

VOLUME 47, ISSUE 10
ISSUE DATE: **MAY 18, 2015**
RULE ADOPTIONS
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

47 N.J.R. 1014(b)

Adopted Concurrent Amendments: N.J.A.C. 13:45A-17.1, 17.2, 17.3, and 17.4

Adopted Concurrent New Rules: N.J.A.C. 13:45A-17A

Home Improvement and Home Elevation Contractor Registration

Proposed: November 3, 2014, at 46 N.J.R. 2188(a).

Adopted: March 6, 2015, by Steve C. Lee, Acting Director, New Jersey **Division of Consumer Affairs**.

Filed: April 21, 2015, as R.2015 d.081, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3) **and with concurrent proposed new rule N.J.A.C. 13:45A-17A.14 not adopted.**

Authority: P.L. 2014, c. 34.

Effective Date: April 21, 2015.

Expiration Date: December 14, 2018.

Summary of Public Comments and Agency Responses:

The official comment period ended January 2, 2015. The New Jersey **Division of Consumer Affairs** (Division) received five comments from the following individuals:

1. Matthew A. Sundeen, CIC, AAI, Vice-President, Maguire Agency
2. Jason Yarusi, Vice President, W.A. Building Movers & Contractors
3. Bradford Lachut, Professional Insurance Agents of New Jersey

[page=1015] 4. Tina Mueller, Managing Partner, Atlantic Structure Movers LLC

5. Anne M. Casillo, CPCU, ARP, CPIW, Regional Director Government Relations, Insurance Services Office, Inc. (ISO)

1. COMMENT: A commenter requested that the Division clarify the amount of commercial general liability (CGL) insurance the Division proposes that home elevation contractors (HECs) maintain. The commenter noted that proposed N.J.A.C. 13:45A-17A.11(a)1 states that "as of October 1, 2014, every registered home improvement contractor seeking to

become registered as a home elevation contractor shall secure and maintain in full force and effect during the entire term of the registration insurance in the amount of \$ 1 million per occurrence, over and above the \$ 500,000 required for registration as a home improvement contractor, of a type covering home elevation activities to cover damages or other losses to the homeowner, lessee, tenant or other party resulting from the home elevation." The commenter also noted that proposed N.J.A.C. 13:45A-17A.11(b)1 states that the commercial general liability coverage requirement calls for a "minimum coverage of \$ 1,000 per occurrence (including the \$ 500,000 of coverage required for all home improvement contractors) with an aggregate limit of \$ 2,000,000." The commenter was unclear whether the Division was proposing to require that HECs carry a total of \$ 1,000,000 of CGL insurance or \$ 1,500,000. Additionally, the commenter requested that the Division clarify what type of insurance is required under paragraph (a)1.

RESPONSE: P.L. 2014, c. 34 requires every HEC in the State to maintain CGL insurance in a minimum amount of \$ 500,000 per occurrence and to "secure and maintain cargo or other insurance that specifically covers home elevation activities, in a minimum amount of \$ 1,000,000 per occurrence to cover damages or other losses to the homeowner, lessee, tenant or other party resulting from a home elevation, except as otherwise provided in this subsection." The insurance required by specially adopted N.J.A.C. 13:45A-17A.11(a) applies to the requirements in place from October 1, 2014, until such time as the new rules set forth in subsection (b) of the concurrent proposal are implemented. Because the specially adopted rules became effective before the special adoption and concurrent proposal was published on November 3, 2014, the language in subsection (a) (requiring HECs to carry \$ 500,000 of CGL and \$ 1,000,000 of cargo or other insurance specifically covering home elevation activities, for a total of \$ 1,500,000 of insurance) tracks the more general language of P.L. 2014, c.34, which was signed into law on August 15, 2014.

Subsection (b), however, contains the proposed insurance and bonding requirements to be implemented 30 days after the concurrent proposal is adopted and published. (See Summary of Agency-Initiated Changes below.) Once the requirements in subsection (b) are implemented, the insurance requirements set forth in subsection (a) would no longer apply. The Division delayed implementing the detailed requirements set forth in subsection (b) until after the public and regulated community had been provided with notice of these requirements and an opportunity to comment. These requirements are much more specific than those in subsection (a) and are intended to further the legislative intent of protecting the consumer from all perils that may occur during the course of a home elevation.

Subsection (b) requires HECs to maintain: (1) \$ 1,000,000 per occurrence of general commercial liability insurance (including the \$ 500,000 in general commercial liability insurance already required of all contractors and \$ 500,000 of additional general commercial liability), with an aggregate limit of \$ 2,000,000; (2) cargo or similar insurance protecting the homeowner's, lessor's, or tenant's personal property in the minimum amount of \$ 50,000 per occurrence, with a minimum aggregate amount of \$ 200,000; (3) riggers, care, custody or control, or similar insurance protecting the dwelling and other structures being elevated in the minimum amount of \$ 500,000 per occurrence, with a minimum aggregate in the amount of \$ 2,000,000; (4) insurance protecting the homeowner, lessor, or tenant from losses not caused through any fault of the contractor in the minimum amount of \$ 500,000 per occurrence, with a minimum aggregate amount of \$ 2,000,000; (5) commercial auto liability insurance having a minimum amount of \$ 1,000,000 per occurrence; and (6) any additional insurance required by law, including, but not limited to, workers compensation insurance.

2. COMMENT: A commenter believed that the notice requirements of N.J.A.C. 13:45A-

17A.11(c) [sic], which requires an insurer to provide the Division with written notice of cancellation or non-renewal within 10 days of the cancellation or non-renewal of any such insurance policies, be amended to place the responsibility for providing this notice on the insured home elevation contractor instead of the insurer. The commenter is concerned that in cases where the home elevation contractor cancels the policy immediately, the insurer would not be able to provide the Division with advanced written notice within the required time frame. Additionally, the commenter noted that although an insurer may cancel a policy for non-payment of the premium, the insurer is required to notify the insured 10 days before the effective date of the cancellation. If the premium is paid within that 10-day period, the policy is not cancelled. The commenter is also concerned that if the insurer has notified the Division 10 days before the impending cancellation and the policy is not cancelled because the insured has made payment, the Division will incorrectly believe that the HEC is not insured.

RESPONSE: P.L. 2014, c. 34 mandates that every bond and insurance policy required to be maintained under the statute must provide that the issuer of the bond or insurance policy provide the Division Director with written notice of cancellation or non-renewal within 10 days of the cancellation or non-renewal of any required bond or insurance policy. Proposed N.J.A.C. 13:45A-17A.11(d) reflects this mandate. It should be noted, however, that neither the statute nor the regulation requires the insurer to provide advance notice of cancellation or non-renewal. The Division understands that there may be circumstances where advanced notice is either impossible or premature; however, once a policy is actually cancelled, an insurer should be able to provide the Division with notice of the cancellation within the 10-day period following the cancellation.

3. COMMENT: A commenter believed that more due diligence is required prior to registering a company as a HEC. The commenter is concerned that the majority of the companies currently registered as HECs are inexperienced new companies formed after Superstorm Sandy and have not been doing lifting work for at least five years. The commenter noted that prior to Superstorm Sandy, there were only two full-time house lifting companies in New Jersey; the commenter wondered how there can now be over 30 companies that have been doing this work for decades. The commenter believed that the Division should revisit the list of approved lifters and urged the Division to take a hard look at each company. The commenter suggested that the Division should require additional information and proof of experience from registrants, such as contracts from prior years, bank deposits, and dated pictures of work performed. The commenter believed that taking these additional steps would save homeowners from additional headaches.

