

COMMUNITY AFFAIRS

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

Rooming and Boarding Houses

Adopted Amendments: N.J.A.C. 5:23- 3.11, 3.14, 6.31;

**5:27-1.4, 1.5, 1.6, 1.9, 2.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.8, 3.12, 6.3, 7.3, 7.4, 8.1, 8.2, 8.3, 8.4,
9.1, 10.1, 11.1, 12.1, 13.1, 14.1**

Proposed: June 5, 2017 at 49 NJR 1276(a).

Adopted: _____, 2017 by Charles A. Richman, Commissioner,
Department of Community Affairs.

Filed: _____, 2017 as R.2017 d. _____, **with technical changes** not
requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 52:27D-124 and N.J.S.A. 55:13B-6.

Effective Date:

Expiration Date:

CHARLES A. RICHMAN
Commissioner

Summary of Public Comments and Agency Responses:

Comments were received from Tonia Ahern, Cape May County; Jim Anders; Barbara Anderson, Chief Executive Officer (CEO)/Consultant, Greater Good Group; Nicole Bragg, Serenity House Alumna; Sheila Buckley, Active Recovery Advocate, Camden County; Terri Burns, New Jersey Alliance of Recovery Residences (NJARR); Barbara Byrne, Active Recovery Advocate, Gloucester County; Diane Cain; Patrice Canin; Donna Catlow; Linda Cooper, Egg Harbor Township, New Jersey; Diana Curry; Douglas D'Alfonso, Active Recovery Advocate, Gloucester County; Keith A. Davis, Esq., Nehmad, Perillo, and Davis, PC; Rose DeFinis; Sherlyn DiPaolo, Enlightened Solutions; John Doe, May's Landing; John Drucker, Assistant Construction Official, Borough of Red Bank; Chanel Dupree; Maria Farhat-Tanzola; Warren Flax; Anthony Gallo; William Gee, President, Ocean County Fire Prevention and Protection Association; Dr. Nancy Greenbarg; Laurel Guenther, Pitman, New Jersey; Edwina Hansen, Ole Hansen and Sons, Inc.; Jennifer Hansen, Hansen Foundation; Roger Hansen, Ole Hansen and Sons, Inc.; Emete Hassan, Hassan Clean and Sober House; Steven Hauck, Director, Edgewater House and Lehigh House; Christine Henshaw; Bob Hogg, President, Steelman, Graves, and Waters, Inc.; Meerah Kim, Serenity House Resident; Cliff Koblin, Addiction Recovery Specialist; Ian Koch, Executive Director, Surfside Recovery Services; Alice LaRocca, Active Recovery Advocate, Atlantic County; Bruce Lynch, Principal, Clifton Larson Allen, LLP; Mitchell Malec; Charlene Maycott, C.C.A.R., C.A.R.C.; John Moriarty, III; Marcella Pettorossi, Active Recovery Advocate, Gloucester County; Donna A. Parker, Addiction Counseling Specialist; Janet Passio; Mark Shepard; Leannek Taylor; Lisa Valentine, President, Valentine Foundation, Inc.; Ginny Weigelt, Recovery Coach; and Debra Wentz, Ph.D., President and Chief Executive Officer, New Jersey Association of Mental Health and Addiction Agencies, Inc.

1. COMMENT: Several commenters asked that a public hearing be held.

RESPONSE: The Department thanks the commenters for their request. Because comments that were wide-ranging in both breadth and depth were received on this rule proposal, the Department believes that it is not necessary to hold a public hearing.

2. COMMENT: Several commenters suggested that, rather than the proposed rules, the Department should adopt the current National Alliance of Recovery Residences (NARR) standards.

RESPONSE: The National Alliance of Recovery Residences (NARR) standards cover four different “levels” of facilities. These range from a Level 1, which most closely coincide with Oxford Houses, to Level 4, which provide for paid staff and on-site treatment services. These standards thus provide a spectrum of different types of facilities meeting different levels of need by residents. New Jersey has a similar range of facilities available, which also provide different levels of services. Some of these (such as rooming and boarding houses) are regulated by DCA, while others are regulated by other State agencies, such as the Department of Health and the Department of Human Services. CSLRs represent just one type of facility, intended to offer a specific, limited therapeutic environment, with a live-in owner/operator and no personal services. The Department believes that the CSLRs rule provides a clear definition and a set of standards that are appropriate within the framework of existing New Jersey facilities. In addition, standards for licensing these facilities are established in New Jersey law. The Department believes that this rule establishes clear standards that fit into the current regulatory and statutory framework.

