

CHAPTER 32

SUBMISSION AND HANDLING OF INFORMATION WHICH MAY BE ENTITLED TO CONFIDENTIAL TREATMENT

Authority

N.J.S.A. 52:27F-18(d).

Source and Effective Date

R.2001 d.39, effective December 22, 2000.
See: 32 N.J.R. 3719(a), 33 N.J.R. 292(a).

Chapter Expiration Date

Chapter 32, Submission and Handling of Information Which May Be Entitled to Confidential Treatment, expires on December 22, 2005.

Chapter Historical Note

Chapter 32, Submission and Handling of Information Which May Be Entitled to Confidential Treatment, was originally codified in Title 14A as Chapter 7, Submission and Handling of Information Which May Be Entitled to Confidential Treatment. Chapter 7 was adopted as new rules by R.1985 d.490, effective September 16, 1985. See: 17 N.J.R. 1745(a), 17 N.J.R. 2284(a). Pursuant to Executive Order No. 66(1978), Chapter 7 expired on September 16, 1990.

Chapter 7, Submission and Handling of Information Which May Be Entitled to Confidential Treatment, was adopted as new rules and recodified as N.J.A.C. 14:32 by R.1991 d.31, effective January 22, 1991. See: 22 N.J.R. 2649(a), 23 N.J.R. 208(a).

Pursuant to Executive Order No. 66(1978), Chapter 32, Submission and Handling of Information Which May Be Entitled to Confidential Treatment, was readopted as R.1996 d.64, effective January 11, 1996. See: 27 N.J.R. 4136(a), 28 N.J.R. 1222(b).

Pursuant to Executive Order No. 66(1978), Chapter 32, Submission and Handling of Information Which May Be Entitled to Confidential Treatment, was readopted as R.2001 d.39, effective December 22, 2000. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. TRADE SECRETS

14:32-1.1 Scope

The rules in this chapter are promulgated pursuant to N.J.S.A. 52:27F-18(d). They shall govern the submission and handling of information which may be entitled to confidential treatment because such information constitutes a trade secret.

Amended by R.1991 d.31, effective January 22, 1991.
See: 22 N.J.R. 2649(a), 23 N.J.R. 208(a).

Added statutory cite.

Amended by R.1996 d.64, effective February 20, 1996.
See: 27 N.J.R. 4136(a), 28 N.J.R. 1222(b).

14:32-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Authorized agent” means any person who is duly authorized by the Board to perform work in connection with the conduct of the Board’s business.

“Board” means the New Jersey Board of Public Utilities.

“Confidentiality claim” means a claim that information is entitled to confidential treatment because such information constitutes a trade secret.

“Energy industry” means any person, company, corporation, business, institution, establishment, or other organization of any nature engaged in the exploration, extraction, transportation, transmission, refining, processing, generation, distribution, sale or storage of energy.

“Trade secret” means the whole or any portion or phase of any scientific, technical, pricing, cost factors or otherwise proprietary information, design, process, procedure, formula, or improvement which is used in one’s business and is secret and of value; and a trade secret shall be presumed to be secret when the owner takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

Amended by R.1991 d.31, effective January 22, 1991.
See: 22 N.J.R. 2649(a), 23 N.J.R. 208(a).

Added definition for “Board” and “trade secret”; deleted “commissioner” and “department”.

Amended by R.2001 d.39, effective January 16, 2001.
See: 32 N.J.R. 3719(a), 33 N.J.R. 292(a).

In “Trade secret”, inserted “pricing, cost factors”.

14:32-1.3 Confidential information

(a) Any energy industry requested by the Board to submit information pursuant to N.J.S.A. 52:27F-18 may assert a confidentiality claim covering part or all of the information by following the procedures set forth in (b) and (g) below.

