

CHAPTER 46
WOMEN-OWNED AND MINORITY-OWNED BUSINESSES

Authority

N.J.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).

Source and Effective Date

R.2009 d.132, effective April 20, 2009.
 See: 40 N.J.R. 5558(a), 41 N.J.R. 1888(a).

Chapter Expiration Date

Chapter 46, Women-Owned and Minority-Owned Businesses, expires on April 20, 2014.

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 N.J.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 N.J.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 N.J.R. 1753(a), 25 N.J.R. 2484(a).

Pursuant to Executive Order No. 66(1978), Chapter 11, Women-owned and Minority-owned Businesses, was readopted as R.1998 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 N.J.R. 4756(a).

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 11, Women-Owned and Minority-Owned Businesses, expired on March 3, 2009. See: 40 N.J.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.

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SUBCHAPTER 1. CERTIFICATION

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.137. 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.

Amended by R.1998 d.238, effective May 18, 1998.

See: 30 N.J.R. 968(a), 30 N.J.R. 1835(a).

Changed mailing address.

Amended by R.2003 d.383, effective October 6, 2003.

See: 35 N.J.R. 1833(a), 35 N.J.R. 4756(a).

Amended by R.2004 d.394, effective October 18, 2004.

See: 36 N.J.R. 2978(a), 36 N.J.R. 4826(b).

In (a), added the last sentence; in (b), inserted “, and purposes other than qualifying for certain government programs and doing business with casino licensees pursuant to P.L. 2003, c.189” at the end.

Recodified from N.J.A.C. 12A:11-1.1 and amended by R.2009 d.132, effective April 20, 2009.

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

Rewrote (a) and (b); and in (c), substituted the address of the New Jersey Department of the Treasury for the address of the N.J. Commerce and Economic Growth Commission.

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 manufacturers 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: