

Title 17, Chapter 46 -- Chapter Notes

CHAPTER AUTHORITY:

NJ.S.A. 52:18A-30, 52:27H-21.7 et seq. and 52:32-17 et seq.; P.L. 2008, c. 27; and Executive Order No. 71 (2003) and Executive Order No. 34 (2006).

CHAPTER SOURCE AND EFFECTIVE DATE:

R2009 d.132, effective April 20, 2009.

See: 40 N.J.R 5558(a), 41 NJ.R. 1888(a).

CHAPTER EXPIRATION DATE:

In accordance with NJ.S.A. 52: 14B-5.1 b, Chapter 46, Women-Owned and Minority-Owned Businesses, expires on April 20, 2016. See: 43 N.J.R. 1203(a).

CHAPTER HISTORICAL NOTE:

Chapter 11, Women-Owned and Minority-Owned Businesses, was adopted as R.1987 d.376, effective September 21,1987. See: 19 N.J.R 1176(a), 19 NJ.R. 1739(a).

The Executive Order No. 66(1978) expiration date of Chapter 11, Women-owned and Minority-owned Businesses, was extended by gubernatorial directive from September 21, 1992 to April 30, 1993. See: 24 NJ.R 4333(a).

Pursuant to Executive Order No. 66(1978), Chapter 11, Women-owned and Minority-owned Businesses, was readopted as R.1993 d.237, effective April 30, 1993. See: 25 N.J.R. 1056(a), 25 NJ.R. 1753(a), 25 NJ.R. 2484(a).

Pursuant to Executive Order No. 66(1978), Chapter 11, Women-owned and Minority-owned Businesses, was readopted as R1998 d.238, effective April 22, 1998. See: 30 N.J.R 968(a), 30 N.J.R. 1835(a).

Chapter 11, Women-Owned and Minority-Owned Businesses, was readopted as R.2003 d.383, effective September 4,2003. See: 35 N.J.R. 1833(a), 35 NJ.R. 4756(a).

In accordance with NJ.S.A. 52:14B-5.1c, Chapter II, Women-Owned and Minority-Owned Businesses, expired on March 3,2009. See: 40 NJ.R. 5558(a).

Pursuant to P.L. 2008, c. 27, expired Chapter 11 of Title 12A, Women-Owned and Minority-Owned Businesses, was recodified as Chapter 46 of Title 17 and adopted as new rules by R.2009 d.132, effective April 20, 2009. See: Source and Effective Date. See, also, section annotations.

Chapter Notes

§ 17:46-1.1 Application and scope

(a) The rules in this subchapter are promulgated by the 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 business with casino licensees pursuant to P.L. 1987, c.B7. The Act also allows the 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) 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:

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.

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§ 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:

"Applicant" means 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.).

"Broker" means a person who for all or part of his time is in the business of buying and/or selling of tangible and/or non-tangible property in the capacity of but not limited to a manufacturer's representative, distributor, or agent (non-employees of the business) and who does not exercise dominion or possess title over the items or things for sale.

"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 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 Division.

"Days" means the normal operating business days of the State.

"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 head of the 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. The Diversity Registry IS listed on the State's business website at www.newjerseybusiness.gov.

"Division" means the Division of 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 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" means a person who is:

1. Black, which is a person having origins in any of the black racial groups in Africa; or
2. Hispanic, which is a person of Spanish or Portuguese culture, with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race; or
3. Asian American, which is a person having origins in any of the original peoples of the Far East, Southeast Asia, Indian Subcontinent, Hawaii or the Pacific Islands; or
4. American Indian or Alaskan native, which is a person having origins in any of the original peoples of North America.

"Minority business" means a business which is:

1. 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. 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 minorities who own it, and which is at least 51 percent owned by one or more minorities or, if stock is issued, at least 51 percent of the stock is owned by one or more minorities.

"MBE" means a minority business enterprise.

