Concise Explanatory Statement

Rhode Island Government Register

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, following is a concise explanatory statement:

AGENCY: **Rhode Island Department of Business Regulation**

DIVISION: **Commercial Licensing**

RULE IDENTIFIER: **230-RICR-30-45-1**

REGULATION TITLE: **Residential Solar Retailer Registration and Solar Agreements**

RULEMAKING ACTION: **Full rulemaking, Adoption**

COMMENT PERIOD: **January 27, 2025, to February 26, 2025**

A. Statement of Purpose of the Amendments

Pursuant to the enactment of R.I. Gen. Laws § 5-93-4, the Department is required to create an online registration database for residential solar retailers. In order complete the implementation process, DBR proposed this regulation which establishes a registration process for residential solar retailers, disclosure requirements for residential solar retailer agreements.

- Registration is by solar retailers seeking to do business in Rhode Island.
- Registrations must be submitted electronically.
- Registrations shall require a roster of all representatives soliciting, leasing, and/or selling solar energy systems on behalf of a solar retailer.
- Solar energy system lease or sale agreements must state itemized costs associated with the sale or lease and must include standard disclosure forms as developed by OER.
- Registration and Renewal fee will be $750 for a one-year registration.

B. Summary of the Regulatory Analysis

In accordance with R.I. Gen. Laws § 5-93-4, all solar retailers selling, leasing, and/or soliciting solar energy systems for purchase or lease must be registered with the Department. In addition to providing a roster of all representatives, for whom background checks are required, all solar retailers' lease and/or sale agreements must include certain specific disclosures and information. Rhode Island solar energy system customers and prospective customers will benefit from increased transparency and clarity in solar energy retail sales and leasing.

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

A full regulatory analysis may be found in the RICR database under the "Rulemaking Documents" tab for these proposed amendments under the title "Studies/Reports."

C. Summary of Post-Comment Changes

The following differences exist between the text of the proposed rule as published in accordance with R.I. Gen. Laws § 42-35-2.7 and the rule as adopted. These changes are all consistent with, and are a logical outgrowth of, the proposed regulation in the notice of proposed rulemaking in accordance with R.I. Gen. Laws § 42-35-6.1. In addition to this summary of changes, a redlined document showing the exact changes is attached.

1. Commentary was received regarding the 10-day employee roster update requirement for residential solar retailers and questions as to whether the employee roster updates could be made quarterly or annually.

   In consideration of this commentary, the Department made a post-comment change in § 1.4.6 to permit registrant residential solar retailers to notify the Department on a quarterly basis no later than the last day of each quarter (March 31st, June 30th, September 30th, and December 31st) of any changes to the roster of employees and third-party representatives. Registrants must notify the Department of all other material changes to information contained in the residential solar retailer's registration within ten business days.

2. While proofreading the final regulation, the Department identified a typo in the statutory citation in first line of § 1.4(A). The citation has been corrected as follows: R.I. Gen. Laws § 5-~~8~~9~~3~~-4.

D. Summary of Comments Not Resulting in Regulatory Language Changes

Below is a summary of other public comments received that did not result in changes to the text of the Regulation and a brief description of the Department's reasons for not making any such changes after due consideration.

1. *Request for exemption from criminal records check for third party representatives.* Commentary was received suggesting that third party sales representatives should be included on registrants' employee rosters but should not be required to submit to criminal background checks.

   In accordance with R.I. Gen. Laws § 5-93-4(d), "each owner, member, director, and principal officer of the applicant, and any individual acting as manager or a sales representative of the applicant shall obtain and provide a national criminal records check from the bureau of criminal identification of the department of attorney general, department of public safety division of the state police, or local police department that shall include fingerprints submitted to the Federal Bureau of Investigation." The statute does not provide an exemption for third-party sales representatives. Accordingly, the Department declines to make a change in response to this comment.

2. *Request for attestation from registrant that criminal background checks were performed in lieu of submission of criminal background checks to Department.* Commentary was received which suggested that residential solar retailers should be permitted to submit attestations that criminal background checks have been performed because submitting background checks with any third party raises legal risks.

