

VOLUME 48, ISSUE 24
ISSUE DATE: **DECEMBER 19, 2016**
RULE ADOPTIONS
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

Adopted Amendments: N.J.A.C. 13:45A-17.2, 17.7, 17.9, and 17.10

Adopted New Rule: N.J.A.C. 13:45A-17.5A

Home Improvement Contractors: Initial and Renewal Applications; Identification Badges and Notice Statement; Duty to Update Information; Refusal to Issue, Suspension or Revocation of Registration; Hearing; Other Sanctions

Proposed: February 1, 2016, at 48 N.J.R. 185(a).

Adopted: November 14, 2016, by Steve C. Lee, Director, **Division of Consumer Affairs**.

Filed: November 23, 2016, as R.2016 d.188, **without change**.

Authority: N.J.S.A. 56:8-138.1.

Effective Date: December 19, 2016.

Expiration Date: December 14, 2018.

Summary of Public Comment and Agency Response:

The official comment period closed on April 1, 2016. In order to ensure compliance with the Administrative Procedures Act and the rules promulgated by the Office of Administrative Law, the comment period was extended through November 12, 2016. The Division received four comments on the notice of proposal from the following:

1. Jody B. Shilan, MLA, Executive Director, New Jersey Landscape Contractors Association;
2. Gail E. Woolcott, Director of Operations, New Jersey Landscape Contractors Association;
3. John Perna, General Sales Manager, Hamilton Building Supply; and
4. James W. Stopa, Stopa Carpentry & General Contracting, LLC.

1. Jody Shilan, on behalf of the New Jersey Landscape Contractors Association (NJLCA) expressed understanding for the proposal, but noted that badges will cause consumer confusion. Specifically, the commenter believes that a badge will lead a homeowner to think it is the same as having a license when, in fact, the badge only represents registration with the State. As the commenter points out, a badge means the contractor has "a Federal Tax ID Number, a checking account, \$ 500,000 of insurance," and has paid \$ 110.00 for the registration. The NJLCA worries that this proposal will "reinforce the misconception" that the

registration is the same as the license and give more credibility to "inexperienced and unprofessional contractors." The NJLCA believes that this proposal will damage the reputations of their members. Unprofessional home improvement contractor (HIC) registrants will be mistaken for licensed individuals and the industry will suffer if consumers deem home improvement a profession consisting of unprofessional, yet licensed, practitioners.

RESPONSE: The requirement that home improvement contractors must display a State-issued identification badge is imposed pursuant to statute, P.L. 2013, c. 144. The Division's proposed amendments and new rule are intended to implement that statutory requirement. Although the Division appreciates the commenter's concerns about potential confusion for consumers, the Division notes that the badges that will be issued will not connote that the holder is licensed by the Division. Rather, the Division believes that the proposed amendments and new rule are consistent with the Legislature's intent to protect consumers from individuals fraudulently representing themselves as home improvement contractors when they are not properly registered.

2. Gail E. Woolcott, on behalf of the NJLCA, inquired whether HIC registration costs will spike because of the proposed amendments. The commenter also inquired what the cost for the ID badges will be, and on the date a final rule will be implemented.

RESPONSE: As noted in the notice of proposal, the proposed amendments and new rule will have an economic impact on home improvement contractors that will be required to pay badge fees for the issuance of the identification badges for all its salespersons. There will be no increase in the registration fees imposed by the Division on home improvement contractors as a result of the new identification badge requirement. The actual fee for the issuance of the badges will be set by the vendor chosen by the State through the State's procurement process. The amount of the fee is not known at this time because the procurement process has not been completed, and a contract has not been awarded. The requirement to obtain and wear an identification badge will become effective six months following the award of the State contract for the badge creation, as provided in N.J.A.C. 13:45A-17.5A(a). The Division will notify home improvement contractors when the contract for the badge creation is awarded, so contractors will know that within six months of that notification, identification badges must be obtained and displayed consistent with the requirements set forth in the proposed amendments and new rule.

