

COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

Adopted Amendments: N.J.A.C. 5:23-5.3, 5.4, 5.20, 5.21, and 5.22

Adopted New Rule: N.J.A.C. 5:23-5.19H

Proposed: October 3, 2022, at 54 N.J.R. 1898(a).

Adopted: March 9, 2023, by Lt. Governor Sheila Y. Oliver, Commissioner, Department of Community Affairs.

Filed: April 5, 2023, as R.2023 d.058, **with a non-substantial change** 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: May 1, 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; Ralph Venturini, Borough of Ramsey Construction Official; and Dennis Bettler, Bernards Township Construction Official.

Comments Received from Mitchell Malec, Retired Former Employee of the Department of Community Affairs

6. COMMENT: The commenter notes that the proposed amendments are to implement changes required pursuant to PL. 2009, c. 119, however, he is unable to find these provisions stating that a technical assistant is required to be appointed. In addition, the

commenter questions, what notice do appointed individuals of civil service and non-civil service municipalities receive if these proposed amendments are adopted.

2. COMMENT: The commenter notes that there are provisions that state that no person shall act as a construction official or subcode official for any municipality unless the Commissioner of the Department of Community Affairs (Department) determines that the person is qualified, and technical assistants are not mentioned in these provisions, implying that the Department does not determine their qualifications. However, the commenter notes the provisions stating that technical assistants must demonstrate working knowledge of relevant changes to the Uniform Construction Code (UCC) and new construction innovations, which may be satisfied by completion of appropriate programs and training. The commenter states that it appears the Department is proposing that appointed technical assistants must be certified, which is not mentioned, and would like clarification on the matter. Additionally, the commenter questions if an individual appointed, or holding a position working for a construction or subcode official is not subject to the proposed amendments.

RESPONSE TO COMMENTS 1 AND 2: The Department respectfully disagrees with the commenter, as there are not any provisions requiring the appointment of technical assistants. According to N.J.S.A. 52:27D-126(a), technical assistants may be appointed, if necessary, for the assistance of construction officials. Further, the Uniform Construction Code (UCC) defines “appointed” as the offer, acceptance, and commencement of employment. The purpose of the proposed amendments is to implement the requirement that technical assistants who are appointed or who currently hold the position must be certified and subject to continuing education requirements pursuant to P.L. 2009, c. 119.

Working technical assistants are aware of this rulemaking through both the Code Advisory Board meetings, as well as engagement with stakeholder organizations about the status of these rules. The Department also publishes a list of all newly adopted rules in its seasonal newsletter, the *Construction Code Communicator*.

3. COMMENT: The commenter states that it appears the Department is either manipulating the provisions or being manipulated to require education and certification of technical assistants. The commenter notes that these education and training programs may be unnecessary for currently employed technical assistants. The commenter questions the intent of the Department and asks if these provisions are only applicable to appointed technical assistants, or is the intent to impose pre-employment and retroactive educational requirements on all staff of the Uniform Commercial Code (UCC) code enforcement offices. Additionally, the commenter recommends that these amendments not be adopted as proposed.

RESPONSE: The Department respectfully disagrees. P.L. 2009, c. 119 requires the establishment of certification and education for technical assistants. The provisions state that all technical assistants are required to be certified; however, currently employed technical assistants with existing voluntary certification are exempt from the initial education requirements. Additionally, the proposed rules would require all certified technical assistants to take continuing education units (CEUs), which are deemed necessary for keeping technical assistants up to date with the current standards and practices of construction code administration.

4. COMMENT: The commenter recommends that technical assistants to the construction official who are already certified should be given a waiver from the initial \$91.00 application fee.

RESPONSE: The Department respectfully disagrees as the transition from the previous voluntary program to the new proposed program will require the update of an extensive number of records. The administrative function involved in that process and the maintenance of the program necessitates the administration of this fee.

5. COMMENT: The commenter notes that it is expressed in the notice of proposal summary that it appears the Department has issued an informal, non-renewal, and voluntary certification for 20 years free of charge and asks for the anticipated revenue by these amendments versus what was expected for 20 years.

