

PLEASE READ

The special adoption that follows is subject to technical review by the Office of Administrative Law.

LAW AND PUBLIC SAFETY

DIVISION OF CONSUMER AFFAIRS

Home Improvement and Home Elevation Contractor Registration

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

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

Special Adopted and Concurrent Proposed Amendments and New Rules Authorized
_____ by: New Jersey Division of Consumer Affairs, Steve C. Lee, Acting
Director

Steve C. Lee

Filed:

Authority: P.L. 2014, c.34

Calendar Reference: See Summary below for explanation of exemption to calendar requirement.

Concurrent Proposal Number: PRN 2014- _____

Effective Date:

Expiration Date:

Submit written comments by _____ to:

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P.O. Box 45027
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OR electronically at: www.NJConsumerAffairs.gov/proposal/comment/

In accordance with P.L. 2014, c.34, the New Jersey Division of Consumer Affairs has adopted the following amendments and new rules for applicants wishing to perform home elevation activities in the State that became effective on _____2014, upon acceptance for filing by the Office of Administrative Law. The specially adopted amendments and new rules shall be effective for a period not to exceed 270 days from the date of enactment of P.L. 2014, c. 34 (August 15, 2014).

Concurrently, the provisions of these amended and new rules are being proposed for readoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The adopted amendments and new rules will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4(f) if filed on or before the 270 day expiration date from the date of enactment of P.L. 2014, c.34.

The agency special adoption and concurrent proposal follows:

Summary

On August 15, 2014, P.L. 2014, c.34 was enacted, amending and supplementing the Contractor's Registration Act, P.L. 2004, c.16 (C. 56:8-136 et seq.). P.L. 2014, c.34 establishes a new registration program for those home improvement contractors (HICs) engaged in the business of selling or making home elevations in this State as home elevation contractors (HECs). Pursuant to P.L. 2014, c.34, and its rulemaking authority, N.J.S.A. 56:8-1 et seq., specifically, N.J.S.A. 56:8-152, the Division of Consumer Affairs (the "Division") is proposing a new subchapter, N.J.A.C. 13:45A-17A, to establish the registration program for HECs, including the application, disclosure, insurance, surety bond, badge identification, and other requirements of the program.

Additionally, the Division is proposing amendments to existing rules at N.J.A.C. 13:45A-17.1; 17.2; 17.3; and 17.4 to clarify that HEC entities possessing valid registrations pursuant to proposed new subchapter N.J.A.C. 13:45A-17A may perform other types of home improvements without also registering as home improvement contractors pursuant to the Contractors' Registration Act (N.J.A.C. 13:45A-17.3). However, registered HECs would be subject to the other rules of N.J.A.C. 13:45A-17 when performing home improvements other than home elevations.

N.J.A.C. 13:45A-17.1 sets forth the purpose and scope of the rules in the subchapter. The Division proposes to amend N.J.A.C. 13:45A-17.1 (b) to clarify that HECs registered pursuant to proposed N.J.A.C. 45A-17A.3 are subject to the rules of N.J.A.C. 13:45A-17 when performing home improvements other than home elevations. After the effective date of the Act and the special adoption, October 1, 2014, HECs are specifically obligated to provide consumers entering into contracts with evidence of their insurance coverage.

Existing N.J.A.C. 13:45A-17.2 is a definitions section. The Division proposes to add the term, "home elevation contractor." Additionally, the Division proposes to amend the term "home improvement" to exclude the construction, installation, replacement, improvement or repair of fire protection devices, security protection devices, and central heating and air conditioning equipment because this work may only be done by a licensed professional. The Division also proposes to exclude from the definition of "home improvement" any other work required by law to be performed by a licensed master plumber, licensed master HVACR contractor, or licensed electrical contractor.

N.J.A.C. 13:45A-17.3 requires HICs who are not exempt under N.J.A.C. 13:45A-17.4, and entities that advertise as home improvement contractors in this State, to register with the Division in accordance with the provisions of subchapter 17. This section is proposed to be amended to clarify that HECs registered pursuant to N.J.A.C. 13:45A-17A.3 are permitted to engage in the business of making or selling all home improvements and need not register separately as HICs. N.J.A.C. 13:45A-17.4 is proposed to be similarly amended to

exempt from the HIC registration requirements entities holding a valid registration as a HEC pursuant to N.J.A.C. 13:45A-17A.3. However, should the entity's HEC registration cease to be valid, the entity would be required to register as a HIC before engaging in the making or selling of home improvements.

