

COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

Standards for the Licensure of Residential Health Care Facilities

Adopted 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

Proposed: April 20, 2020, at 52 N.J.R. 835(a).

Adopted: September 24, 2020, by Lt. Governor Sheila Y. Oliver, Commissioner, Department of Community Affairs.

Filed: November 10, 2020, as R.2020 d.130, **without change**.

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

Effective Date: December 7, 2020.

Expiration Dates: March 25, 2022, N.J.A.C. 5:23; and
 November 15, 2024, N.J.A.C. 5:27A.

Summary of Public Comments and Agency Responses:

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

1. COMMENT: The commenter requested clarification on the treatment of “process equipment” in the rulemaking, inquiring into which aspects of electrical substations are currently reviewed by the Department and which of those aspects are considered to be process equipment. The commenter also inquired if there exists an established “demarcation point” for electrical substations indicating where the Department’s jurisdiction ends and a local enforcing agency’s

jurisdiction begins. The commenter recommended that the Department retain sole plan review responsibilities over substations due to the Department's experience in the matter.

RESPONSE: The Department reviews structural support requirements for process equipment, including footings, foundations, and structural framing supports, as well as building services (such as HVAC, lighting, and receptacles) and the circuits that feed them. Process equipment, as such, is exempt from review pursuant to the Uniform Construction Code (UCC). As it relates to new substation buildings and enclosures that may be occupied, the Department provides the full complement of plan reviews for all applicable subcodes in accordance with the UCC. The demarcation point is understood to mean either the service point for the building or the feeders that supply power to the building. The Department thanks the commenter for his recommendation, but believes that local enforcing agencies are competent to assume plan review responsibilities.

2. COMMENT: The commenter inquired into whether the Department uses the National Electrical Safety Code (NESC) and IEEE documents or the National Electrical Code (NEC) for the electrical aspects of electrical generating stations and substations.

RESPONSE: Due to the limited scope of the Department's responsibilities as described in the Response to Comment 1, the NEC is the benchmark standard utilized in reviews; the IEEE may be referenced if the situation requires it (see Bulletin 19-3). The NESC may only be used in limited cases and is not applicable in utility generation and substation projects, pursuant to N.J.A.C. 5:23-3.16(a).

3. COMMENT: The commenter stated that he supports the Department's proposed amendment to amend the names of forms to remove the hyphen from form numbers. He recommended that the Department, for consistency, make the same change throughout the UCC and other documents, citing N.J.A.C. 5:23-2.14(d)1 and 2.20(d), and "Name" of F155 form as examples.

RESPONSE: This change will not be made upon adoption as the recommendation is outside the scope of this rulemaking.

4. COMMENT: The commenter recommended that the Department correct references to FGI's "Guidelines for Design and Construction of Health Care Facilities," as this document is a 2010 edition and a variety of newer guidelines have since been released. The commenter further inquired: "How does the Department establish an operative date for the FGI guidelines and where is this expressed in the regulations? Understanding that the 2014 guidelines were published or issued at different times, what was the Department's mandatory operative date for the 2014 guidelines? [...] It is requested and recommended that the Department appropriately rewrite the section."

RESPONSE: This change will not be made upon adoption as the recommendation is outside the scope of this rulemaking. As stated at item 8 within the notice of proposal, the change is intended to provide consistent language with the current language at N.J.A.C. 5:23-3.2(b)1, with no change in scope or application. For reference, the original edition of a code or standard is adopted unless otherwise stated.

5. COMMENT: The commenter took issue with the proposed amendment's stipulation that an electrical service equipment repair or replacement shall require the grounding electrode system

to be updated to the NEC, Article 250, Part III, for reconstruction projects. The commenter forwarded a number of questions on this topic: who determines if an existing system is up to code; how the Department arrived at its cost estimation; if a certificate from an agency or licensed contractor will be required; whether the proposed amendment will apply exclusively to detached one- and two-family dwellings, and the estimated cost if applicable to other dwellings. The commenter also had a number of technical questions: whether contractors will install supplemental electrodes for the estimated \$150.00 cost; if the proposed amendment will require supplemental electrodes or additional grounding provisions where only single rods, pipes, or plate grounding electrodes are present; if the proposed amendment is applicable only to the grounding electrode system, understood to mean the grounding electrode conductor plus grounding electrodes; and if the proposed amendment would apply if elements of swimming pools were used as the grounding electrode. The commenter finally recommended that the Department review Bulletins 98-1 and 02-2, as they relate to the proposed amendment.