3. COMMENT: Several commenters stated that the rules should not include a 10-resident limit, particularly when compared to the 16-person limit for Oxford Houses, which provide less oversight. They argue that a higher permitted number of residents would be more financially sustainable for facilities. In place of the 10-person limit, the commenters suggest using the NARR standard, which

is based on a minimum of 50 square feet per person for each bedroom. Finally, a commenter suggested that the 10-person limit might violate the ADA and federal FHA.

RESPONSE: The 10-person occupancy is based on the International Building Code's occupancy limit for a transient congregate dwelling. Because these residences are not required to be sprinklered, to enhance the safety of these residences, the occupant limit was established at the 10-person maximum for a transient congregate dwelling rather than the 16-person maximum for a non-transient congregate residence.

4. COMMENT: Several commenters stated that the rules should further define the term "adequate means of egress." They propose that two points of egress, the back and front doors, should be a sufficient standard.

RESPONSE: The term "means of egress" is a code term that is well-understood. The Uniform Construction Code consists of adopted subcodes, which establish technical requirements. The means of egress requirements are established in the International Building Code, which is the adopted building subcode of the Uniform Construction Code (N.J.A.C. 5:23-3.14), and is the code section amended by these rules. An "adequate" means of egress would be a code-compliant one. The reference to "adequate means of egress" is in the summary statement, not in the rule text, so the Department sees no need to further amend this section.

5. COMMENT: Several commenters contended that the term phrase "lack of probity" is vague and should be further defined.

RESPONSE: The Department believes that the phrase "lack of probity" is readily understandable and does not require further explanation. It should also be noted that this term is existing language (at N.J.A.C. 5:27-3.3(b)) and is not proposed for change.

6. COMMENT: Several commenters stated that the rules are not clear as to what types of alarms are required for a CSLR.

RESPONSE: The types of alarms required are, in fact, clearly spelled out in the rules. Specifically, proposed N.J.A.C. 5:27-1.5(c)(1)(iii) states that each facility shall have smoke alarms that comply with the Uniform Fire Code (UFC). The rules go on to say that fire alarm systems installed in accordance with the one- and two- family dwelling subcode shall also be deemed to be compliant. Smoke alarms are required to be located in each sleeping room, in the area outside separate sleeping rooms, and on each additional story of the dwelling, including basements and habitable attics. In addition, the rules separately require carbon monoxide alarms (N.J.A.C. 5:27-14.1). Because alarm requirements have changed over time, the specific type of smoke alarm required depends on the code under which the building was constructed.

7. COMMENT: Two commenters stated that the rules require a Federal Standards Statement.

RESPONSE: The Department disagrees with this comment. At the time the rules were published in the *New Jersey Register* for public comment, the Department noted in that publication that “No Federal standards analysis is required because the amendments are not being proposed in order to implement, comply with, or participate in any program established under Federal law or under any State law that incorporates or refers to Federal law, standards, or requirements.” This rule amends the Rooming and Boarding House regulations and the Uniform Construction Code regulations. It establishes a new classification of rooming house. As stated in the Federal Standards Statement, it does not ‘implement, comply with, or participate in any program established under Federal law or under any State law that incorporates or refers to Federal law, standards, or requirements.’ This statement is accurate and tracks precisely the requirement of the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30-5.1(c)(4).

8. COMMENT: Several commenters contended that the rules should not include an annual licensing fee of \$356, as the yearly cost will be difficult for non-profits facilities to absorb.

RESPONSE: All rooming and boarding houses licensed by the Department under the Rooming and Boarding House Act require payment of an annual licensing fee. This is true whether the licensee is a non-profit or for-profit entity. Such a fee helps offset the Department's costs for regulation of the facility.

9. COMMENT: A number of commenters suggested that the rules should not prohibit CSLR facilities from offering food, laundry, financial and other personal services to residents. Some of those commenters argue that licensees of these types of facilities provide these types of services on occasion, and that they are beneficial to residents. Some commenters also suggest that the rules need to be clearer on what exactly is permitted and what is prohibited in these areas.

