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**OFFICE OF HIGHWAY TRAFFIC SAFETY
Qualifying Nonprofit Organizations
Proposed New Rules: N.J.A.C. 13:86B**

Authorized By: Gary Poedubicky, Acting Director, Office of Highway Traffic Safety.

Authority: N.J.S.A. 27:5F-29.c(8).

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

Proposal Number: PRN 2016-058.

Submit written comments by July 1, 2016, to:

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The agency proposal follows:

Summary

Pursuant to the New Jersey Highway Traffic Safety Act of 1987 (Act), N.J.S.A. 27:5F-18 et seq., the Office of Highway Traffic Safety (OHTS) is charged with administering the State's highway traffic safety program on behalf of the Governor and under the supervision of the Attorney General. This program is funded with Federal monies received by the State under the U.S. Highway Traffic Safety Act of 1966 (Pub. L. 89-564; 23 U.S.C. §§ 401-404) and any acts amendatory or supplementary thereto. The New Jersey Highway Traffic Safety Act as amended by P.L. 2007, c. 84, effective March 16, 2008, permits a qualifying nonprofit

organization (NPO) to apply for highway traffic safety project grants for programs approved by the Director of the OHTS. The Act authorizes the Director to adopt criteria by which a nonprofit organization shall qualify for the award of a grant for a program approved by the Director. The Act specifies certain criteria that the Director must include, as well as the types of programs for which an NPO may be awarded a grant. Prior to the amendments, the Act only permitted the award of grants to State agencies and agencies of a political subdivision of the State, such as a municipality or county. The expired rules proposed herein as new rules expired on September 2, 2015, and are proposed with technical amendments.

Proposed Subchapter 1 contains general provisions, including the scope and purpose of the rules, the authority for promulgating them, and definitions of terms used throughout the rules. The terms are self-explanatory.

Proposed Subchapter 2 contains rules establishing the criteria by which a nonprofit organization may qualify to apply for a grant and the documents and information necessary to demonstrate the NPO meets the criteria.

N.J.A.C. 13:86B-2.1 sets forth the criteria an NPO must meet to be a qualifying NPO eligible to apply for a grant. The first four criteria in proposed N.J.A.C. 13:86B-2.1 are required by the Legislature at N.J.S.A. 27:5F-20.h and 29.c(8). The NPO must be tax exempt under 26 U.S.C. § 501(c)(3) of the Federal Internal Revenue Code and not a private foundation as defined in 26 U.S.C. § 509(a). The NPO must provide services throughout the State, be operated primarily for scientific, educational, service, charitable or similar purposes in the public interest and have a demonstrable record of conducting highway traffic safety programs.

The Director would establish the following additional qualifying criteria in N.J.A.C. 13:86B-2.1. The NPO must be incorporated under New Jersey law as nonprofit corporation or must have been organized under other New Jersey statutory authority to operate in this State for at least one year before the date of its application for a grant. If the NPO is engaged in fundraising it must be registered under the New Jersey Charitable and Registration Act with the Division of Consumer Affairs. If the NPO provides services that require licensing or registration by a local or State government, the NPO must hold the license or registration, and the NPO must be registered to do business in New Jersey. If it is applying for a grant for training or other activities designed to reduce crash-related trauma under proposed N.J.A.C. 13:86B-3.1(a)4, the NPO must be an employer of staff who perform the duties of first responders and emergency medical technicians. Finally, an NPO that applies for a grant on behalf of another entity to implement an emergency services program must meet the additional criteria under proposed N.J.A.C. 13:86B-3.2.

