

**COMMUNITY AFFAIRS**

**DIVISION OF CODES AND STANDARDS**

**Uniform Construction Code**

**Adopted Amendment: N.J.A.C. 5:23-1.4, 2.7, 2.14, and 2.17A**

Proposed: August 7, 2017 at 49 N.J.R. 2327 (a)

Adopted: \_\_\_\_\_, 2018, by Charles A. Richman, Commissioner,  
Department of Community Affairs.

Filed: \_\_\_\_\_, 2018 as R.2018 d. \_\_\_\_\_, **with technical changes and**

**Agency-initiated changes** not requiring additional public notice and comment (see  
N.J.A.C. 1:30-6.3). Text proposed at N.J.A.C. 5:23-2.7(c)3v and N.J.A.C. 5:23-  
2.7(c)5vii is not adopted due to an intervening rule adoption published on January 16,  
2018.

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

Effective Date:

Expiration Date: March 25, 2022

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**Charles A. Richman**  
**Commissioner**

## **Summary of Public Hearing**

The Department held a public hearing on November 29, 2017 at the Department of Community Affairs, 101 South Board Street, Trenton, New Jersey. Charles A. Richman, Commissioner of the Department of Community Affairs, was the hearing officer. The purpose of this hearing was to seek public comment; no determinations needing recommendation from the hearing officer were intended to be found as a result of the hearing. Of the 49 attendees, 13 presented testimony. All points raised in the testimony are reflected in the summary of written comments below. A copy of the record of the public hearing is available for review by contacting:

Department of Community Affairs

Office of the Commissioner

Attention: Administrative Practice Officer

101 South Broad Street

Post Office Box 800

Trenton, New Jersey 08625

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

Comments were received from: Ronald Barbarulo, President, New Jersey Plumbing Inspectors Association (NJPIA), and Chairman, New Jersey Codes Coalition; Michael F. Cerra, Assistant Executive Director and Director, Government Affairs, New Jersey League of Municipalities; Eric DeGesero, Executive Director, Independent Electrical Contractors (IEC); Ronald J. Ferrari, Building Subcode Official, Township of Parsippany – Troy Hills; John Fiedler, Construction Official, Township of Hillsborough; Meghan M. Hunscher, President, New Jersey Association of Planning and Zoning Administrators (NJAPZA); Pat Intindola, Construction Official, Township

of Nutley; Jeffrey Kolakowski, Vice President of Government Affairs, New Jersey Builders Association (NJBA); Robert LaCosta, Construction Official, Township of Scotch Plains; Dave Larkin, Building Subcode Official and Fire Inspector, Township of Robbinsville; Charles Lasky, Construction Official, Borough of Seaside Heights; The Honorable Colleen Mahr, Mayor, Borough of Fanwood; Mitchell Malec, a retired former employee of the Department of Community Affairs; Pat Naticchione, Construction Official and Zoning Official, Township of Egg Harbor, and President, New Jersey Building Officials Association, Inc. (NJBOA); Melissa Nelson, Technical Assistant to the Construction Official, Borough of Seaside Heights; Dan O’Gorman; Michael G. O’Hagan, Construction Official, City of Absecon; Kenneth D. Roberts, Zoning Official, Housing Inspector, Code Enforcement, Borough of Seaside Heights; Kenneth Rogers, Construction Official, Township of Bedminster; Lawrence Scorzelli, Fire Subcode Official and Building Inspector, Borough of Ramsey; Robert A. Shoremount, Strandberg Consulting Group; Nicolina Tecuapetla, Code Enforcement Officer, Borough of Seaside Heights; The Honorable Dr. Anthony E. Vaz, Mayor, Borough of Seaside Heights; Christopher Vaz, Borough Administrator, Borough of Seaside Heights; Christopher Weniger, Chief Fire Marshal, Township of Hillsborough.

1. COMMENT: Although one commenter agreed with the Department’s statement in the summary that ordinary maintenance is construction work that does not require a construction permit and, therefore, is not inspected, the commenter expressed concern with the Department’s characterization of permits and inspections as “tools to ensure compliance.” The commenter stated that the proposal is inherently misguided if the Department believes that the uninspected construction work will comply with the Uniform Construction Code (UCC). The commenter added that there are municipalities that track the failure rates of UCC inspections; in some

municipalities, the failure rate is as high as 20%. If inspected work fails at such a rate, the commenter wondered about the lack of code compliance without inspections.

RESPONSE: The items that the Department is proposing for inclusion as ordinary maintenance are limited to items where the consequences of not complying with the code have little or no impact on life safety. Similarly, the items that have been included in the definition of minor work are items where the full permitting and inspection process are not needed to ensure compliance with the Uniform Construction Code (UCC). In both cases, the changes are proposed so that the level of effort on the part of the applicant and enforcing agency are commensurate with the value of these services to the public.

2. COMMENT: One commenter observed that minor work allows the work to be initiated and to proceed and balances that activity with an inspection by code enforcement officials so that safety issues or other deficiencies may be identified. The commenter also observed that maintenance is defined as “the process of maintaining or preserving someone or something, or the state of being maintained;” the commenter added that this definition does not contemplate replacement.

RESPONSE: The “state of being maintained” in some cases involves replacement. The Department believes that the items that are allowed to be replaced are reasonable and fit well within the concept of ordinary maintenance.

3. COMMENT: One commenter expressed disappointment that, although the areas addressed by the proposal have been misunderstood by many and enforcement has not been uniform, these proposed amendments have the effect of reducing oversight and, consequently, will provide less

protection for consumers. The commenter observed that clarification is needed to ensure uniform enforcement and protection for consumers.

RESPONSE: The Uniform Construction Code (UCC) is first and foremost a building code and, while there are often some ancillary consumer protection benefits, consumer protection is not the primary aim of the UCC. The Department crafted the rule from the perspective of what was reasonable from a code enforcement perspective, recognizing that legislation such the New Jersey Contractor Registration Act (N.J.S.A. 56:8-136 et seq.) requires all full and part-time contractors who engage in “home improvements” to annually register with the New Jersey Division of Consumer Affairs as a Home Improvement Contractor (HIC). Consumer protection is under the jurisdiction and authority of the Division of Consumer Affairs in the Department of Law and Public Safety.

4. COMMENT: One commenter expressed concern that the proposed amendments to minor work would create issues for public and firefighter safety. Specifically, the commenter thought that the rule proposal would allow basements and attics to be finished without permits or inspections. The commenter expressed concern that without proper code enforcement this kind of work could create life safety issues when the finished basement or attic were used as a sleeping room. The commenter observed that, when unregulated, these spaces often have a single means of escape from a fire. In addition, the commenter asserted that many basements and attics have interior stairs that terminate in or near the kitchen area on the first floor of a home. The commenter asserted that kitchen fires are the most common type of residential fires and concluded that a fire that occurs in a kitchen would block the only means of egress from the basement. In addition, the commenter believed that the lack of inspections could result in the improper placement or lack of installation of smoke

and carbon monoxide alarms, improper or missing fire blocking, and insufficient combustion air for fuel burning appliances. Without inspections, the number of illegal and unsafe conditions in these spaces could increase.

RESPONSE: Upon adoption, the Department has removed a reference to the installation of partitions under minor work which retains the status quo. With this change upon adoption, it is clear that the reconfiguration of space is not ordinary maintenance. The Department is puzzled about the commenter's concern about stairs from a basement terminating in the kitchen because there is no restriction in the code that would restrict stairs from terminating in a kitchen, regardless of how the work is categorized.

5. COMMENT: One commenter commended the Department for its work on the proposed amendments at N.J.A.C. 5:23-1.4, 2.7, 2.14, and 2.17A. The commenter recommended that these proposed amendments be adopted without delay, with the exception of the change proposed at N.J.A.C. 5:23-2.7 (c)2vii, which would extend the designation of the replacement of valves, including bath and shower valves, from its current limitation to one- or two-family dwellings to any building.

RESPONSE: The Department is allowing the replacement of shower valves in all use groups because the ability of shower valves, regardless of type, to protect bathers is dependent on the owner of the facility ensuring that the valves and water heater settings are properly adjusted. Requiring a permit for the replacement of the valve will not, in and of itself, protect the public from scalding. Protection of occupants from scalding is the responsibility of the building owner and inspections and permits ensure that such protection is provided only at the time of the inspection. Any adjustment to the valve or the water heater after the inspection can result in a

condition that does not comply with the code. Because the owner already has responsibility, without oversight, for the continued functioning of the valve, it is reasonable to rely on the owner to ensure compliance with the code at the time that the valve is replaced.

6. COMMENT: One commenter expressed opposition to the proposal by the Department of Community Affairs, to expand the "ordinary maintenance" provisions of the New Jersey Uniform Construction Code, N.J.A.C. 5:23-2.7. The commenter expressed concern that the reduction in oversight would result in home remodeling projects that would be undertaken and completed without proper design, construction permits, or code compliance, which would result in an unnecessary reduction of consumer protection and public safety.

RESPONSE: The Department has reviewed the list of ordinary maintenance and minor work with an eye toward ensuring that the permitting and inspection process is commensurate with the risk to the public. The Department is amending the adoption to require that the installation of decks be removed from minor work and that the proposed language that describes the installation of partitions in minor work also be removed. Otherwise, the Department is satisfied that the items listed as ordinary maintenance and minor work are appropriate and are not in and of themselves hazardous. As has been previously stated, the Uniform Construction Code may provide benefits to consumers, but its primary purpose is not consumer protection, which is under the authority of the Division of Consumer Affairs in the Department of Law and Public Safety.

7. COMMENT: One commenter agreed that certain regulations may need to be re-examined and possibly relaxed and asked that the Department partner with the professional code enforcement

associations to make determinations about the most effective amendments to make that would also continue to ensure the protection of the health, safety, and welfare of New Jersey's residents.

RESPONSE: Throughout the proposal process, the Department solicited, received, and responded to feedback from code officials, design professionals and the public on these proposed amendments. In response to several requests, the Department held a public hearing on this rule proposal. After hearing the opinions of these varied affected parties, the Department believes that the proposed regulations, with the exception of the installation of decks and partitions under minor work, are reasonable and provide a balance between public safety and the effort necessary on the part of the public and the code enforcement community for the execution of a reasonable permit and inspection process.

8. COMMENT: One commenter expressed support for the proposed amendments, including the amendment regarding the amendment at N.J.A.C. 5:23-1.4 concerning prior approvals.

RESPONSE: The Department thanks the commenter for the expression of support. The Department believes that the elimination of the installation of decks in the proposal will make the fact that work may be considered minor work, even without the requirement that compliance with prior approvals be demonstrated before a permit may be issued, less troublesome.

9. COMMENT: Several commenters expressed support for a public hearing on these proposed amendments.

RESPONSE: The Department appreciates the expression of support; the public hearing was held on November 29, 2017.



