERATIONS**

Cottage Food Operator Permit

Proposed Amendment: N.J.A.C. 8:24-1.5

**Proposed New Rules: N.J.A.C. 8:24-11 and 8:24-11
Appendix**

Authorized By: Judith M. Persichilli, R.N., B.S.N., M.A.,
Commissioner, Department of Health, in consultation with the
Public Health Council.

Authority: N.J.S.A. 24:1-1 et seq., particularly 24:2-1, 24:5-1 et seq.,
24:6B-1 et seq., 24:10-57.20, 24:10-73.1, 24:12-12, and 24:17-1
et seq.; and 26:1A-7 and 10.

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

Proposal Number: PRN 2020-027.

Submit written comments by June 19, 2020, electronically to
<http://www.nj.gov/health/legal/ecomments.shtml> or by regular mail
postmarked on or before June 19, 2020, to:

Joy L. Lindo, Director
Office of Legal and Regulatory Compliance
Office of the Commissioner
New Jersey Department of Health
PO Box 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

N.J.S.A. 24:1-1 et seq., particularly 24:2-1, 24:5-1 et seq., 24:6B-1 et seq., 24:10-57.20, 24:10-73.1, 24:12-12; and 26:1A-7 require the Department of Health (Department) to promulgate standards for sanitation in establishments that prepare, or otherwise offer, food for retail distribution, that is, to the ultimate consumer, rather than to an intermediary, such as a wholesaler, a grocer, or a cold storage warehouse, and in food and beverage vending machines. Existing N.J.A.C. 8:24, Sanitation in Retail Food Establishments and Food and Beverage Vending Machines, establishes these requirements. Existing N.J.A.C. 8:21, Food and Drugs, establishes the sanitary standards applicable to food and drugs that are manufactured, stored, or distributed to intermediaries, such as wholesalers.

Existing N.J.A.C. 8:24-2.1(c)1 prohibits the operation of a retail food establishment "in a private home or in a room used as living or sleeping quarters." However, the definition of the term, "retail food establishment," at existing N.J.A.C. 8:24-1.5, authorizes persons to sell or offer for human consumption, food that is prepared in a "kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the health authority." Thus, a person can distribute to consumers food that is not potentially hazardous (more commonly known as "shelf-stable" food because it does not require refrigeration) that is prepared in a home kitchen if the food is not sold for profit, provided the consumer is informed that the food was prepared in an unregulated facility.

Having reviewed the prohibition on the sale of home-made food, and having heard from stakeholders who desire to engage in for-profit sales of