Proposed new subchapter N.J.A.C. 13:45A-17A sets forth the registration requirements for HECs. Proposed new rule N.J.A.C. 13:45A-17A.1 describes the purpose and scope of the rules in the subchapter. Proposed new rule N.J.A.C. 13:45A-17A.2 establishes the definitions for the subchapter.

Proposed new N.J.A.C. 13:45A-17A.3 (a) requires HECs in the State to register with the Division in accordance with the provisions of this proposed new subchapter. Proposed subsection (b) prohibits a HEC from advertising home elevation services unless registered as a HEC. Proposed subsection (c) requires persons currently registered as HICs to convert their registrations to HEC registrations if they intend to perform home elevations. In the case of such a conversion, the initial term of the HEC registration would be the unexpired term of the HIC registration that was converted and there would be no additional initial registration fee. Proposed subsection (d) clarifies that a person with a valid HEC registration is not required to register as a HIC. However, if that HEC registration is subsequently surrendered, revoked, suspended, not renewed, or otherwise becomes invalid, the person must register as a HIC prior to making or selling home improvements and must obtain a new badge identifying the person as a HIC. Proposed subsection (e) clarifies that contractors that hire HECs but do not themselves perform home elevations are not required to be registered. Proposed subsection (f) states that officers and employees of a registered HEC are not required to register separately from the registered business entity as long as the officers and employees sell or make home elevations within their respective scopes of performance for that registered business entity.

Proposed new rule N.J.A.C. 13:45A-17A.4 establishes the initial and renewal application requirements for HEC registrants. Proposed subsections (a) sets forth the specific

requirements for an initial registration application, in addition to those required by subsection (c) and (d), for those who already possess a HIC registration that is being converted to a HEC registration. All such applicants will be required to provide a valid and current the home improvement contractor registration number, proof of the requisite insurance, a certification that the HEC has a named person in an ownership or staff position who has a minimum of five years of experience in home elevation. The definition of “staff” encompasses direct employees as well as consultants, so long as the consultant has the required experience directly performing home elevations and training in the use of home elevation equipment, as required by the Act.

Proposed subsection (b), requires those who have who have converted from a HIC registration pursuant to subsection (a), and those who have initially registered after October 1, 2014 under subsection (c), to provide, within thirty (30) days of the adoption of the concurrent proposal, additional information including proof of compliance with any additional insurance or bonding requirements set forth at N.J.A.C. 13:45A-17.11(b) and a list of three references, complete with contact information, for whom the experienced individual in an ownership or staff position in the HEC has elevated a residential or non-commercial structure within the past five years.

Proposed subsection (c) and (d) set forth the elements of the application required by all applicants for a home elevation contractor registrations, including those who were not previously registered as home improvement contractors.

Proposed subsection (e) provides that an application that is not completed because of an applicant’s failure to cure a deficiency or comply with a request for additional information within two years of the last notice or request will be considered abandoned.

Proposed subsection (f) also requires entities renewing their registrations to provide: a completed renewal application; proof of insurance and a letter evidencing bonding capacity as required in proposed N.J.A.C. 13:45A-17A.11 together with a statement of the amount of

bonds that the applicant has outstanding; and the appropriate renewal registration fee and late fee, if applicable.

Proposed subsection (g) requires a home elevation contractor to, 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 must notify the Division, in writing, within three calendar days.

Proposed subsection (h) provides that the first registration period will expire on March 31, 2016. After this date, the registration period will run from April 1 to March 31 of each year.

Proposed new rule N.J.A.C. 13:45A-17A.5 sets forth the information that must be provided on the disclosure statement by the applicant concerning the entity or any of the entity's officers, directors, principals or persons with an ownership interest of 10 percent or more in the business. The information required to be disclosed includes convictions of various criminal offenses as stipulated in N.J.S.A. 56:8-141(a) and other information that the Director may consider when issuing, suspending or revoking a registration issued under this subchapter as stipulated in N.J.S.A. 56:8-141(b).