10. COMMENT: One commenter observed that the summary of PRN 2017-171 states that ordinary maintenance does not require a construction permit and is not inspected. The summary also states that construction work must comply with the Uniform Construction Code (UCC). The commenter expressed an opinion that it is unreasonable to believe that work that is not inspected will comply with the UCC.

RESPONSE: The Department continues to believe that code compliance and permit requirements are two separate issues. In fact, the Department continues to believe that designating some work as ordinary maintenance (with no permit or inspection requirements), and other work as minor work (through which work may begin following notification to the code enforcement office, a permit may be obtained after work has begun, and inspections are conducted after work has been completed) is reasonable and serves the public well.

11. COMMENT: One commenter expressed opposition to the proposed changes by the Department of Community Affairs to N.J.A.C. 5:23-2.7, ordinary maintenance. The commenter believed that the amendments would allow contractors to construct without any code compliance. The commenter expressed concern that the residents would be prey to unscrupulous contractors. The commenter pointed out that municipalities are inundated with potential house buyers who submit Open Public Records Act (OPRA) requests for records of construction improvements to the houses they are considering buying. These requests can result in the municipality learning that work was done without permits, often haphazardly. The commenter added that the inspections that are eliminated by this rule proposal should be restored.

RESPONSE: The Uniform Construction Code (UCC) is first and foremost a building code and, while there are often some ancillary consumer protection benefits, they are not the primary aim of

the UCC. The Department crafted this rule from the perspective of what was a reasonable level of code enforcement. The Department believes that no matter where the line is drawn with respect to what needs a permit, there will be people who will perform work without a permit. Nonetheless, compliance with the UCC is required and, when noncompliant work is found, compliance is enforced. The Department recognizes that, as mentioned in a previous response, consumer protection legislation such as the New Jersey Contractor Registration Act, and other trade licensing requirements, including the New Jersey Master Plumbing License and the Master Heating, Ventilation, Air-conditioning, and Refrigeration (HVACR) contractor license, complement the UCC to ensure construction projects are well-performed and the consumer is protected.

12. COMMENT: Several commenters expressed opposition to the removal of “prior approval” from the definition of “minor work.” They observed that the mechanism currently in place—which prohibits issuing a construction permit until all prior approvals have been met--provides a clear benefit to the permit applicant. In fact, this practice makes the local land use regulation process work. All the various state and municipal regulations and ordinances that have to do with land development should be integrated; the code enforcement official’s role needs to be preserved.

RESPONSE: The Department has listened to the commenters who have observed that allowing decks to be installed or completely replaced as minor work could result in decks that not only fail to comply with the Uniform Construction Code, but that also contravene local land use ordinances. The Department has been persuaded that, in this instance, the prior approval serves a beneficial purpose for the applicant and the code enforcement community alike. Therefore, the Department will retain the status quo and will not adopt designating the construction of decks as minor work. With the elimination of this provision, the Department believes that the impact on local land use

approvals is sufficiently mitigated. The Department also recognizes that registered Home Improvement Contractors (HICs), and other related licensed professionals, should have sufficient knowledge about the prior approval process to ensure consumer protection with regard to the other minor work provisions.

13. COMMENT: One commenter was largely supportive of the proposal and commended the Department for its efforts to reduce unnecessary regulatory burdens, but expressed concerns that some of the amendments could reduce standardization, eliminate uniformity, weaken homeowner protections, increase confusion, time delays, and expenses, and could be abused by unscrupulous and/or unregistered home improvement contractors.

RESPONSE: The Department believes that the rule is sufficiently clear and will be uniformly enforced. The commenter has not explained how adding work that can be done without permits and started prior to obtaining a permit will cause delays. Finally, as stated above, the UCC is first and foremost a building code and, while there are often some ancillary consumer protection benefits, they are not the primary aim of the UCC. The Department crafted the rule from the perspective of what constitutes a reasonable level of code enforcement.

14. COMMENT: One commenter expressed support for several of the amendments, including the addition of “smoke alarm” to the other fire alerting devices at N.J.A.C. 5:23-2.7(c)4i, allowing notice of a minor work project to be submitted or written notice submitted electronically or in person at N.J.A.C. 5:23-2.17A(b)1, requiring the permit fee to be paid prior to issuing the permit

at N.J.A.C. 5:23-2.17A(b)2, and specifying that fishing electrical wire would be designated as minor work at N.J.A.C. 5:23-2.17A(c)4.

RESPONSE: The Department appreciates the expression of support.

15. COMMENT: One commenter expressed support for the amendments related to prior approvals (N.J.A.C. 5:23-1.4), ordinary plumbing maintenance, ordinary electrical maintenance, ordinary fire maintenance, and ordinary heating, ventilation, and air conditioning maintenance. In particular, the commenter expressed support for: eliminating prior approvals from the definition of “minor work” (N.J.A.C.5:23-1.4); eliminating the installation of a door or window from ordinary maintenance (N.J.A.C. 5:23-2.7(c)1v); allowing the repair, replacement, or installation of non-structural elements, such as cabinets (N.J.A.C. 5:23-2.7(c)1viii); adding the repair of flooring to ordinary maintenance (N.J.A.C. 5:23-2.7(c)1ix); adding the replacement of roofing on one- or two-family dwellings to ordinary maintenance (N.J.A.C. 5:23-2.7(c)1x); adding the replacement of siding on one- or two-family dwellings to ordinary maintenance (N.J.A.C. 5:23-2.7(c)1xi and xii); adding the repair of screens to ordinary maintenance (N.J.A.C. 5:23-2.7(c)1xiv); adding the repair, replacement, or installation of gutters and leaders to ordinary maintenance (N.J.A.C. 5:23-2.7(c)1xvi); specifying that notice for a minor work project may be oral or written and presented either in person or electronically (N.J.A.C. 5:23-2.14); allowing a deck that is not more than 30” above grade to be constructed or totally replaced as minor work (N.J.A.C. 5:23-2.17A(c)1i); in a one- or two-family dwelling, designating the repair, replacement, or installation of a non-structural partition without any reconfiguration of space as minor work (N.J.A.C. 5:23-2.17A(c)1iii); and identifying as minor work the installation of a radon mitigation system in a one- or two-family dwelling, as long as no new electrical work is required (N.J.A.C. 5:23-2.17A(c)5).

RESPONSE: The Department appreciates the expression of support.

16. COMMENT: One commenter expressed strong concern that by changing the definition of minor work and eliminating prior approvals, the Stormwater Management Act would be subverted. This change would create conditions for vastly increased impervious coverage, which would result in higher velocity flows into wastewater and stormwater management systems. This unanticipated additional load may well overtax treatment systems and result in negatively affected water conditions statewide.

RESPONSE: Though the Department does not believe that decks are considered impervious cover, it is eliminating the construction of decks as minor work upon adoption. The Department is not aware of any other provision in the proposal, with the exception of the increase in shed size that could be construed as increasing impervious cover. Since sheds of a certain size have always been exempt from a permit, municipalities should already have a mechanism in place for ensuring that sheds that do not require a permit meet stormwater management criteria. The Department believes that activities that are outside the Uniform Construction Code (UCC) are a far more likely source of increased impervious cover, such as the installation and expansion of walkways, patios, and driveways. With regard to minor work projects, the code enforcement office is no longer the means of enforcing prior approvals and stormwater management requirements.

17. COMMENT: One commenter stated that the proposed amendment at N.J.A.C 5:23-1.4 (definitions, minor work) would allow work that at this time must be fully reviewed for compliance and safety to proceed without a review. The commenter believes that this change in prior approvals conflicts with the clear intent of the Uniform Construction Code (UCC), which was developed

through a process that included the active input of the local professionals who administer and implement these regulations, and that has been intended to protect the health, safety and welfare of residents. The commenter observed that the fact that these professionals view this proposal as a dilution of public safety standards underscores that the proposal conflicts with the underlying purpose of the UCC and is contrary to the public interest.

RESPONSE: The purpose of the Uniform Construction Code (UCC) is to provide a reasonable set of standards together with a reasonable system to implement and enforce those standards, so that building construction in New Jersey results in safe and affordable structures. Thus, there is a balance that must be forged between the strictness of the system and the efficiency of that system. The Department believes that it has struck that balance and that the items included in the proposal have the correct level of oversight in relation to the protection of the public.

18. COMMENT: One commenter, after providing the statutory and regulatory underpinning for “minor work,” commented that the Department’s deletion of ‘no prior approvals and’ from N.J.A.C. 5:23-1.4 has no impact on required prior approvals and the issuance of a construction permit. This commenter stated that deleting “prior approval” from the definition of “minor work” affects only minor work that requires a prior approval.

RESPONSE: The Department agrees the work must comply with State or local requirements, and, as stated in the response to the previous comment, agrees that, with regard to minor work projects, the code enforcement office is no longer the means of enforcing prior approvals and other non-Uniform Construction Code (UCC) regulatory requirements.

19. COMMENT: One commenter took exception to a summary in the Code Advisory Board (CAB) minutes of February 10, 2017. The commenter included several illustrations of difficulties that a building owner might experience if a minor work project were undertaken and that project contravened prior approvals, such as zoning requirements. The commenter asked whether it would be better to retain ‘no prior approvals and’ in N.J.A.C. 5:23-1.4, to avoid situations where minor work triggers a prior approval.

RESPONSE: While the Department agrees that the construction of decks may have implications related to zoning lot coverage and set-backs, statements in Code Advisory Board (CAB) minutes are outside the scope of this proposal. After reflecting on substantive comments received on the proposed change that would have allowed decks to be constructed as minor work, the Department is eliminating the construction of decks as minor work upon adoption and is thus retaining the status quo.

20. COMMENT: One commenter recommended that the Department review the Uniform Construction Code (UCC) definition of ‘small job,’ because some minor work may also be considered a small job. The commenter added that most UCC local enforcing agencies and their offices would adequately question someone proposing ‘minor work,’ if given the opportunity and regardless of whether the UCC allows work to be started before a permit is issued, and would advise the individual of the need for prior approvals, if applicable. The commenter believes that the Department should recognize that even construction not requiring a construction permit, such as, but not limited to, fences under 6 feet in height or sheds less than 100 square feet in area, may be subject to zoning or other prior approvals. The commenter asked the Department to explain its statement that ‘this change will mean that, moving forward, the permit applicant will be

responsible for ensuring that the minor work project being undertaken meets State and local requirements that are outside the jurisdiction of the UCC.’ The commenter believed that the applicant has always had these responsibilities. The commenter added that agencies (UCC, Zoning, Planning, Coastal, Others) that are aware of required approvals outside their jurisdiction and do not advise an applicant of these required approvals and the appropriate enforcing agency for enforcement, would be a disservice to the industry.