(b) Any energy industry submitting information pursuant to N.J.S.A. 52:27F-18 to the Board and asserting a confidentiality claim covering such information shall submit two documents to the Board. The first document shall contain all the information requested by the Board, including any information which the energy industry claims to be entitled to confidential treatment. The second document shall be identical to the first report except that it shall contain no information which the energy industry claims to be entitled to

confidential treatment. If all submitted information is claimed to be confidential, no second document is required.

(c) The top of each page of the first document containing the information which the energy industry claims to be entitled to confidential treatment shall display the heading "CONFIDENTIAL" in bold type.

(d) All parts of the text of the first document which the energy industry claims to be entitled to confidential treatment shall be underscored. Parts already determined by the Board to be entitled to confidential treatment shall be so labeled.

(e) The first document containing the information which the energy industry claims to be entitled to confidential treatment shall be enclosed in an envelope. The outside of the envelope shall display the word "CONFIDENTIAL" in bold type on both sides.

(f) If all the information has been already determined by the Board to be entitled to confidential treatment, only one document is required to be submitted and the top of each page shall display the heading "CONFIDENTIALITY DETERMINED".

(g) The energy industry submitting the documents shall send them to the Board official who requested the information by certified mail return receipt requested, by personal delivery, or by other means which allows verification of the fact of receipt and the date of receipt.

Amended by R.1991 d.31, effective January 22, 1991.
See: 22 N.J.R. 2649(a), 23 N.J.R. 208(a).
Changed "department" to "Board".

14:32-1.4 Confidentiality determinations

(a) Information claimed to be entitled to confidential treatment will be treated as confidential until the Board receives a request under N.J.S.A. 47:1A-1 et seq., to inspect or copy such information.

(b) After receiving such request, the Board shall make a confidentiality determination. The Board shall so notify the energy industry that submitted the information by certified mail return receipt requested. The notice shall state that a request for the information has been made and that the energy industry that submitted the information may, within 30 days of notification, submit a request to the Board for a summary proceeding. The request should include evidence to support a claim that the information is entitled to confidential treatment. The evidence may include, but is not limited to affidavits, records, other documents, and a statement, which shall be as detailed as possible without disclosing any information which the energy industry claims to be entitled to confidential treatment, indicating:

1. The measures taken by the energy industry to guard against undesired disclosure of the information to others;

2. The extent to which the information has been disclosed to others, and the precautions taken in connection therewith; and

3. Whether the energy industry asserts that disclosure of the information would be likely to result in substantial, harmful effects on the energy industry's competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

(c) The Board shall review the evidence. If after such review, the Board determines that the information is not entitled to confidential treatment, the Board shall so notify the energy industry that submitted the information by certified mail return receipt requested. Such determination shall be made after consideration of the applicable criteria in N.J.A.C. 14:32-1.5. The notice shall state the basis for the determination, that a party may request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1 and 1:21, within 10 days of the determination and that, if the request for confidentiality was not granted and a hearing is not requested, the Board will make the information available to the public on the tenth working day after the date of the energy industry's receipt of the written notice.

(d) If the Board determines that the information is entitled to confidential treatment, the information shall not be deemed to be public records and shall be exempt from the requirements of N.J.S.A. 47:1A-1 et seq., pursuant to N.J.S.A. 52:27F-18(d). The Board shall so inform the affected person who made the request for release of the information under N.J.S.A. 47:1A-1 et seq. The notice shall state the basis for the determination and that it constitutes final agency action.

Amended by R.1991 d.31, effective January 22, 1991.
See: 22 N.J.R. 2649(a), 23 N.J.R. 208(a).
Changed "department" to "Board".

14:32-1.5 Criteria for confidential determination

(a) Determinations made under N.J.A.C. 14:32-1.4(d) shall hold that information is entitled to confidential treatment if:

1. The energy industry has asserted a confidentiality claim;

2. The energy industry has satisfactorily shown that it has taken and will continue to take reasonable measures to protect the confidentiality of the information;

3. The information is not, and has not been, reasonably obtainable without the energy industry's consent by persons, other than governmental bodies, using legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;

4. No statute specifically requires disclosure of the information;

5. The energy industry has satisfactorily shown that disclosure of the information would be likely to cause substantial harm to the energy industry's competitive position;

6. Disclosure of the information is likely to impair the Board's ability to obtain similar information in the future.

Amended by R.1991 d.31, effective January 22, 1991.
See: 22 N.J.R. 2649(a), 23 N.J.R. 208(a).

