

6. Agreement to use the proceeds of any funding only for the purposes approved by the Department;

7. Documentation that the claimant is the warrantor of the new home(s);

8. A copy of the agreement between the builder and the owner(s) of the new home(s) or community association to remediate the damages; and

9. Any additional information that the Department, in its review of the claim, determines would be necessary to effectuate the purposes of the Act.

(e) A claim submitted by a warranty guarantor that has not instituted suit prior to the effective date of the Act to recover damages on grounds of failure of FRT plywood roof sheathing will be accepted upon submission of the certifications, documentation, and agreements required of owners in N.J.A.C. 5:25A-2.3(a); or of community associations (if the roof is a common element) in N.J.A.C. 5:25A-2.3(c); and, of a builder in N.J.A.C. 5:25A-2.3(d), except for N.J.A.C. 5:25A-2.3(d)8.

1. The warranty guarantor must also provide any reports used in making the determination that the FRT plywood has met the criteria for a major structural defect, color photographs of the roof conditions, a roof inspection survey documenting the condition of the attic with respect to ventilation, and mechanical and plumbing exhausts, together with any additional information that the Department, in its review of the claim, determines to be necessary.

5:25A-2.4 Assignment of litigated claims

(a) Any person who, prior to the effective date of the Act, had instituted a civil action to recover damages arising out of the failure of FRT plywood roof sheathing may submit a claim under the provisions of the Act and these regulations.

(b) The claim shall include the following information and documentation:

1. The caption and docket number of the civil action;
2. The name, address and telephone number of the claimant's attorney;
3. The status of the civil action;
4. The status of discovery;
5. A copy of all pleadings and orders filed in the civil action including the complaint, answers, counter-claims, cross claims, and any amendments thereto;
6. A copy of any expert reports exchanged among the parties;
7. All other documents and information that the Commissioner or the Attorney General may require of

the claimant or the claimant's counsel to effectuate the purposes of the Act; and

8. A certification that the submission is truthful and complete.

(c) The claim shall be referred to the Attorney General for a determination of whether the claimant's rights against responsible parties should be accepted for assignment to the State.

(d) If the Attorney General makes an initial recommendation to accept the assignment of the claimant's rights against responsible parties, the Commissioner shall process the claim in accordance with N.J.A.C. 5:25A-2.3 and 2.5, and the claimant shall be required to submit the required documents, certifications, and agreements applicable to N.J.A.C. 5:25A-2.3 at that time.

(e) Prior to the Department's making any payment for remediation, the Attorney General will make a final review of the claim and claimant or claimant's counsel shall at that time file and supply to the Attorney General any supplemental or updated information requested by the Attorney General.

1. If, and only if, the Attorney General, after conducting such final review, continues to recommend the assignment of the claimant's rights against responsible parties, the claimant will be required to file a motion for voluntary dismissal without prejudice of the civil action pending before the court, for the severance of those claims approved by the Attorney General and by the Department from other claims in the civil action, for a stay of the proceedings in the action, or to take other such action as the Attorney General may direct.

2. The Attorney General may refuse the assignment even if the court refuses to grant the requested relief.

(f) Where a case is in litigation, all parties shall be given at least 21 days in which to conduct investigations of the condition of the roof sheathing prior to commencement of work authorized by the Department. When the Department accepts the assignment of the claim, notice shall be given to the parties and the 21-day period for conducting investigations shall thereupon commence.

5:25A-2.5 Claim examinations

(a) Upon acceptance of a claim for assignment, the Bureau shall examine the premises. This examination shall be done in accordance with the standard practices of the Bureau using the following classification system:

1. Standard characteristics not to be confused with deterioration:
 - i. Darker color than regular plywood sheathing;
 - ii. Rough exposed surface on attic side (usually "D" face);

iii. Grain checking of surface veneer.

2. Levels of deterioration:

i. None to slight:

- (1) Efflorescence-surface bloom;
- (2) Roofing nails secure;
- (3) Firm to pressure—no veneer separation;
- (4) Slight to moderate veneer checking along the grain.

ii. Moderate:

- (1) Roofing nails secure;
- (2) Slight veneer checking perpendicular to and along the grain;
- (3) Slight sag and give to pressure.

iii. Severe:

- (1) Excessive darkening (charring) and efflorescence (surface bloom);
- (2) Face veneer separation, buckling and cracking;
- (3) Noticeable give to pressure;
- (4) Roofing nails show sign of corrosion and are no longer snug enough to adequately secure the roofing material.

iv. Failure:

- (1) Veneer delamination, peeling and falling away; and
- (2) Easy give to pressure, soft and flexible.

(b) To be eligible for funding, the condition of the FRT plywood sheathing must qualify as a major structural defect, as defined in N.J.A.C. 5:25A-1.3. In accordance with the classification system described in N.J.A.C. 5:25A-2.5(a), if the roof sheathing is characterized as "severe" or "failure" by the Bureau, the defect shall be classified as a major structural defect. If a condition of inevitable premature failure, as determined in accordance with N.J.A.C. 5:25A-2.6, is found to exist by the Bureau, the condition shall also be classified as a major structural defect.