RESPONSE: The Department does not have an anticipated revenue for the current voluntary program due the program being free-of-charge. In regard to the anticipated revenue from these amendments, they cannot be accurately determined due to the unknown number of individuals who would seek certification. Further, the purpose of the revenue from the amendments is to provide for administrative maintenance of the program and to support continuing education contracts.

6. COMMENT: The commenter asks how many employed individuals will be impacted by these amendments and what does the Department expect the average overall costs to be to the individual.

RESPONSE: The Department does not anticipate any additional costs to impacted individuals, outside of the application and triennial renewal fees, which are minimal and necessary for the

administration of the program. The \$91.00 initial application fee will impact all currently employed technical assistants.

7. COMMENT: The commenter questions if an individual took an educational program 10 years ago, would they receive credit.

RESPONSE: Previously completed educational programs are accepted for credit pursuant to the provisions of this program.

8. COMMENT: The commenter questions if the Municipal Procedures Manual has been revised since March 2018, and how many hours of training has the Department mandated for technical assistants since that date.

RESPONSE: The Municipal Procedure Manual has not been updated since March 2018. In addition, the Department did not mandate any training for technical assistants since that date.

9. COMMENT: The commenter questions if the Department is firm on requiring an education program of 45 hours and if a provisional certification can be issued with completion of the educational programs within 36 months.

RESPONSE: The Department affirms their stance on the requirements of the education program as it is based upon the existing curriculum for construction officials. In addition, the Department does not currently have plans for the provisional certification for technical assistants.

10. COMMENT: The commenter doubts the Department will be able to or want to have technical assistant certification required immediately after adoption of these amendments and

new rule and recommends an effective date of certification at least one year from the effective date of these amendments. The commenter recommends that this should be stated at N.J.A.C. 5:23-5.4(g).

RESPONSE: As this rule applies to technical assistants prospectively, and because this does not impact the current employment status of any technical assistant, the Department respectfully disagrees that a delayed effective date is necessary.

11. COMMENT: The commenter asks what the time frame is for individuals with civil service status and no certification and what the actions are if certification is not obtained. The commenter recommends that these individuals be given a waiver from the initial \$91.00 application fee and educational requirements. In addition, the commenter recommends all technical assistants to the construction official employed prior to the effective date be given the same waiver to the fee and educational requirements.

RESPONSE: Please see the Responses to Comments 4 and 6, regarding the application fee. These requirements are effective upon adoption, and all working technical assistants must adhere to the requirements set forth in this rulemaking. There is no basis to waive the education requirements for working technical assistants.

12. COMMENT: The commenter recommends the revising of job opening notices relevant to these amendments and rules.

RESPONSE: The Department thanks the commenter for their recommendation and will work with the Civil Service Commission on revising technical assistant job notices.

13. COMMENT: The commenter notes that the Department is establishing that the educational program be at least 45 contact hours of instruction for a technical assistant to the construction official and states that this is the same amount of contact hours as an educational program for a construction official. The commenter asks which factors the Department considered in determining that technical assistants need to receive a commensurate level of education as a construction official. The commenter questions if a statement made by a UCC and New Jersey Association of Technical Assistants Board member that mentioned the fairness and consistency with the other education requirements had influence on the matter.

The commenter states that the proposed number of contact hours is excessive and recommends that a reasonable number of contact hours be considered. The commenter provides an example being, but not limited to, a six or seven contact hour course and believes that anything over 15 hours would be excessive based on one third of the construction official program being 15 hours.

RESPONSE: The Department respectfully disagrees as the curriculum has been well established and has been educating construction officials, subcode officials, and technical assistants for decades. It is necessary to presume that individuals without certification have little to no knowledge of permitting procedures nor of the UCC, in general, to ensure that all who receive certification have the appropriate education on the matter. The Department would like to state that it is not equivalent to the construction official program aside from the coincidental amount of course hours.

14. COMMENT: The commenter asks if a highly technical clerical worker with experience working as a Technical Assistant 1, 2, or 3 for construction official needs this educational

program to perform the work of a technical assistant. The commenter explains that considering the average cost of a construction official 45-hour course, it is not reasonable to subject a present or future technical assistant to this burden. The commenter further questions the amount of tuition reimbursement for the course and why remote courses are not permitted.

