

NEW JERSEY DEPARTMENT OF THE TREASURY

DEVELOPMENT OF SMALL, WOMEN AND MINORITY BUSINESSES

Proposed Readoption and Recodification with Amendments: N.J.A.C. 12A:11 as 17:46

Authorized By: R. David Rousseau, State Treasurer

Authority: N.J.S.A. 52:27H-21.17 et seq., 52:32-17 et seq., 52:18A-30, P.L. 2008, c. 27,
Executive Order No. 71 (2003) and Executive Order No. 34 (2006)

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

Proposal Number: PRN 2008-_____.

Submit written comments by _____ to:

Nina Moseley
Senior Director
Division of Minority and Women Business Development
Department of the Treasury
33 West State Street, 1st Floor
PO Box 026
Trenton, New Jersey 08625-0026

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, Women-Owned and Minority-Owned Businesses would otherwise expire on September 4, 2008. Pursuant to N.J.S.A. 52:14B-5.1c, submission of this notice of proposed readoption with amendments to the Office of Administrative Law extends that expiration date by 180 days to March 2, 2009.

N.J.A.C. 12A:11 was promulgated by the New Jersey Commerce Commission. The objective of N.J.A.C. 12A:11 was the implementation of the Unified Certification Act (the Act). The Act also authorizes the certification of women-owned and minority-owned firms seeking to qualify for certain government programs or do business with casino licensees, pursuant to P.L. 1987, c. 137. P.L. 1986, c.195. P.L. 2008, c. 27 abolished the New Jersey Commerce Commission and transferred the functions, powers and duties of the Division of Development for Small Businesses and Women's and Minority Businesses to the Department of the Treasury, to be administered within that Department as the State Treasurer so determines. The State Treasurer has determined to allocate such functions, powers and duties and the authority for this chapter to the Division of Minority and Women Business Development in the Department of the Treasury (Division). The Division has reviewed these rules, including the following amendments, and it has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

The proposed amendments are technical and substantive in nature. They are technical in that they replace references to the New Jersey Commerce and Economic Growth Commission and the Chief Executive Officer and Secretary with references to the Division and the Director of the Division. The amendments are substantive in that they augment qualification standards, more clearly delineate the procedures for certification and establish appeals procedures. The Division is allowing a 60-day comment period for this notice of proposal; therefore, the proposal falls under the N.J.A.C. 1:30-3.3(a) exception to the requirement for calendar notice.

Chapter 11, Certification of women- owned and minority -owned firms, was adopted pursuant P.L. 187, C.137. and P.L. 2003,C.189 . As mentioned above, the objective of the rules was then and continues to be the implementation of 52:27H-21.17 et seq., 52:32-17 et seq., 52:18A-30, P.L. 2008, c. 27, Executive Order No. 71 (2003) and Executive Order No. 34 (2006). The purpose of the Act and these rules is to set forth the manner in which the Division may assist in providing equal opportunity for minority and women-owned business enterprises to participate in State purchasing and procurement processes. A further objective of the rules is to update the references to the State entities implementing the Act, pursuant to P.L. 2008, c. 27.

Following is a summary of the provisions of each section of the chapter proposed for readoption:

[12A:11]17:46-1.1 Applicability and scope

This section sets forth the scope of the Division's role in the New Jersey Department of the Treasury. N.J.A.C. 17:46 – 1.1 references P.L. 2008, c.27, which authorized the transfer of

the functions, powers, and duties of the Division of Development for Small Businesses and Women's and Minority Businesses to the Division of Minority and Women Business Development in the Department of the Treasury and the transfer of the functions, powers and duties of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises to the New Jersey Economic Development Authority .

[12A:9]17:46-1.2 Definitions

This section sets forth the definitions of words and terms used in the rules and amends certain terms to conform to statutory changes. N.J.A.C. 17:46-1.2 deletes the term "Administrator"-Administrator for the Contracting Opportunity and Certification Office Certification and Approvals Unit. The definition of the term "Applicant" is modified to clarify that the term refers to a "Business". The term "Businesses" means an entity organized for profit including, but not limited to, an individual or individuals, sole proprietorship, partnership, limited liability company, corporation or joint venture". The definition of the term "Director" is modified to clarify that the term refers to the head of the Division of Minority and Women Business Development. The term "Division" is modified to reference the "Division of Minority and Women Business Development ," which replaces the "Division of Development for Small Businesses and Women's and Minority Businesses."