RESPONSE: Though the UCC defines “small job” as construction work requiring no prior approvals, the total cost of which is under \$5,000, this term is not used in the UCC; its primary application is in the municipal procedures manual, which is not part of this rule. The Department will delete this term in the future to avoid the confusion that appears to have arisen, at least for one commenter. The commenter is correct that the applicant has always been responsible for obtaining whatever prior approvals were needed prior to commencing with a project. With the change to the restrictions on minor work, the applicant will no longer be able to rely on the construction official as a means of ensuring that all prior approvals have been met prior to starting work. Municipalities may choose to create a way to alert residents of prior approvals; this could be done on a municipality’s website. The Department agrees with the commenter that this is not a new issue, since historically there have been cases where work is undertaken that does not require a construction permit at all, but is still required to comply with local ordinances.

21. COMMENT: One commenter expressed serious reservations about the proposed rule change involving the definition of “minor work.” While the commenter endorsed the concept of streamlining the municipal permit application process and eliminating red tape for the property owner who wants to make improvements, the commenter believed that removing the reference to



prior approvals and allowing minor work to occur for five days prior to the filing an application would be a recipe for greater, not fewer, burdens on the public. The commenter added that most municipalities in New Jersey require zoning permits, whereby a proposed change to a property must be checked to ensure that it is a permitted use and meets the development standards in the zoning ordinance before it may proceed. Under the proposed rule change, construction could be initiated on a myriad of structures and alterations that might be illegal under the local zoning ordinance, including decks, porches, home offices, sheds, and residential conversions. The commenter pointed out that in both 2015 and 2016, construction authorized statewide by building permits for alterations exceeded \$7.5 million, so the potential for violations could be significant. If a violation were to be found and subject to enforcement, the property owner could face a court summons, removal of the violation, and/or an appearance before the zoning board of adjustment for a variance. Any abatement would involve the expenditure of additional time and money on the part of the property owner. The commenter added that, over time, violations not enforced have a negative impact on a community's quality of life, which is a cost the general population ends up paying.

RESPONSE: As has been previously stated, upon adoption, the Department is eliminating the amendment that would have allowed the construction of decks as minor work. The Department agrees that the construction of decks might have had impacts on zoning lot coverage, and setbacks. With the elimination of this provision, the Department believes that the impact on local land use approvals is sufficiently mitigated. Additionally, as has been previously stated, each municipality may identify a means of informing its residents of local requirements that had functioned as prior approvals to the issuing of a construction permit for a project classified as minor work. In addition, some of the examples offered by the commenter, including alterations to

create a home office and converting a residence into another use or occupancy, involve work that is not minor work and that requires plan review, plan release, a complete permit application, and inspections.

22. COMMENT: One commenter stated that the original concept of the Uniform Construction Code (UCC) was for uniformity and standardization within the State of New Jersey for compliance with all aspects of construction work performed and for the protection of homeowners. The commenter believed that the UCC established the local enforcing agency to be the *de facto* clearing house for all compliance, not only with the codes, but prior approvals. While enforcing agencies are licensed by the Department, code officials are municipal employees and, if instructed by their employers, must continue to be the *de facto* check for compliance with required prior approvals.

RESPONSE: The Department disagrees. The local enforcing agency has never been the *de facto* clearing house for *all* prior approvals when a construction project has been undertaken. The Department has traditionally allowed work to be undertaken as ordinary maintenance or minor work and some of these projects may have required a prior approval. For example, the installation of fences, sheds, patios, and even window replacements could all be impacted by prior approvals. The concept of the UCC has been to enforce the prior approvals when that can be done within the framework of the permitting/inspection process; it was never the intent of the code to modify the permitting/inspection process in order to capture every conceivable prior approval. Municipalities may develop a system for enforcing their prior approvals, but in the case of minor work, that system cannot be used to delay the start of construction.

23. COMMENT: One commenter stated that because permit fees pay the enforcing agencies' expenses, including salaries, if this proposal is approved, a reduction in fees should result due to the reduced services. This commenter thought that municipalities could then create by ordinance a new "prior approval compliance" position and charge additional fees for that service. If so, this could add expense and could also add time delays because there is no time limit established by state statute for "prior approval compliance" as there is for zoning and plan review. Ostensibly, this proposal, while reducing UCC requirements, could result in increased regulation by municipalities or simply a net zero transfer of UCC regulations to municipal regulations. The commenter expressed concern that at some point, the Department may remove the enforcing agencies as the de facto check on "prior approvals" from all permit applications in the future.

RESPONSE: The Department is unsure if the process described by the commenter will occur and cannot comment on this speculative scenario. Additionally, as noted above, checking for many, but not all, prior approvals has traditionally been accomplished within the permitting/inspection process. Where the UCC does not provide a mechanism to check for a prior approval, the municipality will have to decide how to enforce those provisions, which are required by municipal action. This is not a new concept since there has always been some work in the UCC that could be done without permits and that might have required a prior approval.

24. COMMENT: One commenter asserted that the amendments at N.J.A.C. 5:23-2.7 propose an expansion of certain thresholds for when construction permits are required for home remodeling. The commenter expressed concern that partitions inside dwellings would be allowed to be repaired or replaced, with no assurance they were put back in the same location and arrangement. This commenter also expressed concern that the rule proposal would allow the replacement of interior

finish, such as drywall, up to 25% of the entire house. The commenter expressed concern that without a construction permit, plans, or inspections, there would be no construction controls and that, as a result, "house flippers" would be able to alter and renovate homes unregulated, uninspected, and with unlicensed contractors. This would mean that there would no longer be any limits for replacing piping that might have been "leaking." New electrical wiring would be allowed to be "fished" behind new drywall or installed over walls that could lack required fire blocking. The roof on the house could be replaced as an unregulated project, and then sold to unknowing homebuyers. The commenter expressed concern that re-categorizing these projects as minor work could open the door for exploitation in each of these areas.

RESPONSE: The Department disagrees. The rules do not allow for the rearrangement of partitions without a permit. The Uniform Construction Code has always allowed a certain amount of renovation to occur to a building without oversight. Code officials will continue to enforce the code when the applicant exceeds the work that may be done without a permit, just as they have always done. While the proposal expands the work that may be done without a permit, the Department believes the nature of this work makes it acceptable to eliminate the need for permits, regardless of whether that work is performed by homeowner, a contractor, or a house flipper.

25. COMMENT: One commenter expressed support for the following 11 amendments to ordinary maintenance (N.J.A.C. 5:23-2.7): (1) At N.J.A.C. 5:23-2.7(c)lv, removing "installation" for windows; (2) at N.J.A.C. 5:23-2.7(c)lviii, adding "installation" to repair or replacement of exterior trim, decoration, or moldings; (3) at N.J.A.C. 5:23-2.7(c)lix, adding "repair" of flooring; (4) at N.J.A.C. 5:23-2.7(c)lxiv, adding "repair" of screens; (5) at N.J.A.C. 5:23-2.7(c)lxvi, adding "repair" and "installation" of exterior gutters and leaders; (6) at N.J.A.C. 5:23-2.7(c)2xi, allowing

the replacement of domestic dishwashers; (7) at N.J.A.C. 5:23-2.7(c)3i, allowing the replacement of receptacles, switches, or lighting fixtures that do not contain emergency battery packs; (8) at N.J.A.C. 5:23-2.7(c)3vi, allowing the installation of burglar alarms, security systems, or doorbells; (9) at N.J.A.C. 5:23-2.7(c)3vii, allowing the installation of irrigation landscape units under 30 volts; (10) at N.J.A.C. 5:23-2.7(c), adding “smoke alarms” to the fire alert systems being replaced; and (11) at N.J.A.C. 5:23-2.7(c)5vii, allowing the replacement of domestic clothes dryers.

RESPONSE: The Department appreciates the expression of support.

26. COMMENT: One commenter expressed concern about the amendment at N.J.A.C. 5:23-2.7(c)1ii, maintaining wall finishes. The commenter observed that whether the project involved repair due to damage or minor restoration as a result of some other activity, maintenance of wall finishes has been classified as ordinary maintenance. The commenter pointed out that the extent of the work designated as ordinary maintenance, however, has been appropriately limited to a portion, not the entirety, of a room or space. By increasing the threshold from 25% of a room to 25% of the total wall area of a dwelling, entire rooms could be completely re-finished. The commenter expressed concern that new rooms, including in basements or attic areas and spaces, could be created or subdivided where they did not previously exist, and, with all new wall finishes permitted, the resulting conditions would not be evaluated for compliance. The commenter pointed out that the codes often require very specific interior finishes, such as drywall, as a component of a fire-resistance rated assembly, i.e. a load-bearing partitions in large dwellings of Type VA construction. In this case, if the gross area of wall replacement were to fall below the proposed threshold, there would be no construction controls (e.g. inspections) to ensure that the required rating had been maintained.

RESPONSE: The Department does not agree with the commenter's assertion that new rooms and spaces could be created. The proposed amendment does not allow for reconfiguring space, so rooms are not allowed to be subdivided without a permit. In fact, no new walls that did not exist before the project was undertaken may be installed under the ordinary maintenance provisions. It is important to remember that ordinary maintenance does not mean that the project does not need to meet the Uniform Construction Code (UCC). Therefore, in Type VA construction, the replacement drywall must preserve the rating of the wall as required by code. This is the case whether the threshold for a permit and inspection is established at 25% of the room or 25% of the dwelling.

27. COMMENT: Two commenters pointed out a lack of clarity in the proposed amendment at N.J.A.C. 5:23-2.17A(c)1ii, pertaining to interior finishes, with regard to whether ceilings are included when determining "wall area." These commenters observed that the proposal does not reference ceiling finishes, but states, 'interior finishes of less than 25 percent of the wall area.' These commenters recommended that if the Department intended to include ceilings, the rule should state it unambiguously. Alternatively, the rule could be amended to delete "of the wall area." Or, if ceilings were not intended for inclusion, the text could be amended to state, 'excluding ceiling finishes.' One commenter pointed out that one- and two- family homes vary greatly in size. The owner of a 1,000 square foot home would be limited to the replacement of finishes in approximately 250 square feet of their home, whereas the owner of a 20,000 square foot home would be allowed to replace finishes in approximately 5,000 square feet of the home. The commenter asserted that a project of 5,000 square feet should not be considered ordinary maintenance and, in the commenter's opinion, it should not be considered minor work. The

commenter asked that this provision be amended to limit to the total square footage of the finishes that may be replaced and recommended “up to a maximum of 500 square feet of interior finishes” be considered.

RESPONSE: As proposed, the replacement of ceilings would not be included as ordinary maintenance. The Department appreciates being informed that this could prove confusing and will provide guidance in the *Construction Code Communicator* regarding its application. The Department believes that a percentage of the entire wall area of the home accurately reflects that character of the job that should be considered ordinary maintenance. The Department believes that a portion of the total wall area can be replaced, but does not believe that projects that could be considered a reconstruction under the rehabilitation subcode of the UCC should be able to be classified as ordinary maintenance.