Proposed new N.J.A.C. 13:45A-17A.6 (a) provides that applicants and registrants have a duty to update information provided to the Division on the application within 20 calendar days of the change or addition. Proposed subsection (b) provides that applicants and registrants have a duty to update information provided to the Division on the disclosure statement within 30 calendar days of the change or addition. These requirements are derived from N.J.S.A. 56:8-138(c) and 141(e), respectively. Proposed subsection (c) requires HECs to inform the Division about personnel changes involving individuals required to wear identification badges pursuant to N.J.A.C. 13:45A-17A.14. Proposed subsection (d) requires

HECs to notify the Division if the HEC no longer has in a management or staff position, an individual with five years of experience in making home elevations.

Proposed new rule N.J.A.C. 13:45A-17A.7 provides that applicants and registrants have a continuing duty to cooperate with the Division by providing any assistance, information or documents requested by the Director.

Proposed new N.J.A.C. 13:45A-17A.8 (a) provides the grounds on which the Director may refuse to issue or renew, or may suspend or revoke any registration issued by the Division. Proposed subsection (b) states that the information in the application and disclosure statement may be used by the Director for the purpose of denying, suspending or revoking a registration. Additionally, this subsection provides that applicants and registrants are 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. Subsection (c) requires the Director to notify applicants and registrants prior to refusing to issue or renew, suspending or revoking a registration or assessing a penalty and provide an opportunity to be heard. Subsection (d) allows the Director to suspend or revoke a registration in addition to assessing a monetary penalty for a violation of the subchapter. Subsection (e) clarifies that nothing in the subchapter limits the Director from imposing any additional fees, fines, penalties, restitution, attorney fees, costs, or any other sanctions as permitted under the Consumer Fraud Act.

Proposed new rule N.J.A.C. 13:45A-17A.9 allows for reinstatement of a suspended registration upon the entity's satisfying the conditions for reinstatement as determined by the Director and paying all outstanding fees, fines, penalties and restitution, including payment of the reinstatement fee specified in proposed new rule N.J.A.C. 13:45A-17A.13. Additionally, if a suspended registration is reinstated, all individuals required to wear badges pursuant to N.J.A.C. 13:45A-17A.14 must obtain new badges.

Proposed new N.J.A.C. 13:45A-17A.10 (a) states that the registration number and certificate issued by the Division are the property of this State and that the HEC must

immediately return all registration certificates and remove the registration number from all vehicles, advertising and other places where it is displayed if the registration is suspended or revoked or if the contractor fails to renew the registration. Proposed subsection (b) concerns lost, destroyed, or mutilated certificates. Proposed subsection (c) requires the Director to issue duplicate certificates so that a contractor is able to comply with proposed subsection (d), which requires a registered contractor to display prominently the original or duplicate registration certificate issued by that Division at each place of business. Subsection (d) also contains requirements for the use of registration numbers. Subsection (e) requires that any invoice, contract or correspondence given by a registrant to a consumer shall prominently contain the Division's toll-free number.

Proposed new rule N.J.A.C. 13:45A-17A.11 (a) sets forth the amounts, types, proofs and notice requirements for insurance and surety bond(s) that registrants must maintain. P.L. 2014 c.34 requires that HECs maintain \$500,000 per occurrence of commercial general liability insurance required of all home improvement contractors, and a minimum of \$1,000,000 per occurrence of cargo or other insurance that specifically covers damages or other losses to the homeowner, lessee, tenant or other party resulting from home elevation activities. For any contract initiated after October 1, 2014, home elevation contractor applicants will be required to demonstrate that they maintain insurance coverage in this amount, and specify the types of insurance that they are maintaining. This requirement will be effective upon the filing of the special adopted rule, authorized by N.J.S.A. 56:8-138.2(b), and will remain in effect until 30 days after the adoption of the concurrent proposal.

The Act also authorizes the Division, in consultation with the Department of Banking and Insurance, to require HECs to secure and maintain additional insurance in such kind and amount as the Director may determine. After consultation with the Department of Banking and Insurance, the Division proposes to require: (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. Enforcement of the requirements set forth in this paragraph will not be pursued until 30 days after the adoption of the concurrent proposal, filed simultaneously with the special adopted rule authorized by N.J.S.A. 56:8-138.2(b).