It contains a new defined term, "Denial". "Denial" means an administrative decision to reject an application for reasons such as the submission being incomplete, inaccurate, or failing to meet the eligibility standard for a minority business or a women business. "Selective Assistance Vendor Information" is a new defined term meaning the database listing registered small businesses and certified minority and women-owned businesses by the Division. Diversity Registry is a new defined term meaning the database listing self-declared small, minority- and women-owned businesses. Also, the term "State contracting agency" means any board, commission, committee, authority, division, department or agency of the State which possesses the legal authority to enter into or award contracts for goods and services or construction contracts.

The following is a summary of the remainder of the chapter:

Standards of certification for minority businesses and women businesses- N.J.A.C. 17:46-1.3; Certification procedures for minority businesses and women businesses- N.J.A.C.17:46-1.4; Acceptance as a certified minority business or women business- N.J.A.C.17:46-1.5; Time for application to be certified as a minority and/or women business- N.J.A.C.17:46-1.6; Right of withdrawal- N.J.A.C.17:46-1.7; Denial or revocation - N.J.A.C. 17:46-1.8; Procedure for challenging a business certified as a minority business and/or women business-N.J.A.C.17.46-1.9; Procedure for challenging a business certified as a minority business and/or women business-N.J.A.C.17.46-1.10; Certification reciprocity-N.J.A.C.17.46-1.11; Information confidentiality-N.J.A.C.17.46-12.

Social Impact

The readoption and recodification of N.J.A.C. 12A:11 as 17:46 will provide for the continued

implementation of the Division of Development for Small Businesses, and Women's and Minority Businesses Act, N.J.S.A. 52:27H-21.7, et seq, as the functions of the Commerce Commission under that Act have been transferred to the Department of the Treasury, pursuant to P.L. 2008, c. 27. The purposes of the Act and these rules is to set forth the manner in which the Division may assist in providing equal opportunity for minority and women-owned business enterprises to participate in State purchasing and procurement processes.

The readoption and recodification of these rules will continue to facilitate the achievement of this objective by defining the scope of services authorized in the Act.

Economic Impact

The readoption of these rules will impact the State's economy by offering continued assistance for small, women, and minority owned businesses. 96.6 percent of New Jersey companies employ fewer than 100 workers and 37 percent of New Jersey workers are employed by these small businesses. The continuation of these services is vital to the growth and stability of New Jersey's economy.

Federal Standards Statement

There are no Federal standards or requirements applicable to the rules proposed for readoption with amendment. As a result, an explanation or analysis of the proposed amendments of these rules pursuant to Executive Order No. 27(1994) is not required.

Jobs Impact

The readoption of these rules will result in continued services provided by the Division of Minority and Women Business Development in the Department of the Treasury. These services enable small businesses and women and minority businesses to grow these businesses and to maintain and to expand their employment.

Agriculture Industry Impact

It is anticipated that the readoption of these rules will have no impact on the agriculture industry.

Regulatory Flexibility Statement

Since the rules proposed for readoption with amendments specify services to be provided

by the Division to small businesses and women and minority businesses, the impact on small businesses will continue to be positive. No reporting, recordkeeping or other compliance requirements are imposed on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Smart Growth Impact

Any impact with respect to the achievement of smart growth and the implementation of the State Development and Redevelopment Plan would be a result of the participation of small businesses, women and minority businesses in projects within designated smart growth areas.

Smart Growth Development Impact

The impact of the rules proposed for readoption with amendments on the availability of affordable housing or housing production within Planning areas 1 or 2, or within designated centers, under the State Development and Redevelopment Act would be a result of the participation of small businesses, women and minority businesses in housing production within these areas.