(c) If a claim is accepted for assignment and is found eligible for funding based on the examination, the owner or association, as the case may be, shall be instructed to propose an acceptable method of remediation and to obtain a minimum of two independent estimates from contractors of the cost of implementing the method of remediation.

(d) Nothing in this chapter shall be construed to prohibit the Bureau from making a determination, in the interest of economy and efficiency, to secure the replacement of sections of roofs adjacent to sections that have a major structural defect.

Amended by R.1994 d.506, effective October 3, 1994.
See: 26 N.J.R. 2706(a), 26 N.J.R. 3941(b).

5:25A-2.6 Predictive testing procedure for inevitable premature failure

FRT plywood roof sheathing shall be examined in accordance with the procedure and classification system described in N.J.A.C. 5:25A-2.5(a). FRT plywood roof sheathing found by the Bureau, using that classification system, to have experienced deterioration that is "moderate" or worse shall be deemed to be in a condition of inevitable premature failure.

New Rule, R.1994 d.506, effective October 3, 1994.
See: 26 N.J.R. 2706(a), 26 N.J.R. 3941(b).

Case Notes

Regulation precluding recovery for inevitable premature failure of FRT roofing unless defect actually occurred within statutory period was void. Appeal of Adoption of N.J.A.C. 5:25A-1.1 et seq., by New Jersey Dept. of Community Affairs, Div. of Housing and Development, 266 N.J.Super. 625, 630 A.2d 383 (A.D.1993).

Regulation precluding recovery for inevitable premature failure of fire retardant roofing plywood was void under New Home Warranty and Builders' Registration Act. Appeal of Adoption of N.J.A.C. 5:25A-1.1 et seq., by New Jersey Dept. of Community Affairs, Div. of Housing and Development, 266 N.J.Super. 625, 630 A.2d 383 (A.D. 1993).

New Home Warranty and Builders' Registration Act authorizes recovery for inevitable premature failure of fire retardant roofing plywood, and for other major construction defects actually arising within 10-year warranty period. Appeal of Adoption of N.J.A.C. 5:25A-1.1 et seq., by New Jersey Dept. of Community Affairs, Div. of Housing and Development, 266 N.J.Super. 625, 630 A.2d 383 (A.D. 1993).

5:25A-2.7 Methods of remediation

A proposed plan of remediation of structural failures in FRT plywood roof sheathing must conform to the New Jersey Uniform Construction Code (N.J.A.C. 5:23). The Bureau will accept a true copy of a building permit as proof of compliance with this provision.

5:25A-2.8 Claim payments

(a) The cost of remediation shall not exceed the lesser of the estimates accepted by the Bureau. The Bureau shall not approve a plan for remediation that exceeds the authorized scope of work. The authorized scope of work shall not include the replacement of roof shingles over undamaged plywood sheathing for the sole purpose of not having mismatched roof shingles; provided, however, that replacement of roof shingles over undamaged plywood roof sheathing may be permitted by the Bureau in the interest of economy and efficiency. Proposals that call for an upgrade in the quality of roof shingles compared to that which exists shall not be approved. The Bureau shall have the right to engage a contractor of its choice to perform the remediation.

(b) Payment shall be made only upon presentation of verified invoices for work and material actually provided and installed in accordance with the approved plan of remediation.

(c) Unless the contractor has been selected by the Bureau, payment shall be made by check payable jointly to the owner and contractor selected by the owner to perform the remediation. No payment will be made in advance of the commencement of work.

5:25A-2.9 Hearings

(a) Decisions of the Bureau shall be final, except that a person aggrieved by any ruling, action, order or notice of the Bureau denying a claim filed pursuant to this chapter, in whole or in part, shall be entitled to an administrative hearing in accordance with 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, on the issue of whether the examination of the roof sheathing was conducted in accordance with N.J.A.C. 5:25A-2.5 or whether the proposed method of remediation was consistent with N.J.A.C. 5:25A-2.7. The burden of proof in either case shall lie with the claimant.

(b) Any request for an administrative hearing must be filed with the Hearing Coordinator of the Division of Hous-

ing and Development, CN 802, Trenton, NJ 08625 within 15 days after receipt by the person of the notice of the ruling, action, order, or notice complained of.

(c) Decisions by the Attorney General not to recommend assignment shall not be reviewable in an administrative hearing.

5:25A-2.10 Roof reserve standard of adequacy

A claimant that is an association shall be required to contribute towards the cost of remediation a percentage of its accumulated roof reserves that is proportionate to the percentage of the total roof area requiring replacement. In the event that accumulated roof reserves are less than the amount that would have been accumulated based on a 30-year useful life of roofing materials, or such shorter period as may be specified in a manufacturer's warranty or guarantee of such materials, the difference shall also be required to be contributed by the association towards the cost of remediation.