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Action: Notice of Action on Petition for Rulemaking

Agency

LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS

Administrative Code Citation

N.J.A.C. 13:31-4.1

Text

Notice of Action on Petition for Rulemaking

State Board of Examiners of Electrical Contractors

Petitioner: Darren Reaman, Director of Government Affairs, CEDIA.

Authority: N.J.S.A. 45:1-15.1.

Take notice that on October 14, 2016, the State Board of Examiners of Electrical Contractors (Board) received a petition for rulemaking from Darren Reaman, Director of Government Affairs, on behalf of the Custom Electronic Design & Installation Association (CEDIA), requesting that the Board amend its rule governing the limited telecommunications wiring exemption. The petitioner proposes that the Board amend N.J.A.C. 13:31-4.1 to add a new exemption for the design, installation, integration, erection, repair, maintenance, or alteration of products that transport voice, video, audio, and data signals in residential premises.

CEDIA is the professional trade association of companies that specialize in designing and installing electronic systems for the home.

These systems include home networking, home automation and communication systems, media rooms, and single or multi-room entertainment systems. CEDIA members include home technology professionals, manufacturers, industry-related professionals, professional services, and manufacturer representatives, and range from small, independent electronic systems contracting firms to large multi-national manufacturers.

According to the petitioner, its interest in the petition for rulemaking is to clarify a "confusing regulatory scheme" that is outpaced by 21st century technological developments and consumer demands. The petitioner notes that the limited telecommunications wiring exemption was created in 1993 with few or no substantial changes since. The petitioner believes that, in an industry as dynamic as technology, changes must be made to adapt with the times. The petitioner further believes that recent regulatory changes and pending legislation are an attempt to narrow the scope of the limited telecommunications wiring exemption.

The petitioner believes that the work of home technology professionals is not properly classified under existing New Jersey law. It states that its members are typically registered as home improvement contractors, but there is no specific license that embodies the work of home technology professionals. The petitioner further notes that its members work either through the "less than 10 volts" threshold set forth at N.J.S.A. 45:5A-18(j), or the limited telecommunications wiring exemption. The petitioner states that it supports licensing for home technology professionals when the license properly represents the specific skills for the work they complete.

The petitioner notes that, with the convergence of technology, applications and capabilities within the home have increased. The petitioner also states that the skills needed for home technology professionals have evolved and grown with the capabilities of residential electronic systems. In addition, the petitioner believes that having electronic systems work fall under the scope of an electrical contractors' license, a burglar alarm business license, or any other existing professional license does not properly represent and support the residential electronic systems industry.

The petitioner states that New York, Connecticut, Pennsylvania, Massachusetts, New York City, and Philadelphia have licenses or exemptions that address the low-voltage electronic systems industry. The petitioner further notes that the wired infrastructure used in today's modern residential technology systems is not in place to deliver electricity, but rather to deliver information and intelligence in the form of voice, data, audio, and video systems. The petitioner

believes that these complex systems require well-trained and technologically astute home technology professionals, who understand not only the intricacies [page=1455] of installing these systems, but also how to integrate these systems, so they work in conjunction with each other through the ease of a single control device. The petitioner believes that residential electronic systems do not pose a hazard from a shock or fire initiation standpoint as defined in the National Electric Code.

The petitioner recommends amending N.J.A.C. 13:31-4.1 pursuant to the Board's statutory authority at N.J.S.A. 45:5A-18, which sets forth exemptions from the requirements of the Electrical Contractors Licensing Act of 1962. The petitioner notes that this statute expressly authorizes the Board to "also exempt from the business permit provisions of this act such other electrical activities of like character which in the Board's opinion warrant exclusion from the provisions of this act." In addition, the petitioner cites N.J.S.A. 45:5A-6, which expressly authorizes the Board to "adopt and amend all rules and regulations not inconsistent with the Constitution and laws of this State which may be reasonably necessary for the proper performance of its duties and the purposes of this act and for the conduct of the proceedings before it."

In further support of its petition, the petitioner refers to the regulatory history of the limited telecommunications wiring exemption (see 24 N.J.R. 339(a); 25 N.J.R. 705(a)). Specifically, the petitioner notes that the Board, at the time of rule adoption, did not impose a voltage limit for the exemption. In addition, the petitioner notes that one commenter noted that, at the time of the statute's enactment in 1962, the "interconnect" industry (as it was known in 1992) was virtually non-existent and that, without an exemption, smaller companies would be unable to compete with larger companies if the regulatory scheme required the subcontracting of telecommunications wiring work to electrical contractors. The petitioner believes that this comment is precisely why, nearly 25 years later, the telecommunications wiring exemption needs to be modernized. The petitioner further states that technology has far outpaced the regulations and that modernization of the rule is long overdue. The petitioner notes that the internet, along with wireless technology, has almost completely replaced telephone wiring in today's residences, and that consumers have dozens of wireless devices using their home network, which have grown increasingly advanced and yet remain quite safe.

