

CHAPTER 11

WOMEN-OWNED AND MINORITY-OWNED BUSINESSES

Authority

N.J.S.A. 10:5-36(k) and (o), 52:18A-30(d), 52:25-1, 52:27C-71(q), 52:27C-73(a), (f) and (h), 52:27H-6(f), 52:27H-21.24, 52:32-17 et seq., 52:34-6 et seq., and 52:34-12 and 13; and Executive Order No. 84(1993).

Source and Effective Date

R.2003 d.383, effective September 4, 2003.
See: 35 N.J.R. 1833(a), 35 N.J.R. 4756(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 11, Women-Owned and Minority-Owned Businesses, expires on March 3, 2009. See: 40 N.J.R. 5558(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 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: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. CERTIFICATION

12A:11-1.1 Application and scope

(a) The rules in this subchapter are promulgated by the Commerce and Economic Growth Commission to implement the Unified Certification Act, P.L. 1986, c.195. 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 firms doing business with casino licensees pursuant to P.L. 1987, c.137. The Act also allows the Commerce and Economic Growth Commission 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.

(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.

(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

(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.

12A:11-1.2 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 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.

“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, as judged and determined by the Contracting Opportunity and Certification Office of the Commerce and Economic Growth Commission.

“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.

“Days” means the normal operating business days of the State.

“Director” means the Director of the Division of Development for Small Businesses and Women and Minority Businesses in the Commerce and Economic Growth Commission.

“Division” means the Division of Development for Small Businesses and Women and Minority Businesses in the Commerce and Economic Growth Commission.

“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, op-

erating 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. 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 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. 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. 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.

“Noncompliance” means failure to comply with specifically requested additional information or documentation.

“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.

“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.

“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. 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. 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.

Amended by R.1998 d.238, effective May 18, 1998.
See: 30 N.J.R. 968(a), 30 N.J.R. 1835(a).

Rewrote “Administrator” and “Certification” definitions; deleted “Certification and Approvals Unit” and “Control” definitions; and inserted new “Contracting Opportunity and Certification Office”, “Managerial and operational control”, “MBE”, “Non-compliance”, “Rejection” and “WBE” definitions.

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

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

Deleted “Commissioner” and “Department”; amended “Certification”, “Contracting Opportunity and Certification Order”, “Director” and “Division”; added “Commission” and “Secretary”.

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

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

Added “Applicant”.

12A:11-1.3 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 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 non-minority 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.

(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.

Amended by R.1998 d.238, effective May 18, 1998.
See: 30 N.J.R. 968(a), 30 N.J.R. 1835(a).

Rewrote (b).

Amended by R.2003 d.383, effective October 6, 2003.
See: 35 N.J.R. 1833(a), 35 N.J.R. 4756(a).

In (b)iii, deleted "actually" preceding "performing" in the second sentence.

12A:11-1.4 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. For this purpose, the Commission shall prepare a New Jersey Uniform Certification Application. This form shall be available from the Commission, and other agencies and departments of the State which maintain programs which require certification of minority and women businesses.

(b) As part of its application to the Commission, 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. 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 (N.J.S.A. 52:27H-21.18).

(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.

(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 complete application shall result in rejection.

(g) 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.

(h) 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.

(i) 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.

Amended by R.1998 d.238, effective May 18, 1998.
See: 30 N.J.R. 968(a), 30 N.J.R. 1835(a).

In (a) and (b), substituted "Contracting Opportunity and Certification Office" for "Certification and Approvals Unit"; in (b), inserted "required" following "provide all" in the introductory paragraph, added "contributed. Gifted ownership shall not be considered" at the end of 5, inserted a new 6, recodified former 6 through 13 as 7 through 14, and added a new 15; in (c), added a second sentence; rewrote (d); and in (e), changed N.J.A.C. reference.

Amended by R.2003 d.383, effective October 6, 2003.
See: 35 N.J.R. 1833(a), 35 N.J.R. 4756(a).

Substituted references to "Commission" for references to "Department" throughout.

Amended by R.2004 d.394, effective October 18, 2004.
See: 36 N.J.R. 2978(a), 36 N.J.R. 4826(b).

Inserted a new (c) through (e) and recodified former (c) through (f) as (f) through (i).

12A:11-1.5 Acceptance as a certified minority business or women business

(a) When a business is determined by the Contracting Opportunity and Certification Office to be a minority and/or women business, the business will be added by the Commission to the electronic database. 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, that business shall be eligible for all appropriate State programs which require certification as a criteria for participation. 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 it shall be informed by the Contracting Opportunity and Certification Office by mail of its certification status. The Contracting Opportunity and Certification Office shall also issue an individual certification number exclusive to the business as part of the certification procedure.

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

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

Rewrote (a) and (c); and in (b), substituted "electronic database" for "Certified Business Register" in the first sentence, and substituted "database" for "register" throughout.

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

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

In (a), substituted "Commission" for "Department" in the first sentence.

12A:11-1.6 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, 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.

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

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

Rewrote the section.

12A:11-1.7 Right of withdrawal

An applicant firm for the State of New Jersey Unified Certification Program may request in writing, to the Administrator, 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.

New Rule, R.1998 d.238, effective May 18, 1998.

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

Former N.J.A.C. 12A:11-1.7, Denial of certification as a minority or women business, was recodified to N.J.A.C. 12A:11-1.8.