RESPONSE: The Rooming and Boarding House rules provide separate licenses for various types of facilities (Class A to Class F). These facilities provide different levels of services to residents, and thus fill different niches in terms of residents' needs. Rooming houses provide no services; boarding houses provide a range of services. A Class B facility is permitted to provide meals and laundry services only, while a Class C facility is able to offer a full range of services, including all of those suggested by the commenters. Should an owner decide to offer these services, the residence could be appropriately licensed as a boarding house. Providing a category of rooming houses without services ensures that there are various options available to a prospective resident depending on his or her needs. The Department would like to make it clear that these rules do not prohibit the provision of the means for the residents to provide services, such as cooking and laundry, for themselves. The sponsoring organization may not provide regular meal, laundry, or other services for the residents. The residents are expected to live together and to meet these basic needs themselves.

10. COMMENT: One commenter recommended that the rules should include a provision for weekly house meetings.

RESPONSE: These regulations require the owners/operators to establish house rules. The house rules are not set by regulation. Weekly house meetings could be included in the house rules.

11. COMMENT: Several commenters suggested that the rules seem to be “micro-managing” how licensees of these types of facilities operate, which may violate the federal Fair Housing Act.

RESPONSE: The Department does not agree that the proposed rules amount to a “micro-managing” of the operation of a CSLR. The rules recognize and adhere to the general template for how sober homes operate, including the limited role assigned to the operator. Rather than “micro-managing” the operation of a CSLR, the rules, in fact, respect the manner in which these types of facilities operate.

12. COMMENT: Two commenters suggested that the rules should change the name CSLR to Cooperative Recovery Residence, in order to bring it up to date with the Substance Abuse and Mental Health Services Administration (SAMHSA) recommended terminology.

RESPONSE: The Department declines to make the change suggested. The rules are clear as to the definition of a CSLR, and there should not be any confusion resulting from the terminology employed.

13. COMMENT: A commenter raised a concern over possible discrimination against individuals who are taking psychotropic medications and/or receiving medication-assisted treatment for substance abuse disorders. The commenter feels that such individuals should not be excluded from opportunities for the recovery support offered by CSLR facilities. Another commenter made a similar argument as to persons with HIV.

RESPONSE: The proposed rules do not exclude individuals who are taking psychotropic

medications and/or receiving medication assisted treatment from residing in a CSLR. While the licensee would not be permitted to provide medication management, the rules do not prohibit CSLR residents who are undergoing a treatment regimen or who are HIV positive.

14. COMMENT: One commenter asked whether, if a facility “doesn’t offer supervision” (in the manner of an Oxford House), the CSLR rules would apply to such facility.

RESPONSE: As explained in detail in Comment 24 below, Oxford Houses are outside the jurisdiction of the Rooming and Boarding House Act. Residences that are similar in operation to Oxford Houses, but are not part of Oxford House, Inc, are reviewed on a case-by-case basis to determine whether they, like Oxford Houses, fall outside the jurisdiction of the Rooming and Boarding House Act or whether they fall within its jurisdiction. As discussed in the response to Comment 24 below, CSLRs, as defined in these rules, do not operate in the same manner as Oxford Houses and are subject to Department regulation and licensure.

15. COMMENT: Two commenters stated that the rules should differentiate between CSLRs and partial care housing, such as partial hospital programs (PHP).

RESPONSE: The Department believes that the difference between these facilities is clear and further differentiation in the regulations is not required. Partial Hospital Programs (PHP) provide outpatient care for people who are living in an off-site residence. The patients who are in recovery from substance abuse and who are receiving this outpatient care might reside in a CSLR, but the residence itself would not be licensed to provide any program in house.

16. COMMENT: One commenter stated that the rules need to recognize CSLR facilities as part of the “treatment continuum.”

RESPONSE: The Department believes that CSLRs, which are the threshold level at which licensure for the residence is required, are part of the continuum of residential housing available to

people in recovery. Because treatment does not take place in the CSLR, the residence itself is not on the programmatic “treatment continuum.”. However, the Department believes that initiating licensure for residences that house people in recovery who are able to live in a home with some oversight and with some autonomy and responsibility, the continuum of available recovery residences is expanded.

17. COMMENT: Several commenters suggested that the rules should require CSLR facilities to maintain professional staff, such as a case manager, an activities coordinator, as well as other support personnel. In addition, the rules should address paid staff, such as cooks, who may not always be on site. Another commenter suggested that the rules require that a CSLR offer “life skills education and development.”

RESPONSE: The Rooming and Boarding House Act requires a live-in owner/operator, but does not allow services to be provided. This is statutory. There are other facilities, outside the jurisdiction of the Rooming and Boarding House Act, but within the jurisdiction of the Department of Health or the Department of Human Services, that require the kind of additional oversight and supervision these commenters recommend.