In addition to the insurance requirements at N.J.A.C. 13:45A -17A.11, as authorized by N.J.S.A. 56:8-142, the Division proposes to require that HECs post a payment and performance bond in favor of the owner, lessee, tenant or other party to the contract for home elevation. The Division proposes to require a HEC to provide, at the time of registration **or** no later than 30 days after the adoption of the concurrent proposal, filed simultaneously with the special adopted rule authorized by N.J.S.A. 56:8-138.2(b), a letter from a surety company evidencing that the HEC has a bonding capacity of at least \$500,000. Once a HEC has entered into a contract for a specific home elevation, the Division proposes to require that the HEC post a payment and performance bond in favor of the homeowner, tenant or other party to the home elevation contract, for the duration of the project, in the amount of the cost of the home elevation contract, to assure completion of the project.

Proposed new subsection (b) sets the minimum credit rating for insurers and surety companies issuing insurance or bonds on home elevation projects. Proposed subsection (c) sets forth the information that must appear on the certificate or certificates of insurance. A

copy of the insurance policy or policies together with the declaration page indicating the limits of liability must be attached to the certificate. The Division must be named as a certificate holder on all insurances. The Division must be given notice of cancellation or non-renewal of an insurance policy within 10 days of cancellation or non-renewal. Proposed new subsection (d) requires registrants to submit to the Division a certificate of insurance for new or replacement policies before the former policies are no longer effective. Proposed new subsection (e) requires HECs to maintain bonding capacity of at least \$500,000 throughout the registration term.

Proposed new rule N.J.A.C. 13:45A-17A.12 states that in addition to the requirements of a home improvement contract pursuant N.J.A.C. 13:45A-16.2, every home elevation contract to which a person required to be registered as a HEC is a party must comply with the provisions of N.J.S.A. 56:8-151.

Proposed new rule N.J.A.C. 13:45A-17A.13 sets forth the fee schedule for the home elevation contractor registration program.

Proposed new rule N.J.A.C. 13:45A-17A.14 sets forth the requirements relating to identification badges. Proposed N.J.A.C. 13:45A-17A.14 (a) requires that each individual acting on behalf of a HEC entity wear an identification badge on his or her upper left torso when performing, engaging or attempting to 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(s) disclosed on the entity's registration form on file with the Division. Proposed new rule N.J.A.C. 13:45A-17A.14 (a) 1 provides that this rule would not become effective until a rule requiring all HICs to wear identification badges under N.J.A.C. 13:45A-17 is effective. This subsection would also require that the individual required to wear the badge provide written notice about the badge to the homeowner.

Proposed new subsection (b) requires that all entities complete an electronic badge declaration form upon registration identifying the individuals required to wear badges.

Proposed new subsection (c) directs the entities to the Division's website to obtain

information identifying the State authorized vendor or vendors who will be issuing and managing the badges on behalf of the Division. Proposed new subsection (c) also sets forth the conditions that must be satisfied before a badge will be issued by the State authorized vendor or vendors. Proposed new subsection (d) requires that badges be unalterable, and lists the information to be printed on the badges.

Proposed new subsection (e) establishes that a badge is valid for two years, and sets forth the renewal process. This subsection also prohibits an entity from allowing an individual to sell home improvements without a valid badge; an entity that permits such selling without a badge will be deemed to be in violation of the subchapter and subject to the penalty provisions of N.J.S.A. 56:8-143.

Proposed new subsection (f) prohibits the transfer of badges between individuals, and sets forth the procedure that must be followed when the association between a salesperson and an entity is terminated.

Proposed new subsection (g) sets forth the procedure that must be followed when an individual changes his or her name, or if a badge is lost or stolen. In the case of a lost or stolen badge, until the badge is replaced, the individual is prohibited from engaging in the face-to-face sales of home improvements other than on the business's premises.

Proposed new subsection (h) requires an entity to surrender for destruction all badges that have been issued on its behalf if the entity's registration has been suspended, revoked, or not renewed, and sets forth the procedure for surrendering the badges. Proposed N.J.A.C. 13:45A-17A.14 (h) and proposed N.J.A.C. 13:45A-17A.9 require an entity to obtain new badges if the entity's registration is subsequently reinstated.