In addition, the commenter notes that the Department is proposing 1.5 CEUs be completed every three years. The commenter states that this amount is also excessive and recommends that the amount should be .1 or .2 CEUs every three years or free Department-sponsored remote courses. The commenter believes that the Department has not provided the justification for these required instructional hours. The commenter requests that the Department not state the justification is the result of an organization that provides those numbers or that the Department's technical assistant program has existed for decades and is the current practice or that the law allows it and the UCC Code Advisory Board has approved it.

RESPONSE: The Department respectfully disagrees with the commenter. While technical assistants will need to outlay tuition costs for the program, the Department has a robust tuition remission program, reimbursing 100 percent of the tuition cost to applicable individuals. In addition, the continuing education requirement was meant to be commensurate with those required of inspectors who do not hold the administrative licenses, which amounts to one class per year. The Department determined that the amount was not excessive and accounts for up-to-date administrative changes. The Department also notes that remote courses are permitted.

15. COMMENT: The commenter believes that the Department should modify the regulations to address and allow technical assistant trainee and intern positions. The commenter states that it would be more logical to have these individuals required to take an educational program and

become certified.

RESPONSE: The trainee and intern positions within the UCC are based upon not only the lack of completing the examination and educational programs for a given licensure discipline, but to also allow for experience exemptions within that discipline, which would not be a part of the technical assistant certification process. However, within two years of holding the trainee position, anyone in that position must take the necessary exam. This process is outside the scope of this rulemaking and does not warrant amendment at this time.

16. COMMENT: The commenter questions the Department's determination that the costs are not unduly burdensome to those subject to the rulemaking where no municipal or other reimbursement is provided.

RESPONSE: Please see the Response to Comment 6.

17. COMMENT: The commenter recommends that the last sentence at N.J.A.C. 5:23-5.21(d)1 be revised to read: "The following CEUs must be completed between each license or certification renewal." The commenter states that certification is not a license and recommends that the word, certification, be reflected at N.J.A.C. 5:23-5.21(b), (a), (c), (d)5, (d)6, and other sections as needed, to provide clarity.

RESPONSE: The Department thanks the commenter for their recommendation; the phrase "or certification" has been added upon adoption at N.J.A.C. 5:23-5.21(d) for internal consistency; however, the Department respectfully disagrees that further changes are needed throughout N.J.A.C. 5:23-5.21.

18. COMMENT: The commenter states that overall, the Department's proposed amendments and new rule appear to need more review, consideration, and development and, as such, should not be adopted as proposed. The commenter recommends that the Department continue to issue voluntary technical assistant registration and certification without charge for another year, or longer, if needed, to address the issues.

RESPONSE: The Department respectfully disagrees with the commenter and does not anticipate extending the voluntary technical assistant registration and certification program for additional time.

Comment Received from Ralph Venturini, Borough of Ramsey Construction Official

19. COMMENT: The commenter notes their 37-year experience as a licensed code official and states that the recognition and licensing of technical assistants is long overdue. The commenter fully supports and recommends adopting the proposed amendments and new rule.

RESPONSE: The Department would like to thank the commenter for the support and recommendation.

Comment Received from Dennis Bettler, Bernards Township Construction Official

20. COMMENT: The commenter notes how vital technical assistants are to any construction code office and that technical assistants are mentioned 61 times in the Department's standard operating procedures for construction code offices but are not mentioned in the UCC. The commenter appreciates that this proposal remedies this issue and supports adoption of the proposal as written.

RESPONSE: The Department would like to thank the commenter for their support.

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 under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

Full text of the adoption follows (addition to the proposal indicated in boldface with asterisks ***thus***):

5:23-5.21 Renewal of license or certification

(a)-(c) (No change.)

(d) Continuing education requirements are as follows:

1. The following continuing education requirements are based upon the type of licenses or certification held, and not upon employment positions held. Continuing Education Units (CEUs) will be subject to approval by the Department. One CEU equals 10 contact hours. CEUs will be awarded both for technical and administrative licenses or certifications. The following CEUs must be completed between each license ***or certification*** renewal:

i.- iv. (No change.)

v. Technical assistant to the construction official certification – 1.5 administrative CEUs.

2.-6. (No change.)

(e)-(f) (No change.)