Housing Affordability Impact

The impact of the rules proposed for readoption with amendments on the change of average costs associated with housing would be a result of the participation of small businesses, women and minority businesses in housing production .

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.S.A. 12A:11.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 46. WOMEN-OWNED AND MINORITY-OWNED BUSINESSES

SUBCHAPTER 1. CERTIFICATION

[12A:11] **17:46**-1.1 Application and scope

(a) The rules in this subchapter are promulgated by the [Commerce and Economic Growth Commission] **Division of Minority and Women Business Development in the Department of the Treasury (the Division)** to implement the Unified Certification Act (**the Act**), P.L. 1986, c.195 **and Executive Order No. 34 (2006), establishing the Division.** The Act establishes a unified procedure for the certification of women-owned and minority-owned firms, which firms are seeking to qualify for certain government programs and **or do** [firms doing] business with casino licensees pursuant to P.L. 1987, c.137. The Act also allows the [Commerce and Economic Growth Commission]

Department of the Treasury to certify minority and women-owned businesses for purposes other than qualifying for certain government programs and doing business with casino licensees pursuant to P.L. 2003, c.189 **such as programs and initiatives that are designed to ensure equal opportunity for minority and women-owned business enterprises to participate in State purchasing and procurement processes. Executive Order No. 34 (2006) established the Division of Minority and Women Business Development to administer and monitor policies, practices, and programs, for which minority and women-owned businesses may be certified, that will further the State's efforts to ensure equal opportunity for minority and women-owned business enterprises to participate in State purchasing and procurement processes.**

(b) [The Act requires the Commerce and Economic Growth Commission to establish and implement standards and procedures for certifying women-owned and minority-owned businesses for certain government programs, firms doing business with casino licensees pursuant to P.L. 1987, c.137, and purposes other than qualifying for certain government programs and doing business with casino licensees pursuant to P.L. 2003, c.189.] **Under P.L. 2008, c. 27, the New Jersey Commerce Commission was abolished, and the responsibilities of the unit that administered the certification program were transferred to the Department of the**

Treasury to be administered within that department as the Treasurer so determines. The State Treasurer has determined to administer those responsibilities through the Division.

(c) Applications and questions regarding certification of women-owned and minority-owned businesses should be addressed to:

[N.J. Commerce and Economic Growth Commission
Contracting Opportunity and Certification Office
PO Box 820
20 West State Street
Trenton, New Jersey 08625-0820]

New Jersey Department of the Treasury

Division of Minority and Women Business Development

33 West State Street, 1st Floor

PO Box 026

Trenton, New Jersey 08625-0026

(d) The Act applies to every women-owned and minority-owned firm that wishes to do business with any department or agency of the State of New Jersey which department or agency has specific programs which require the certification of authenticity of ownership for women-owned and minority-owned businesses and for businesses wishing to do business with casino licensees pursuant to P.L. 1987, c.137.

[12A:11] **17:46**-1.2 Definitions

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

["Administrator" means the Administrator for the Contracting Opportunity and Certification Office.]

"Applicant" means [an individual or individuals, a sole proprietor, partnership, joint venture or corporation] **a business** that applies for certification as a minority business or women's business, in accordance with the provisions of P.L. 1986, c.195 (N.J.S.A. 52:27H-21.17 et seq.).

...

"Business" means an entity organized for profit including, but not limited to, an individual or individuals, sole proprietorship, partnership, limited liability company, corporation or joint venture.

"Certification" means a minority-owned or women-owned business enterprise has been authenticated as being at least 51 percent independently owned and managerially controlled and operationally controlled either by minorities or females for participation in [State] programs requiring certification, **or in initiatives that are designed to ensure equal opportunity for**

minority and women-owned business enterprises to participate in State purchasing and procurement processes, as judged and determined by the [Contracting Opportunity and Certification Office of the Commerce and Economic Growth Commission] **Division.**

["Commission" means the Commerce and Economic Growth Commission.]

["Contracting Opportunity and Certification Office" means the office in the Commerce and Economic Growth Commission which is given sole authority over certification of minority and women businesses for State programs or which may provide certification for Federally mandated programs.]

...