18. COMMENT: A commenter argued that CSLRs should be required to enter into memoranda of understanding with treatment providers for referral of residents who may relapse.

RESPONSE: Mandating these types of agreements is outside the scope of a CSLR. These regulations do not prohibit a provider from having a referral plan in place in the event of a resident’s relapse, but the residences themselves are not required to have such a plan in order to be licensed.

19. COMMENT: A commenter stated that CSLR facilities require funding in order to cover costs such as regular inspections and to market themselves, as is done in other states.

RESPONSE: This comment is beyond the scope of these rules. The licensing fee helps to cover the costs to the Department of work associated with licensing the facility. The Department does not

contemplate providing funding for inspections that the owner might have conducted outside the scope of the regulations or for advertising.

20. COMMENT: A commenter stated that the rules should address the issue of residents' rights.

RESPONSE: The issue of the rights of residents of rooming and boarding houses is already addressed in the statute governing such facilities. Specifically, the Rooming and Boarding House Act contains a section setting forth the rights of all residents of "boarding facilities." N.J.S.A. 55:13B-19. A "boarding facility" for purposes of this section is defined to include rooming houses, boarding houses, and residential health care facilities. N.J.S.A. 55:13B-18. CSLRs are covered by the Rooming and Boarding House Act and are thus subject to these provisions, which include ensuring that residents may manage their own financial affairs, receive and send unopened correspondence, practice the religion of their choice, and have unrestricted communication, including personal visitation, with any person of choice, at any reasonable hour.

21. COMMENT: A commenter stated that the rules should include standards governing residents' behavior.

RESPONSE: This subject has already been addressed by existing rules. Pursuant to N.J.A.C. 5:27-3.2(a), a licensee for a rooming or boarding house is required to establish "reasonable rules governing the conduct of persons within the rooming or boarding house." This rule applies to CSLRs.

22. COMMENT: A commenter stated that Cooperative Sober Living Residence (CSLR) facilities will need to comply with local zoning and other municipal codes.

RESPONSE: The enforcement of municipal zoning ordinances is outside State jurisdiction. Enforcement of local zoning ordinances lies with the municipality. The Department is unclear as to what "other municipal codes" might apply and, therefore, cannot comment further on this observation.

23. COMMENT: One commenter questioned the value in requiring that a Cooperative Sober Living Residence (CSLR) have a live-in owner/operator and recommended that this requirement be removed.

RESPONSE: The requirement is statutory; the Rooming and Boarding House Act (N.J.S.A. 55:13B-1 et seq.) requires that a rooming house have a live-in owner/operator who, in addition to ensuring that the residents comply with house rules, is able to accept service of notices or other communication between the Department and the owner and provide access to the home for required inspections.

24. COMMENT: One commenter referenced guidance given in a memorandum provided by the Department in 1990 as if that guidance were regulatory. Similarly, this commenter made references to guidance in Bulletin 04-2 (Oxford House) in the Uniform Construction Code (UCC) as if it were regulatory. Specifically, the commenter observed that these documents provide guidance on Oxford Houses, which may have up to 16 residents and may be four stories as long as a second means of egress is provided.

RESPONSE: Oxford Houses are outside the regulatory authority of the Rooming and Boarding House Act of 1979, so they are not licensed by the Bureau of Rooming and Boarding House Standards. The Oxford House model places significant control in the hands of the residents who live together as a single housekeeping unit, share all expenses jointly, pay their expenses from a common bank account, establish house rules cooperatively, and make decisions together, including who will be allowed to move in when a resident leaves and space becomes available. In addition, the Oxford House by-laws preclude Oxford House, Inc. or any of its charters from owning the dwelling that serves as a recovery residence. Cooperative Sober Living Residences (CSLR) differ from that model. The CSLRs have more supervision and oversight than do Oxford Houses. The CSLR's sponsoring

agency owns or holds the lease on the dwelling, controls the placement of residents in the home, and establishes the rules for residency. These rules for residency include establishing house rules; they may also set requirements for participation in off-site recovery programs. CSLRs do not provide in-house programs or services, as do other, more regulated and more comprehensive recovery environments; on the continuum of recovery care facilities, they are the threshold at which licensure is required. The comment regarding the number of stories permitted is addressed in Comment 26 below.

25. COMMENT: One commenter asked about the Department's substantiation for the changes to the building subcode and asked whether these changes would be submitted to the International Codes Council (ICC) as proposed changes to the International Residential Code (IRC).