28. COMMENT: One commenter observed that the proposed amendment at N.J.A.C. 5:23-2.7(c)1ii, which expands ordinary maintenance to allow the installation, repair, or replacement of interior finishes of less than 25 percent of wall area in a one-or two-family dwelling without a specified time period, provides little control of the work expanding over 25 percent. The same is true for the proposed amendment at N.J.A.C. 5:23-2.7(c)1.xii, regarding the repair or replacement of siding, except this section is applicable to other than one-and two-family dwellings. For example, an applicant could install, repair, or replace 25 percent of the interior finish or siding at four different times for a total replacement of 100 percent. The commenter recommended that the Department either amend the rule to specify the repair and replacement of interior finishes and siding similar to the expansion of roof covering in the proposed amendment to N.J.A.C. 5:23-2.7(c)1x or include a time frame.

RESPONSE: The Department believes that trying to determine when a particular part of a renovation was performed would be difficult to prove-and that this is particularly so for interior work. In addition, all work performed must comply with the UCC regardless of whether a permit is required. The Department does not believe that establishing a time frame would increase code compliance.

29. COMMENT: One commenter observed that there appears to be a need to state that repair and replacement is ‘with like material’ or ‘code compliant material’ in various sections. For example, replacement of fire-rated material with non-rated fire material could occur and, as written, is allowed. Similarly, the commenter thought that this section, as amended, could be read to allow the installation of polypropylene or high-density polyethylene material (as an interior finish) that does not meet the pass-fail criteria of National Fire Protection Association (NFPA) 101/Chapter 10 for products tested in accordance with the test method standard NFPA 286.

RESPONSE: The Department believes that N.J.A.C. 5:23-2.7(b)5, which states that any work that will increase the nonconformity of any existing building shall not be considered ordinary maintenance, adequately covers this. However, the Department also notes that NFPA 101, Chapter 10, is not adopted as part of the Uniform Construction Code in the State of New Jersey.

30. COMMENT: One commenter observed that, the amendment at N.J.A.C. 5:23-2.7(c)1v, which addresses the replacement of any window or door, should include language scoping the replacement of safety glazing. The commenter explained that there are windows in Uniform Construction Code (UCC) buildings that are required to have tempered glazing in hazardous locations and that are now being replaced. The commenter went on to observe that, although there



is typically no permit or inspection, the regulations ought to be clear that any such exemption includes a requirement that windows required to have safety glazing at the time of installation be replaced only with safety glazing.

RESPONSE: The Department believes that N.J.A.C. 5:23-2.7(b)5, which states that any work that will increase the nonconformity of any existing building shall not be considered ordinary maintenance, as well as N.J.A.C. 5:23-2.7(c)1iv, regarding the replacement of glass in any window or door, adequately cover this. The rehabilitation subcode of the UCC, N.J.A.C. 5:23-6, also covers the requirement for safety glazing. The Department does not believe that an additional regulatory statement is warranted.

31. COMMENT: One commenter expressed support for the amendment at N.J.A.C. 5:23-2.7(c)1v, to remove the “installation” of windows or doors within the same opening. The commenter recommended that the replacement of windows and doors connected to any means of egress or emergency escape should not be ordinary maintenance; they should be inspected because they are important to life safety. The commenter stated that this would be in harmony with the regulation at N.J.A.C. 5:23-2.7(b)4 where ‘work affecting fire safety’ is excluded from ordinary maintenance.

RESPONSE: The Department believes that the current language at N.J.A.C. 5:23-2.7(c)1v, which requires the window to have the same clear opening in order to be designated as ordinary maintenance, adequately covers this. This replacement of windows within the same rough opening has been allowed as ordinary maintenance for many years without compromising fire safety and without adversely impacting the public.

32. COMMENT: One commenter stated that, with regard to the amendment at N.J.A.C. 5:23-2.7(c)1vi, the replacement of a partition is different from the replacement of a partition railing or a cabinet. The issue of structural versus non-structural is one that impacts many small projects now – and permits are required. The commenter expressed concern that the lack of construction controls (permits, inspections) would endanger unwitting residents where inexperienced or disreputable contractors circumvent enforcement by representing the replacements as non-structural. This amendment would change the emphasis from required permits and inspections to relying on the code enforcement official intervening if, and only if, the local construction office is able to identify work as non-compliant. The commenter believed that this could prove to be dangerous and unsafe.

RESPONSE: The Department thanks the commenter. Upon review, the Department has found that the amendment made to N.J.A.C. 5:23-2.7(c)1vi, which allowed for the repair or replacement of any nonstructural component, such as a partition, in one- and two-family dwellings, is inconsistent with the charging text at N.J.A.C. 5:23-2.7(b), which states that ordinary maintenance shall not include the cutting away of any wall, partition, or portion thereof. Because of this internal logical inconsistency, the Department is not adopting the amendments to N.J.A.C. 5:23-2.7(c)1vi, and will revert to the original rule text.

33. COMMENT: One commenter expressed concern that the amendment at N.J.A.C. 5:23-2.7(c)1vi, “partitions” could result in partitions that never existed before that would nonetheless be represented as being replaced. The commenter expressed concern that people who make it a habit to over-crowd their rental properties would be likely take advantage of the opportunities that this provision would make available to them. This provision would open the door for dividing

bedrooms into smaller units without the benefit of inspections for emergency escape and fire alarms. A “partition” needs to be defined. Is it a floor to ceiling, non-load bearing wall? Or is it a knee wall similar to a partition railing?

RESPONSE: As stated in response to the previous comment, amendments to N.J.A.C. 5:23-2.7(c)1vi will not be adopted due to an internal logical inconsistency. However, the Department would like to emphasize that the reconfiguration of space requires a permit.

34. COMMENT: One commenter expressed concern that the amendment at N.J.A.C. 5:23-2.7(c)1vi, the elimination of the term “partition railing,” could be confusing and suggested that a more reasonable requirement would be to retain “partition railing.” This would eliminate the problems that could arise from allowing partitions to be repaired or replaced without permits and inspections. If no permit or inspection were required, the commenter asked, how would the enforcing agency ensure that there is no new partition that could compromise egress from a bedroom in a one or two-family dwelling?

RESPONSE: As stated in response above, amendments to N.J.A.C. 5:23-2.7(c)1vi will not be adopted due to an internal logical inconsistency. Thus, the status quo is retained and a permit is required for the installation of a partition that reconfigures a space.

35. COMMENT: One commenter expressed unequivocal support for the amendment at N.J.A.C. 5:23-2.7(c)1vi with regard to partition walls and partitions railings. The commenter added that, for years, he has asked the Department to further explain this section and its application. The commenter also expressed support for the Group-specific amendment, which will eliminate a lot of questions.

RESPONSE: The Department thanks the commenter for the expression of support, however as stated in response to a previous comment, amendments to N.J.A.C. 5:23-2.7(c)1vi will not be adopted due to an internal logical inconsistency.

36. COMMENT: One commenter expressed concern about a lack of clarity in the amended language at N.J.A.C. 5:23-2.17A(c)1iii and expressed concern with the word “installation.” The commenter proposed that, hypothetically, installing a partition where none had currently existed would be a reconfiguration of space. According to the Rehabilitation Subcode of the Uniform Construction Code (UCC), this would be categorized as an “alteration” project. The commenter expressed confusion about that language itself, explaining that “Repair, replacement, or installation with no reconfiguration of any non-structural component such as a partition...” sounds as if the “component” or “partition” itself could not be reconfigured. This would mean that a contractor would not be permitted to change (reconfigure) a partition from 4-inch studs to 6-inch studs, or from 8-foot high to the underside of the floor or deck above, which could be 12 to 15 feet above. The commenter thought that the Department intended to use “reconfiguration” as it is used in the Rehabilitation Subcode and not to initiate a newly permissible level of work that could be undertaken without permits or inspections. The commenter concluded that the underlying purpose of this amendment is to provide commercial building owners with a little relief for “minor work” in their buildings. If so, the commenter regards this as a positive change.

RESPONSE: The Department agrees and, due to an internal logical inconsistency, has eliminated installation of partitions from the list of minor work. The Department agrees that the installation of a partition that did not exist before would result in a reconfiguration of space, and that reconfiguration is an alteration subject to the Rehabilitation Subcode (N.J.A.C. 5:23-6).

37. COMMENT: One commenter stated that the amendment at N.J.A.C. 5:23-2.7(c)1vii, pertaining to the repair, replacement, or installation of non-structural elements, should not categorize cabinets as ordinary maintenance. The commenter added that any exemption should be limited to one-and-two-family dwellings. The commenter explained that, despite that fact that the Department recognizes cabinets as furniture, the commenter disagrees with this categorization because furniture is routinely moved with a homeowner; cabinets are not moved. The commenter expressed concern about structural issues and was also concerned that cabinets could be either inappropriately installed in an egress corridor or element or affixed to a fire barrier; these installations could negate a fire-resistance rating. In a more extreme circumstance, the commenter thought that the work could readily incorporate a sink or other plumbing fixture that an owner could easily allege was merely a ‘replacement.’

RESPONSE: The Uniform Construction Code (UCC) contains no provisions for the loads or attachment methods for cabinets, so it is not clear what the standards could be applied to the installation of cabinets. Therefore, the Department believes it is appropriate to continue treating cabinets as a furnishing (not as furniture) that is attached to a wall, similar to shelves, televisions, and comparable products.

38. COMMENT: One commenter expressed support for the amendment at N.J.A.C. 5:23-2.7(c)1vii regarding the repair, replacement, or installation of cabinets. The commenter recommended that the amendment be limited to one- or two-family dwellings because in office buildings, although interior office partitions are a non-structural element, their installation could create a means of egress issue or an issue with accessibility for people with disabilities due to

inadequate maneuvering space. The commenter recommended limiting this to one- or two-family dwellings.

RESPONSE: The Department appreciates the expression of support. Although the installation of furnishings outside of a construction project could impact the means of egress of a space, its enforcement is through the Uniform Fire Code (UFC). Additionally, the existing language did not limit the work to one- and two-family dwellings, and there has not been a detrimental effect on the public.

39. COMMENT: Commenter supports the amendments at N.J.A.C. 5:23-2.7(c)1viii, pertaining to the installation of any interior or exterior trim, decoration, or molding and N.J.A.C. 5:23-2.7(c)1ix, pertaining to the repair of flooring material.

RESPONSE: The Department thanks the commenter for the support.

40. COMMENT: One commenter expressed general support for the amendment at N.J.A.C 5:23-2.7(c)1ix, pertaining to the repair, replacement, or installation of any flooring material, but recommended that a permit and inspection should be required of buildings where the installed carpeting could create a fire hazard or buildings that are in a flood zone.