   In accordance with the statutory requirement in R.I. Gen. Laws § 5-93-4(d), background checks are required as part of the solar retailer registration process. The Department is in regular receipt of criminal background checks across many divisions for license registration and renewal purposes. The Department maintains criminal background checks in accordance with applicable state and federal confidentiality laws. Accordingly, the Department declines to make a change in response to this comment.

3. *Require only one background check for salespeople working with multiple retailers.* Commentary was received which requested that only one background check be submitted for salesperson(s) employed by more than one residential solar retailer in order to avoid duplicative records.

   In accordance with the statutory requirement in R.I. Gen. Laws § 5-93-4(d), every applicant is required to submit background checks for each owner, member, director, and principal officer of the applicant, and any individual acting as manager or a sales representative. These records are not duplicative because each registrant and license application is unique and their respective employee rosters are maintained separately. Accordingly, the Department declines to make a change in response to this comment.

4. *Require itemized cost lists for solar agreements when customers are purchasing the solar energy system.* Commentary was received that for power purchase agreements, residential solar retailers should be exempt from providing itemized cost lists.

   In accordance with R.I. Gen. Laws § 5-93-6, the standard disclosure form shall "[i]nclude applicable information and disclosures as provided in §§ 5-93-7, 5-93-8, 5-93-9, and 5-93-10." In accordance with § 5-93-10, the Act sets forth the specific information to be included in the disclosure addendum for power purchase agreements. Accordingly, the Department declines to make a change in response to this comment.

5. *Requests to allow solar contracts to include "market rate" in solar agreements for itemized costs that may occur in the future.* Commentary was received that it is not possible for residential solar retailers to know the exact costs associated with a solar energy system.

   In accordance with R.I. Gen. Laws § 5-93-12, entitled "Good-faith estimate allowed," solar retailers are permitted to make good faith estimates for cost information as required in the standard disclosure forms. Accordingly, the Department declines to make a change in response to this comment.

6. *The Act does not mention solar agreements.* Commentary was received that the Act does not state that the Department has authority to develop rules related to solar energy agreements, only disclosure forms and suggests that § 1.5(A) requiring itemization of costs as it applies to solar agreements is not covered by the Act.

   The Act provides that all residential *solar agreements* must include certain standard disclosures. The standard disclosure forms are not independent of the solar agreements but rather must be incorporated into said solar agreements. Section 1.5(A) requires that solar agreements include certain disclosures set forth in an itemized list of costs for the prospective customer as required under § 5-93-9(3)(ii). Accordingly, the Department is authorized by the act to regulate the contents of solar agreements and, therefore, declines to make a change in response to this comment.

7. *Solar agreements should include detailed installation schedules and back-out options for customers.* Commentary received that solar agreements should provide specific deadlines for installation and the option to terminate the solar agreement when certain installation benchmarks are not timely met.

   In accordance with R.I. Gen. Laws § 5-93-7(c)(3), standard disclosure forms must include approximate start and completion dates for solar energy system installations. While there is no specific statutory requirement for agreement terminations, in accordance with § 5-93-16, private claims against solar retailers may be filed as a civil action. Accordingly, the Department declines to make a change in response to this comment.

8. *No itemized costs should be required for third-party-owned solar lease agreements.* Additional commentary was received that there should be no itemized cost list requirements for power purchase agreements.

   As explained above in No. 4, the standard disclosure form shall "[i]nclude applicable information and disclosures as provided in §§ 5-93-7, 5-93-8, 5-93-9, and 5-93-10." In accordance with § 5-93-8, the Act sets forth the specific information to be included in the disclosure addendum for solar system lease agreements. Accordingly, the Department declines to make a change in response to this comment.

E. Frequently Asked Questions from the Public Comment Period

Some of the comments received during the public comment period were questions concerning definitions and the deadline for registrations. The Department has included these questions and answers in this Concise Explanatory Statement. Additional FAQs will be posted on the Department's website when the registration system launches.

1. *The Regulation should provide a clear definition of "solar retailer."*

   The definition of "solar retailer" is set forth in the Act, § 5-93-2. Section 1.3(A) of the regulation incorporates all the statutory definitions into the regulation.