Another commenter raised concerns that the Division's current protocol (requiring a certification of experience or the names of three references) for determining a contractor's experience is inherently flawed. The commenter suggested that under the current system, contractors seeking registration as a HEC could give fictitious references, or provide names of friends or family who would give the contractor a positive reference. The commenter suggested that the only valid means of verifying an applicant's experience is for the consumer to call the proposed contractor's insurance company and verify (1) that the contractor is insured for home elevation activities; (2) the length of time the contractor has been insured to perform home elevation and/or commercial elevation activities; and (3) the contractor's success/damage claims record. Additionally, the commenter suggested that the consumer ask whether the contractor's primary job is home elevation or whether the contractor performs home elevation projects on an occasional basis.

RESPONSE: The Division believes that it performs adequate due diligence before it registers a HEC. The Division speaks with each reference, asking open-ended questions to make sure

that the information provided by the reference comports with the information provided by the applicant. If there is a discrepancy, the Division requires the applicant to provide additional references. The Division registers a HEC only after it is satisfied that the HEC has the requisite experience. Additionally, each applicant for registration is required to certify that the information provided in the application is true and accurate. If an applicant is found to have lied on its application, the Division can take action to revoke the [page=1016] registration. The Division has considered the commenter's suggestion of requiring applicants to provide copies of contracts, bank statements, and dated photos. However, the Division believes that these items offer no guarantee as to the nature or quality of the work performed, and notes that contracts, bank statements, and dated photos can also be faked.

Additionally, the Division believes that the bonding requirement will result in another layer of scrutiny of the contractor's qualifications. The Division has been advised that a surety will require the HEC to provide evidence of its insurance coverage and track record in the industry before it will issue a bond.

The Division also agrees with the commenter who felt that it is important that consumers ask questions prior to entering into a home elevation contract. The Division has issued a consumer brief entitled, "Hiring a Home Elevation Contractor. What You Should Know....," available on the Division's website that advises consumers about questions they should ask and information they should obtain prior to hiring a home elevation contractor.

4. COMMENT: Two commenters objected to the proposed bonding requirement. The commenters thought that the requirement is unreasonable because (1) the HEC may have been hired by a general contractor (GC) or other prime contractor, with the elevation being a very small part of the overall job; (2) the bond would add unnecessary expense to all the jobs; and (3) because HECs often work on multiple jobs at the same time, it may be difficult for HECs to get bonds for every job, especially if the bonds are not released in a timely fashion.

RESPONSE: P.L. 2014, c. 34 authorizes the Division to require the posting of a bond in favor of the owner, lessee, tenant, or other party to the home improvement contract for home elevation. The Division believes that the proposed bonding requirement is essential in order to protect homeowners from loss resulting from a HEC's failure to complete the elevation job. While the proposed insurance requirements are meant to protect a homeowner's personal and real property, the purpose of the performance bond requirement is to ensure that the elevation is completed and that any defective work is corrected.

Addressing the commenters' specific concerns, a GC would not be required to obtain a large bond to cover the entire job; rather, the HEC would be required to post a bond to cover only the lift portion of the job. Although this would add to the expense of the job, the Division does not agree with the commenter that this is an unnecessary expense. The bond provides assurance that the lift portion of the job will be completed even if the HEC contracted to do the job suffers a setback, is unable to complete the job, and another HEC must take over. While the bonding requirement may have an impact on HECs that perform multiple jobs at the same time, the Division believes that any negative impact is outweighed by the consumer protection that the bonding requirement affords.

Furthermore, the Division is not alone in requiring home elevation contractors to post a payment and performance bond. In November 2011, Louisiana established a bonding requirement for participation in its Hazard Mitigation Grant Program. This requirement was established after homeowners complained of fly-by-night contractors disappearing after receiving payment for home elevation projects, and other contractors leaving behind shoddy

work, or failing to complete jobs. In order to receive an exemption from Louisiana's bonding requirement, a contracting firm must show that they are unable get a surety bond and the homeowner must agree to the exemption. Additionally, firms that are not bonded may collect only 25 percent of the payment up front (instead of 80 percent), may work on a maximum of four projects at once, and must meet insurance and warranty rules. The Division notes that N.J.A.C. 13:45C-2 provides a mechanism for applicants in unique circumstances to apply for waiver of a regulatory requirement that would result in undue hardship.

Participation in Connecticut's Community Development Block Grant - Disaster Recovery Program, under the United States Department of Housing and Urban Development (HUD) Disaster Recovery grant program for Hurricane Sandy, is conditioned, among other things, on the contractor's ability to obtain a commitment letter from a surety company licensed to do business in the State of Connecticut, for payment and performance bonds in an amount equal to 100 percent of the construction cost for any contract over \$ 100,000. Similarly, under New York City's Build It Back Repair Program's home elevation program, when applying to participate in the program, a HEC must supply a letter from a New York State surety stating that the contractor can obtain at least \$ 500,000 in payment and performance bonds. After the contractor has been accepted to the program and prior to beginning work, the contractor must obtain payment and performance bonds equal to the full dollar amount of their work in each home for which he or she is under contract at any given time.

Additionally, the New Jersey Department of Community Affairs' (DCA) Homeowner Reconstruction, Rehabilitation, Elevation and Mitigation (RREM) Program 2013 Request for Qualifications (RFQ) states that each participating contractor is required to maintain performance and payment bonds in an amount equal to the value of the active construction projects issued under the RREM work order awarded by the RREM program. The contractor must provide evidence of a minimum bonding capacity of \$ 1,000,000, and must maintain bonds covering 100 percent of the contractor's amount under contract at any given time.

The Division believes that its proposed bonding requirement is in line with other agencies' bonding requirements for the performance of home elevations. While the Division appreciates the commenters' concerns, the Division believes that any adverse economic impact to HECs caused by the proposed bonding requirement will be significantly outweighed by the necessary consumer protection established by the proposed bonding requirement.

5. COMMENT: Two of the commenters supported the proposed insurance requirements. They believed that the minimum requirements set forth in proposed N.J.A.C. 13:45A-17A.11(b)1 through 3 provide a measure of protection to New Jersey residents and homeowners while not being onerous on those engaged in the home elevation trade.

RESPONSE: The Division thanks the commenters for their support.

6. COMMENT: A commenter objected to the statutory requirement of \$ 1,000,000 of insurance to cover losses associated with home elevation activities. The commenter stated that claims filed under cargo insurance are few and far between, and are nowhere near \$ 1,000,000 in value. The commenter noted that North Carolina requires minimum limits of \$ 50,000 in cargo insurance. Additionally, the commenter stated that cargo and riggers insurance is expensive with cost consequences to the consumer. The commenter believed that the vast majority of dwellings do not approach \$ 1,000,000 of damage value. The commenter felt that the Division should avoid "management by exception." The commenter

stated that prior to the enactment of the statute, its company carried \$ 100,000 in cargo insurance coverage, and offered additional cargo insurance at a cost to the consumer. The consumer would submit a recent appraisal of his or her dwelling, which the commenter's company would submit to its insurer. The insurer would establish a cost quote to the consumer for the additional protection, if needed. This protocol offered higher insurance limits when necessary. The commenter stated that the vast majority of its projects were sufficiently covered under the company's ordinary limits, and homeowners were not financially penalized by being over-insured.

