

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.1996 d.64, effective January 11, 1996.
See: 27 N.J.R. 4136(a), 28 N.J.R. 1222(b).

Executive Order No. 66(1978) Expiration Date

Chapter 32, Submission and Handling of Information Which May Be Entitled to Confidential Treatment, expires on January 11, 2001.

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. 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, Title 14A was adopted as new rules and recodified as Chapter 32, Title 14 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 was readopted as R.1996 d.64, effective January 11, 1996. 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, 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”.

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).