RESPONSE: The Department has always permitted the replacement and installation of floor coverings as ordinary maintenance and is unaware of any detrimental effect. The proposed change would add the repair of carpeting to the list of work that can be done without a permit. This change is entirely consistent with the current code provisions as a repair would be a subset of replacement or installation.

41. COMMENT: One commenter asserted that the amendment at N.J.A.C. 5:23-2.7(c)1x, maintaining a roof, could be--and has been--construed as allowing the replacement a portion of the roof covering as an interim step to an ultimate replacement. This approach saves the owner the potential expenses of the removal of existing roof coverings or contracting for a dead load analysis. There are, however, sound engineering bases for these code provisions upon complete roof replacement. Underlayment is also a consideration. Enhanced underlayment is a code requirement in cases involving very low average temperatures or low slopes. While not typically visible at final inspection, stipulating the requirements at permit time reinforces the requirement for both the owner and the contractor and increases the likelihood that the added protection will be installed, if required. Omission of all construction controls could degrade public confidence in the building safety system because it would unquestionably result in non-compliant construction and resultant premature failures. The commenter referred Department staff to the building subcode and the one- and two-family dwelling subcode and expressed concern that an ill-advised and ill-informed owner might contract for a greater number of roof coverings than allowed, which creates a violation in the code, and could result in structural issues.

RESPONSE: The Department believes that roof replacement, rather than adding additional layers to existing roofs, is the more common practice due to roof warranties. The Department further believes that the inspection that can be performed after the roof has been replaced is of limited value. Items such as underlayment, flashing and fasteners are all difficult or impossible to inspect at the conclusion of the project.

42. COMMENT: One commenter expressed support for the amendment at N.J.A.C. 5:23-2.7(c)1x, with regard to roof replacements on single-family dwellings. The same commenter expressed

concern for two-family dwellings. The commenter observed that the Uniform Construction Code (UCC) has traditionally protected homeowners from unscrupulous contractors. The commenter detailed experience with inspecting roof replacement at a two-family dwelling that had issues with the use of non-fire-rated sheathing, misuse of incompatible fasteners at fire-retardant treated plywood (FRT), and openings within the fire separation distance required by the code. The commenter asserted that the UCC protects buildings from fire spread from an adjacent property and thought that eliminating two-family dwellings from this required inspection could result in unnecessary loss of property, personal injury, and could pose an unnecessary risk to firefighters. In closing, the commenter expressed concern for townhouses, which are regarded as single-family attached homes. The commenter was apprehensive that townhouses would be treated by contractors as single-family detached homes and a permit would not be obtained, which could place adjacent homeowners in jeopardy in the case of a fire.

RESPONSE: The replacement of sheathing would not be permitted as ordinary maintenance. The use of improper fasteners would not be apparent at the time of inspection. To ensure clarity, “detached” is being added to the “one- and two-family” designation. The Uniform Construction Code (UCC) has traditionally assumed that one- and two-family dwellings are detached unless otherwise specified.

43. COMMENT: One commenter expressed slight opposition to the amendment at N.J.A.C. 5:23-2.7(c)1x. The commenter thought that, although roofing for one- and two-family dwellings could be considered minor work, it should not be ordinary maintenance. Another commenter asserted that a permit and inspection should be required to protect the homeowners from unscrupulous contractors. One commenter thought that this change could result in a return to the days when multiple layers of roofing were routinely installed.



RESPONSE: The Department believes that roof replacement, rather than adding additional layers to existing roofs, is the more common practice due to roof warranties. The Department further believes that the inspection that can be performed after the roof has been replaced is of limited value. Items such as underlayment, flashing and fasteners are all difficult or impossible to inspect at the conclusion of the project. The Department also believes that the Uniform Construction Code (UCC) is first and foremost a building code and, while there are often some ancillary consumer protection benefits, they are not the primary aim of the UCC. Consumer protection is under the jurisdiction of the boards that license contractors, including home improvement contractors; these professional licensing boards are housed in the Division of Consumer Affairs in the Department of Law and Public Safety.

44. COMMENT: One commenter observed that, with regard to the amendment at N.J.A.C. 5:23-2.7(c)1xi, siding would fall into essentially the same category as re-roofing, except that the issues are more fire-related than structural. The commenter pointed out that the Uniform Construction Code (UCC) has limits on exterior wall finishes based upon fire separation distance. Exterior walls close to property lines might have higher minimum fire and flame spread requirements than those that are further away. The commenter expressed concern that siding contractors could omit these higher-cost elements when providing an estimate because there would be no permit requirement. This means that there would be little or no chance of the unacceptable condition being discovered prior to completion. The commenter expressed a companion concern with regard to polypropylene siding. The commenter observed that, although this siding is excluded from ordinary maintenance, the commenter thought that it would be difficult, if not impossible, for a local agency to effectively screen this sub-category of work from a much larger pool of siding work. The commenter took

exception to the Department's statement that "compliance with the UCC is still required." The commenter expressed doubt that voluntary adherence to the regulations would result.

RESPONSE: There are few restrictions on the use of siding near a property line for one- and two-family dwellings for other than polypropylene. The Department does not believe it is reasonable to require a permit for every siding job because there are restrictions on the use of polypropylene siding. The Department believes that a more reasonable approach is to require a permit for siding that has limitations related to the distance to the property line.

45. COMMENT: One commenter expressed concern about the amendment at N.J.A.C. 5:23-2.7(c)1xi with regard to siding. The commenter observed that there are many kinds of siding, including vinyl, stucco, wood, brick, and stone. The commenter thought that the proposal should clarify what types of siding it is discussing. The installation of stucco, brick, and stone are far more involved than vinyl installations. The commenter thought that making all siding except polypropylene ordinary maintenance could create safety issues in the future due to poor installations.

RESPONSE: The Department disagrees. Brick, stucco and stone are not considered siding. These materials are broadly categorized as "exterior wall finishes" and would either be considered part of the wall construction or a veneer based on their thickness and/or construction. A change in the permit requirements for the use of these materials was not part of this rule amendment.

46. COMMENT: Two commenters expressed concern with and opposition to the expansion of the size of a shed that could be installed without a construction permit. Both commenters were concerned with the possibility that a high-density polypropylene shed would be erected too close

to a property line. The commenter stated that existing polypropylene siding in need of repair or replacement should be ordinary maintenance.

RESPONSE: Sheds of the size restrictions in this rule would be considered Group U, and do not need to comply with the property line fire-resistive rating requirements in the one- and two-family dwelling code. The Department does not believe that the change in the size of the shed would increase the risk to public safety. There has been no evidence that the Department is aware of that the location of small garden utility sheds near the property line has been a significant threat to public safety.

47. COMMENT: One commenter took exception to regarding a deck as similar to a porch or stoop. The commenter explained that maintenance could include re-pointing, replacing stone treads or rails, applying a brick or adhered stone veneer. However, the commenter asserted that replacing an entire stoop raises issues of foundation support, guardrails, handrails and dimensional uniformity. The commenter stated that replacing a framed porch or deck adds potential failure points to the project: properly sized foundations, support beams and framing members, proper attachment and hangers, including corrosion resistance. The commenter pointed out that establishing a maximum height of a deck reduces the severity of the potential failure, but does not address the likelihood of failure. The commenter believes that the public has a right to expect a building code enforcement program to protect against potential failures like these. The commenter expressed an apprehension that, without prior approvals, the local enforcing agency would be in the unenviable position of becoming an enforcer against violators rather than an administrator of building safety and codes.

RESPONSE: The Department agrees with the commenter that the installation of decks should not be considered minor work and has amended the proposal to remove the creation of decks as minor work. The Department also agrees with the commenter that the complete replacement of a deck should not be considered ordinary maintenance and has amended the proposal to retain the existing requirements. The Department points out that replacing a stoop has been part of minor work for years and the Department is not aware of problems associated with that designation.

48. COMMENT: Several commenters cautioned that the amendment at N.J.A.C. 5:23-2.7(c)1xiii would affect the Stormwater Management Act, which would present additional risks to the public safety. The commenter added that substandard deck constructions are common, whether at, above, or below the proposed height. Decks present a serious floating debris hazard in flood conditions. There is also the potential for collapse if the methods of construction, support, and attachment to the structure is deficient. The commenter believed that the additional burden cast upon the homeowner to design and inspect his own work, the potential for personal injuries and property damage with the complication of litigation and insurance issues outweigh the minor benefit of this amendment. One commenter recommended that “or total replacement of decks” be removed from minor work.

RESPONSE: The Department agrees with the commenter that the complete replacement of a deck should not be considered ordinary maintenance and has amended the proposal to retain the existing requirements.

49. COMMENT: One commenter expressed support for the amendments regarding decks and recommended that the qualification of 30” above grade be moved to ensure that the maximum height applies to porches, stoops, and decks alike.

RESPONSE: While the Department appreciates the expression of support, it has been convinced that the complete replacement of decks should not be considered ordinary maintenance and that the installation of new decks should not be considered minor work. The rule has been amended upon adoption to retain the existing requirements.

50. COMMENT: One commenter expressed concern that the amendment at N.J.A.C. 5:23-2.17A(c)1iv, could be misconstrued to apply to a change of use or even a change in the character of a building because non-code users, such as building owners, management companies, and realtors, do not understand the categories of work in the Rehabilitation Subcode. The commenter suggested adding the word “or Change of Use or a change in the character of a building or structure” after the N.J.A.C. 5:23-2.7 for clarity.

RESPONSE: The language referenced by the commenter was previously in the rules but was simply being relocated without change in the text. The Department is not aware of any confusion caused by the language.

51. COMMENT: One commenter expressed concern about the amendment at N.J.A.C. 5:23-2.7(c)1xv due to experience with of poorly installed attic insulations, some of which have caused problems with under ventilation or blocked ventilation, which leads to rotting roof sheathing and mold. Another commenter thought that roll and bat insulation should be required to have a permit to ensure that it is in contact with sheathing or sheetrock.

RESPONSE: Roll and batt insulation has traditionally been allowed to be installed as ordinary maintenance and the Department is not aware of any problems that have arisen due to this designation. The proposed change would allow for the installation of blown-in type of insulation. The Department anticipates that allowing blown-in insulation as ordinary maintenance is as reasonable as allowing the installation of roll or batt insulation, which has been categorized as ordinary maintenance for many years.

52. COMMENT: One commenter expressed support for the amendment at N.J.A.C. 5:23-2.7(c)1xv because it would provide much needed relief to building owners if the installation limits were removed or were relaxed. The commenter asked about the significance of the criterion “adjacent to or not more than one and a half inches from an interior finish.”

