

40 percent of funds awarded to the State under 23 U.S.C. § 402 must be expended by or for the benefit of the State’s political subdivisions. See N.J.S.A. 27:5F-25. This required minimum percentage of funding allocated to local political subdivisions will be unaffected by the eligibility of qualifying NPOs to apply for grants.

Federal Standards Statement

A Federal standards analysis is not required because the U.S. Highway Traffic Safety Act of 1996 as supplemented and amended (23 U.S.C. §§ 401-404) and regulations promulgated by the National Highway Traffic Safety Administration (23 CFR Parts 1200 and 1350) do not contain standards and requirements as to the qualifications an NPO must meet to receive a subgrant from the State.

Jobs Impact

The OHTS anticipates that new jobs may be created by those qualifying NPOs, which receive a grant because they will need staff to administer and oversee the grant program.

Agriculture Industry Impact

The OHTS does not anticipate that the proposed new rules will have an impact on the agriculture industry.

Regulatory Flexibility Statement

To the extent an NPO may meet the definition of small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the proposed new rules do not impose any additional mandatory reporting, recordkeeping, or other compliance requirements on an NPO. An NPO’s application for eligibility for a grant is voluntary. The proposed new rules require an NPO to show that it meets qualifying criteria. An NPO may rely, in part, on existing documentation to show its eligibility. If a grant is awarded to a qualifying NPO, the NPO will be subject to the reporting, recordkeeping, and other compliance required by the Department of Law and Public Safety and Federal, State, or local governments for similar grants.

Housing Affordability Impact Analysis

The proposed new rules will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the proposed rules concern grants to NPOs for highway traffic safety programs.

Smart Growth Development Impact Analysis

The proposed new rules will have no impact on smart growth development and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules concern grant eligibility of NPOs for highway traffic safety programs.

Full text of the expired rules proposed herein as new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:86B-2.2 Application to demonstrate compliance with qualifying criteria

(a) The NPO shall attach to its application for a grant, a resolution from its governing body authorizing the application. To demonstrate compliance with each of the qualifying criteria set forth in N.J.A.C. 13:86B-2.1, the NPO shall also attach to its application the documents and information set forth below. The NPO may supply such information by way of an annual report or other organizational report or publication or a written submission certified to by an officer of the NPO.

1.-3. (No change.)

4. A description of all highway traffic safety programs conducted by the NPO during the year immediately prior to the date of its application, the subject matter of which is related to an approved program area established by N.J.A.C. [13:86]13:86B-3.1, including the dates during which the NPO conducted the program, whether it was conducted on a local or Statewide basis, and statistics showing the number of persons who participated in the program;

5.-9. (No change.)

SUBCHAPTER 4. ADDITIONAL INFORMATION/
DETERMINATION

13:86B-4.2 Determination NPO is qualifying/acceptance

(a) (No change.)

(b) If the Director determines based on the documents and information provided in accordance with N.J.A.C. [13:86]13:86B-2.1 that the NPO has met all of the criteria to establish that it is a qualifying NPO and is, therefore, eligible to apply for a grant, but has submitted an application for a grant in an unapproved program area, the Director shall return the grant application and explain in writing the reasons for its return.

(c) If the Director determines based on the documents and information provided in accordance with N.J.A.C. [13:86]13:86B-2.1 that the NPO has met all of the criteria to establish that it is a qualifying NPO and the application is submitted for a grant in an approved program area, the Director shall accept the application for processing in accordance with N.J.S.A. 27:5F-[29c(8)]29.c(8).

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Third Party Suppliers Advertising and Marketing Standards

Proposed Readoption of Specially Adopted Amendments: N.J.A.C. 14:4-7.2, 7.3, and 7.4

Proposed Readoption of Specially Adopted New Rule: N.J.A.C. 14:4-7.13

Authorized By: New Jersey Board of Public Utilities, Richard S. Mroz, President, Joseph L. Fiordaliso, Mary-Anna Holden, Dianne Solomon, and Upendra Chivukula, Commissioners.
Authority: N.J.S.A. 48:3-51 and 48:3-85 et seq.
Calendar Reference: See Summary below for explanation of exception to calendar requirement.
BPU Docket Number: EX15121427.
Proposal Number: PRN 2016-057.