“Denial” means an administrative decision to reject an application for reasons such as the submission being incomplete, inaccurate, or failing to meet the eligibility standard for a minority business or a women business.

"Director" means the [Director] **head** of the [Division of Development for Small Businesses and Women and Minority Businesses in the Commerce and Economic Growth Commission.] **Division of Minority and Women Business Development in the Department of the Treasury.**

“Diversity registry” means the database listing self-declared small, minority- and women-owned businesses, including those listed in SAVI. The Diversity Registry is listed on the State’s business website at www.newjerseybusiness.gov.

"Division" means the Division of [Development for Small Businesses and Women and Minority Businesses in the Commerce and Economic Growth Commission.] **Minority and Women Business Development in the Department of the Treasury. The Division has been allocated the authority by the State Treasurer to register vendors for the New Jersey Set-Aside program and certify businesses under the Uniform Certification Act.**

"Managerial and operational control" means authority over the affairs of a business, including, but not limited to, capital investment, property acquisition, employee hiring, contract negotiations, legal matters, officer and director selection, operating responsibility, financial transactions and the rights of other shareholders or joint partners; except that managerial and operational control shall not include absentee ownership, nor shall it be deemed to exist where an owner or employee who is not a minority, in the case of a minority business, or a male owner or employee, in the case of a women business, is disproportionately responsible for the operation of the business or for policy and contractual decision. **Performance of office administration and clerical duties by the woman owner in the case of a women-owned business, or minority owner in the case of a minority-owned business, does not alone satisfy the requirement of exercising managerial and operational control.** The term means that the applicant currently must possess the knowledge and authority to weigh all advice given and make an independent determination, and that the applicant should have experience and technical competence in the business to which certification is being sought, that is, the working knowledge and ability needed to operate a business in the given industry or service area. Managerial and operational control will also not be deemed to exist if in the judgment of the [Administrator of the Contracting Opportunity and Certification Office] **Director** and by normal industry standards, minorities or women are not reasonably judged to be in control of that business. Examples of such absence of managerial and operational control could include brokers, manufacturers' representatives and

franchisees.

...

"Minority business" means a business which is:

1. [A sole proprietorship, partnership or joint venture] owned and controlled by minorities in which at least 51 percent of the ownership interest is held by minorities and the management and daily business operation are controlled by one or more of the minorities who own it; or
2. (No change.)

...

["Noncompliance" means failure to comply with specifically requested additional information or documentation.]

...

["Rejection" means an administrative decision not to process an application.]

["Secretary" means the Chief Executive Officer and Secretary of the Commerce and Economic Growth Commission.]

...

“State contracting agency” or “contracting agency” means any board, commission, committee, authority, division, department or agency of the State which possesses the legal authority to enter into or award contracts for goods and services or construction contracts. A list of State contracting agencies shall be maintained on www.newjerseybusiness.gov, and updated as necessary to reflect the addition or elimination of agencies.

"Women business" means a business which is:

1. [A sole proprietorship owned and controlled by a woman; or
2. A partnership or joint venture] owned and controlled by women in which at least 51 percent of the ownership is held by women and the management and daily business operations of which are controlled by one or more women who own it; or
- [3.]**2.** A corporation or other business entity authorized under the laws of the United States whose management and daily business operations are controlled by one or more women who own it, and which is at least 51 percent owned by women or, if stock is issued, at least 51 percent of the stock is owned by one or more women.

[12A:11] **17:46**-1.3 Standards of certification for minority businesses and women businesses

(a) A business may be eligible to be certified as a minority business, a women business, or both.

(b) In order to be eligible to be certified under the Act a minority or women business must be independently owned, operated, and controlled and can demonstrate the ability to be considered a "going concern" by normal industry standards. Newly-formed businesses and businesses whose ownership and/or control has changed recently are closely scrutinized to determine the reasons for the timing of the formation or change in the business.