N.J.A.C. 13:86B-2.2 requires the NPO to provide with its application a resolution from its governing body authorizing the application, as well as the documents and information to demonstrate the NPO's compliance with the qualifying criteria. The NPO can supply requested information by way of its annual report or other publication or a written submission certified by an officer of the NPO. The rule requires a letter from the Federal Internal Revenue Service confirming the NPO's status under § 501(c)(3) of the Federal Internal Revenue Code and proof that the NPO provides services throughout the State. Proposed N.J.A.C. 13:86B-2.2(a)3, 5, and 6 are related. Paragraph (a)5 requires a copy of the NPO's certificate of incorporation under N.J.S.A. 15A:1-1 et seq., or other organizing document, its by-laws or governing rules, and the names of trustees, directors, or other governing officials, and all officers. These documents are likely to demonstrate that the NPO is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest, and that it has been organized for at least one year prior to the date of its application, in satisfaction of paragraphs (a)3 and 6. Paragraph (a)4 requires a description of highway traffic safety programs the NPO has conducted during the year immediately prior to the date of its application and related information. Paragraph (a)7 requires a description of any activities conducted by the NPO that require registration with the Division of Consumer Affairs pursuant to the Charities Registration and Investigation Act, N.J.S.A. 45:17A-18 et seq., and a copy of the NPO's valid registration. Paragraph (a)8 requires a copy of any registration, license, or other approval required by a State or local government agency to provide the services offered by the NPO

throughout the State, including registration to do business in the State as required by P.L. 2004, c. 57. Paragraph (a)9 requires an NPO that is seeking to apply for a grant to train first responders and emergency medical technicians employed by the NPO to provide a list of such employees. The citation to N.J.A.C. 13:86-3.1 in Paragraph (a)4 of the expired rule has been corrected to N.J.A.C. 13:86B-3.1.

N.J.A.C. 13:86B-3.1 identifies the types of approved programs for which a qualifying NPO may be awarded a grant. Paragraph (a)1 identifies six specific highway traffic safety program areas in which the qualifying NPO may provide a public information or education program. The proposed rule includes three other approved program areas: to conduct surveys of highway safety issues; to conduct studies of available crash data; and to provide training and other activities for employees of the NPO serving as first responders and emergency medical technicians that are designed to reduce crash-related trauma.

N.J.A.C. 13:86B-3.2 implements N.J.S.A. 27:5F-26, which permits qualifying NPOs to submit an application on behalf of a hospital, volunteer or non-volunteer first aid, rescue or ambulance squad, or other local entity serving a public purpose for a grant to implement an emergency services program. The proposed rule requires the NPO to meet all qualifying criteria set forth in Subchapter 2. The NPO must also demonstrate that it has a record of conducting programs related to providing emergency medical services to the public and that during a one-year period immediately prior to the date of the application it had a working relationship with the entity on whose behalf it applies for the grant.

Subchapter 4 contains the rules that govern the Director's determination as to whether the NPO has met the qualifying criteria.

N.J.A.C. 13:86B-4.1 authorizes the Director to request required documents or information not provided by the NPO or additional information needed to clarify the NPO's compliance with any criteria and requires a response from the NPO within 15 days. If the NPO fails to respond within this time period, the Director shall return the application as incomplete.

N.J.A.C. 13:86B-4.2 authorizes three determinations. Subsection (a) permits the Director, upon determination that the NPO has failed to meet the qualifying criteria, to return the application to the NPO and to identify in writing the criteria the NPO has failed to meet. Subsection (b) permits the Director to return the application to the NPO when the Director determines that, although the NPO has met all qualifying criteria, it has submitted an application for an unapproved program. The Director is to explain in writing the reason for the application's return. Subsection (c) authorizes the Director to accept the application for processing in accordance with N.J.S.A. 27:5F-29.c(8) upon finding that the NPO has met the qualifying criteria and has submitted an application for an approved program. The citations to N.J.A.C. 13:86-2.1 in subsections (b) and (c) of the expired rule have been corrected to N.J.A.C. 13:86B-2.1.

Because the Office has provided a 60-day comment period, this notice of proposal is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Private sector entities have for many years participated as partners in the programs of the OHTS. The rules implement the Legislature's intent to support NPOs experienced at delivering services throughout the State and with a record of conducting highway traffic safety programs by permitting them to qualify for a grant of Federal monies to support programs approved by the Director. Consequently, the highway traffic safety programs of the NPOs that receive such awards will be fully integrated into the State Highway Traffic Safety Plan. The OHTS anticipates that awarding a grant to a qualifying NPO will have the effect of expanding the overall effectiveness of such programs by reaching segments of the public served by the NPO throughout the State and more effectively coordinating private and public efforts to improve highway traffic safety in the State.

Economic Impact

The economic impact on qualifying NPOs who receive a grant will be beneficial as it will provide funding to support highway traffic safety-related activities from a source distinct from those sources needed to deliver non-traffic safety related services. The Act requires that at least

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).