RESPONSE: The Department appreciates the expression of support. The requirement for “adjacent to and not more than one- and one-half inches (1-1/2”) from an interior finish” addresses the paper facing found on some roll and batt insulation. Because the facing does not comply with the interior finish requirements, it should not be exposed; furthermore, it should be installed on the winter warm side of the building envelope meaning that it will be on the side of the interior finish.

53. COMMENT: One commenter thought that the use of the word “fixture” in the amendment at N.J.A.C. 5:23-2.17A(c)2 was confusing. The commenter recommended that “plumbing fixtures” including replacement of a “like-with-like” stipulation. This would be particularly important with replacing a boiler or furnace in a one-or two-family dwelling.

RESPONSE: The term “fixture” is defined in the plumbing subcode. Boilers and furnaces are included in N.J.A.C. 5:23-2.17A(c)3, which specifies that the boiler or furnace be of “like capacity.”

54. COMMENT: With regard to the amendments at N.J.A.C. 5:23-2.7(c)2iv, repair of leaks in piping; N.J.A.C. 5:23-2.7(c)2vii, replacement of bath and shower valves; and N.J.A.C. 5:23-2.7(c)2x, replacement of plumbing fixtures, one commenter expressed a concern that allowing unlimited leak repair and valve and fixture replacement could result in abuse by owners and contractors who would seek to avoid or circumvent a permit and inspections. The commenter’s concern was based on experience finding non-compliant work that had been undertaken and completed without a permit or an inspection. The commenter also expressed concern about including gas-fired hot water heaters as plumbing fixtures that are covered by ordinary maintenance because their installation must be properly vented to prevent carbon monoxide leaking into the structure.

RESPONSE: The Department is puzzled by the comment on the replacement of hot water heaters. The installation of water heaters is minor work in the proposal as it was prior to the proposal. The Department continues to believe that the repair of leaks between two successive joints is overly restrictive. The repair of leaks is within the spirit of ordinary maintenance, as are valve and fixture replacements. Fixture replacements are generally not complicated, do not involve sizing issues, and inspections provide limited benefits.

55. COMMENT: One commenter asked whether the amendment at N.J.A.C. 5:23-2.7(c)2iv, which designates ‘the repair of leaks involving the replacement of piping’ as ordinary maintenance, could

be construed as allowing the replacement of an entire water service without a permit. The commenter expressed opposition to such a broad change. One commenter recommended that this change be limited to one- or two-family dwellings.

RESPONSE: The Department continues to believe that the repair of leaks between two successive joints is overly restrictive. The repair of leaks is within the spirit of ordinary maintenance, as are valve and fixture replacements. Fixture replacements are generally not complicated, do not involve sizing issues, and inspections provide limited benefits. Limiting this provision to one- or two-family dwellings cannot be made upon adoption because that limitation was not part of the proposal.

56. COMMENT: One commenter expressed concern about the amendment at N.J.A.C. 5:23-2.7(c)2vii because the commenter believes that the replacement of a residential shower/bath differs from a commercial building shower/bath replacement. The American Society of Sanitary Engineering (ASSE) has standards for commercial shower/bath valve replacement. The commenter recommends that an inspection of a commercial building shower/bath valve replacement should be required to protect the safety and welfare of the public.

RESPONSE: As was explained in response to an earlier comment, the Department is allowing the replacement of shower valves in all use groups because the ability of shower valves, regardless of type, to protect bathers is dependent on the owner of the facility ensuring that the the valve and water heater settings have been-and remain-properly adjusted. Requiring a permit for the replacement of the valve will not, in and of itself, protect the public from scalding. Protection of occupants from scalding is the responsibility of the building owner and inspections and permits ensure that such protection is provided only at the time of the inspection. Any adjustment to the



valve or the water heater after the inspection can result in a condition that does not comply with the code. Because the owner already has responsibility, without oversight, for the continued functioning of the valve, it is reasonable to rely on the owner to ensure compliance with the code when the valve is replaced.

57. COMMENT: One commenter asked whether this amendment applies to pressure reducing valves and expressed opposition to including pressure reducing valves. The commenter supports the change for shower valves and fixture stop valves. Another commenter expressed concern for one- and two-family homeowners and asserted that this work should be performed by a licensed master plumber.

RESPONSE: With regard to the replacement of bath/shower valves and the concern expressed for homeowners, please see the response above. With regard to the requirement that this work be performed by a licensed master plumber, the Department has enforced and will continue to enforce the requirements for a plumbing license when a permit is required, but a permit is not the primary mechanism for enforcing the licensing requirement, which is under the jurisdiction and authority of the Division of Consumer Affairs in the Department of Law and Public Safety.

COMMENT 58: One commenter expressed support for the proposed amendment at N.J.A.C. 5:23-2.7(c)3i. This commenter recommended that, because the code publication cycle often changes section numbers, a broad reference to “as currently adopted in the NEC” should be substituted for the specific code sections.

RESPONSE: The Department believes that, in this case, defining what can be done with precision helps eliminate disputes between contractors and code officials. The Department does agree with

the commenter that, as drafted, there will be additional work for the Department to maintain the cross reference, but the Department holds that the clarity that results is worth it.

COMMENT 59: The Department proposed amendments to N.J.A.C. 5:23-2.7(c)3i refers to National Electrical Code (NEC) sections 406.9(A), (A)1, and 406.12, while there is no section 406.9(A)1 in the NEC. The Department's proposal, PRN 2017-029, filed in January 2017, *New Jersey Register* February 21, 2017, proposed amendment of this section to refer to only section 406.4(D). The reference to section 406.4(D) seems more appropriate. If the Department considers NEC sections 406.13, 406.14, and other sections in the NEC that the Department has not referenced that specify where ground-fault circuit interrupter protection, damp/wet, or tamper-resistant receptacles are required. The Department's deletion of 'rated at 20 amps or less and operating at less than 150 volts to ground' is not recommended. Please confirm that the Department considers the replacement of a 347/600 VAC Wye 3 phase switch, a vehicle charging station receptacle, and like or similar items to be ordinary electrical maintenance recognizing the safety concerns. The commenter recommended that the Department change 'lighting fixture' to 'luminaire' to be consistent with NEC terminology.

RESPONSE: The proposal to amend this section that was published on February 21, 2017 has been approved for adoption and will be published in the *New Jersey Register* on January 16, 2018. The Department appreciates the commenter's observation that the language in that proposal for this amendment is simpler and more accurate; the Department will revert to that text. In the absence of a statement or explanation of the particular concern, the Department cannot comment on the commenter's assertion that deleting the requirement that 'rated at 20 amps or less and operating at less than 150 volts to ground' "is not recommended." Similarly, the Department

cannot comment on unspecified “safety concerns” about a “vehicle charging station receptacle and like or similar items.” The Department would like to point out that this section of ordinary maintenance applies to replacement; it does not apply to a new installation.

60. COMMENT: One commenter expressed opposition to the proposed change to N.J.A.C. 5:23-2.7(c)3i because of the potential that companies that are not licensed New Jersey electrical contractors would conclude they may work with voltages above 150V and amperages above 20. The commenter feared that these contractors would think that if no permit were needed, no license would be necessary.

RESPONSE: The Department has enforced and will continue to enforce the requirements for contractors’ licenses when a permit is required, but a permit is not the primary mechanism for enforcing the licensing requirement, which is under the jurisdiction and authority of the Division of Consumer Affairs in the Department of Law and Public Safety. The Division of Consumer Affairs is responsible for enforcing licensing requirements for licensed master plumbers; electrical contractors; heating, ventilation, air-conditioning, and refrigeration contractors; and home improvement contractors.

61. COMMENT: One commenter expressed support for the amendment at N.J.A.C. 5:23-2.7(c)3v, the replacement of kitchen range hoods. Specifically, the commenter supported the performance standard approach to domestic kitchen hood replacement. However, the commenter recommended further clarification to ensure that replacement of any domestic kitchen hood with a hood that vents to the exterior as a result of the replacement be classified as either minor work or an alteration. The commenter explained that the makeup air that is required for those with capacity above 400 cfm is best incorporated during the design phase and not after a substandard

installation has been completed. Integral hood/filter fixtures neither vent to the exterior nor reach the airflow capacity triggering other code provisions. One commenter recommended that the existing installation be required to vent to the exterior and be classified as minor work.

RESPONSE: After the amendments to this section were proposed, an adoption of PRN 2017-029 occurred. PRN 2017-29 contained a similar amendment concerning the replacement of kitchen hoods as ordinary maintenance. At this time, the Department is reverting to the language that was adopted under PRN 2017-29.

62. COMMENT: Another commenter cautioned against the possible expansion of a range hood system where there is no oversight. A non-compliant expansion could backdraft the water heater and furnace flue gases, which contain deadly carbon monoxide. Because there is no provision for requiring carbon monoxide (CO) detectors in such a basement arrangement, the possibility of the risk of such poor work represents an unacceptable risk to homeowners.

RESPONSE: After the amendments to this section were proposed, an adoption of PRN 2017-029 occurred. PRN 2017-29 contained a similar amendment concerning the replacement of kitchen hoods as ordinary maintenance. At this time, the Department is reverting to the language that was adopted under PRN 2017-29.

63. COMMENT: One commenter suggested that the Department consider rewording N.J.A.C. 5:23-2.7(c)3v, pertaining to the replacement of kitchen range hoods in dwellings. The commenter questioned whether it were the Department's intent that the replacement of a kitchen range hood with an output of over 400 cubic feet per minute (cfm) would require a permit, while the replacement of kitchen range hoods of 400 cfm or less would be considered ordinary maintenance.

The commenter stated that if an existing kitchen range hood in a single-family dwelling had an output cfm of over 400 and it is replaced by one of same output, it should be considered ordinary maintenance. The commenter also states that, as proposed, changing a 500 cfm fan to a 400 cfm fan would be considered ordinary maintenance. The commenter stated that the rule text, as proposed, could be misread to allow up to 400 cfm to be *added* to the former capacity. Finally, the commenter provided many examples of kitchen range hood replacements in various home designs.

RESPONSE: After the amendments to this section were proposed, an adoption of PRN 2017-029 occurred. PRN 2017-29 contained a similar amendment concerning the replacement of kitchen hoods as ordinary maintenance. At this time, the Department is reverting to the language that was adopted under PRN 2017-29. This resolves the potential misreading of the text.

64. COMMENT: One commenter questioned why rewording N.J.A.C. 5:23-2.7(c)3v, pertaining to the replacement of kitchen range hoods in dwellings, has been limited to “dwellings,” when N.J.A.C. 2.7(c)5, pertaining to ordinary heating, ventilation, and air conditioning maintenance, has the replacement of motors, pumps, and fans of the same capacity as ordinary maintenance. The commenter made the same comment for N.J.A.C. 5:23-2.7(c)5vi, regarding kitchen range hoods and recommended that the Department review PRN-2017-029, published February 21, 2017, and pointed out a difference in proposed rule text from that proposal to this one.