1. For purposes of these rules, a business shall be deemed to be independently owned, operated, and controlled, if its management is responsible for both its daily and long term operation, and that management owns at least 51 percent interest in the business. The ownership and control by minorities or women shall be real, substantial, and continuing, **demonstrating authority over the affairs of the business,** and shall go beyond the pro forma ownership of the business as reflected in its ownership documents. Examples of insufficient contributions include: a promise to contribute capital; a note payable to the business; owners who are not minorities or women; or the mere participation of minorities or women as employees, rather than as a manager. The minority or woman owner shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interest, as demonstrated by an examination of the substance, rather than form, of any arrangements.

i.-iii. (No change.)

iv. When a professional or occupational license or certification is required by Federal or State law to perform or supervise the primary business operations of the applicant business, and the woman owner in the case of a woman-owned business or the minority owner in the case of a minority-owned business does not possess the applicable license or certification, the woman or minority owner shall demonstrate technical competence in the affairs of the business in order to satisfy the requirement for operational control.

(c)-(d) (No change.)

[12A:11] **17:46**-1.4 Certification procedures for minority businesses and women businesses

(a) Any business which seeks to be certified under the Act as a minority business and/or women business must apply to the [Contracting Opportunity and Certification Office of the Commerce and Economic Growth Commission] **Division and pay a non-refundable \$100 application fee for a three-year certification.** For this purpose, the [Commission] **Division** shall prepare a New Jersey Uniform Certification Application. This form shall be available from the [Commission] **Division**[], and other agencies and departments of the State which maintain programs which require certification of minority and women businesses] **and electronically at www.State.nj.us/njbusiness/contracting. Effective January 2009, a business seeking to be certified as a minority business and/or women business shall first register at www.newjerseybusiness.gov for Premier Business Services.**

(b) As part of its application to the [Commission] **Division**, a business shall provide all required information and documents requested by the Uniform Certification Application and any additional information requested by the [Contracting Opportunity and Certification Office] **Division**. The information to be submitted for review shall include:

1.-15. (No change.)

(c) (No change.)

(d) [A first-time applicant must apply for recertification as a minority business or women's business one year after the original certification was issued pursuant to (b) above.] **Every three years, no later than 20 days prior to the expiration of the business's certification, and not**

earlier than 60 days prior to the expiration of such certification, a business interested in remaining certified as a minority or women business shall comply with the certification procedures at (a) and (b) above, which entail submitting a Uniform Certification Application and paying a non-refundable \$100 application fee.

(e) [After a minority business or women's business has been recertified after first receiving initial certification, the Director shall require the certified minority business or certified women-owned business to apply for recertification every five years pursuant to (b) above.

(f) An applicant must fully and accurately complete [, when directed in writing,] all relevant parts of the Uniform Certification Application. Failure [of a] **to** complete **an** application shall result in [rejection] **denial**.

[(g)] **(f)** [An applicant who fails to comply with specifically requested additional information or documentation shall be considered in non-compliance and shall be subject to rejection.] **In the event that the Division, after reviewing the application, requests additional information or documentation, the applicant's failure to comply with the request within 30 days of the request will result in denial.**

[(h)] **(g)** If the applicant knowingly supplies incomplete or inaccurate information the applicant shall be disqualified under these rules, barred from reapplying for certification for a period of up to 18 months from the date of notice of disqualification, and may be subject to other penalties described in N.J.A.C. [12A:11-1.9] **17:46-1.10**.

[(i)] **(h)** In order to be certified under the Act, a business must also comply with any pre-approvals or other eligibility requirements legitimately established by the contracting agency in whose program the business wishes to participate.

i. Annually, the business must submit, not more than 20 days prior the anniversary of the certification, an annual verification statement, in which it shall attest that there is no change in the ownership, control or any other factor of the business affecting eligibility for certification as a minority or women-owned business.

1. If the business fails to submit the annual verification statement by the anniversary date, the certification will lapse and the business will be removed from the SAVI that lists certified minority and women-owned businesses. If the business seeks to be certified, it will have to reapply and pay the \$100 application fee.

2. If the business submits the annual verification statement by the anniversary date, but either the verification statement or other information received by the Division indicates that the business is no longer eligible for certification as a minority or women-owned business, the Division shall revoke the certification pursuant to this chapter and following revocation, the business shall be removed from the SAVI. The business may appeal this revocation pursuant to the procedures set forth below at N.J.A.C. 17:46-1.8.

[12A:11] **17:46**-1.5 Acceptance as a certified minority business or women business

(a) When a business is determined by the [Contracting Opportunity and Certification Office] **Division** to be a minority and/or women business, the business will be added [by the

Commission] to the State's [electronic database] SAVI. [The businesses on this database shall be eligible for all appropriate State programs which require certification as a criteria for participation in a specific program.] There shall be no limit to the number of businesses on the database. Each business shall be placed on the database denoting its status as minority and/or women business enterprise.

(b) When a business is placed on the [electronic database] SAVI, that business shall be eligible for all appropriate State programs **and initiatives** which [require certification as a criteria for participation] **are designed to ensure equal opportunity for minority and women-owned business enterprises to participate in State purchasing and procurement processes.** Once a business is placed on the database, it cannot be denied an opportunity to participate in the various State programs until it is removed from the database.

(c) When a business is placed on the [electronic database] SAVI it shall be informed by the [Contracting Opportunity and Certification Office] Division by mail of its certification status. The [Contracting Opportunity and Certification Office] Division shall also issue an individual certification number exclusive to the business as part of the certification procedure.

[12A:11] 17:46-1.6 Time for application to be certified as a minority and/or women business

A business may apply to be certified by the [Department's Contracting Opportunity and Certification Office] Division[,] at any time [, whenever State programs require certification of the control and ownership of a business under the Act as a minority business and/or women business] , **unless restricted under these rules.**

[12A:11] 17:46-1.7 Right of withdrawal

An applicant firm for the State of New Jersey Unified Certification Program may request in writing, to the [Administrator] Director, that its application be withdrawn. Such withdrawal [shall be approved prior to any approval, denial or rejection being made by the Contracting Opportunity and Certification Office, and] will not be prejudicial to any subsequent application. [The Administrator would only disapprove a request for withdrawal if a determination of approval, denial or rejection had been made by the Contracting Opportunity and Certification Office.] The applicant may reapply not sooner than 120 calendar days following the date of withdrawal approval. An applicant may withdraw once during a 12 month period.

[12A:11] 17:46-1.8 Denial **or revocation** of certification as a minority or women business **and appeal**

(a) If the Division either denies an application for certification as a minority or women-owned business or revokes a certification as a minority or women-owned business, the division will so notify the business. The denial or revocation is effective as of the date of the Division's notice to the business of its denial or revocation determination.

[(a)] **b.** When a business has been denied certification based upon the information provided by that business in its submitted Uniform Certification Application or **had its certification revoked**, the business [may appeal the decision of the Contracting Opportunity and Certification

Office] **has the right to an appeal. The appeal procedures in this section govern denials and revocations, except revocation on the basis of false information knowingly supplied by the business. Revocation based on false information knowingly supplied by the business is addresses by the procedures at N.J.A.C. 17:46-1.10.**

[(b)] **c.** [A business that is denied certification shall have 10 days from the date of notification of the denial to request a hearing with the Contracting Opportunity and Certification Administrator for his or her or its first level appeal. The Contracting Opportunity and Certification Office shall notify the applicant of the time and place of the hearing and of the right of the applicant to attend and be represented at the hearing. The hearing shall be conducted by the Administrator. The burden of proof of eligibility lies with the applicant. The applicant may appeal the decision of the Administrator by requesting in writing to the Office of the Secretary of the Commerce and Economic Growth Commission a final appeal within 15 days from receipt of the initial appeal decision. The letter shall include all information available relevant to the appeal. The applicant will be informed of a date, time, and place and circumstances upon which the applicant may appear personally before the Secretary or his or her designee. The applicant may accept or reject the opportunity to personally appear at this hearing before a decision statement is issued.] **Within ten days from receipt of the denial or revocation notification, the business that received the notification may request, in writing to the Division, an appeal hearing. The appeal shall be concerned with the qualification of a business under these rules as a minority business or women business enterprise. When the Division receives an appeal, it shall conduct a hearing on the matter as follows.**

1. The Division shall notify the business of the time and place of the hearing and of the right of the business to appear and be represented by counsel at the hearing.