The commenter also objected to the requirement that HECs insure against losses caused by "Acts of God." The commenter believed that this requirement is unnecessary, unjustifiable, and unconscionable. The commenter opined that the homeowner's insurance company should continue to be responsible for such liabilities. The commenter stated that historically, some insurers would add a rider to the homeowner's policy to allow all of their coverage to continue in effect while the house is raised or moved, and suggested that insurance companies that refuse to do this should be compelled to add the rider to the homeowner's policy.

RESPONSE: P.L. 2014, c. 34 requires a HEC to obtain, in addition to the \$ 500,000 of CGL that all home improvement contractors must obtain, \$ 1,000,000 of cargo or other insurance that specifically covers home elevation activities. Because this requirement is mandated by statute, the Division does not have the authority to change it.

The Division believes that the proposed list of required insurances set forth in N.J.A.C. 13:45A-17A.11(b) implements the Legislature's intent to protect a homeowner, tenant, lessee, or other party whose home is being lifted, from losses to the home's contents and structure associated [page=1017] with a home elevation, including those resulting from the HEC's negligence and those resulting from "Acts of God," such as wind damage.

The Division has been advised that in many instances, in order to successfully establish a claim under some cargo or riggers insurance policies, the homeowner must prove that the HEC's negligence caused the loss; Acts of God are not covered. The Division has also been advised that some insurers suspend the homeowner's policy covering Acts of God while the house is separated from its foundation. Although the commenter has suggested that the Division require insurance companies to continue the homeowner's coverage while the house is being lifted, the Division believes that the Legislature intended to place the responsibility for insuring against damage to the home and its contents during a home elevation on the HEC, not the homeowner. Therefore, the Division has proposed that HECs insure against fault-based and non-fault based losses while the home is being lifted.

The Division looked at other home elevation programs for guidance in establishing the dollar amount of each required insurance. As the commenter noted, North Carolina requires \$ 50,000 in cargo insurance to protect the contents of the home being lifted. Louisiana requires \$ 500,000 in rigger's insurance to protect the structure of the home being lifted. New York City's Build It Back Program requires \$ 1,000,000 per occurrence of CGL, with a \$ 2,000,000 aggregate for one or two jobs, and \$ 4,000,000 aggregate for three or more jobs. The Division's proposed insurance requirements are consistent with those coverage amounts.

7. COMMENT: A commenter objected to the provision in proposed N.J.A.C. 13:45A-17A.11(c) [sic] requiring that an insurer provide both a certificate of insurance and a copy of the HEC's insurance policy to the Division. The commenter stated that a certificate of insurance is a document used to verify the existence of insurance coverage, reflecting the

types and monetary limits on the policies represented. The commenter believed that requiring the policy and a certificate of insurance is redundant, as there is no better representation of coverage than the policy itself. However, because the policy may be quite long and not readily available, the commenter was concerned that requiring the policy may cause unnecessary delays in starting elevation work. The commenter suggested that the proposal be amended to remove the requirement that HECs seeking registration submit the actual policy to the Division.

RESPONSE: Proposed N.J.A.C. 13:45A-17A.11(d) requires applicants to provide the actual insurance policy because the Department of Banking and Insurance (DOBI) reviews the policy for the Division to ensure that the HEC's insurance coverage meets the requirements of proposed N.J.A.C. 13:45A-17A, and that the policy does not contain any exclusions that would negate the purported coverage listed on the certificate. The Division has been advised that it is unlikely that insurers would be willing to state on the certificate itself that the correct insurance coverage is in place, as such a representation would imply that the insurer has reviewed and interpreted the statute and regulations and the policy terms and conditions, and is warranting that the coverage is sufficient.

8. COMMENT: A commenter disputed a statement in the Regulatory Flexibility Analysis that no professional services are likely to be needed to comply with the proposed amendments and new rules. The commenter believed that some municipalities misinterpret the statute as mandating signed and sealed architectural or engineering drawings for the lift elevation details, resulting in additional cost to the consumer. The commenter stated that "architects and engineers are not experienced as a bona fide structural mover/home elevation contractor for determining the most effective means and methods of elevating a structure, and simultaneously optimizing and facilitating the work of other professionals contracted to perform foundation and/or other work associated with the project." The commenter believed that, in reality, an architect or engineer will draw, sign, and seal the drawings and means and methods directive of a bona fide structural mover/home elevation contractor, and include a statement that it has deferred to the judgment of the elevation contractor. The commenter believed that acknowledgement and recognition of the elevation contractor's ability to produce their own support design, and means and methods is in order. The commenter noted that some architects and engineers recognize their experiential deficiencies and refuse to produce these drawings.

RESPONSE: The Division's proposed regulations do not address the requirement for drawings or lift elevation details, and, therefore, the Division is unable to address the commenter's concerns. The Division suggests that the commenter direct these comments and concerns to the Department of Community Affairs.

Summary of Agency-Initiated Changes:

The Division, on its own initiative, amends on adoption N.J.A.C. 13:45A-17.1(c), 17A.3(a)1, 17A.4(b), and 17A.11(b), to clarify the implementation date of certain provisions of this concurrent proposal relating to registration, insurance, and bonding requirements. The Division proposes to substitute the calendar date that falls 30 days after publication of this adoption notice for the phrase, "30 days after adoption of this proposal." The Division believes that this amendment will clarify for the public and regulated community exactly when those provisions will be implemented. It has always been the Division's intent to provide clear and fair notice of the implementation date in order to give the regulated community an opportunity to secure the insurance and bonding necessary to comply with the Division's proposed rules. Under the existing language, the rules would be implemented 30 days after the Division Director signs the adoption notice which, as a practical matter,

would likely occur prior to publication. This would be unfair to the regulated community because it could not prepare to comply with rules to be implemented at a future date without knowing this date. Because this amendment provides the regulated community with a specific implementation date, and will not prejudice the regulated community in any way, the Division believes that this agency initiated change does not require republication and further public comment.

Additionally, the Division is not adopting concurrent proposed N.J.A.C. 13:45A-17A.14, the rule regarding identification badges. The Division will reconsider this rule when it proposes identification badge rules for home improvement contractors.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments and new rules are subject to State statutory requirements and are not subject to any Federal standards or requirements.

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

SUBCHAPTER 17. HOME IMPROVEMENT CONTRACTOR REGISTRATION

13:45A-17.1 Purpose and scope

(a) The purpose of the rules in this subchapter is to implement the provisions of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. as amended by P.L. 2004, c.16 (N.J.S.A. 56:8-136 et seq.), P.L. 2013, c. 144, and P.L. 2014, c. 34 by providing procedures for the regulation of home improvement contractors and establishing standards to facilitate enforcement of the requirements of the Act. The rules establish the Division's registration procedures for those persons who fall under the requirements of this law.

(b) These rules shall apply to home improvement contractors in this State, unless otherwise exempt under N.J.A.C. 13:45A-17.4. Home elevation contractors registered pursuant to N.J.A.C. 13:45A-17A.3 shall be subject to the rules of this subchapter when performing home improvements other than home elevations.