2. *Provide at least 90 days after the rules are promulgated for application/registration.*

Solar retailer applications will only be required and accepted *after the* Regulation is filed as final with the Secretary of State. Solar retailers will have ninety (90) days to register after that date. The Department will notify its interested parties list and work with the Office of Energy Resources to notify solar retailers when the regulations is finalized.

3. *The timing of the registration process and promulgation of final disclosure forms may make compliance impossible.*

   Registration will not be required until after promulgation of the Regulation and availability of disclosure forms.

230-RICR-30-45-1

TITLE 230 – DEPARTMENT OF BUSINESS REGULATION

CHAPTER 30 – COMMERCIAL LICENSING

SUBCHAPTER 45 – RESIDENTIAL SOLAR RETAILERS

PART 1 – Residential Solar Retailer Registration and Solar Agreements

1.1 Authority

A. This Part is promulgated pursuant to the authority granted in R.I. Gen. Laws § 5-93-18.

1.2 Purpose

A. The purpose of this Part is to establish standards, procedures, and requirements for the registration of residential solar retailers who conduct business in Rhode Island and for residential solar agreements and disclosures in connection therewith.

1.3 Definitions

A. In addition to the terms defined in R.I. Gen. Laws § 5-93-2, for this Part, the following terms shall have the following meanings:

1. “Act” means the Residential Solar Energy Disclosure and Homeowners Bill of Rights Act, R.I. Gen. Laws Chapter 5-93.

2. “DPS” means the Department of Public Safety Division of the State Police.

3. “OER” means the Office of Energy Resources.

4. “Registrant” means the solar retailer registered with the Department as required by R.I. Gen. Laws § 5-93-4.

5. “Registration” means a solar retailer registration as required by R.I. Gen. Laws § 5-93-4.

6. “RIAG” means the Office of the Attorney General.

7. "Solicit" means offering or attempting to sell or lease a residential solar energy system to a person or requesting, urging, or attempting to persuade a person to purchase, lease or apply for a particular kind of solar system from a particular solar retailer.

8. "Sell" means to transfer a residential solar energy system to a customer on behalf of a solar retailer in return for monetary payment or other consideration.

1.4 Solar Retailer Registrations

A. In accordance with R.I. Gen. Laws § 5-983-4, all solar retailers selling, leasing, and/or soliciting residential solar energy systems for purchase or lease must be registered with the Department prior to conducting such activities with respect to persons or property in the state of Rhode Island.

1.4.1 Applications for Solar Retailer Registration

A. Every solar retailer subject to R.I. Gen. Laws § 5-93-4 shall submit a complete application for registration to the Department along with the applicable registration fee.

B. The Department will evaluate applications based upon the information provided by the applicant on the forms/submissions and otherwise obtained during the application process.

C. Every application for registration as a residential solar retailer shall be on such forms and through such submission mechanisms as designated by the Department and shall include the information set forth in R.I. Gen. Laws § 5-93-4 and any other information the Department may require, including, but not limited to the following:

1. Evidence of general liability insurance coverage for bodily injury and property damage of not less than $500,000 per occurrence and in the aggregate and, if requested by the Department, financial statements confirming the ability to meet financial obligations and claims;

2. Along with the roster of employees and third-party sales representatives who are or will be soliciting, leasing, and/or selling solar energy systems on behalf of the solar retailer applicant, a copy of the standards and qualifications the solar retailer has implemented for such employees and third-party sales representatives pursuant to R.I. Gen. Laws § 5-93-5(b);

3. For each owner, member, director, and principal officer of the solar retailer applicant, each manager of the applicant, and every person who will engage in the solicitation, lease, and/or sale of residential solar energy systems on behalf of the solar retailer applicant, including third-party sales representatives, the results of a national criminal records check from the RIAG's bureau of criminal identification, the DPS, or local police department in accordance with R.I. Gen. Laws § 5-93-4(d);

4. The form of identification badge to be worn by employees and third-party sales representatives who are or will be soliciting, leasing and/or selling solar energy systems on behalf of the solar retailer;

5. The forms of solar agreement, which must include notice of the right to cancel or rescind as set forth in R.I. Gen. Laws § 5-93-11, that will be used by the solar retailer and its employees and third-party sales representatives for the solicitation, lease, and/or sale of residential solar energy systems in this state;