The Division has determined that the comment period for this proposal shall be 60 days; therefore pursuant to N.J.A.C. 1:30-3.3(a)5, this proposal is excepted from the rulemaking calendar requirement.

Social Impact

Proposed new subchapter N.J.A.C. 13:45A-17A will have a positive impact on the public and legitimate sellers and makers of home elevations in this State. Registration of HECs will provide assurance that a registered HEC has met the minimum standards under P.L. 2004, c.16, as amended by P.L. 2014 c.34 (N.J.S.A. 56:8-136 et seq.), including the requirements that the HEC is experienced, or has an experienced person in a management or staff position, and maintains commercial general liability, cargo and riggers, and other insurance that would cover the homeowner against damage to the structure, its contents, or any other consequential damages incurred as a result of the elevation activities, whether or not the damage is caused as a result of the negligence of the HEC. Homeowners will also benefit from the requirement that HECs maintain payment and performance bonds, which assure the elevation jobs are completed. HECs will benefit from regulations that level the playing field for all home elevation contractors. Entities may benefit from greater patronage by the public if they are in compliance with the law and have met the State's standards. General contractors will benefit by knowing that any home elevation subcontractors they hire must meet these statutory and regulatory standards.

By recognizing that consumers and contractors who have entered into contracts before October 1, may continue to operate under the terms of those contracts, and will be deemed to be in compliance with the regulations, the Division is attempting to balance the interests of the consumers and contractors as parties to private contract to proceed under its terms without undue delay or additional expense. To require all work now underway, particularly recovery projects being undertaken the wake of Super Storm Sandy, to cease awaiting the registration process with its enhanced requirements could be fundamentally unfair in individual circumstances. Just as Executive Order #2 (2009) (Christie) expressly

limits the impact of new regulations in force on projects that met permit requirements at the time of application, parties that relied on the state of law when they contracted for projects involving considerable planning and expense should not be disadvantaged by newly created consumer protections. Consumers in this situation should be informed of the new requirements, and if they assent, in writing, to going forward, their pending projects should not be disrupted.

The rule makes clear, though, that for projects for which a contract has not yet been executed, the additional requirements as set forth in the Act should be met. With the filing of this special adoption, applicants will be required to demonstrate that they have at least \$1 million dollars of insurance in addition to the \$500,000 required for HIC registration, and to provide a breakdown of the types of insurance they are maintaining. In addition the applicant must identify the staff member who has five years of experience in home elevation.

Economic Impact

The proposed amendments and new rules will have an economic impact on all HEC entities. All HECs will be required to register. Registrants will incur costs from applying and maintaining the registration. However, HICs converting their registrations to HEC registrations will not have to pay an additional initial registration fee. Under the current rules, HICs performing home elevations are required to pay a registration fee to register as a HIC.

Immediately upon the filing of this special adoption, applicants currently registered as HICs who seek to engage in home elevation projects not yet under contract will need to produce evidence of insurance coverage of an additional \$1 million 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, and identify the individual on staff with the requisite experience.

Within 30 day of the adoption of the concurrent proposal, as a condition of registration or continuing registration, proof will be required demonstrating that entities maintain commercial general liability, cargo, riggers liability, care custody and control, or similar policies or endorsements that together are broad enough to cover all aspects of the elevation. Entities will also be required to maintain any other insurance required by statute.

After the adoption of the concurrent proposal, entities will also have to present a letter from a surety company evidencing bonding capacity of \$500,000. Once an entity has entered into a contract for a specific home elevation project, the entity will also be required to procure payment and performance bonds to assure completion of the project.

Registered entities will also incur costs associated with the display of their registration certificates and registration numbers including fees for duplicate certificates, if the entity has multiple places of business, and reproducing the registration number on certain commercial vehicles, all advertisements and business invoices, contracts and other correspondence to consumers in this State.

Additionally, entities will have to pay badge fees for the issuance and management of identification badges for all of its salespersons as well as computer access charges, if any, to complete and maintain the electronic badge declaration. Either the entities or salespersons will pay for transportation costs associated with traveling to the State authorized vendor for issuance of the badges.

The Division anticipates that the proposal will have no direct financial impact on consumers, but HEC entities may pass their registration costs on to consumers as part of the cost of home elevation contracts.