"Principal" means any officer, director, or individual who directly or indirectly holds any beneficial interest in or ownership of the securities of the business and/or any employee of the business who is empowered by title or by explicit assignment to authorize the procurement, purchase, or contracting of equipment, goods, services, or supplies whatsoever involving an expenditure of \$ 1,000.00 or greater.

"Public agency" means the State or any department, division, agency, authority, board, commission or committee thereof.

"Selective Assistance Vendor Information (SAVI)" means the database listing registered small businesses and certified minority and women-owned businesses by the Division.

"State contracting agency" or "contracting agency" means any board, commission, committee, authority, division, college, university, 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.

"WBE" means a women business enterprise.

"Woman or women" means a female or females, regardless of race.

"Women business" means a business which is:

1. 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
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.

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§ 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. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as an MBE or WBE. In determining whether a potential MBE or WBE is an independent business, all relevant factors shall be considered, including the date the business was established, and the degree to which financial, equipment leasing, and other relationships with such nonminority and non-women businesses vary from industry practice.

ii. Only businesses performing a commercially useful function may be certified under this program. An MBE or WBE is considered to perform a commercially useful function when it carries out its responsibilities by performing, managing, and supervising the work involved. To determine whether an MBE or WBE is performing a commercially useful function, the amount of work subcontracted, industry practices, and other relevant factors shall be evaluated.

iii. Minority and women business enterprises engaged in the procurement of materials and supplies

must be significantly and substantially involved in the production or have evidence of movement of inventory on hand, in and out of his or her or its facility (leased, owned, or rented) to be considered for certification.

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) In order to be eligible as a minority business, a business must be a sole proprietorship, partnership, joint venture, corporation, or other business entity authorized under the laws of the United States, which is at least 51 percent owned, operated and controlled by persons who are Black, Hispanic, Asian American, American Indian or Alaskan native.

(d) In order to be eligible as a women business, a business must be a sole proprietorship, partnership, joint venture, corporation, or other business entity authorized under the laws of the United States, which is at least 51 percent owned, operated, and controlled by persons who are women, without regard to race.

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§ 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 Division and pay a non-refundable \$ 100.00 application fee for a three-year certification. For this purpose, the Division shall prepare a New Jersey Uniform Certification Application. This form shall be available from the Division and electronically at www.state.nj.us/njbusiness/contracting. 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 Division, a business shall provide all required information and documents requested by the Uniform Certification Application and any additional information requested by the Division. The information to be submitted for review shall include:

1. Place of business;
2. Names and addresses of the owners, partners, or shareholders as applicable, and their representative shares of ownership;
3. Names and addresses of members of the board of directors in the case of corporations;
4. Names and addresses of the officers of the business;
5. Names and addresses of capital investors and the amount of capital contributed. Gifted ownership shall not be considered;
6. Personal and Corporate Tax Returns for each owner, director and officer of the enterprise for the past three consecutive years (including W2's);

7. Numbers of shares of all classes of stock issued, and stock outstanding in the case of a corporation;
8. The bonding capacity and history of the business;
9. The affiliation of the business or any of its owners, officers or directors with any other business entity;
10. A representative list of current and prior clients for the past two years where applicable;
11. A complete list of major real and personal property holdings of the business;
12. A complete disclosure of financial statements and balance sheets;
13. A complete listing of banking institutions with which the business is affiliated;
14. A complete listing of previously attained certifications and a listing of all legal entities which denied certification; and
15. Copies of office/warehouse, lease/rental agreements and/or deeds, and mortgages when homebased.