(c) Home improvement contractors who have entered into a contract with a consumer to perform home elevation services prior to October 1, 2014, shall be deemed to be in compliance so long as the contractor maintains written proof that the consumer has been apprised of the requirements that became effective on October 1, 2014, including those required at N.J.A.C. 13:45A-17A.4(b) and 17A.11(b) which will be implemented *[30 days after adoption of this proposal]* ***on June 17, 2015***, and the consumer has knowingly elected to proceed under the terms of that contract.

13:45A-17.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

[page=1018] "Home elevation contractor" means a person engaged in the business of making or selling home elevations and includes corporations, partnerships, associations, and any other form of business organization or entity, and their officers, representatives, agents, and employees.

"Home improvement" means the remodeling, altering, painting, repairing, renovating, restoring, moving, demolishing, or modernizing of residential or non-commercial property or the making of additions thereto, and includes, but is not limited to, the construction, installation, replacement, improvement, or repair of driveways, sidewalks, swimming pools, terraces, patios, landscaping, fences, porches, windows, doors, cabinets, kitchens, bathrooms, garages, basements and basement waterproofing, water softeners, heaters, and purifiers, solar heating or water systems, insulation installation, home elevation, siding, wall-to-wall carpeting or attached or inlaid floor coverings, and other changes, repairs, or improvements made in or on, attached to or forming a part of the residential or non-commercial property, but does not include the construction of a new residence. The term extends to the conversion of existing commercial structures into residential or non-commercial property and includes any of the above activities performed under emergency conditions. The term does not apply to any work required to be performed by a licensed master plumber, licensed master heating, ventilating, air conditioning, and refrigeration contractor, or licensed electrical contractor. Home elevations are home improvements that require registration pursuant to N.J.A.C. 13:45A-17A.

...

13:45A-17.3 Registration required

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

(e) Home elevation contractors registered pursuant to N.J.A.C. 13:45A-17A.3 shall be permitted to engage in the business of making or selling home improvements.

(f) (No change.)

13:45A-17.4 Exemptions

(a) The following persons are exempt from the registration requirements of this subchapter:

1.-6. (No change.)

7. Any person licensed as a home financing agency, a home repair contractor or a home repair salesman pursuant to N.J.S.A. 17:16C-77, provided that the person is acting within the scope of such license;

8. Any home improvement retailer with a net worth of more than \$ 50,000,000 or any employee of such home improvement retailer who is making or selling such home improvements within the person's scope of employment of the home improvement retailer;

and

9. Any person holding a valid registration as a home elevation contractor pursuant to N.J.A.C. 13:45A-17A.3; provided that if the person's home elevation registration is surrendered, suspended, revoked, not renewed, or otherwise is no longer valid, the person shall register as a home improvement contractor prior to engaging in the business of making or selling home improvements unless the person qualifies for exemption from registration pursuant to (a)1 through 8 above.

SUBCHAPTER 17A. HOME ELEVATION CONTRACTOR REGISTRATION

13:45A-17A.1 Purpose and scope

(a) The purpose of the rules in this subchapter is to implement the provisions of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., as amended by P.L. 2004, c. 16, P.L. 2013, c. 144, and P.L. 2014, c. 34 (the "Act") by providing procedures for the regulation of home elevation contractors and establishing standards to facilitate enforcement of the requirements of the Act. The rules establish the Division's registration procedures for home elevation contractors.

(b) These rules shall apply to home elevation contractors in this State.

13:45A-17A.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Advertise" means to communicate to the public by means of any print, electronic, or any other media, including, but not limited to, newspapers, magazines, periodicals, journals, circulars, flyers, business cards, signs, radio, telephone, facsimile machine, television, computer, or the Internet. "Advertise" includes having a person's name in a classified advertisement or directory in this State under any classification of home improvement or home elevation as defined in this section, but does not include simple residential alphabetical listings in standard or Internet telephone directories.

"Badge declaration" means the electronic form that a registered entity must complete, as set forth in N.J.A.C. 13:45A-17A.14(b), that identifies individuals performing, engaging, or attempting to engage in the face-to-face sale of home improvements, including home elevations, on behalf of the entity at a location or locations in this State other than the business location or locations disclosed pursuant to N.J.A.C. 13:45A-17A.4(c).

"Director" means the Director of the **Division of Consumer Affairs**.

"Division" means the **Division of Consumer Affairs** in the Department of Law and Public Safety.

"Employee" means an employee as defined in N.J.A.C. 18:35-7.1.

"Entity" means the business registered or to be registered as a home elevation contractor.

"Home elevation" means a home improvement consisting of lifting a home off a slab or existing foundation system and setting it back down on a new foundation or piers, posts, columns, or pilings.

"Home elevation contract" means a home improvement contract for a home elevation.

"Home elevation contractor" means a person engaged in the business of making or selling home elevations and includes corporations, partnerships, associations, and any other form of business organization or entity, and their officers, representatives, agents, and employees.

"Home improvement" means the remodeling, altering, painting, repairing, renovating, restoring, moving, demolishing, or modernizing of residential or non-commercial property or the making of additions thereto, and includes, but is not limited to, the construction, installation, replacement, improvement, or repair of driveways, sidewalks, swimming pools, terraces, patios, landscaping, fences, porches, windows, doors, cabinets, kitchens, bathrooms, garages, basements and basement waterproofing, water softeners, heaters, and purifiers, solar heating or water systems, insulation installation, home elevation, siding, wall-to-wall carpeting or attached or inlaid floor coverings, and other changes, repairs, or improvements made in or on, attached to or forming a part of the residential or non-commercial property, but does not include the construction of a new residence. The term extends to the conversion of existing commercial structures into residential or non-commercial property and includes any of the above activities performed under emergency conditions. The term does not apply to any work required to be performed by a licensed master plumber, licensed master heating, ventilating, air conditioning, and refrigeration contractor, or licensed electrical contractor.

"Home improvement contract" means an oral or written agreement for the performance of a home improvement between a contractor and an owner of residential or non-commercial property, or a contractor and a tenant or lessee of residential or non-commercial property, if the tenant or lessee is to be obligated for the payment of home improvements made in, to, or upon such property, and includes all agreements under which the contractor is to perform labor or render services for home improvements, or furnish materials in connection therewith.

"Home improvement contractor" means a person engaged in the business of making or selling home improvements and includes corporations, partnerships, associations, and any other form of business organization or entity, and their officers, representatives, agents, and employees.

"Residential or non-commercial property" means a structure used, in whole or in substantial part, as a home or place of residence by any natural person, whether or not a single or multi-unit structure, and that part of the lot or site on which it is situated and which is devoted to the residential use of the structure, and includes all appurtenant structures.

"Sale of home improvements" means any action taken by or on behalf of an entity with the goal of entering into a contract with a consumer for the performance of a home improvement, including a home elevation, which includes, but is not limited to: initial

contact with the consumer; taking measurements; presenting estimates for the cost of a home elevation or other home improvement; and entering into the contract with [page=1019] the consumer for the completion of the home improvement or home elevation or both.

"Staff" means an employee or an individual who is engaged pursuant to a written agreement to provide consulting services to the home elevation contractor.

"State authorized vendor or vendors" means the business or businesses with which the State has contracted to act on behalf of the Director for the issuance and management of home improvement contractor identification badges.