Comments may be submitted through July 1, 2016, by e-mail in **Microsoft Word format**, or in a format that can be easily converted to Word, to: rule.comments@bpu.state.nj.us or on paper to:

Irene Kim Asbury, Secretary
New Jersey Board of Public Utilities
ATTN: BPU Docket Number: EX15121427
44 S. Clinton Ave., 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

The agency proposal follows:

Summary

The Board of Public Utilities is proposing the readoption of the amendments at N.J.A.C. 14:4-7.2, 7.3, and 7.4 and the new rule at N.J.A.C. 14:4-7.13, which were adopted outside of the requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-5.1 on September 30, 2014, in order to codify new statutory requirements enacted through P.L. 2013, c. 263, which amended N.J.S.A. 48:3-51 and 48:3-85. The rules are designed to prohibit certain energy suppliers from making false and misleading claims to potential customers and to prohibit suppliers’ calls to customers where no existing business relationship exists if those individuals are on the Do-Not-Call list.

By filing this notice of rules proposed for readoption with the Office of Administrative Law prior to March 30, 2016, the expiration date of these amendments and new rule is extended 180 days to September 26, 2016, pursuant to N.J.S.A. 52:14B-5.1.c(2). As the Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements set forth at N.J.A.C. 1:30-3.1 and 3.2, pursuant to N.J.A.C. 1:30-3.3(a)5.

Following is a section-by-section summary of the rules proposed for readoption.

N.J.A.C. 14:4-7.2 contains definitions of terms that are used multiple times in the subchapter and the amendments included the addition of "existing business relationship," "sales representative," "telemarketer," "telemarketing sales call," and "unsolicited advertisement."

New N.J.A.C. 14:4-7.3(d) and (e) set forth advertising prohibitions for electric power suppliers, gas suppliers, brokers, energy agents, marketers, private aggregators, sales representatives, and telemarketers including: making false or misleading advertising claims to potential residential customers; and contacting a potential residential customer by telephone for the purpose of making an unsolicited advertisement, if there is not an existing business relationship with the potential residential customer and the residential customer's telephone number appears on the no telemarketing call list established and maintained by the Division of Consumer Affairs and the national do-not-call registry. The rules also require that any complaints related to violations of the rules prohibiting the contacting of a potential residential customer by phone must be forwarded to the Division of Consumer Affairs for further investigation.

New N.J.A.C. 14:4-7.4(n) and (o) set forth marketing prohibitions for electric power suppliers, gas suppliers, brokers, energy agents, marketers, private aggregators, sales representatives, and telemarketers including: making false or misleading advertising claims to potential residential customers; and contacting a potential residential customer by telephone for the purpose of making an unsolicited advertisement, if there is not an existing business relationship with the potential residential customer and the residential customer's telephone number appears on the no telemarketing call list established and maintained by the Division of Consumer Affairs and the national do-not-call registry. The rules also require that any complaints related to violations of the rules prohibiting the contacting of a potential residential customer by phone must be forwarded to the Division of Consumer Affairs for further investigation.

New N.J.A.C. 14:4-7.13 states that in addition to all penalties, fines, or remedies authorized by law, violators of the provisions of N.J.A.C. 14:4-7.3(d)1 and 7.4(n)1 are liable to the residential customer in an amount equal to all charges paid by the residential customer after such violation occurs in accordance with any procedures as the Board may prescribe and be liable for a civil penalty pursuant to N.J.S.A. 48:3-83. The rule also authorizes the Board to revoke the license of any electric power supplier, gas supplier, broker, energy agent, marketer, or private aggregator found in violation of N.J.A.C. 14:4-7.3(d) or 7.4(n).

Social Impact

The proposed readoption of the specially adopted amendments and new rule will have a positive social impact for New Jersey by continuing to prohibit certain energy suppliers from making false and misleading claims to potential customers and continuing to prohibit suppliers' calls to customers where no existing business relationship exists if those individuals are on the Do-Not-Call list.

Economic Impact

The proposed readoption of the specially adopted amendments and new rule will not have any economic impact.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt, or amend State rules exceeding any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The proposed readoption of the specially adopted amendments and new rule have no Federal analogue and are not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards, or Federal requirements. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal standards analysis for the proposed readoption of the specially adopted amendments and new rule.

Jobs Impact

It is anticipated that the proposed readoption of the specially adopted amendments and new rule will not cause any jobs to be generated or lost in any area of the State's economy.

Agriculture Industry Impact

The Board does not expect any agriculture industry impact from the proposed readoption of the specially adopted amendments and new rule.

Regulatory Flexibility Statement

A small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is a business that has fewer than 100 full-time employees. The proposed readoption of the specially adopted amendments and new rule does not impose reporting, recordkeeping, or other compliance requirements on small businesses operating as energy suppliers. Accordingly, no regulatory flexibility analysis is required.

Housing Affordability Impact Analysis

The proposed readoption of the specially adopted amendments and new rule will have no impact on the affordability of housing in New Jersey and will not evoke a change in the average costs associated with housing because the scope of the rules is limited to the regulation of the electric power suppliers, gas suppliers, brokers, energy agents, marketers, private aggregators, sales representatives, and telemarketers.