Federal Standards Statement

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

Jobs Impact

The Division does not anticipate that the proposed amendments and new rules will have an impact on the number of jobs in the State.

Agriculture Industry Impact

The proposed amendments and new rules will have no impact on the agriculture industry in the State.

Regulatory Flexibility Analysis

If, for purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., all registered HEC entities are considered “small businesses,” then the following compliance requirements apply.

The compliance requirements in the proposed amendments and new rules implement P.L. 2014 c.34 which states that HECs must be registered with the Division. In the registration process, applicants must comply by (1) providing certain information about the business and its officers, directors, principals, and persons who have an ownership interest of 10 percent or more in the home elevation business; (2) purchasing and maintaining the required levels of insurance, and providing a letter evidencing bonding capacity in the

minimum amount of \$500,000; and (3) paying the required fees to the Division. Once an entity is registered, the entity must comply by: (1) renewing the registration on an annual basis and providing such information as required by the Director; (2) paying the required renewal fees; (3) maintaining the required insurance policies or certificates and surety bonds; (4) using written contracts, when appropriate, that are in compliance with existing regulations and N.J.S.A. 56:8-151; (5) completing a badge declaration form listing the sales persons associated with the entity who are required to wear an identification badge, obtaining the badges from the State authorized vendor or vendors, and renewing the badges; and (6) displaying the registration certificate and registration number in accordance with N.J.S.A. 56:8-144.

The reporting requirement in the proposed amendments and new rules state that the HEC applicants and registrants report any changes in the information contained on their applications within 20 calendar days from the change or addition and any changes in the information contained on their disclosure statements within 30 calendar days from the change or addition. Additionally, entities must report any change in sales force within three days of the change, and collect and return badges issued to salespersons who are no longer in their employ. If an entity's registration is suspended, revoked, or has not been renewed, the entity must surrender all identification badges associated with the entity within three business days; if the Division reinstates its registration, all of the entity's salespersons must obtain new badges.

In order to comply with the badge requirements, an entity will need access to a computer. The entity will incur badge fees and incidental costs that will vary according to the size of the business' sales force (See Economic Impact).

The Division believes that no professional services are likely to be needed to comply with the proposed amendments and new rules. The Division believes that because the proposed amendments and new rules are intended to protect the public from unqualified, uninsured, fraudulent, misleading or deceptive practices of certain HECs, the provisions of the proposed amendments and new rules must be applied uniformly to all HECs regardless of the size of the business, and no differing compliance requirements for any registrant are provided.

Housing Affordability Impact Statement

The proposed amendments and new rules will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the regulation would evoke a change in the average costs associated with housing because the proposed amendments and new rules concern the registration of home elevation contractors.

Smart Growth Development Impact Statement

The proposed amendments and new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the regulation would evoke a change in housing production in Planning areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed rules concern the registration of home elevation contractors.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [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, **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 exempt under N.J.A.C. 13:45A-17.4. **Home elevation contractors registered pursuant to N.J.A.C. 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 the effective date of this regulation 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 will become effective upon the filing of this regulation, as well as those set forth in the concurrent proposal, and the consumer has knowingly elected to proceed under the terms of that contract.

13:45A-17.2 Definitions

“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, [fire protection devices, security protection devices, central heating and air conditioning equipment,] 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 HVACR 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.

13:45A-17.4 Exemptions

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

1. – 8. (No change.)

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 - 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-17.5A (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 HVACR 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 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 the effective date of this regulation, and the contractor maintains written proof that the consumer has been apprised of the requirements that will become effective after the filing of this regulation, as well as those set forth in the concurrent proposal, and has knowingly elected to proceed under the terms of that contract, the contractor will be deemed in compliance with this regulation.

(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. 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 N.J.A.C. 13:45A-17A.4 (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 subsection (a), and those who have initially registered after October 1, 2014, under (c) below, within 30 days of the adoption of the concurrent proposal, 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) ; and

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 subparagraphs (a) 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 (a)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;

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 entity pursuant to N.J.A.C. 13:45A-17A.14 (a) 1 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 paragraphs (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 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 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) Upon the filing of this special adoption, 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:

1. 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, 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, 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.

(b) 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-.

(c) 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.

(d) 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

(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 residence 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.4A (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;

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-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. 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;

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.

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.

(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; and

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

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.

(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.