13:45A-17A.3 Registration required

(a) On or after October 1, 2014, no person shall engage in the business of making or selling home elevations in this State unless registered with the Division in accordance with this subchapter, except as provided in (a)1 below:

1. If a home improvement contractor has entered into a contract with a consumer to perform home elevation services, prior to October 1, 2014, and the contractor maintains written proof that the consumer has been apprised of the requirements that became effective October 1, 2014, including those required at N.J.A.C. 13:45A-17A.4(b) and 17A.11(b) which will be implemented *[30 days after adoption of this proposal]* ***on June 17, 2015***, and has knowingly elected to proceed under the terms of that contract, the contractor will be deemed in compliance with this subchapter.

(b) No person shall advertise indicating that the person is a home elevation contractor in this State unless the person is registered with the Division in accordance with this subchapter.

(c) Any person registered as a home improvement contractor wishing to perform home elevations shall convert his or her home improvement registration into a home elevation registration at no additional fee by completing a home elevation contractor application. The initial term of such home elevation registration shall be the unexpired term of the home improvement registration that was converted.

(d) A person registered as a home elevation contractor shall be exempt from the requirement to register as a home improvement contractor pursuant to N.J.A.C. 13:45A-17.3(a)9; provided that if a person's home elevation registration is surrendered, suspended, revoked, not renewed, or otherwise is no longer valid, such person shall register as a home improvement contractor under N.J.A.C. 13:45A-17.3 prior to engaging in the business of making or selling home improvements and shall obtain a new badge identifying the person as a home improvement contractor.

(e) Contractors that hire sub-contractors to make home elevations, but do not themselves perform home elevations, shall not be required to register as a home elevation contractor with the Division in accordance with this subchapter.

(f) Officers and employees of a registered home elevation contractor shall not be required to register separately from the registered business entity provided that the officers and employees sell or make home elevations within their respective scopes of employment for that registered business entity.

13:45A-17A.4 Initial and renewal applications

(a) Home improvement contractors seeking to become registered under this subchapter shall apply to convert their registration to a home elevation contractor by submitting the following information in addition to that required by (c) and (d) below, on forms provided by the Director:

1. A current and valid registration number;
2. A certification that the applicant contractor currently has, in an ownership or staff position, at least one named person with a minimum of five years of experience in home elevation, including working directly on home elevation projects and training in the operation of home elevation equipment and describing such experience; and
3. Proof of the home elevation contractor's insurance policies in the types and amounts that comply with the requirements of N.J.A.C. 13:45A-17A.11(a)1.

(b) Home elevation contractors who have converted their HIC registrations under (a) above, and those who have initially registered after October 1, 2014, under (c) below, *[within 30 days of the adoption of the concurrent proposal]* ***no later than June 17, 2015***, shall submit the following on forms provided by the Director:

1. Proof of the home elevation contractor's insurance policies in the types and amounts that comply with the requirements of N.J.A.C. 13:45A-17A.11(b);
2. A letter from a surety company authorized to do business in the State, addressed to the Division, to the effect that the applicant has a bonding capacity of at least \$ 500,000; and
3. A list of three references, complete with contact information, for whom the experienced individual in an ownership or staff position in the home elevation contractor has elevated a residential or non-commercial structure within the past five years.

(c) Applicants seeking to engage in home elevations who do not have a current and valid registration as a home improvement contractor shall apply for initial registration with the Division by submitting the following on forms provided by the Director:

1. The name and street address of each place of business of the home elevation contractor and any fictitious or trade name to be used by the home elevation contractor;
2. The type of business organization;
3. The name, residence, and business street address of each officer, director, principal, and person with an ownership interest of 10 percent or more in the entity, including the

percentage of ownership held;

4. The name and number of any professional or occupational license, certificate, or registration issued by this State or any other governmental entity to any officer, director, principal, or person with an ownership interest of 10 percent or more in the entity;

5. Whether the entity, any officer, director, principal, or person with an ownership interest of 10 percent or more in the entity has been adjudged liable in an administrative or civil action involving any of the situations in (c)5i through v below either as a home improvement contractor or a home elevation contractor. For the purposes of this paragraph, a judgment of liability in an administrative or civil action shall include, but not be limited to, any finding or admission that the entity, officer, director, principal, or person with an ownership interest of 10 percent or more in the entity engaged in an unlawful practice or practices related to any of the named situations in (c)5i through v below regardless of whether that finding was made in the context of an injunction, a proceeding resulting in the denial, suspension, or revocation of a license, certification, or registration, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any state or Federal agency. As described above, this paragraph covers the following situations:

i. Obtaining any registration, certification, or license by fraud, deception, or misrepresentation;

ii. Engaging in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense;

iii. Engaging in gross negligence, gross malpractice, or gross incompetence;

iv. Engaging in acts of negligence, malpractice, or incompetence involving selling or making a home elevation or home improvement; or

v. Engaging in professional or occupational misconduct;

6. Whether the entity, any officer, director, principal, or person with an ownership interest of 10 percent or more in the entity has been convicted of any crime involving moral turpitude or any crime relating adversely to selling or making home elevations or other home improvements in any state or Federal proceeding. For the purpose of this paragraph, a plea of guilty, non vult, nolo contendere, or any other such disposition of alleged criminal activity shall be deemed a conviction;

7. Whether the entity, any officer, director, principal, or person with an ownership interest of 10 percent or more in the entity has had its authority to engage in the activity regulated by the Director revoked or suspended by any other state agency or authority;

8. Whether the entity, any officer, director, principal, or person with an ownership interest of 10 percent or more in the entity has violated or failed to comply with the provisions of any act, regulation, or order administered or issued by the Director;

9. Whether the entity, any officer, director, principal, or person with an ownership interest of 10 percent or more in the entity believes it, he, or she is unable to meet the

requirements of the Act (N.J.S.A. 56:8-136 et seq.) or rule in this subchapter for medical or any other good cause to the detriment of the public's health, safety, and welfare;

[page=1020] 10. The name and street address of an agent in the State of New Jersey for service of process; and

11. A certification that the applicant currently has, in an ownership or staff position, at least one named person with a minimum of five years of experience in home elevation, including working directly on home elevation projects and training in the operation of home elevation equipment and describing such experience.

(d) In addition to the information required in (c) above, the applicant shall include the following with the initial application:

1. A properly completed disclosure statement that complies with the requirements of N.J.A.C. 13:45A-17A.5;

2. Proof of the applicant's insurance policies in the types and amounts that comply with the requirements of N.J.A.C. 13:45A-17A.11(a)1 or (b) as applicable;

3. When applicable, a letter from a surety company authorized to do business in the State, addressed to the Division, to the effect that the applicant has a bonding capacity of at least \$ 500,000;

4. The initial registration fee in the amount specified in N.J.A.C. 13:45A-17A.13 unless not required pursuant to N.J.A.C. 13:45A-17A.3(c); and

5. A list of three references, complete with contact information, for whom the experienced individual in an ownership or staff position in the applicant has elevated a residential or non-commercial structure within the past five years.

(e) An application that is not completed because of the applicant's failure to cure a deficiency or to comply with the Director's request for additional information within two years from the date of the last deficiency notice or the date of the last written request for additional information shall be deemed to have been abandoned.