3. John Perna, General Sales Manager at Hamilton Building Supply, noted that the badges will assist in confirming an HIC's credibility, but expressed serious concern regarding the confusion that the badges will generate for consumers. The commenter noted that an HIC gets documentation from the State confirming registration, which he believes should be enough to prove the contractor's credibility. The commenter suggested that this documentation should be presented to the consumer when signing a contract with an HIC. Mr. Perna also noted that other trades do not have the badge requirement, and that HICs should not be treated differently. He also argues that badges are redundant to the documentation from the State and believes the use of badges will open the industry up to frivolous lawsuits.

RESPONSE: As noted above in the Response to Comment 1, the requirement that home improvement contractors must display a State-issued identification badge is imposed pursuant to statute, P.L. 2013, c. 144, and the Division's proposed amendments and new rule are intended to implement that statutory requirement. The Division notes that Legislature did not impose the identification badge requirement on trades other than home improvement contractors.

4. James W. Stopa, of Stopa Carpentry & General Contracting, LLC, questioned whether people carrying out the work of a project need badges even if they did not participate in the sale of the contracting services. He objects to the use of badges and believes that the State should go after fraudulent or criminal HICs and not punish the entire industry. The commenter notes that he ponders the thought of leaving the State for other regions where the badge requirement does not exist.

RESPONSE: As noted above in the Response to Comment 1, the Division has proposed these amendments and new rule in order to implement the statutory requirement set forth in P.L. 2013, c. 144, that home improvement contractors wear identification badges. Consistent with proposed new N.J.A.C. 13:45A-17.5A(a), only those individuals performing, engaging, or attempting to engage in the sale of home improvements are required to wear the badge. The "sale of home improvements" is defined in the amendments to N.J.A.C. 13:45A-17.2 to mean 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 home improvements. Therefore, individuals performing the actual home improvements are not required to wear the identification badge.

[page=2825] **Federal Standards Statement**

A Federal standards analysis is not required because the adopted amendments and new rule are governed by N.J.S.A. 45:12-1 et seq., and are not subject to any Federal requirements or standards.

Full text of the adopted amendments and new rule follows:

SUBCHAPTER 17. HOME IMPROVEMENT CONTRACTOR REGISTRATION

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:

...

"Badge declaration" means the electronic form that a registered entity must complete, as set forth in N.J.A.C. 13:45A-17.5A(b), which identifies individuals performing, engaging, or attempting to engage in the sale of home improvements.

...

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

...

"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 or home improvements, including, but not limited to: initial contact with the consumer; taking measurements; presenting estimates for the cost of home improvements; and entering into the contract with the consumer for the completion of home improvements.

"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 and home elevation contractor identification badges.

13: 45A-17.5A Identification badges

(a) On or after six months after the award of the contract for badge creation and other ancillary services related to the badges, each individual performing, engaging, or attempting to engage in the sale of home improvements, 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 sale of home improvements until the individual has obtained and is wearing a valid identification badge.

(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 residence of each individual who will perform, engage, or attempt to engage in the sales of home improvements on behalf of the entity. 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;
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 HVACR 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-17.9

and shall also be subject to the penalty provisions of N.J.S.A. 56:8-143.

(f) Identification badges are not transferable. 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. The address for surrender shall be set forth on the Division's website.

i. Failure of an entity to collect and timely surrender an identification badge shall be deemed to be a violation within the meaning of N.J.A.C. 13:45A-17.9.

(g) 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; or

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

i. In the case of a lost or stolen badge, the individual shall not perform, engage or attempt to engage in the sales of home improvements until the individual obtains and is wearing a new badge.

(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 surrendered badges shall be destroyed. Any subsequent reinstatement of registration shall require the issuance of a new badge.

13:45A-17.7 Duty to update information

(a)-(b) (No change.)

(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-17.5A, the entity 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 sales of home improvements on behalf of the entity until the individual has obtained and is wearing a badge.

13:45A-17.9 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

home improvement contractor business:

1.-8. (No change.)

9. Has failed to comply with the badge requirements set forth in N.J.A.C. 13:45A-17.5A. 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;

Recodify existing 9.-10. as 10.-11. (No change in text.)

(b) (No change.)

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

[page=2826] (d)-(e) (No change.)

13:45A-17.10 Reinstatement of suspended registration

A registration that is suspended by the Director may be reinstated upon the 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-17.14. 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-17.5A shall obtain new badges.