RESPONSE: Upon adoption of the 2015 edition of the International Building Code (IBC), the Department added language to retain the Group R-5 designation for buildings that are constructed under the International Residential Code (IRC). The change to the Building Subcode referenced by the commenter is to clarify that Community Sober Living Residences (CSLRs) are to be designated as Group R-5 and are to be constructed under the IRC, which is adopted in the Uniform Construction Code (UCC) as the one- and two-dwelling subcode (N.J.A.C. 5:23-3.20).

Throughout the years, the Department has sought to provide clarification on the proper use group designation for various medical and therapeutic treatment arrangements. The length of time that individuals reside in the facility, the number of people housed by the facility, the level of independent living, the ability of occupants to self-egress, and the time it takes occupants to self-egress all affect the building subcode group designation of the facility. Treatment levels, therapeutic settings, the size of treatment groups, as well as the names that identify these facilities, evolve over time as the state of the art of medical, therapeutic, and psychiatric care changes. The change to the

building subcode is needed to ensure that the CSLRs are designated as a consistent use group under the building subcode. Due to the level of independent living, level of treatment, egress ability of the occupants, and occupant load, the Department believes that a Group R-5 designation is appropriate.

The ICC publishes the International Building Code (IBC) and the International Residential Code (IRC) as separate codes. The IBC is adopted as the building subcode of the UCC; the IRC is adopted as the one- and two-family dwelling subcode of the UCC. The IBC does not reference the IRC and does not include a Group designation for buildings constructed to comply with the IRC. The designation of Group R-5 for buildings constructed to comply with the IRC (which is adopted as the one- and two-family dwelling subcode) is an administrative change made in the Uniform Construction Code for clarity. Since the International Code Council (ICC) does not have a Group R-5 designation, and the amendment is being made to New Jersey's designation of Group R-5 in the UCC, the Department does not believe that submitting a State-sponsored code change to the ICC would be appropriate. It would essentially mean proposing a change to a section of the IBC that does not exist.

26. COMMENT: One commenter asked whether the designation of Cooperative Sober Living Residences (CSLR) as Group R-5 would prohibit such facilities from being located in a four-or- more story building.

RESPONSE: Cooperative Sober Living Residences (CSLR) are subject to the height and area limitations of Group R-5 and, therefore, are limited to three stories.

27. COMMENT: One commenter asked whether the placement of Cooperative Sober Living Residences (CSLR) within Group R-5 meant that CSLRs could be located only within a single-family dwelling or if one could be located within a two-family dwelling. This commenter asked a similar question concerning the amendments to the Rehabilitation Subcode, which are specific to Group R-5: Could a CSLR be in group occupancies other than single-family homes?

RESPONSE: Cooperative Sober Living Residences (CSLR) would be permitted to be located in any building arrangement covered by the one- and two-family dwelling subcode. Although the Department expects the majority of these Cooperative Sober Living Residences to be housed in traditional single-family detached dwellings, a duplex, which is also Group R-5, would also be permitted.

28. COMMENT: A commenter asked if a Cooperative Sober Living Residence (CSLR) could be considered to be Group R-4 and have 16 occupants.

RESPONSE: By definition, a CSLR cannot exceed 10 occupants. Treatment facilities that have greater than 10 occupants may be constructed under the provisions for Group R-4, but they would not be CSLRs by definition.

29. COMMENT: A commenter asked why the definition of Cooperative Sober Living Residence (CSLR) was included in the rooming and boarding house regulations in lieu of in the Uniform Construction Code (UCC).

RESPONSE: Types of treatment facilities are typically not defined in the building subcode of the UCC, rather, they are defined by the regulations that certify, license, or oversee the facility. Defining CSLRs in the Rooming and Boarding Home rules is consistent with this regulatory approach.

30. COMMENT: A commenter asked whether the proposed amendments to N.J.A.C. 5:23-6.31, Change of Use, are intended to apply only to changes of use of single family homes (Group R-3 or Group R-5) or whether buildings with other group designations could undergo a change of use to a Cooperative Sober Living Residence.

RESPONSE: The Department has not contemplated extending these regulations to buildings other than Group R-3 or Group R-5, one- and two-family dwellings.

31. COMMENT: One commenter asked the Department to explain why the Department would be the sole enforcing agency for these regulations.

RESPONSE: The Department asserted jurisdiction over these facilities to ensure uniformity of enforcement and consistency between two bureaus in the Department that have complementary, but distinct, jurisdiction and authority.

32. COMMENT: One commenter questioned whether the egress windows in a newly constructed single-family home that are 5.0 square feet and that comply with new construction standards are required to be altered to meet the 5.7 square foot standard in these regulations?