(f) A registered home elevation contractor shall include the following with the annual renewal application:

1. A completed renewal application on a form provided by the Director;

2. Proof of the home elevation contractor's insurance coverage in the types and amounts that comply with the requirements of N.J.A.C. 13:45A-17A.11(a)1;

3. A letter from a surety company authorized to do business in New Jersey and addressed to the Division to the effect that the applicant has a bonding capacity of at least \$ 500,000, and stating the amount of bonds required by N.J.A.C. 13:45A-17A.11(a)2 that the applicant has outstanding;

4. The renewal registration fee in the amount specified in N.J.A.C. 13:45A-17A.13; and
5. If the completed renewal application is received by the Division after the renewal application's due date as specified on the renewal application, the late fee in the amount specified in N.J.A.C. 13:45A-17A.13.

(g) A home elevation contractor shall, at all times throughout the registration term, have at least one named person in an ownership or staff position with a minimum of five years of experience in home elevation, including working directly on home elevation projects and training in the operation of home elevation equipment. If at any time, there is no such person in management or on staff, the home elevation contractor shall notify the Division, in writing, within three calendar days.

(h) The first registration period shall expire on March 31, 2016. Thereafter, a registration period shall commence on April 1 of each year and end on the following March 31.

13:45A-17A.5 Disclosure statement

(a) Each applicant for initial registration shall file a disclosure statement with the Director stating whether it or any of its officers, directors, principals, or persons with an ownership interest of 10 percent or more in the home elevation contractor business has been convicted of any violations of the following provisions of the "New Jersey Code of Criminal Justice," Title 2C of the New Jersey Statutes, or the equivalent under the laws of any other jurisdiction:

1. Any crime of the first degree;

2. Any crime which is a second or third degree crime and is a violation of chapter 20 or 21 of Title 2C of the New Jersey Statutes; or

3. Any other crime which is a violation of N.J.S.A. 2C:5-1 or 2C:5-2 (conspiracy), N.J.S.A. 2C:11-2 (criminal homicide), N.J.S.A. 2C:11-3 (murder), N.J.S.A. 2C:11-4 (manslaughter), N.J.S.A. 2C:12-1 (assault), N.J.S.A. 2C:12-3 (terroristic threats), N.J.S.A. 2C:13-1 (kidnapping), N.J.S.A. 2C:14-2 (sexual assault), subsection a. or b. of N.J.S.A. 2C:17-1 (arson and related offenses), subsection a. or b. of N.J.S.A. 2C:17-2 (causing or risking widespread injury or damage), N.J.S.A. 2C:15-1 (robbery), N.J.S.A. 2C:18-2 (burglary), N.J.S.A. 2C:20-4 (theft by deception), N.J.S.A. 2C:20-5 (theft by extortion), N.J.S.A. 2C:20-7 (receiving stolen property), N.J.S.A. 2C:20-9 (theft by failure to make required disposition of property received), N.J.S.A. 2C:21-2 (criminal simulation), N.J.S.A. 2C:21-2.1 (fraud relating to driver's license or other document issued by governmental agency to verify identity or age; simulation), N.J.S.A. 2C:21-2.3 (fraud relating to motor vehicle insurance identification card; production or sale), N.J.S.A. 2C:21-3 (frauds relating to public records and recordable instruments), N.J.S.A. 2C:21-4 (falsifying or tampering with records), N.J.S.A. 2C:21-6 (fraud relating to credit cards), N.J.S.A. 2C:21-7 (deceptive business practices), N.J.S.A. 2C:21-12 (defrauding secured creditors), N.J.S.A. 2C:21-14 (receiving deposits in a failing financial institution), N.J.S.A. 2C:21-15 (misapplication of

entrusted property and property of government of financial institution), N.J.S.A. 2C:21-19 (wrongful credit practices and related offenses), N.J.S.A. 2C:27-2 (bribery in official and political matters), N.J.S.A. 2C:27-3 (threats and other improper influence in official and political matters), N.J.S.A. 2C:27-5 (retaliation for past official action), N.J.S.A. 2C:27-9 (public servant transacting business with certain persons), N.J.S.A. 2C:27-10 (acceptance or receipt of unlawful benefit by public servant for official behavior), N.J.S.A. 2C:27-11 (offer of unlawful benefit by public servant for official behavior), N.J.S.A. 2C:28-1 (perjury), N.J.S.A. 2C:28-2 (false swearing), N.J.S.A. 2C:28-3 (unsworn falsification to authorities), N.J.S.A. 2C:28-4 (false reports to law enforcement officials), N.J.S.A. 2C:28-5 (tampering with witnesses and informants; retaliation against them), N.J.S.A. 2C:28-6 (tampering with or fabricating physical evidence), N.J.S.A. 2C:28-7 (tampering with public records or information), N.J.S.A. 2C:28-8 (impersonating a public servant or law enforcement officer), N.J.S.A. 2C:30-2 (official misconduct), N.J.S.A. 2C:30-3 (speculating or wagering on official action or information), N.J.S.A. 2C:35-5 (manufacturing, distributing or dispensing a controlled dangerous substance), N.J.S.A. 2C:35-10 (possession, use or being under the influence or failure to make lawful disposition of a controlled dangerous substance), N.J.S.A. 2C:37-2 (promoting gambling), N.J.S.A. 2C:37-3 (possession of gambling records), or N.J.S.A. 2C:37-4 (maintenance of a gambling resort).

13:45A-17A.6 Duty to update information

(a) Whenever any information required to be included in the application changes, including, but not limited to, a change to the certification required under N.J.A.C. 13:45A-17A.4(c)11, or if additional information should be added after the filing of the application, the registered home elevation contractor shall provide that information to the Director, in writing, within 20 calendar days of the change or addition. Whenever any other information filed with the Director pursuant to the Act (N.J.S.A. 56:8-136 et seq.) or this subchapter has changed, the registered home elevation contractor shall provide that information to the Director, in writing, within 20 calendar days of the change or addition.

(b) Whenever any information required to be included in the disclosure statement changes, or if additional information should be added after the filing of the statement, the applicant or registered home elevation contractor, as appropriate, shall provide that information to the Director, in writing, within 30 calendar days of the change or addition.

(c) Whenever there is a deletion or addition to the list of individuals required to wear identification badges pursuant to N.J.A.C. 13:45A-17A.14, the registered home elevation contractor shall inform the Division within three business days of the deletion or addition by logging on to the Division's website and amending the badge declaration. Any additions to the list shall be accompanied by the badge fee. Any individual added to the entity's list of individuals required to wear a badge shall not perform, engage, or attempt to engage in the face-to-face sales of home elevations on behalf of the entity at a location or locations in this State other than the business location or locations disclosed by the [page=1021] entity pursuant to N.J.A.C. 13:45A-17A.4(c) until the individual has obtained and is wearing a badge.

(d) If, at any time, a home elevation contractor no longer has in an ownership or staff position, at least one named person with a minimum of five years of experience in home

elevation, the home elevation contractor shall notify the Division, in writing, within three calendar days.

13:45A-17A.7 Requirement to cooperate

Home elevation contractor applicants seeking to register with the Division and registered home elevation contractors shall have the continuing duty to provide any assistance or information; to produce any records requested by the Director; and to cooperate in any inquiry, investigation, or hearing conducted by the Director.