2. The appeal request shall include all information available to the appealing business relevant to the appeal.

3. The burden of proof lies with the business.

4. The hearing will be conducted by a designee of the Director. The designee shall issue a written report to the Director within seven days of the close of the hearing.

5. At the discretion of the Director's designee, the business may be permitted to file written exceptions to the designee's report, no later than five working days after the date on which the report is made available to the business.

6. Thereafter, the Division shall issue a decision on the appeal and notify the business by certified letter.

(d) An applicant who receives a decision from the [Office of the Secretary] **Division** that the denial **or revocation** has been reaffirmed may reapply one year after the original date of denial **or revocation**.

[12A:11] **17:46-1.9** Procedure for challenging a business certified as a minority business and/or women business

(a) The qualifications under these rules of a business [on the electronic database] **for eligibility to be certified as a minority and/or women-owned businesses and inclusion in the SAVI** may be challenged by any [other business on the State bidders list or the State set-aside bidders list, and any State department or agency] **third party**. The [Secretary] **Division** shall have the discretion to dismiss a challenge for insufficient evidence.

1. A certification challenge shall be made in writing to the [Commission] **Division**, with copies to the challenged business and to the appropriate contracting agency where a specific contract is at issue.

2. A certification challenge to the [Commission] **Division** must be concerned with the authenticity of a business under these rules as a minority business or women business enterprise. Challenges of any other kind must be directed to the State department or agency which requires those other qualifications.

3. (No change.)

(b)[In the case of a challenge to a certified minority or women business enterprise, the State agency or department making a contract award under a specific program shall be notified within three days of receipt of a challenge [and shall immediately suspend any further awards under the contract for a period not to exceed 20 days so the Commission may conduct a hearing, if warranted.

1. In the event that a currently certified minority and/or women business is unsuccessfully challenged under these rules by the Commission, the State agency or department shall proceed to award the contract as otherwise authorized by State statute.

2. In the event that a currently certified minority and/or women business is not disqualified by the Commission within 20 days, any contract awards suspended at the time due to the challenge shall be allowed to be awarded without prejudice.] **Because State contracting agencies do not utilize certification status for bidding purposes, a challenge, whether successful or not, will not impact the award of contracts. However, because State contracting agencies utilize certification status for tracking and reporting purposes, the Division shall promptly report the result of a certification challenge to State contracting agencies.**

[3](c) The right to challenge a currently certified minority and/or women business is in addition to and is independent of any protest hearing rights which are afforded by any State agency or department.

[(c)](d) When the [Commission] **Division** receives a challenge, upon the request of the business whose certification is at issue, the [Commission] **Division** shall conduct a hearing on the matter as follows. The business must request the hearing [within five days of the suspension of a contract award or in the case when no contract award is involved,] within five days [from] **after** receipt of notice that the business is subject to a challenge proceeding.

1. The [Commission] **Division** shall notify all interested parties of the time and place of the hearing, and of the right to attend and be represented at the hearing.

2. The burden of proof lies with the challenger. However, the [Commission] **Division** may use its own resources to ascertain the viability of a challenge and the status of a business.

3. The hearing will be conducted by the designee of the [Secretary] **Director**. This designee

shall issue a written report to the [Secretary of the Commission] **Director** within [five]**seven** days of the close of the hearing.

4. A participant at the hearing who is a party to the challenge procedures will be permitted to file written exceptions to the [hearing officer's] **designee's** report no later than [three]**five** **working** days [from]**after** [the issuance of the report] **the date on which the report is made available to the business.**

5. Thereafter, the [Secretary] **Director** shall issue a final decision on the challenge and notify the parties by certified letter.