RESPONSE: The Department anticipates that the residences used as CSLRs will be existing dwellings that undergo a change in the character of use. However, there was no intent to require an existing residence with 5.0 square foot windows on the first floor, built in compliance with the building subcode, to have to alter the window size. To eliminate the inconsistency in these regulatory requirements, this rule is amended upon adoption to require egress windows that comply with the UCC.

33. COMMENT: One commenter stated that the Rooming and Boarding House statute, N.J.S.A. 55:13B-6, requires the Department to adopt regulations that ensure that every rooming and boarding house is constructed and operates in a manner that protects the health, safety, and welfare of its residents while promoting a homelike atmosphere. By exempting CSLRs from the habitability provisions of the Rooming and Boarding House regulations (N.J.A.C. 5:27), the Department appears to have failed to meet its statutory obligations for these recovery residences. Please explain.

RESPONSE: In proposing that specific habitability requirements be excluded from the licensing requirements of CSLRs, the Department wishes to clarify that it did not intend to imply that these residences were not bound by the statutory requirement that they be habitable. The Department

recognized the requirements of both statutory and case law as requiring a safe, habitable dwelling. In *Trentacost v. Brussel*, 82 N.J. 214 (1980), the New Jersey Supreme Court stated that, “When engaged in the business of providing shelter, present-day landlords do not furnish merely four walls, a floor and ceiling. They have come to supply, and tenants now expect, the physical requisites of a home. ... At a minimum, the necessities of a habitable residence include sufficient heat and ventilation, adequate light, plumbing and sanitation and proper security and maintenance.” Because this commenter read the rule as specifically excluding basic habitability standards, the Department is retaining upon adoption those items those requirements that specify a habitable residence. To leave the rule without clarification could result in the nonsensical situation in which a dwelling could be licensed as a CSLR, but could not be occupied because it would not be deemed by other laws to be habitable. In addition, the Department would like to make it clear that these standards will be part of the licensing inspection.

34. COMMENT: One commenter observed that, despite stepping back from requiring ventilation, natural and electrical lighting, heating, maintenance, and structural stability, the Department nonetheless requires a “full kitchen.” This commenter asked for an explanation as to what is meant by a “full kitchen” and why a full kitchen is required.

RESPONSE: The Department believes that the components of a “full kitchen” are well-understood. A full kitchen would include appliances that allow for cooking meals and cleaning up; therefore, a full kitchen would have a stove, an oven, a refrigerator, and a sink.

35. COMMENT: One commenter asked whether collegiate recovery programs or communities of two-year or four-year public institutions, whether on campus or in rental houses, are subject to these proposed regulations.

RESPONSE: Residences that house recovery programs for college students would be subject to

the same requirements that apply to other types of housing for college students. Off-campus housing would be evaluated for its use and occupancy and a determination would be made on a case-by-case, fact-specific basis as to whether or not the residence was outside the jurisdiction of the Rooming and Boarding House Act.

Summary of agency-initiated changes:

1. At N.J.A.C. 5:27-1.4(b), in two places “these regulations” is changed to “this chapter” for consistency with the standards set by the Office of Administrative Law.

2. At N.J.A.C. 5:27-1.5(c) iv, “these regulations” is changed to “this chapter” for consistency with the standards set by the Office of Administrative Law.

3. At N.J.A.C. 5:27-1.6(b)6, “these regulations” is changed to “this chapter” for consistency with the standards set by the Office of Administrative Law.

4. At N.J.A.C. 5:27-2.1, in the definition of “Cooperative Sober Living Residences, “these regulations” is changed to “this chapter” for consistency with the standards set by the Office of Administrative Law.

5. At N.J.A.C. 5:23-3.8(b), “these regulations” is changed to “this chapter” for consistency with the standards set by the Office of Administrative Law.

6. At N.J.A.C. 5:27-4.9, “these regulations” is changed to “this chapter” for consistency with the standards set by the Office of Administrative Law.

