COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

Alternative Materials

Proposed Amendments: N.J.A.C. 5:23-2.8, 3.7, 3.8, 3.8A

Proposed Repeal: N.J.A.C. 5:23-3.8

Proposed Recodification: N.J.A.C. 5:23-3.8A

Authorized by: Susan Bass Levin, Commissioner, Department of Community Affairs

Authority: N.J.S.A. 52:27D-124

Proposal Number: PRN 2003-

Calendar: Exempt due to 60-day public comment period

Submit written comments by , 2003 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
Post Office Box 802
Trenton, New Jersey 08625-0802
Fax Number: (609) 633-6729
E-mail: mticktin@dca.state.nj.us

_____

SUSAN BASS LEVIN,
COMMISSIONER

The agency proposal follows:

Summary

The following amendments are being proposed in an effort to update the Uniform Construction Code by deleting provisions that have become unnecessary or obsolete. A section-by-section summary of the proposal follows:

1. Language that was previously codified at N.J.A.C. 5:23-3.8(d), specifying that the Department has exclusive authority to approve systems for indirect apportionment of heating costs in multiple dwellings, has been moved to a more appropriate location at **N.J.A.C. 5:23-2.8(b)**.

2. The title of **N.J.A.C. 5:23-3.7** has been changed to "Municipal approvals of alternative materials, equipment, or methods of construction." This title is more descriptive and more accurate.

3. At **N.J.A.C. 5:23-3.7(a)** existing language has been replaced in order to provide clear standards for the approval of alternative materials, equipment or methods of construction that are not specifically covered by the code, but that can be shown to be acceptable for a specific application or use. This amendment recognizes that field evaluation labels and reports, letters issued by nationally recognized testing laboratories, or reports of engineering findings issued by nationally recognized evaluation service programs should be accepted as proof that a specific material, equipment, or method is safe and suitable.

4. At **N.J.A.C. 5:23-3.8**, Subsections (a), (b), and (c) have been deleted because these provisions have never been invoked.

5. **N.J.A.C. 5:23-3.8A** has been recodified as N.J.A.C. 5:23-3.8.

Social Impact

The proposed amendments would enhance the effectiveness of the Uniform Construction Code (UCC) because proving guidance of the approval of alternative materials would enhance the uniformity of enforcement of the UCC. Also, deleting provisions that are unnecessary or obsolete would result in a clearer, more effective UCC.

Economic Impact

The Department does not anticipate that the proposed amendments would have any positive or negative economic impact.

Federal Standards Statement

No Federal Standards analysis is required because the proposed amendments are not being proposed pursuant to Federal law or 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.

Jobs Impact

The Department does not anticipate that any jobs would be lost or created as a consequence of this proposal.

Agriculture Industry Impact

The Department does not anticipate that the proposed amendments would have any impact on the agricultural industry.

Regulatory Flexibility Statement

The proposed amendments would not impact "small businesses" as defined by the Regulatory Flexibility Act in N.J.S.A. 52:14B-16 et seq. The proposal does not include new requirements for professional services or impose any record keeping, reporting, or compliance burdens on small businesses.

Smart Growth Impact

Due to the subject matter of this proposal, the Department does not expect that it would have any impact upon wither the achievement of smart growth or the implementation of the State Development or Redevelopment Plan.

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

5:23-2.8 Installation of equipment

(a) When the installation, extension or alteration of mechanical equipment, refrigeration, air conditioning or ventilating apparatus, plumbing, gas piping, electric wiring, heating system or other equipment is specifically controlled by the provisions of this chapter, it shall be unlawful to use such equipment until a certificate of occupancy or certificate of approval, as the case may be, has been issued therefor by the construction official having jurisdiction. Use of elevator devices shall be subject to N.J.A.C. 5:23-12.9.

(b) The Department shall have exclusive authority to approve systems for indirect apportionment of heating costs in multiple dwellings.

5:23-3.7 Municipal approvals [of nonconforming materials] **of alternative materials, equipment, or methods of construction**

(a) Approvals: [Except as otherwise provided in N.J.A.C. 5:23-3.8, the appropriate subcode official may approve the use of fixtures, appurtenance, materials and methods of a type not conforming with the requirements of, nor expressly prohibited by, the regulations after determination that such fixture, appurtenance, material or method is of such design or quality, or both, as to appear to be suitable and safe for the use for which it is intended. A record of such approvals shall be maintained and shall be available to the public.

1. Any person desiring to install or use a fixture, appurtenance, material or method of a type not conforming with the requirements of, nor expressly prohibited

by, the regulations shall, prior to such installation or use, submit to the appropriate subcode official such proof as may be required to determine whether such fixture, appurtenance, material or method is of such design or quality, or both, as to appear to be suitable and safe for the use for which it is intended.]

Alternative materials, equipment, or methods of construction shall be approved by the appropriate subcode official provided the proposed design is satisfactory and that the materials, equipment, or methods of construction are suitable for the intended use and are at least the equivalent in quality, strength, effectiveness, fire resistance, durability, and safety of those conforming with the requirements of the regulations.

1. A field evaluation label and report or letter issued by a nationally recognized testing laboratory verifying that the specific material, equipment, or method of construction meets the identified standards or has been tested and found to be suitable for the intended use, shall be accepted by the appropriate subcode official as meeting the requirements of (a) above.

2. Reports of engineering findings issued by nationally recognized evaluation service programs, such as, but not limited to, the Building Officials and Code Administrators (BOCA), the International Conference of Building Officials (ICBO), the Southern Building Code Congress International (SBCCI), the International Code Council (ICC), and the National Evaluation Service, Inc., shall be accepted by the appropriate subcode official as meeting the requirements of (a) above. The materials, equipment, or assembly shall be installed in accordance with the conditions specified in the report.

(b) - (c) (No change in text.)

[5:23-3.8 Departmental approval of nonconforming materials

(a) Approval: Whenever the commissioner shall approve any fixture, appurtenance, material or method, such shall be binding and accepted in each municipality.

(b) Notice: Notice of intention to approve any such fixture, appurtenance, material or method shall be published in the New Jersey Register at least 45 calendar days prior to its final approval. Thereafter, notice of final approval, stating operative date, shall be published in the New Jersey Register.

(c) Prospective effect: Any approval issued pursuant to this section shall be prospective in nature and shall not alter the ruling of a subcode official already rendered in a specific instance relating to a specific permit or structure.

(d) The Department shall have the exclusive authority to approve systems for indirect apportionment of heating costs in multiple dwellings.]

Recodify 3.8A as 3.8 (No change in text.)