12A:11-1.8 Denial of certification as a minority or women business

(a) When a business has been denied certification based upon the information provided by that business in its submitted Uniform Certification Application or its annual Cer-

tification Verification Statement the business may appeal the decision of the Contracting Opportunity and Certification Office.

(b) 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.

(c) The procedure for appeal of a denial of certification shall be executed in the same manner as hearings for a challenge to a certified business as provided by N.J.A.C. 12A:11-1.9. The Contracting Opportunity and Certification Office shall be considered as the challenger pursuant to N.J.A.C. 12A:11-1.9.

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

Recodified from N.J.A.C. 12A:11-1.7 and amended by R.1998 d.238, effective May 18, 1998.

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

In (a) and (c), substituted "Contracting Opportunity and Certification Office" for "CAU"; rewrote (b); and inserted a new (d). Former N.J.A.C. 12A:11-1.8, Procedure for challenging a business certified as a minority business and/or women business, was recodified to N.J.A.C. 12A:11-1.9.

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

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

In (b) and (d), substituted "Secretary" for "Commissioner" throughout.

12A:11-1.9 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 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. The Secretary shall have the discretion to dismiss a challenge for insufficient evidence.

1. A certification challenge shall be made in writing to the Commission, 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 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) 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.

3. 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) When the Commission receives a challenge, upon the request of the business whose certification is at issue, the Commission 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 receipt of notice that the business is subject to a challenge proceeding.

1. The Commission 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 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. This designee shall issue a written report to the Secretary of the Commission within five 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 report no later than three days from the issuance of the report.

5. Thereafter, the Secretary 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.

Recodified from N.J.A.C. 12A:11-1.8 and amended by R.1998 d.238, effective May 18, 1998.

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

In the introductory paragraph of (a), substituted "electronic database" for "Certified Business Register". Former N.J.A.C. 12A:11-1.9, Obligations to provide information and penalties for failure to provide complete and accurate information, was recodified to N.J.A.C. 12A:11-1.10.

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

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

Substituted "Secretary" for "Commissioner" and "Commission" for "Department" throughout.

12A:11-1.10 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.

(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, after notice and opportunity for a contested case hearing pursuant to N.J.S.A. 52:14B-10 and N.J.A.C. 1:1, 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 its business representation of ownership and/or control, for the duration of the period of the misrepresentation.

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

(c) Any business certified by the Commission as a minority and/or women business shall immediately apprise the Commission of any circumstances which in any way affect the ownership composition of the business, or the control over the business.

(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.

(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.

Recodified from N.J.A.C. 12A:11-1.9 and amended by R.1998 d.238, effective May 18, 1998.

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

In (d), substituted "electronic database" for "Certified Business Register". Former N.J.A.C. 12A:11-1.10, Period and terms of certification, was recodified to N.J.A.C. 12A:11-1.11.

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

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

Substituted references to "Secretary" for references to "Commissioner" and references to "Commission" for references to "Department" throughout.

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

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

Added (e).

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. Submits on an annual basis not more than 20 days before or 10 days after the date of initial certification notice an Annual Verification Statement, which shall attest that the ownership and control of that business on which certification was granted has not changed; and

2. Submits within 20 days notice of any material change in the business, whether it affects the status of the business under the Act or not.

(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.

Recodified from N.J.A.C. 12A:11-1.10 and amended by R.1998 d.238, effective May 18, 1998.

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

In (a), substituted "Contracting Opportunity and Certification Office" for "CAU" in the introductory paragraph and in 1, inserted "Annual" preceding "Verification Statement"; and added a new (b). Former N.J.A.C. 12A:11-1.11, Fees for certification, was recodified to N.J.A.C. 12A:11-1.12.

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

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

In (a), substituted "three" for "five" preceding "years".

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), substituted "five" for "three" following "for a period of" in the introductory paragraph; added a new (b); recodified former (b) as (c).

12A:11-1.12 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.

Recodified from N.J.A.C. 12A:11-1.11 by R.1998 d.238, effective May 18, 1998.

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

Former N.J.A.C. 12A:11-1.12, Certification reciprocity, was recodified to N.J.A.C. 12A:11-1.13.

12A:11-1.13 Certification reciprocity

(a) The Secretary 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 program; and
2. The Commission 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.

Recodified from N.J.A.C. 12A:11-1.12 and amended by R.1998 d.238, effective May 18, 1998.

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

In (a), inserted "or accept certification by" preceding "other public and private". Former N.J.A.C. 12A:11-1.13, Information confidentiality, was recodified to N.J.A.C. 12A:11-1.14.

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

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

In (a), substituted "Secretary" for "Commissioner"; and in (b), substituted "Commission" for "Department" throughout.

12A:11-1.14 Information confidentiality

(a) All information and documents submitted to the Commission 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 electronic database is not deemed confidential.

(b) All submitted information and documents shall be handled on a strict need to know basis.

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

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

Recodified from N.J.A.C. 12A:11-1.13 and amended by R.1998 d.238, effective May 18, 1998.

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

In (a), substituted "electronic database" for "Certified Business Register"; in (c), substituted "Contracting Opportunity and Certification Office" for "CAU" and changed N.J.A.C. reference; and in (d), substituted "Contracting Opportunity and Certification Office" for "CAU".

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

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

Rewrote (a).