6. The disclosure form, which must comply with the requirements set forth in R.I. Gen. Laws §§ 5-93-6 and 5-93-7 and § 1.6 of this Part, that will be provided to customers by the solar retailer and its employees and third-party sales representatives in connection with the solicitation, lease and/or sale of residential solar energy systems in the state of Rhode Island; and

7. Any other information that the Department shall require.

D. No registration will be issued for incomplete or deficient applications.

E. All applications for registration and renewal shall be submitted electronically through a registration system as directed by the Department.

1.4.2 Background Checks

A. Pursuant to R.I. Gen. Laws § 5-93-14(a)(9), the Department may deny a solar retailer application for registration, or grant a registration application with conditions, if the results of the national criminal records checks of any owner, member, director, principal officer, manager, or sales representative, including third-party sales representatives, required under § 1.4.1(C)(3) of this Part reveals conviction of or nolo contendere plea to an offense involving theft, embezzlement, or mishandling of funds, including without limitation any offense under R.I. Gen. Laws Chapters 11-41 and 11-68, or to a felony that is substantially related to the solar retailer registration consistent with R.I. Gen. Laws § 28-5.1-14.

B. As to any solar retailer applicant that is a public company, national criminal background checks will be required for all officers, directors, managers, members, employees, agents and sales representatives, including third-party agents and sales representatives, who will have managerial or operational oversight and/or control with respect to the solar retailer's conduct of activities and business in Rhode Island or who will have contact and/or communicate with Rhode Island residents.

1.4.3 Term of Registration

A. The term of the registration shall be one (1) year from the date on which it was issued.

B. The expiration date of the registration shall appear on the registration. It is the obligation of the registrant to timely renew its registration. Failure to receive a renewal notice shall not be an excuse for failure to renew.

1.4.4 Annual Renewal of Registration

A. Registrants shall apply for the renewal of the registration with the Department in the manner designated for renewal by the Department.

B. Annual renewal applications shall be submitted on such forms and include such information as required by the Department.

C. Renewal applications must be received by the Department prior to the expiration of the registration.

D. Registrations that are not renewed prior to their expiration date shall expire.

1.4.5 Transfer of Registration Prohibited

A. A registration shall be granted only to the registrant. A registration is not subject to transfer or assignment without prior approval of the Department.

1.4.6 Duty to Update Information on File with the Department

A. It is the responsibility of the registrant to ensure that all application information is accurate and current for the duration of the registration.

B. Registrants shall notify the Department within ten (10) business days of any material change in the information contained in the registration, including but not limited to:

1. Any change as to the registrant's designated person in "responsible charge" and/or such person's contact information on record with the Department as provided in R.I. Gen. Laws § 5-93-4(b)(1);

2. Any change as to the registrant's appointed agent for the acceptance of service of process and/or such agent's contact information on record with the Department as provided in R.I. Gen. Laws § 5-93-4(b)(2)(iii);

~~3. Any change of registrant's roster of employees and third-party sales representatives who are or will be soliciting, leasing, and/or selling solar energy systems on behalf of the solar retailer on record with the Department as provided in R.I. Gen. Laws § 5-93-4(b)(3) and this Regulation;~~

~~4~~3. Any change of the registrant's forms of solar agreement on record with the Department as provided in § 1.4.1(C)(6) of this Part;

~~5~~4. Any change of the registrant's disclosure form on record with the Department as provided in § 1.4.1(C)(7) of this Part; and/or

~~6~~5. As to any owner, member, director, principal officer, manager, or sales representative of registrant, any conviction or nolo contendere plea that has not been previously disclosed on a criminal records check provided to the Department in accordance with R.I. Gen. Laws § 5-93-4 and § 1.4.2 of this Part.