RESPONSE: The work scope in question is a reconstruction of a building as defined at N.J.A.C. 5:23-6.3, colloquially known as a “gut-job” or gutting of a structure; this provision would apply to all reconstructed buildings. As such, the permit applicant would necessarily be obliged to evaluate electrical equipment. In almost all cases, a licensed electrician would perform this evaluation; in the case of a single-family homeowner doing their own work, the permit application would alert the local enforcing agency to the project and be able to provide comment. For clarity’s sake, the proposed amendment has been necessitated by the experience of inspectors in the field, wherein evaluations would routinely uncover that the grounding electrode system was missing or damaged. The vast majority of contractors bring the grounding electrode system up to code as part and parcel of their work; the proposed amendment would mandate such work

for those who do not, potentially reducing prices as the work would no longer be considered optional or an “add-on.” Generally speaking, the work to upgrade could be as minor as adding another ground rod, and while there may be cases that warrant a more extensive upgrade, the mitigation of potentially life-threatening electrical hazards would outweigh the costs. In relation to swimming pools, Article 680 is not included in the scope of this rulemaking. As such, the Bulletins referenced, issued in accordance with N.J.A.C. 5:23-3.9, are scoped accordingly and do not need updating as a result of this modification.

6. COMMENT: The commenter expressed confusion about the proposed amendments effect of removing enforcement responsibility over residential health care facilities (RHCFs) from the Department and assigning it to local enforcing agencies. The commenter stated that construction plan review for RHCFs not located with and operated by the Department of Health has resided with the AHJ since 2005, and requested clarification as to the Department’s current plan review responsibilities. The commenter expressed that, in his opinion, the Department should retain sole plan review agency for RHCFs licensed pursuant to N.J.A.C. 5:27A in keeping with the statute, N.J.S.A. 30:11A-9.

RESPONSE: Because an RHCF licensed by the Department provides only personal care services, for example, assistance with dressing, hygiene, bathing, providing meals and transportation to the residents, and so forth, reviews by the Department’s Health Care Plan Unit (HCPU) are not necessary as the building’s singular purpose is to provide a home-like residential setting. No rooms within these facilities exist in which to conduct medical procedures, exams, and the like. Currently, the Department reviews plans for new RHCFs or proposed renovations to existing RHCFs in order to determine compliance with the space requirements, in accordance

with the Standards for Licensure of Residential Health Care Facilities; the plans are thereafter referred to the local enforcing agency for permitting. The Department maintains that plan submittal to local enforcing agencies would be acceptable, as they are competent to perform such reviews.

7. COMMENT: The commenter requested clarification on the “space requirements” delineated at N.J.A.C. 5:27A-3 or 3A and inquired if this “exclude[s] provisions of N.J.A.C. 5:27A-3 and 3A such as bathroom facilities, laundry equipment, sounding devices, tear-proof mattress and box spring covers, fire extinguishers, bedside lighting, and more?” The commenter further stated that it is not clear which agency will be responsible in ensuring RHCFs are compliant with said space requirements, and recommended a review of N.J.A.C. 5:23-2.18(g) if the proposed amendments are adopted. Confusion was expressed with regards to whether more restrictive provisions will govern if the proposed amendments come into conflict with existing code. The commenter inquired if RHCFs in accordance with the FGI’s 2018 Guidelines for Design and Construction Residential Health, Care, and Support Facilities would be compelled to comply with the space requirements discussed above; or, if the proposed amendments are adopted, if variations and waivers will be required to be submitted to the Department in accordance with N.J.A.C. 5:27A-3.1

RESPONSE: The space requirements delineated at N.J.A.C. 5:27A-3 or 3A do not exclude the provisions listed at N.J.A.C. 5:27A-3 or 3A. The owner would still be required to provide all the services listed at N.J.A.C. 5:27A-6.1 and maintain the building’s physical plant and life safety components. The Bureau is and will remain responsible for ensuring that facilities continue to conform to N.J.A.C. 5:27A-3 and 3A after construction or renovation is completed.

8. COMMENT: “[I]f the Department’s intent is to transfer the responsibility of these RHCF items to local enforcing agencies; the responsibilities being transferred need to be clearly understood by the local enforcing agencies prior to transfer; the LEAs should be provided, if needed, with training; there should be a transition phase or operative date as to when LEAs take on these responsibilities, a UCC Bulletin (similar to UCC Bulletin 79-6) should be issued, and more.”

RESPONSE: The Department thanks the commenter for his recommendations, but believes that local enforcing agency officials are competent to assess whether proposed buildings or renovations comply with the standards delineated at N.J.A.C. 5:27A-3 without additional training. The Department will consider issuance of a Bulletin on the matter.

Federal Standards Statement

No Federal standards analysis is required for the amendments because the amendments 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:

TEXT