(c) Pursuant to P.L. 2003, c.189, less documentation is required for first-time applicants seeking certification. The documentation requirements in this subsection only apply to first-time applicants for certification. All other applicants must follow the requirements in (b) above. A first-time applicant for certification as a minority business or women-owned business must submit documentation that is necessary to determine the applicant's eligibility for certification. The Director shall not require an applicant to provide any personal Federal or personal State income tax returns. The information submitted for review shall include, but not be limited to:

1. The names and addresses of the owner, partners or shareholders, as applicable, and their representative shares of ownership;
2. The names and addresses of members of the board of directors, in the case of corporations;
3. The names and addresses of the officers of the business;
4. The number of shares of stock issued and outstanding, in the case of a corporation;
5. The articles of incorporation, bylaws, partnership agreements, or joint venture agreements, as applicable;
6. Organizational charts;
7. An applicant's certificate of birth and motor vehicle driver's license; and
8. An affidavit certifying that the applicant is a minority business or women's business, as defined pursuant to section 2 of P.L. 1986, c.195 (NJ.S.A. 52:27H-21.18).

(d) 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 \$ 100.00 application fee.

(e) An applicant must fully and accurately complete all relevant parts of the Uniform Certification Application. Failure to complete an application shall result in denial.

(f) 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.

(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. 17:46-1.10.

(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.

1. Annually, the business must submit, not more than 20 days prior the anniversary of the certification, an annual Certification 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.

i. If the business fails to submit the annual Certification 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 \$ 100.00 application fee.

ii. If the business submits the annual Certification Verification Statement by the anniversary date, but either the Certification 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.

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§ 17:46-1.5 Acceptance as a certified minority business or women business

(a) When a business is determined by the Division to be a minority and/or women business, the business will be added to the State's SAVI. 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 SAVI, that business shall be eligible for all appropriate State programs and initiatives which 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 SAVI, it shall be informed by the Division by mail of its certification status. The Division shall also issue an individual certification number exclusive to the business as part of the certification procedure.

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§ 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 Division at any time, unless restricted under this chapter.

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§ 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 Director, that its application be withdrawn. Such withdrawal will not be prejudicial to any subsequent application. 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.

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§ 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.

(b) When a business has been denied certification based upon the information provided by that business in its submitted Uniform Certification Application or its annual Certification Verification Statement or had its certification revoked, the business 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 addressed by the procedures at N.J.A.C. 17:46-1.10.

(c) Within 10 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 Division that the denial or revocation has been reaffirmed may reapply one year after the original date of denial or revocation.

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§ 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 for eligibility to be certified as a minority- and/or women-owned businesses and inclusion in the SAVI may be challenged by any third party. The Division shall have the discretion to dismiss a challenge for insufficient evidence.

1. A certification challenge shall be made in writing to the 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 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. The written challenge shall be accompanied by supporting documentation of the charges.

(b) 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.

(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.

(d) When the Division receives a challenge, upon the request of the business whose certification is at issue, the Division shall conduct a hearing on the matter as follows. The business must request the hearing within five days after receipt of notice that the business is subject to a challenge proceeding.

1. The 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 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 Director. This designee shall issue a written report to the Director within 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 designee's report no later than five working days after the date on which the report is made available to the business.

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

6. 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.

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§ 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 Division.

(b) When a business has been certified as a minority and/or women business on the basis of false information knowingly supplied, the 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 on its representation of ownership and/or control, for the duration of the period of the misrepresentation;

2. Order the business ineligible to transact any business within the State, for a period of not less than 12 months and not more than 60 months; or

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

(c) Any business certified by the Division as a minority and/or women business shall immediately apprise the 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 this chapter.

(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, the Attorney General or other enforcement agencies.

(e) Any applicant who knowingly supplies false information or has been awarded a contract to which the business would not otherwise have been entitled in the absence of that false information, shall, upon conviction, be guilty of a crime of the fourth degree.

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§ 17:46-1.11 Certification reciprocity

(a) The 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 Division's program; and
 2. The 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 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.

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§ 17:46-1.12 Information confidentiality

- (a) All information and documents submitted to the 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 Division's electronic database is not deemed confidential.
- (b) 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 Division may be shared with other entities who need the information respective of reciprocal agreements authorized Division pursuant to N.J.A.C. 17:46-1.11.
- (d) Information and documents provided to the Division may be made available in a public manner where required during a challenge or appeal proceedings under this subchapter.

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