Smart Growth Development Impact Analysis

The Board does not expect the proposed readoption of the specially adopted amendments and new rule to have an impact on housing production in New Jersey and there is an extreme unlikelihood that the rules 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 scope of the rules is limited to the regulation of the electric power suppliers, gas suppliers, brokers, energy agents, marketers, private aggregators, sales representatives, and telemarketers.

Full text of the specially adopted amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 4. RETAIL CHOICE CONSUMER PROTECTION

14:4-7.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise. In addition, definitions set forth at N.J.A.C. 14:4-1.2 and 14:3-1.1 shall apply to this subchapter, unless the context clearly indicates otherwise.

"Existing business relationship" means a relationship formed by a voluntary two-way communication between an electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer and a customer regardless of an exchange of consideration, on the basis of an inquiry, application, purchase, or transaction initiated by the customer regarding products or services offered by the electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer; however, a customer's use of electric generation service or gas supply service through the customer's electric public utility or gas public utility shall not constitute or establish an existing business relationship.

...

"Sales representative" means a person employed by, acting on behalf of, or as an independent contractor for, an electric power supplier, gas supplier, broker, energy agent, marketer, or private aggregator who, by any means, solicits a potential residential customer for the purpose of providing electric generation service or gas supply service to that customer.

"Telemarketer" shall have the same meaning as set forth in N.J.S.A. 56:8-120.

"Telemarketing sales call" means a telephone call made by a telemarketer to a potential residential customer as part of a plan, program, or campaign to encourage the customer to change the customer's electric power supplier or gas supplier. A telephone call made to an existing customer of an electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, or sales representative, for the sole purpose of collecting on accounts or following up on contractual obligations, shall not be deemed a

telemarketing sales call. A telephone call made in response to an express written, electronic, or telephonic request of a customer shall not be deemed a telemarketing sales call.

“Unsolicited advertisement” means any advertising claims of the commercial availability or quality of services provided by an electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer which is transmitted to a potential customer without that customer’s prior express invitation or permission.

14:4-7.3 Advertising standards

(a)-(c) (No change.)

(d) In the advertisement of their services, electric power suppliers, gas suppliers, brokers, energy agents, marketers, private aggregators, sales representatives, and telemarketers are prohibited from:

1. Making false or misleading advertising claims to a potential residential customer;
2. Contacting a potential residential customer by telephone for the purpose of making an unsolicited advertisement, if the electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer does not have an existing business relationship with the potential residential customer and the residential customer’s telephone number appears on the no telemarketing call list established and maintained by the Division of Consumer Affairs, pursuant to N.J.S.A. 56:8-127 or any successor statute, or the national do-not-call registry as maintained by the Federal Trade Commission.

(e) Any complaints related to violations of (d)2 above shall be forwarded to the Division of Consumer Affairs for further investigation.

14:4-7.4 Marketing standards

(a)-(m) (No change.)

(n) In the marketing of their services, electric power suppliers, gas suppliers, brokers, energy agents, marketers, private aggregators, sales representatives, and telemarketers are prohibited from:

1. Making false or misleading marketing claims to a potential residential customer;
2. Contacting a potential residential customer by telephone for the purpose of the marketing of their services, if the electric power

supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer does not have an existing business relationship with the potential residential customer and the residential customer’s telephone number appears on the no telemarketing call list established and maintained by the Division of Consumer Affairs or the national do-not-call registry as maintained by the Federal Trade Commission.

(o) Any complaints related to (n)2 above shall be forwarded to the Division of Consumer Affairs for further investigation.

14:4-7.13 Penalties

(a) In addition to any other penalties, fines, or remedies authorized by law, an electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer that violates the provisions of N.J.A.C. 14:4-7.3(d)1 and 7.4(n)1 and collects charges for electric generation service or gas supply service from a residential customer who was subjected to false or misleading advertising or marketing claims by the electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer in violation of the provisions of N.J.A.C. 14:4-7.3(d)1 and 7.4(n)1:

1. Shall be liable to the residential customer in an amount equal to all charges paid by the residential customer after such violation occurs in accordance with any procedures as the board may prescribe, whether the electric power supplier or gas supplier provided the electric generation service or gas supply service to that customer, or the electric generation service or gas supply service was provided to the customer by a broker, energy agent, marketer, private aggregator, sales representative, or telemarketer who contacted the customer on behalf of the electric power supplier or gas supplier; and
2. Shall be liable for a civil penalty pursuant to N.J.S.A. 48:3-83.

(b) The Board is hereby authorized to revoke the license of any electric power supplier, gas supplier, broker, energy agent, marketer, or private aggregator found in violation of N.J.A.C. 14:4-7.3(d) or 7.4(n).