13:45A-17A.8 Refusal to issue, suspension, or revocation of registration; hearing; other sanctions

(a) The Director may refuse to issue or renew, or may suspend or revoke any registration issued by the Division upon proof that an applicant or registrant or any of its officers, directors, principals, or persons with an ownership interest of 10 percent or more in the entity:

1. Has obtained any registration, certification, or license by fraud, deception, or misrepresentation;
2. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise, or false pretense;
3. Has engaged in gross negligence, gross malpractice, or gross incompetence;
4. Has engaged in repeated acts of negligence, malpractice, or incompetence involving selling or making a home elevation or other home improvement;
5. Has engaged in professional or occupational misconduct;
6. Has been adjudged liable in an administrative or civil action involving any finding or admission which would provide a basis for discipline pursuant to (a)1 through 5 above, regardless of whether that finding was made in the context of an injunction; a proceeding resulting in the denial, suspension, or revocation of a license, certification, or registration; consented to in an assurance of voluntary compliance; or any similar order or legal agreement with any state or Federal agency;
7. Has been convicted of any crime involving moral turpitude or any crime relating adversely to selling or making home elevations or home improvements. For the purpose of this paragraph, a plea of guilty, non vult, nolo contendere, or any other such disposition of alleged criminal activity shall be deemed a conviction;
8. Has had his or her authority to engage in the activity regulated by the Director revoked or suspended by any other state or Federal agency or authority for reasons consistent with this section;
9. Has failed to comply with the badge requirements set forth in N.J.A.C. 13:45A-17A.14. It shall be an affirmative defense to a charge of failing to return a badge to the State authorized vendor that the entity used its best efforts to collect and surrender the badge;

10. Has failed to update information as required by N.J.A.C. 13:45A-17A.6;

11. Has violated or failed to comply with the Act (N.J.S.A. 56:8-136 et seq.) or any provision of this subchapter or the provisions of any act, regulation, or order administered or issued by the Director;

12. No longer has at least one named person with the experience required in N.J.A.C. 13:45A-17A.4(g) in an ownership or staff position; or

13. Is unable to meet the requirements of the Act (N.J.S.A. 56:8-136 et seq.) or any rule in this subchapter for medical or any other good cause to the detriment of the public's health, safety, and welfare.

(b) Information contained in the application required pursuant to N.J.A.C. 13:45A-17A.4 and information contained in the disclosure statement required to be filed pursuant to N.J.A.C. 13:45A-17A.5 may be used by the Director as grounds for denying, suspending, or revoking a registration. An applicant whose registration is denied or a home elevation contractor whose registration is suspended or revoked based upon information contained in the application or disclosure statement or any amendments thereto shall be afforded an opportunity to be heard pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, upon written request to the Director within 30 days of the notice of denial, suspension, or revocation, which shall contain the basis for such action. In any matter in which the provisions of the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq., apply, the Director shall comply with the requirements of that act.

(c) Except as provided in (b) above, prior to refusing to issue or renew or suspending or revoking a home elevation contractor registration, assessing a penalty, or other sanction, the Director shall notify the applicant or registrant and provide an opportunity to be heard.

(d) In addition to assessing a monetary penalty for any violation of this subchapter, the Director may revoke a registration or suspend the registration for a period of time dependent upon the seriousness of the violation.

(e) Nothing contained in this subchapter shall limit the Director from imposing any additional fees, fines, penalties, restitution, or any other sanctions as permitted under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

13:45A-17A.9 Reinstatement of suspended registration

A registration that is suspended by the Director may be reinstated upon the home elevation contractor satisfying the conditions for reinstatement as determined by the Director and paying all outstanding fees, fines, penalties, and restitution, including the payment of the reinstatement fee specified in N.J.A.C. 13:45A-17A.13. If a suspended registration is reinstated, all individuals associated with the reinstated entity required to wear badges pursuant to N.J.A.C. 13:45A-17A.14 shall obtain new badges.

13:45A-17A.10 Ownership and use of registration number; replacement and duplicate

certificates

(a) Each registration number and certificate containing such registration number issued by the Director to a home elevation contractor shall remain the property of the State of New Jersey. If the Director suspends, refuses to renew, or revokes a registration, the home elevation contractor shall immediately return all registration certificates to the Director and shall remove the registration number from all vehicles, advertising, and anything else on which the registration number is displayed or otherwise communicated.

(b) The Director shall issue a replacement certificate upon payment of the replacement certificate fee as set forth in N.J.A.C. 13:45A-17A.13 and receipt by the Director of an affidavit or certified statement attesting that the original was either lost, destroyed, mutilated, or is otherwise no longer in the custody of and cannot be recovered by the certificate holder.

(c) The Director shall issue a duplicate certificate to a registered home elevation contractor upon payment of the duplicate certificate fee as set forth in N.J.A.C. 13:45A-17A.13 and receipt by the Director of an affidavit or certified statement that the registered contractor has multiple places of business in which the home elevation contractor must display a certificate. A registered home elevation contractor may not possess more registration certificates than the number of places of business utilized by the home elevation contractor.

(d) A registered home elevation contractor shall prominently display:

1. The original registration certificate or a duplicate registration certificate issued by the Division at each place of business; and

2. The home elevation contractor's registration number on all advertisements distributed within this State, on business documents and contracts, and on correspondence with consumers of home elevation services in this State.

(e) All commercial vehicles registered in this State and leased or owned by a registrant and used by the registrant for the purpose of providing home elevations, except for vehicles leased or rented by a registrant to a customer of that registrant, shall be marked on both sides with the following information:

1. The name of the registered home elevation contractor in lettering at least one inch in height; and

2. The home elevation contractor registration number of the registrant in lettering at least one inch in height.

(f) Any invoice, contract, or correspondence given by a registrant to a consumer shall prominently contain the toll-free telephone number provided by the Division pursuant to N.J.S.A. 56:8-149.b, which shall be displayed in all caps in at least 10-point boldface type as follows: FOR INFORMATION ABOUT CONTRACTORS AND THE [page=1022] CONTRACTORS' REGISTRATION ACT, CONTACT THE NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, **DIVISION OF CONSUMER AFFAIRS** AT 1-888-656-6225.

13:45A-17A.11 Mandatory insurance and bonding

(a) As of October 1, 2014, every registered home improvement contractor seeking to become registered as a home elevation contractor shall secure and maintain in full force and effect during the entire term of registration insurance in the amount of \$ 1 million per occurrence, over and above the \$ 500,000 required for registration as a home improvement contractor, of a type covering home elevation activities to cover damages or other losses to the homeowner, lessee, tenant, or other party resulting from the home elevation.