C. Registrants shall notify the Department no later than the last day of each quarter (March 31st, June 30th, September 30th, and December 31st) of any change to the registrant's roster of employees and third-party sales representatives who are or will be soliciting, leasing, and/or selling solar energy systems on behalf of the solar retailer on record with the Department as provided in R.I. Gen. Laws § 5-93-4(b)(3) and this Regulation;

D. The registrant shall provide written notice to the Department, within five (5) days, of the denial, suspension, or revocation by any other state, province, district, or territory of any registration, license, permit, approval, or other authorization to engage in the solicitation, sale, and/or lease of residential solar energy systems, or the commencement of any proceedings to effect such denial, suspension, or revocation.

~~D~~E. If after registration, a solar retailer registrant ceases residential solar energy system solicitation, sales and/or leasing in the state of Rhode Island, the registrant shall provide written notice thereof to the Department within ten (10) days, and such notice shall include the name, address, phone number and email address of one or more natural persons, reasonably acceptable to the Department, who registrant has designated to be the point of contact and person responsible to receive and address any complaints, inquiries and communications regarding residential solar energy systems sold, leased and/or installed in Rhode Island by or on behalf of registrant and any system purchase or lease agreements made in connection therewith.

1.5 Solar Agreement Requirements

A. Statement of Additional Charges

1. Pursuant to R.I. Gen. Laws § 5-93-9(3)(ii), each proposal and/or contract for the purchase or lease of a residential solar energy system must state and include an itemized description of any and all fees, costs and charges that are in addition to the solar system installation costs, including, without limitation, any of the following that will be paid or payable by the customer or that will be paid or payable by the solar retailer to any third party and included or factored into the system price and/or financing or otherwise assessed to the customer:

a. Fees, costs, and charges for financing and/or loan origination;

b. Fees, costs, and charges included or factored into or otherwise related to establishing or securing the interest rate, purchase or lease pricing, and any adjustments thereof;

c. Any other purchase or financing terms;

d. Fees, costs, and charges for tree or shrub removal; and

e. Fees, costs, and charges for roof replacement or repair.

2. Promptly following a customer's request, residential solar retailers must provide a detailed itemization of all charges related to a residential solar system purchase or lease, which separately states the costs of the solar system panels and/or other electrical equipment and components, labor and design, and any other anticipated permitting or application fees.

B. Customer Copies

1. In addition to providing consumer customers the disclosure form and right of rescission notice as provided in R.I. Gen. Laws §§ 5-93-6 and 5-93-11(b), residential solar retailers must provide electronic or physical hard copies of all executed solar agreements and installation contract(s), financing agreement(s), and any other agreement signed by the customer.

2. Customer copies may be hand-delivered with a receipt, sent by certified mail, or e-mailed using an application that tracks the recipient's review of the attachment.

C. Right to Rescind

1. The seven (7) day right of rescission period provided under R.I. Gen. Laws § 5-93-11 shall commence upon the customer's actual receipt of the fully executed residential solar agreement. Failure of the solar retailer to provide the customer with a copy of the fully executed residential solar agreement shall toll the commencement and running of the rescission period until the customer's receipt of the fully executed agreement as provided herein.

1.6 Standard Disclosure Forms

A. The standard disclosure form(s), which must be provided by residential solar retailers to all potential customers prior to entering a solar purchase or lease agreement pursuant to the Act, specifically including R.I. Gen. Laws §§ 5-93-6, 5-93-7, 5-93-9 and 5-93-10, shall be consistent with the standard disclosure form developed by OER, as the same may be amended from time to time.

1.7 Fees and Charges

A. Registration fees are payable to the "General Treasurer, State of Rhode Island" and are not refundable.

B. Annual Fees:

Registration Fee	$ 750.00
Renewal Fee	$ 750.00

C. Late Renewal Fee:

1. Solar retailers will be subject to a $50.00 late fee for failure to timely submit the annual renewal application and fee.

1.8 Notices of Violation and Penalties

A. Penalties may be imposed on a solar retailer for failure to register or for any other violation of the Act or this Regulation in accordance with R.I. Gen. Laws § 5-93-14.

B. Enforcement proceedings shall be conducted in accordance with the Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35 and the Department's Rules of Procedure for Administrative Hearings, Part 10-00-2 of this Title.

1.9 Severability

A. If any section, term, or provision of this Regulation is adjudged invalid for any reason, all remaining sections, terms, and provisions shall remain in full force and effect.