The petitioner believes that, given this growing marketplace, it is not a surprise that smaller businesses are concerned that the existing antiquated regulatory scheme works to their disadvantage. The

petitioner also states that, if home technology professionals cannot work within the existing limited telecommunications wiring exemption and cannot work with products in excess of 10 volts, their well-established businesses are jeopardized by larger companies who can more easily afford the additional expenses. The petitioner believes that, such a result, would not only close hundreds of small businesses in New Jersey, but would also result in unnecessary expense to New Jersey consumers who seek to employ advanced technologies in their homes.

The petitioner states that: 1) home technology professionals are contractors who work on connected home technology to give customers a seamless experience; 2) home technology professionals design and install electronically enhanced living environments, such as home theaters, media rooms, and whole-house installations and the technology is a conduit for information and intelligence in the form of voice, video, audio, and data signals; 3) with the convergence of technology, the proposed amendment represents the current technologies that home technology professionals design, install, and integrate on residential projects on a daily basis; and 4) the work of home technology professionals is more akin to that of information technology professionals than electrical contractors. Based on the foregoing, the petitioner requests that the Board amend N.J.A.C. 13:31-4.1 by adding a new subsection (c) with the following text:

"For purposes of this subsection, this exemption applies to the design, installation, integration, erection, repair, maintenance, or alteration of products that transport voice, video, audio, and data signals in residential premises."

On December 7, 2016 the Board referred this matter to its Rules and Regulations Committee for further deliberation to develop a better understanding of the implications this request would have for licensees, registrants, other professional licensees, and the welfare and safety of the general public. A notice acknowledging the Board's action on December 7, 2016 was filed with the Office of Administrative Law and was published in the New Jersey Register on January 3, 2017 at 49 N.J.R. 147(d).

The Board and petitioner subsequently extended three times the period for Board deliberation. Notice acknowledging these extensions were published in the New Jersey Register on February 21, 2017, at 49 N.J.R. 344(a), on August 21, 2017, at 49 N.J.R. 2816(b), and on February 5, 2018, at 50 N.J.R. 870(c).

Take further notice that the Board considered the petition for rulemaking at the open public session of its May 9, 2018, meeting and determined to deny the petition because, as presented, the petitioner's

request extends beyond the scope of solely the Board's jurisdiction. The petitioner's request encompasses the jurisdiction of the State Board of Examiners of Heating, Ventilating, Air Conditioning and Refrigeration (HVACR) Contractors and the Fire Alarm, Burglar Alarm and Locksmith Advisory Committee (FBL). The Board believes, however, that there may be merit in initiating a rulemaking with respect to power over the ethernet (POE) and, therefore, intends to seek further input from the public and stakeholders. If upon further input, the Board determines that rulemaking is appropriate, the Board will propose such a rulemaking.

During the Board's period of deliberation, the petitioner and a committee of the Board met and the petitioner submitted additional information concerning its petition. Specifically, by e-mail dated July 21, 2017, CEDIA suggested amending the limited telecommunications wiring exemption to include "smart home/home automation platforms." By letter dated December 1, 2017, CEDIA proposed expanding the limited telecommunications wiring exemption to apply to "the design, integration, maintenance, or alteration of products that transport voice, video, audio, and data signals for home automation platforms." In addition, as part of its December 1, 2017 submission, CEDIA posed several questions concerning the ability of technology integrators, in accordance with the limited telecommunications wiring exemption, to install: closed-circuit televisions (CCTV) and/or cameras utilized for non-monitored purposes, power over the ethernet (POE), residential audio systems, and smart thermostats.

In accordance with N.J.S.A. 45:5A-1 et seq., the Electrical Contractors Licensing Act of 1962, and the Board's rules at N.J.A.C. 13:31, and the respective statutes and rules of the HVACR Board and the FBL Committee, absent a specific statutory exemption (for example, homeowner), licensure of each respective board is required to install equipment. The limited telecommunications wiring exemption does not apply when an individual or company engages in the work of an electrical contractor; engages in the alarm business or in the provision of locksmithing services; or engages in work that requires licensure under another board's purview, such as HVACR.

As defined in the FBL rules at N.J.A.C. 13:31A-1.2, an "electronic security system" includes CCTV systems. In accordance with FBL rules, CCTV requires licensure, unless the homeowner is installing. The Board notes that the limited telecommunication wiring exemption is not applicable because CCTV does not involve FCC wiring and the exemption does not apply when engaging in the alarm business or in the provision of locksmithing services.

Similarly, audio systems are not encompassed under the telecommunication wiring exemption. However, in accordance with N.J.S.A. 45:5A-18(j), as long as the audio system does not exceed 10 volts, electrical contractor licensure is not required.

In accordance with N.J.S.A. 45:16A-2, humidity and thermostatic controls fall under the purview of the HVACR statute and rules. Therefore, the limited telecommunication wiring exemption is not applicable.

Pursuant to N.J.A.C. 13:31-4.1, POE does not meet the requirements of the telecommunication wiring exemption. Therefore, an electrical contractor license is required to install a device or wires to power the device.

As noted above, the Board believes that there may be merit in initiating a rulemaking with respect to POE and, therefore, intends to seek further input from the public and stakeholders. The Board, [page=1456] therefore, will be publishing a notice of pre-proposal to solicit such input in the normal course.

A copy of this notice has been mailed to the petitioner pursuant to N.J.A.C. 1:30-4.2.

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