6. [The entire hearing challenge procedure shall take no more than 20 days to complete; time shall not be considered to run until a contract award is suspended. In the case where no contract award is in question, time will run from the date of the notification to the business by certified mail that it is the subject of a challenge proceeding.] **The Division shall make best efforts to complete the hearing challenge procedure within 30 days after the date of the notification to the business by certified mail that it is subject to a challenge proceeding.**

[12A:11] **17:46**-1.10 Obligations to provide information and penalties for failure to provide complete and accurate information

(a) Applicants for certification under these rules shall accurately and honestly supply all information required by the [Commission] **Division.**

(b) When a business has been certified as a minority and/or women business on the basis of false information knowingly supplied, the [Secretary of the Commission] **Division**, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 17:27, may:

1. Assess the business a penalty in the amount of not more than 10 percent of the total dollar amount of all contracts and/or purchase awarded by the State to that business in reliance of [f] **on** its [business] representation of ownership and/or control, for the duration of the period of the misrepresentation.

2. (No change.)

3. Revoke the certification of the business and remove the business from the SAVI.

(c) Any business certified by the [Commission] **Division** as a minority and/or women business shall immediately apprise the [Commission] **Division** of any circumstances which in any way affect the ownership composition of the business, or the control over the business, **or otherwise affect the eligibility of business under these rules.**

(d) The failure of a business to report any such changed circumstances, or the intentional falsification shall disqualify the business for inclusion on any electronic database under these rules and may subject the business to other sanctions provided for by other State agencies or departments, [as they so relate,] **the Attorney General or other enforcement agencies.**

(e) (No change.)

[12A:11-1.11 Period and terms of certification

(a) A business once duly certified by the [Contracting Opportunity and Certification Office shall not be required to submit a Uniform Certification Application for a period of five years after the effective date of the certification, providing that the firm:

1. -2. (No change.)

(b) A first-time applicant must apply for recertification as a minority or women business one year after the original certification is issued pursuant to N.J.S.A. 52:27H-21.22a and N.J.A.C. 12A:11-1.4.

(c) Failure to comply with (a) above shall result in the Contracting Opportunity and Certification Office placing the firm in an inactive status and/or decertifying the firm]

[12A:11] **17:46-1.11** [Fees for certification

(a) The applicant will be responsible for reimbursing the State for costs associated with providing a site visit when necessary. The applicant business will not be issued certification until it has satisfied this obligation. Associated costs shall include but will not be limited to:

1. Cost of travel to the location of the site visit which is outside a 150 miles radius from the city of Trenton; and

2. Out of pocket per diem expenses of the State employee performing a site visit when required.]

[12A:11] **17:46-1.11** Certification reciprocity

(a) The [Secretary] **Division** may form reciprocal agreements with or accept certifications by other public and private certifying entities as he or she deems appropriate to facilitate minority and women business development and growth.

(b) All reciprocal agreements must provide that:

1. The quality of the program of the other certifying agency is the relative equal of the [Commission's] **Division's** program; and

2. The [Commission] **Division** shall have the right to review all relevant information possessed by the other public or private entity pertaining to the certification of any business seeking to be certified by the [Commission] **Division**.

(c) In the event that the Division forms reciprocal agreements with or accepts certifications by other public and or private certifying entities, it shall list implementation information, such as the names of the entities, the effective date of accepting certifications by other entities, and links to such entities, on the State's business website at www.newjerseybusiness.gov.

[12A:11] **17:46-1.12** Information confidentiality

(a) All information and documents submitted to the [Commission] **Division** as part of the certification application shall be deemed confidential and not subject to disclosure, unless required or allowed by applicable Federal and State law. Information provided for disclosure on

the [Commission's] **Division's** electronic database is not deemed confidential.

(b) [All submitted information and documents shall be handled on a strict need to know basis.]
Any records and files that the Division of Taxation treats as confidential pursuant to N.J.S.A. 54:50-8 shall be subject to the same standards of confidentiality for purposes of the certifications addressed by this chapter.

(c) Information and documents provided to the [Contracting Opportunity and Certification Office] **Division** may be shared with other entities who need the information respective of reciprocal agreements authorized [by the Commissioner] **Division** pursuant to N.J.A.C. [12A:11] **17:46-1.13.**

(d) Information and documents provided to the [Contracting Opportunity and Certification Office] **Division** may be made available in a public manner where required during a challenge or appeal proceedings under this subchapter.