7. At N.J.A.C. 5:27-3.9, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 6.1, 6.2, 7.1, and 7.2, the qualifier that “This section shall not apply to Cooperative Sober Living Residences” is deleted. In the preparation of the summary of comments and agency response, the Department realized, as is explained in the Department’s response to comment 33, that these rules, as proposed, could be read

to allow the licensing of a facility that did not comply with habitability standards required through the Rooming and Boarding House Act, other State laws, and case law. That was not the Department's intent. At N.J.A.C. 5:27-1.6(b)6, these rules state that "Cooperative Sober Living Residences shall be required to comply with all applicable statutory requirements." However implausible such a circumstance might be, the Department is resolving that theoretical ambiguity upon adoption by identifying those sections in these rules that delineate the standards of habitability that apply. Deleting "This section shall not apply to Cooperative Sober Living Residences" in the designated sections will ensure that these rules and the residences licensed through them comply with "all applicable statutory requirements." A companion change is made at N.J.A.C. 5:23-1.9 to delete these sections which had been identified as being exempt from these rules.

8. At N.J.A.C. 5:23-6.31(q)1iv and N.J.A.C. 5:27-1.5(c)1iv, in order to ensure consistency and clarity, the dimensions given for an egress window are changed to a reference to the Uniform Construction Code. It was brought to the Department's attention that there are two dimensional standards for egress windows in the Uniform Construction Code. Because the Department did not intend to create confusion or dimensional inconsistencies, rather than specify dimensions, the rule is being amended to state unambiguously that compliance with the Uniform Construction Code is required.

Federal Standards Statement

No Federal Standards analysis is required because these amendments are not being adopted under the authority of, or in order to implement, comply with, or participate in, any program established under Federal law or any State statute that incorporates or refers to a Federal law, standards, or requirements.

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

5:23-6.31 Change in use

(a) – (p) (No change)

(q) A change in the character of use of a single-family home to a cooperative sober living residence shall comply with this subchapter except as modified below. (Plan review--Building, Fire. Inspection—Building, Fire.)

1. Single-family dwellings of Group R-3 or R-5 that are being converted to a cooperative sober living residence shall meet the requirements of this section.

i. – iii. (No change from proposal text.)

iv. Each bedroom shall have an operable ***egress*** window ***[with a maximum sill height of 44 inches, a width of at least 20 inches, a height of at least 24 inches, and a minimum total area of 5.7 square feet measured from head to sill and from side to side]*** ***that complies with the Uniform Construction Code***.

5:27-1.4. Continuation of lawful existing use

(a) (No change.)

(b) Any facility that is operating as a Cooperative Sober Living Residence, as that term is defined in these regulations, shall be required to obtain a Class F license in order to continue operating. This includes facilities that are currently operating pursuant to a different class of license previously issued pursuant to ***[these regulations]*** ***this chapter***.

5:27-1.5 Construction and alteration; change of use

(a) – (b) (No change.)

(c) A certificate of occupancy shall be required in the event of any change in use other than a conversion from a one or two-unit dwelling to a rooming or boarding house occupied or intended to be occupied by five or fewer residents.

1. A certificate of occupancy shall not be required for the change in the character of use of Class F, Cooperative Sober Living Residences pursuant to N.J.A.C. 5:23-6.

ii. (No change.)

iii. In the vicinity of each sleeping area, each home with a fuel burning appliance or with an attached garage shall have carbon-monoxide alarms that comply with the Uniform Fire Code (N.J.A.C. 5:70-4.19) or with *[these regulations]* ***this chapter***. at N.J.A.C. 5:27-14.1; and

iv. Each bedroom shall have an operable ***egress*** window *[with a maximum sill height of 44 inches, a width of at least 20 inches, a height of at least 24 inches, and a minimum total area of 5.7 square feet measured from head to sill and from side to side]* ***that complies with the Uniform Construction Code (N.J.A.C. 5:23)***.

(d) – (f) (No change.)

(d) A certificate of occupancy shall be required in the event of any change in occupancy or intended occupancy that will increase the number of residents from five or fewer

to six or more or from 20 or fewer to 21 or more.

1. A certificate of occupancy shall not be required for the change in the character of use of Class F, Cooperative Sober Living Residences pursuant to N.J.A.C. 5:23-6. However, a Cooperative Sober Living Residence shall comply with the standards established in (c)1i-v above.

(e) – (f) (No change.)

5:27-1.6 Licenses

(a) (No change.)

(b) There shall be six classes of licenses, which shall be as follows:

1.– 5. (No change.)

6. Class F license: Valid only for Cooperative Sober Living Residences, as defined in *[these regulations]* ***this chapter***. Cooperative Sober Living Residences shall be subject to *[these regulations]* ***this chapter*** only as specifically noted below. Cooperative Sober Living Residences shall be required to comply with all applicable statutory requirements.

(c)– (m) (No change.)

5:27-1.9 Exceptions and exemptions

(a) – (e) (No change.)