Changed "department" to "Board".

14:32-1.6 Access to confidential information

Unless specifically provided for by Federal or State law, no person shall have access to information which has been determined to be entitled to confidential treatment, other than: Board personnel with the express written permission of the Board or its designate, Federal agencies, State agencies, or other governmental entities, subject to the provisions of N.J.A.C. 14:32-1.7 or authorized agents of the Board, subject to the provisions of N.J.A.C. 14:32-1.8.

Amended by R.1991 d.31, effective January 22, 1991.
See: 22 N.J.R. 2649(a), 23 N.J.R. 208(a).
Changed "department" to "Board".

Case Notes

Public disclosure required of electric utility's settlement agreement. In Matter of Westinghouse Electric Corporation Motion for Protective Order. 92 N.J.A.R.2d (BRC) 73.

14:32-1.7 Disclosure of confidential information to Federal agencies, other State agencies, and municipal agencies

(a) The Board may disclose information entitled to confidential treatment to federal agencies, other State agencies, and municipal agencies if:

1. The Board receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency. The request must set forth the official purpose for which the information is needed;
2. The Board notifies the other agency of its determination that the information is entitled to confidential treatment;
3. The other agency has first furnished to the Board a written opinion from that agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the energy industry that submitted the information to the Board to disclose such information to the other agency; and
4. The other agency agrees to take reasonable precautions to maintain the confidentiality of such information.

(b) After determining that it will release the confidential information, the Board shall so notify the energy industry that submitted the information by certified mail return receipt requested. The notice shall state the basis of the determination. If within 14 days of notification of proposed disclosure, the provider of such information requests in writing that the Board reconsider its decision to release the

information, the Board shall conduct a summary proceeding. The request should include evidence to support a claim that the Board's determination was incorrect. The evidence may include, but is not limited to, affidavits, records, and other documents.

(c) If a timely request for reconsideration has been made by the provider of such information, the Board shall review the evidence and its prior determination. If after such review, the Board determines that it will release the confidential information, the Board shall so notify the energy industry that submitted the information by certified mail return receipt requested. The notice shall state the basis for the determination, that it constitutes final agency action concerning the release of the confidential information, and that the Board will make the information available to the requesting governmental agency on the tenth working day after the date of the energy industry's receipt of the written notice. If the Board determines that it will not release the confidential information, the Board shall so inform the requesting governmental agency. The notice shall so state the basis for the determination and that it constitutes final agency action.

Amended by R.1991 d.31, effective January 22, 1991.
See: 22 N.J.R. 2649(a), 23 N.J.R. 208(a).
Changed "department" to "Board".

14:32-1.8 Disclosure of confidential information to authorized agents

(a) The Board may disclose information which has been determined to be entitled to confidential treatment to an authorized agent of the Board if the Board determines that such disclosure is necessary in order for the authorized agent to perform the work in connection with the conduct of the Board's business.

(b) No information shall be disclosed under (a) above, unless there is a written agreement entered into between the Board and the authorized agent which provides that the authorized agent and the authorized agent's employees shall use the information only for the purpose of performing the work in connection with the conduct of the Board's business, shall refrain from disclosing the information to anyone other than the Board, and shall return to the Board all copies of the information (and any abstracts or extracts therefrom) upon request by the Board or whenever the information is no longer required by the authorized agent for the performance of the work.

Amended by R.1991 d.31, effective January 22, 1991.
See: 22 N.J.R. 2649(a), 23 N.J.R. 208(a).
Changed "department" to "Board".