RESPONSE: After the amendments to this section were proposed, the adoption of PRN 2017-029 was approved. As the commenter pointed out, PRN 2017-29 contained a similar amendment concerning the replacement of kitchen hoods as ordinary maintenance. At this time, the Department is reverting to the language that was adopted under PRN 2017-29.

65. COMMENT: One commenter pointed out that the amendment at N.J.A.C. 5:23-2.7(c)3vi would remove the installation of burglar alarms from minor work and add them to ordinary maintenance in one- and two-family dwellings. The commenter stated that to require inspections for the smoke detectors, but not for the combination fire alarm/burglar alarm panel the detectors are connected to would result no inspection of either, whether wired or wireless detectors are used. The commenter stated that fire protection is too important to not require inspections. The commenter also stated that alarm companies do not want the responsibility of providing the primary fire detection in one- and two-family dwellings, and instead find ways to consider their devices to be supplemental without ensuring another system can be considered the primary fire detection device. The commenter stated that only the Fire Subcode Official is qualified to make that determination and suggested that the Department keep all smoke detectors and smoke alarms connected to a control panel as minor work. The commenter recommended that if the Department were to reject leaving burglar alarms and security systems as minor work, it should clarify that work classified as ordinary maintenance applies only to existing structures, and a permit is needed for these installations in new construction.

RESPONSE: Ordinary maintenance applies to work in existing structures. The new installation of smoke alarm systems is not ordinary maintenance even where other security system features use the same system unless it is in addition to a system that provides the detection required by the code. The replacement of smoke alarm and smoke detector heads are ordinary maintenance (N.J.A.C. 5:23-2.7(c)4i), as are the installation of battery-operated smoke detectors at N.J.A.C. 5:23-2.7(c)4iii, however there is no inclusion of the installation of a required fire alarm system other than a battery-operated system as ordinary maintenance.

66. COMMENT: One commenter stated that there appears to be confusion caused by previous direction regarding wireless security systems. The commenter observed that some systems are erroneously considered wireless even if the keypad is wired and the transformer requires running wires and a ground wire is required to bond the system. The commenter thought that a *Construction Code Communicator* article published in Volume 26, Number 1, did not clarify the confusion.

RESPONSE: The proposed amendment would allow the installation of burglar and security systems in one or two-family dwellings regardless of whether they are wireless. Therefore, the comment on an article in the *Construction Code Communicator* is outside the scope of the proposed amendment.

67. COMMENT: One commenter expressed opposition to the amendment at N.J.A.C. 5:23-2.7(c)3vi regarding the installation of burglar alarms and security systems. The commenter thought that this change could cause companies that are not licensed New Jersey electrical contractors or Burglar Fire Alarm Contractors to conclude that they may perform this work in one- and two-family dwellings. The commenter thought that their perception might be that if no permit is needed, no license is necessary.

RESPONSE: The Department does not agree that a change in the permit requirement would open the door to unlicensed contractors performing the work. The Division of Consumer Affairs in the Department of Law and Public Safety is charged with enforcing the contractor licensing laws. Also, with regard to the Uniform Construction Code, contractor licensing laws are enforced (by requiring the contractor's license number) when a permit is required and not the other way around; permits are not required in order to enforce contractor licensing laws.

68. COMMENT: In relation to the amendment at N.J.A.C. 5:23-2.7(c)4i, one commenter agreed with the proposal to treat “smoke alarms” the same as “smoke detectors” with regard to ordinary maintenance, specifically when replacing with a like device.

RESPONSE: The Department thanks the commenter for the support.

69. COMMENT: One commenter observed that, in relation to the amendment at N.J.A.C. 5:23-2.7(c)4iii, battery-powered single or multiple station smoke alarms that are not connected wirelessly to a control are readily available to the homeowner at retail outlets. The commenter further observed that national model codes use both the term “smoke detector” and “smoke alarm” (See International Residential Code (IRC)/2015, New Jersey Edition R314.7). The commenter asserted that a distinction must be drawn between smoke alarms and smoke detectors that are connected to a fire alarm system and those that are not. The commenter added that it should be noted that some manufacturers of fire alarm systems have their wireless devices tested to UL 217, Standard for Smoke Alarms, and other manufacturers of fire alarm systems have their wireless devices tested to UL 268, Standard for Smoke Detectors. Both types are installed by licensed companies as part of a fire alarm system. Relying on terminology because it is used in a model code in this case perpetuates misunderstandings about what is required. The commenter asserts that some subcode officials have refused to issue permits for installation of smoke detectors because they say the code requires smoke alarms.

RESPONSE: The term “smoke alarm” is the correct term for what the Department wants to consider as ordinary maintenance. An alarm is a self-contained device that both detects the presence of smoke and alerts the occupants. A detector monitors for the presence of smoke, but relies on other devices for alerting occupants and/or monitors. Because detectors require an



additional device to perform the full function, the Department does not consider the new installation of such devices ordinary maintenance. The replacement of a detector with an equivalent device is currently allowed as ordinary maintenance at N.J.A.C. 5:23-2.7(c)4i.

70. COMMENT: One commenter opposed the amendment at N.J.A.C 5:23-2.7(c)5ix stating that all chimney linings should be inspected. The commenter pointed out that inspection is not difficult because it requires shining a flashlight up or down a fireplace chimney to verify that the application is uniform, complete, and without any cracks or gaps. The commenter stated that this inspection is a fire safety issue.

RESPONSE: The Department believes that for this particular type of lining system, there is little to inspect. With metal liners, material and size can be checked; these cannot be checked with liquid liners.

71. COMMENT: One commenter expressed support for the amendment at N.J.A.C. 5:23-2.14(b)8, which establishes a permit threshold for sheds and garden-type utility shed with no utilities greater than 200 square feet.

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

72. COMMENT: One commenter expressed support for the amendment at N.J.A.C. 5:23-2.17A(b)1to update the notification options available to a party initiating a minor work project. The commenter added that the applicant should be required to provide the address where the work is taking place.

RESPONSE: The Department appreciates the expression of support. The address is a required part of the notification regarding the project.

73. COMMENT: One commenter opposed the amendment at N.J.A.C. 5:23-2.14(b)8 to eliminate the construction permit requirement for garden-type utility sheds and similar structures (pre-manufactured or site built) under 200 square feet (increasing from 100 square feet). The commenter expressed concern about commercial farm buildings of 200 square feet and recommended that the Department consider increasing the square footage match the commercial farm buildings section.

RESPONSE: For garden type utility sheds, the commercial farm building code presently allows a structure that is 200 square feet in area or less and 10 feet in height or less to be constructed without a permit at N.J.A.C. 5:23-3.2(d)6, which is consistent with the threshold for garden type utility sheds that are ancillary to residential uses (Groups R-2, R-3, R-4 and R-5) established in the proposed rule. The Department is unclear if the commenter is advocating a larger threshold for commercial farm buildings, but believes that the current threshold is appropriate for both.

74. COMMENT: One commenter observed that, with regard to the amendment at N.J.A.C. 5:23-2.14(b)8, increasing the allowable size of sheds that do not require a construction permit is reasonable; however, the reliance on “sufficient weight to hold the structure down” is not reasonable in designated flood zone or high wind areas and exposure classifications. The commenter asserted that, in those areas, sheds up to 200 square feet should require footings, permits and inspections to ensure that they will not be moved by flood waters or winds and create a hazard to adjoining properties or structures.

RESPONSE: The Department did not require footings and foundations for sheds with an area of 100 square feet or less well before Superstorm Sandy. The Department is not aware that there was a significant amount of damage caused by storage sheds during that event. Even if anchored, it is possible that a storage shed would not be able to withstand the hydrodynamic forces on it, so it could become a source of floating debris. Docks, boardwalks, boats, and detritus from damaged buildings are all more significant sources of floating debris.

75. COMMENT: One commenter expressed concern with the amendment at N.J.A.C. 5:23-2.17A(c)1iii, which allows the installation of new partitions without prior review of plans; this commenter thought that this would have health and safety consequences. The commenter expressed particular concern with proliferating illegal and unsafe housing conditions in basements, attics, and living spaces that are now are reconfigured without permits or approvals to create maximum sleeping spaces. The illegal reconfiguration of these spaces has caused inadequate egress, ventilation, a lack of fire detection, and a failure to meet basic housing habitability standards. The commenter believed that the proposed changes at N.J.A.C. 5:23-2.17A(c)4 adding to the scope of electrical work, including the fishing of new conductors, and plumbing work, including 'leak repairs' and valve 'replacement', would allow entirely new rooms and spaces to be created without review or inspection.

RESPONSE: As has been discussed in responses to previous comments, upon adoption, in response to comments received and also in response to the discovery of an internal logical inconsistency in the rule, upon adoption, the Department is eliminating the replacement of partitions from ordinary maintenance and the installation of partitions from minor work. With

these changes, the provision reverts to the status quo in which the creation of new spaces requires a full permit.

76. COMMENT: One commenter asked that the definition of “security systems” in the National Electrical Code (NEC) be added to the UCC. The commenter believed that this would standardize discussions and decisions about the installation of these systems and the permits and inspections that should be required.

RESPONSE: The Department was unable to find a definition of “security system” in the National Electrical Code (NEC).

77. COMMENT: One commenter recommended that the current notice requirement at N.J.A.C. 5:23-2.17A(b)1 be retained. The commenter thought that allowing electronic communication outside normal business hours could result in confusion because there is often no clear confirmation of receipt. The commenter recommended that a new section on electronic communication be developed and that there be a stipulation that work may not commence until confirmation (verbal or electronic, but not by fax) has been received from the enforcing agency. The commenter added that this comment is also applicable to requested inspections.

RESPONSE: The Department disagrees. An applicant who submits an email to the correct email address is in compliance with the rules and should not need to wait for confirmation of receipt from the local enforcing agency. Waiting for confirmation before starting the project could substantially delay the undertaking of projects. The use of email is not substantially different from the use of an answering machine. The rules have required and continue to require that notification be given, not that receipt is acknowledged.

78. COMMENT: One commenter expressed opposition to the proposed change to N.J.A.C. 5:23-2.17A(c)4, pertaining to electrical minor work, and stated that the Department is proposing changes that impact the original intent of this section. The commenter stated that limiting these electrical minor work items to one- and two-family dwellings is a substantial change, and adds that if the Department understands how many receptacles can be installed on a dwelling unit receptacle branch circuit, the concept of ‘adequate to support the load’ does not relate to dwelling unit receptacles. The commenter stated that the Department’s proposed change to delete “125 or 250 volt receptacles or fixtures” and add “outlets” would allow all types of outlets of any voltage to be installed as minor electrical work, and would define an electrical outlet as a point on the wiring system at which current is taken to supply utilization equipment. The commenter questioned whether it were the Department’s intent to consider receptacle outlets, lighting outlets, and power outlets as minor work.