(f) Owners and operators who have been issued Class F licenses for Cooperative Sober

Living Residences are exempt from the following requirements of this chapter:

1. – 6. (No change from proposal text.)
2. N.J.A.C. 5:27-3.9(a)6 and 7 *[, and (b) – (d)]*;
3. *[N.J.A.C. 5:27-4.1;
4. N.J.A.C. 5:27-4.3 – 4.9]*; and

Redesignate 5. as 3. (No change from proposal text.)

5:27-2.1 Definitions

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

"Accessory building" through "Construction class" (No change.)

"Cooperative Sober Living Residence" means a residential setting that serves solely as a home for individuals who are recovering from drug or alcohol addiction and is intended to provide an environment where the residents can support each other's sobriety and recovery. In addition to the other requirements specified in *[these regulations]* ***this chapter***, a Cooperative Sober Living Facility shall satisfy the following criteria:

- 1.-7. (No change.)

5:27-3.8 Employees

- (a) (No change.)
- (b) In other than Class F facilities, Cooperative Sober Living Residences, every licensee

shall have on duty at all times as many employees as may be needed to properly safeguard the health, safety and welfare of the residents, as required by *[these regulations]* ***this chapter***. Such employees shall be adequately trained and supervised.

5:27-3.9 Disclosure of licensee identity

(a) – (b) (No change.)

(c) *[In other than Class F facilities, Cooperative Sober Living Residences,]* *[]*R* []*
*[r]*evised statements shall be furnished within seven days of any change in the information required to be set forth.

(d) *[In other than Class F facilities, Cooperative Sober Living Residences,]* *[]* A *[]*
[a] ll statements and revised statements furnished pursuant hereto shall be signed by the owner or the duly authorized representative of the owner and shall stipulate the date of preparation.

5:27-4.1 Water supply

(a) *[This section shall not apply to Cooperative Sober Living Residences.]*

Redesignate (b) – (d) as (a) – (c) (No change in text from proposal.)

5:27-4.2 Facilities

(a) (No change.)

(b) *[Every Cooperative Sober Living Residence shall contain a full kitchen.]*

Redesignate (c) – (g) as (b) – (f) (No change in text from proposal.)

5:27-4.3 Garbage and rubbish storage

(a) *[This section shall not apply to Cooperative Sober Living Residences.]*

Redesignate (a) – (b) as (b) – (c) (No change in text from proposal.)

5:27-4.4 Lighting and electrical service

(a) *[This section shall not apply to Cooperative Sober Living Residences]*.

Redesignate (a) – (f) as (b) – (g) (No change in text from proposal.)

5:27-4.5 Ventilation

(a) *[This section shall not apply to Cooperative Sober Living Residences.]*

Redesignate (a) – (b) as (b) – (c) (No change in text from proposal.)

5:27-4.6 Heating

(a) *[This section shall not apply to Cooperative Sober Living Residences.]*

Redesignate (b) – (d) as (a) – (c) (No change in text from proposal.)

5:27-4.7 Maintenance

(a) *[This section shall not apply to Cooperative Sober Living Residences.]*

Redesignate (b) – (o) as (a) – (n) (No change in text from proposal.)

5:27-4.8 Use and occupancy of space

(a) *[This section shall not apply to Cooperative Sober Living Residences.]*

Redesignate (b) – (e) as (a) – (d) (No change in text from proposal.)

5:27-4.9 Matters not covered

[In other than Class F facilities, Cooperative Sober Living Residences, a] ***A***ny matter or requirement essential for the structural safety of a rooming or boarding house or essential for the safety or health of the residents thereof or of the public, and which is not covered by the provisions of *[these regulations]* ***this chapter*** shall be the subject of determination by the Bureau in specific cases.

5:27-6.1 Control of Access

- (a) *[This section shall not apply to Cooperative Sober Living Residences.]*
Redesignate (b) – (j) as (a) – (i) (No change in text from proposal.)

5:27-6.2 Protection of valuables

- (a) *[This section shall not apply to Cooperative Sober Living Residences.]*
Redesignate (b) – (c) as (a) – (b) (No change in text from proposal.)

5:23-7.1 Housekeeping

- (a) *[This section shall not apply to Cooperative Sober Living Residences.]*
Redesignate (b) – (d) as (a) – (c) (No change in text from proposal.)

5:27-7.2 Bedrooms

- (a) *[This section shall not apply to Cooperative Sober Living Residences.]*
Redesignate (b) – (e) as (a) – (d) (No change in text from proposal.)