(b) *[Within 30 days of the adoption of this concurrent proposal]* ***No later than June 17, 2015***, every registered home elevation contractor or applicant seeking to become registered as a home elevation contractor shall secure and maintain in full force and effect during the entire term of registration:

1. Cargo, structural movers cargo, builders risk, riggers liability, care custody and control, or any other insurance policies that together are broad enough to cover the following risk of loss to the homeowner's dwelling, other structures, and personal property during the contracted elevation operations: perils typically insured under a "special form" homeowners policy, including damage caused by the negligence of the contractor and its subcontractors. Certificates of insurance for these policies shall be provided to the homeowner. Policies covering the risks identified below shall be maintained in the stated amounts per occurrence with the minimum aggregate amounts:

i. Cargo insurance, or other policy insuring the homeowner's, lessor's, or tenant's personal property located in the dwelling and other structures being lifted, shall provide minimum coverage in the amount of \$ 50,000 per occurrence, with a minimum aggregate amount of \$ 200,000;

ii. Riggers or care custody or control insurance, or other policy insuring the dwelling and other structures being lifted, shall provide minimum coverage in the amount of \$ 500,000 per occurrence, with a minimum aggregate amount of \$ 2,000,000;

iii. Policies insuring the dwelling and other structures being lifted, and the homeowner's, lessor's, or tenant's personal property located in them, for damage unrelated to the legal liability of the contractor shall provide minimum coverage in the amount of \$ 500,000 per occurrence, with a minimum aggregate in the amount of \$ 2,000,000;

iv. Commercial general liability insurance, having a minimum coverage amount of \$ 1,000,000 per occurrence (including the \$ 500,000 of coverage required for all home improvement contractors), with an aggregate limit of \$ 2,000,000; and

v. Commercial auto liability insurance having a minimum coverage amount of \$ 1,000,000 per occurrence;

2. Bonding capacity of at least \$ 500,000 and outstanding payment and performance bonds in an amount at least equal to the value of all active home elevation contracts. A performance and payment surety bond or bonds in favor of the homeowner in the minimum amount of the value of each home elevation contract for the duration of the project, the

signed original of the bond or bonds shall be provided to the homeowner; and

3. Any other insurance required by law or regulations, including, but not limited to, workers compensation insurance.

(c) Insurance and surety bonds shall be obtained from insurers and surety companies licensed to do business in the State of New Jersey with an A.M. Best's rating of not less than A-.

(d) The Division shall be a certificate holder on all insurance policies, and as such, shall be issued a certificate(s) of insurance which shall contain the insured's name, business street address, policy number, term of the insurance, and coverage information. The certificate must state affirmatively the following: "This policy is applicable to the home elevation operations of the insured." A copy of the insurance policy or policies together with the declaration page indicating the limits of liability shall be attached to the certificate. The issuer shall provide the Division with written notice of cancellation or non-renewal within 10 days of the cancellation or non-renewal of any such insurance policies.

(e) Every registered contractor engaged in home elevation whose insurance policies are canceled, not renewed, or changed shall submit to the Director copies of the certificates of insurance for new or replacement policies which meet the requirements of (b)1 and 2 above, before the former policies are no longer effective.

13:45A-17A.12 Requirements of certain home elevation contracts

In addition to the requirements of a home improvement contract pursuant to N.J.A.C. 13:45A-16.2, every home elevation contract in which a person required to be registered as a home elevation contractor is a party shall comply with the provisions of N.J.S.A. 56:8-151.

13:45A-17A.13 Fees

(a) The Division shall charge the following non-refundable home elevation contractor registration fees:

- | | |
|---|------------|
| 1. Initial registration fee | \$ 110.00; |
| 2. Renewal registration fee | \$ 90.00; |
| 3. Late fee | \$ 25.00; |
| 4. Reinstatement fee | \$ 50.00; |
| 5. Replacement or duplicate certificate fee | \$ 20.00. |

13:45A-17A.14 *[Identification badges and notice statement]* *(Reserved)*

*(a) Each individual performing, engaging, or attempting to engage in the face-to face sale of home improvements, including home elevations, on behalf of an entity at a location or locations in this State other than the business location or locations disclosed pursuant to N.J.A.C. 13:45A-17A.4(c), shall wear an identification badge on the upper left corner of the individual's torso in a plainly visible fashion. An individual shall not engage in the face-to-face sale of home improvements on behalf of the entity at a location or locations in this State other than the business location or locations disclosed pursuant to N.J.A.C. 13:45A-17A.4(c) until the individual has obtained and is wearing a valid identification badge.

1. This section shall not become effective until such time as a rule requiring all home improvement contractors to wear identification badges under N.J.A.C. 13:45A-17 becomes effective.

2. Any person required to wear an identification badge shall provide consumers with the following written statement:

MY BADGE TELLS YOU

that I am employed by _____ and that I am authorized to sell home elevations and home improvements on its behalf.

This Badge is for identification purposes only. The issuance of this Badge does not constitute or imply any endorsement or approval by the New Jersey **Division of Consumer Affairs**.

(b) For the purpose of identifying those individuals who are required to obtain and wear an identification badge, each entity shall, upon registration, complete a badge declaration setting forth the name and address of each individual who will perform, engage, or attempt to engage in the face-to-face sales of home elevations or home improvements on behalf of the entity at a location or locations in this State other than the business location or locations disclosed by the entity pursuant to N.J.A.C. 13:45A-17A.4(c). Access to the electronic form shall be available by logging on to the Division website. The name, address, and contact information for the State authorized vendor or vendors issuing identification badges shall be posted on the Division website.

(c) An individual shall not be issued a badge unless:

1. The registration of the entity with which the individual is associated is in good standing;
2. The individual is listed on the entity's badge declaration, as supplemented and amended from time to time;
3. The badge fee has been paid by the entity to the vendor; and
4. The individual presents to the State authorized vendor a form of government-issued photo identification containing the individual's current address of residence, which shall match the address listed on the entity's badge declaration.

(d) The Division, through the State authorized vendor or vendors, shall issue an identification badge that shall be unalterable and shall include the following information:

1. The name, color photograph, and signature of the individual to whom the badge has been issued;

[page=1023] 2. The business name and registration number of the entity;

3. The badge's expiration date; and

4. A clear and visible statement that the badge is not for an electrical contractor, plumbing contractor, or heating, ventilating, air conditioning, and refrigeration contractor.

(e) The badge shall be valid for two years. Each entity on whose behalf a badge has been issued shall apply for renewal of the badge at least 45 days prior to its expiration date, at which time the entity shall pay the badge renewal fee and shall obtain from the State authorized vendor a new badge showing an updated photo and expiration date. An entity that permits an individual required to have a badge to work without a valid badge shall be deemed to be in violation of this subchapter within the meaning of N.J.A.C. 13:45A-17A.8 and shall also be subject to the penalty provisions of N.J.S.A. 56:8-143.

(f) Identification badges are not transferable. Failure of an entity to collect and surrender an identification badge shall be deemed to be a violation within the meaning of N.J.A.C. 13:45A-17.9. The address for surrender shall be set forth on the Division's website. Upon termination of an association between an entity and an individual to whom an identification badge was issued, the entity shall:

1. Inform the Division within three business days of the date of termination by logging on to the Division's website and amending the badge declaration; and

2. Collect the individual's identification badge and surrender it to the State authorized vendor for destruction within three business days of the date of termination.

(g) In the case of a lost or stolen badge, the individual shall not perform, engage or attempt to engage in the face-to-face sales of home improvements on behalf of the entity at a location or locations in this State other than the business location or locations disclosed pursuant to N.J.A.C. 13:45A-17.5(a)1 until the individual obtains and is wearing a new badge. If an individual's badge is lost or stolen, or a badge holder has legally changed his or her name through marriage or court order, the entity with which the individual is associated shall, within three business days of the event, report the event to the Division by logging on to the Division's website and:

1. In the case of a name change, amend the badge declaration; and

2. In the case of a lost or stolen badge, report the loss or theft.

(h) An entity whose registration has been suspended or revoked, or has not been renewed, shall, within three business days of that suspension, revocation, or nonrenewal, surrender all identification badges issued under the registration number of the entity to the State authorized vendor. The address for surrender shall be set forth on the Division's website. All badges so surrendered shall be destroyed. Any subsequent reinstatement of registration shall require the issuance of a new badge.]*