RESPONSE: The Department believes that the adding wiring and fixtures in other than one- or two-family dwellings warrants inspections during the progress of work to ensure that the proper wiring methods are used. As written, the section allows for the installation of additional circuits and outlets in one- and two-family dwellings which could affect the capacity of the system. Most residential services limit the voltage of receptacles that are found in one- or two-family dwellings to under 250 volts, such that the elimination of the restriction will have little practical effect.

79. COMMENT: One commenter questioned the Department’s proposal that “fishing shall be considered minor work regardless of the number of fixtures/receptacles.” The commenter asked whether other methods of installation, in addition to fishing or snaking, such as installing electrical surface raceways, would also be considered minor work. The commenter then asked whether if

all the work is done by wire fishing, more than five fixtures or receptacles could be installed. The commenter also asked whether installing device boxes would be considered minor electrical work.

RESPONSE: The proposal has specifically limited minor work to fishing so that other wiring methods, such as surface mounted wiring, would not be designated as minor work. Where fishing is employed, more than five fixtures or receptacles may be added as minor work. Fishing would include the installation of device boxes.

80. COMMENT: One commenter questioned why the Department would limit the replacement of existing wiring with new wiring to one- and two-family dwellings. The commenter asked whether a factory that needed to replace damaged existing wiring to continue operations must shut down until a permit is issued. The commenter stated that the Department's proposed amendment to N.J.A.C. 5:23-2.7(c)3i, that the replacement of an industrial receptacle, switch, or lighting fixture, would be ordinary maintenance, does not seem logical if the replacement of the wiring to the device would need a permit. The commenter then suggested that the electrical minor work and ordinary maintenance be expanded so that these items are not limited to just one- and two-family dwellings and recommended formatting these sections similar to the formatting of the rehabilitation subcode, N.J.A.C. 5:23-6, by building subcode groups.

RESPONSE: Replacement of wiring with a like material would be considered a renovation and would therefore be permitted as minor work in Groups B, F, M and S based on N.J.A.C. 5:23-2.17A(c)1iv. The replacement of wiring is different from the replacement of a fixture. Ordinary maintenance and minor work have traditionally made distinctions between the installation of plumbing and electrical fixtures and connected wiring and piping. These changes are consistent with that paradigm.

81. COMMENT: One commenter asked whether the amendment at N.J.A.C. 5:23-2.17A(c)2 was faulty. Specifically, the commenter asked whether the Department intended to delete “one- or two-family dwellings” and not simply “one- or two-family.”

RESPONSE: The Department’s intention was to allow for the new installation of fixtures in dwellings in N.J.A.C. 5:23-2.17A(c)2. The amendment accomplishes this.

82. COMMENT: One commenter took exception to the amendment at N.J.A.C. 5:23-2.17A(d)1, which would reduce the inspection timeframe for minor work from the current 30 days to a proposed three days. The commenter expressed reservations about requiring code enforcement officials to certify that the work “substantially complies with the UCC.” The commenter believes that the certification would be baseless if the project were not evaluated beforehand for code compliance. The commenter expressed grave concern that there would be no plan review or inspections of utility and framing work and offered to work with the Department to draft a more logical proposal. Another commenter expressed concern that requiring minor work inspections to meet the same time-frame as other inspections could cause an inspection backlog. The commenter pointed out that many code enforcement agencies are short-staffed, so that minor work inspections are fit in among more extensive inspections. Eliminating this practice would create additional burdens. The commenter recommended a 10-day or 15-day inspection timeframe.

RESPONSE: The Department believes that the expansion of ordinary maintenance will afford the local enforcing agency to perform minor work inspections in a more timely manner. If these inspections are needed, and the Department believes that they are, a 30-day period between the time the work has been completed and the time an inspection is performed is not reasonable.

Because the inspection of minor work is based on what is visible at the time of inspection, the code official will likely only be able to determine that the work “substantially complies” with the code. This language is not new and the Department is not aware of problems that have resulted from its application.

83. COMMENT: The "Social Impact" statement incorrectly asserts that 2017-171 would have a positive social impact. The so-called "clarity of requirements" will not result in "uniformity of enforcement," but rather the dilution of public safety standards. Further, this dilution of public safety standards would allow for unscrupulous and unlicensed contractors to exploit the diluted standards, resulting in unsafe living conditions, overcrowding and other hazards, and deny local professionals the tools to prevent such results.

RESPONSE: The Department disagrees. Although the summary statement is not part of the rule, the Department believes that the framework behind this rule amendment is logical and that logic and reason result in well-understood requirements, which, in turn, generate uniformity of understanding and enforcement.

84. COMMENT: The "Economic Impact" statement incorrectly asserts that 2017-171 would have a positive economic impact. The proposal could benefit unscrupulous and unlicensed contractors, who could now operate under the radar, but it would not benefit the legitimate and licensed professional contractors. Further, this dilution of public safety standards would ultimately harm residents and taxpayers, who would likely spend more after beginning work without any required zoning permits by subjecting them to potential fines and related zoning code enforcement actions.



RESPONSE: The Department disagrees. Although the economic impact statement is not part of the rule, the Department believes that the framework behind this rule amendment is logical. As has been stated in response to comments on the rule proposal itself expressing concern that unlicensed contractors could proliferate, the Uniform Construction Code (UCC) is primarily a building code. When a permit is required, the licensed contractor's number must be provided. That has helped enforce the licensing requirements, but it is an ancillary benefit. The determination about when a permit is required is based on the kind and extent of the work; it is not based on whether a licensed contractor is required. The contractor licensing laws are under the jurisdiction and enforcement authority of the Division of Consumer Affairs in the Department of Law and Public Safety.

### **Summary of agency-initiated changes**

1. At N.J.A.C. 5:23-2.7(c)1x, “detached” would be inserted before “one- and two-family dwellings” as clarification to ensure that it is understood that this section, which addresses roof coverings as ordinary maintenance, does not apply to townhouses.

2. At N.J.A.C. 5:23-2.7(c)1xiii, the status quo concerning the extent of the work that is designated as ordinary maintenance will be retained. The adoption designates the repair or replacement of any part of a deck, porch or stoop as ordinary maintenance. The repair or replacement of an entire deck, porch, or stoop would not be designated as ordinary maintenance. The establishment of a height of the deck subject to this provision would not be adopted.

3. At N.J.A.C. 5:23-2.7(c)1xvi, “and” would be added to include a section, N.J.A.C. 5:23-(c)1xvi, that was published as an adoption on January 16, 2018.

4. At N.J.A.C. 5:23-2.7(c)3, ordinary electrical maintenance, the status quo will be maintained with regard to the existing text, which includes changes made in the adoption published on January 16, 2018; in addition, the Department is deleting several specific sections in favor of the single reference that was adopted on January 16, 2018.

5. At N.J.A.C.5:23-(c)3v and N.J.A.C. 5:23-(c)5vi, the provisions for the replacement of range hoods as proposed on August 7, 2017 will not be adopted, but, rather, the amendments that were adopted on January 16, 2018 will be retained as existing text.

6. At N.J.A.C. 5:23-2.17A(c ), the status quo will be retained and construction or total replacement of any deck as minor work will not be adopted.

7. At N.J.A.C. 5:23-2.17A(c )1iii, the status quo will be retained and the designation of the installation of partitions as minor work will not be adopted.

### **Federal Standards Statement**

A Federal Standards analysis is not required because the amendment is not being adopted under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or under a State statute that incorporates or refers to a Federal law, standards, or requirements.

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

5:23-2.7 Ordinary maintenance

(a) – (b) (No change.)

(c) The following items are ordinary maintenance and shall be treated as such by every enforcing agency. No permit for, inspections of, or notice to the enforcing agency of ordinary maintenance shall be required. This is not an all-inclusive listing of ordinary maintenance.

1. Ordinary building maintenance shall include:

i. – v.

vi. The repair or replacement of any non-structural component, such as a partition railing in one- or two-family dwellings;

vii. - ix. (No change.)

x. The repair or replacement of existing roof covering on **\*detached\*** one- or two-family dwellings.

xi. – xii. (No change.)

xiii. The repair or replacement of any part of a deck, porch, or stoop that does not provide structural support for any roof above or portion of a building **\*[and is not greater than 30 inches above grade level and which is measured from the edge of the deck to any point within 36 inches horizontally to the edge of the open side]\*** ;

xiv. (No change.)

xv. The installation of insulation, except foam plastic insulation, when installed adjacent to or not more than one and one-half inches from an interior finish; **\*[and]\***

xvi. The repair, replacement, or installation of exterior gutters and leaders **\*[;]\***

**\*and\***

xvii. (No change.)

2. (No change.)

3. Ordinary electrical maintenance shall include:

i. The replacement of any receptacle, switch, or lighting fixture, or part thereof, not containing emergency battery packs with a like or similar item. Receptacles in locations where ground-fault circuit interrupter protection, damp/wet or tamper-resistant are required \*[Sections 406.9 (A), 406.9(A)(1), and 406.12,]\* shall comply with Section 406.4(D) of the electrical subcode;

ii. – iv. (No change.)

v. Replacement of kitchen range hoods in dwelling units, provided **\*that\*** the replacement hood exhaust rate does not exceed the exhaust rate of the existing hood or the exhaust rate of the replacement hood does not exceed 400 cfm;

vi. – vii. (No change.)

4. (No change.)

5. Ordinary heating, ventilation and air conditioning maintenance shall include:

i. – v. (No change.)

vi. Replacement of kitchen range hoods in dwelling units, provided **\*that\*** the replacement hood exhaust rate does not exceed the exhaust rate of the existing hood or the exhaust rate of the replacement hood does not exceed 400 cfm;

vii. (No change.)

viii. Replacement of domestic stoves and domestic ovens in dwelling units, provided no change in fuel type, pipe size \*[,] or location or electrical characteristics is required; **\*[and]\***

ix. The replacement of bathroom exhaust fans in dwelling units \*[,] \* \*; **and**\*

\*[ix.]\* \*x.\* The application of liquid applied lining material inside an existing chimney.

6. (No change.)

5:23-2.17A Minor work

(a) – (b) (No change.)

(c) Minor work:

1. Minor work shall mean and include:

i. The construction or total replacement of any \*[deck]\* porch \*[,] \* or stoop that does not provide structural support for any roof above or portion of a building \*[and is not greater than 30 inches above grade level and which is measured from the edge of the deck to any point within 36 inches horizontally to the edge of the open side]\*;

ii. (No change.)

iii. Repair \*[,] \* **or** replacement \*[, or installation]\* with no reconfiguration of any non-structural component such as a partition in structures other than one- and two- family dwellings;

iv. (No change.)

2. – 7. (No change.)