

## SUBCHAPTER 1. DEFINITIONS

## 13:25-1.1 Definitions

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

“Motorized bicycle” means a pedal bicycle having a helper motor characterized in that either the maximum piston displacement is less than 50 c.c. or said motor is rated at no more than 1.5 brake horsepower **or is powered by an electric drive motor** and said bicycle is capable of a maximum speed of no more than 25 miles per hour on a flat surface **or a pedal bicycle having an electric motor that is capable of propelling the bicycle in excess of 20 miles per hour with a maximum motor-powered speed of no more than 28 miles per hour. This term shall not include a low-speed electric bicycle or low-speed electric scooter as defined at N.J.S.A. 39:1-1.**

[“Motorized bicycle” means a pedal bicycle having a helper motor characterized in that either the maximum piston displacement is less than 50 c.c. or said motor is rated at no more than 1.5 brake horsepower and said bicycle is capable of a maximum speed of no more than 25 miles per hour on a flat surface.]

## SUBCHAPTER 3. MOTORIZED BICYCLE LICENSES

## 13:25-3.1 Age requirements; proof of identity and date of birth[; proof that presence in United States is authorized under Federal law]

(a) (No change.)

(b) As a condition for obtaining a motorized bicycle license, all applicants shall be required to furnish to the Commission, upon request, proof of identity and date of birth [and proof that the applicant’s presence in the United States is authorized under Federal law] in the manner set forth [in] **at N.J.A.C. 13:21-8.2[(a), (b) and (c)] or 8.2A.**

(c)-(d) (No change.)

(e) Any person from a foreign country who is in New Jersey for a period of one year or less and who would be entitled to operate a motorized bicycle in this State pursuant to (d) above but for the fact that he or she is not the holder of a driver’s license or motorized bicycle license from the country in which he or she resides shall be eligible to make application for a New Jersey motorized bicycle license or learner’s permit. [The Chief Administrator shall suspend or revoke any motorized bicycle license or learner’s permit issued pursuant to this subsection upon expiration of the license or permit holder’s lawful presence in the United States unless it is demonstrated that the person’s continued presence in the United States is authorized under Federal law.]

(f) (No change.)

## 13:25-3.9 Visual acuity test standards

(a) (No change.)

(b) When the vision in [either] **both** eyes is less than 20/50 and cannot be improved by means of corrective lenses, a certificate adequately explaining the deficiency and signed by a [New Jersey] registered physician, ophthalmologist, or optometrist must be presented.

(c) When the vision in [either] **both** eyes is less than 20/50 and corrective lenses will improve the vision, then corrective lenses will be required to be worn while operating a motorized bicycle; except where corrective lenses show an improvement, but wearing lenses would be detrimental to the applicant’s visual well being, a statement to this effect, signed by a [New Jersey] registered physician, ophthalmologist, or optometrist, must be presented.

(d)-(e) (No change.)

## 13:25-3.15 Period of validity of motorized bicycle license; digitized color picture; fee

(a) Every motorized bicycle license shall have a digitized color picture of the licensee and shall expire [on the last day of the 48th calendar month following the calendar month in which the license was issued] **during the fourth calendar year following the date in which the license was issued and on the same calendar day as the person’s date of birth. If the person’s date of birth does not correspond to a calendar day of the**

**fourth calendar year (that is, a February 29 birthday in a non-leap year), the license shall expire on the last day of the person’s birth month.**

(b) (No change.)

## TREASURY—GENERAL

(a)

## DIVISION OF REVENUE AND ENTERPRISE SYSTEMS

## Socially and Economically Disadvantaged Business Certification

## Proposed New Rules: N.J.A.C. 17:51

Authorized By: Elizabeth Maher Muoio, State Treasurer.

Authority: P.L. 2023, c. 300.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2024-145.

Submit comments by February 14, 2025, electronically, to the New Jersey Department of the Treasury at [http://www.state.nj.us/treas/treas\\_comments.shtml](http://www.state.nj.us/treas/treas_comments.shtml).

The Department encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Peter Lowicki  
Deputy Director  
Division of Revenue and Enterprise Services  
33 West State Street  
Trenton, NJ 08608  
[peter.lowicki@treas.nj.gov](mailto:peter.lowicki@treas.nj.gov)

The agency proposal follows:

## Summary

P.L. 2023, c. 300 (the Act), establishes a program within the Department of the Treasury (Department) for qualified business enterprise owners that are socially and economically disadvantaged to apply for certification as a “qualified business enterprise.”

The purpose of the Act and this chapter is to set forth the manner in which the Department may assist in providing equal opportunity for socially and economically disadvantaged businesses to participate in the State’s certification program. By obtaining a certification, qualified business enterprises may be eligible to participate in select set-aside or goal-based contracting initiatives offered by State agencies. Additionally, certification provides State-backed documentation of socially and economically disadvantaged business status, which can be beneficial in pursuing contracting opportunities at the local and Federal level, as well as with the private sector.

The Department seeks to propose new rules to operationalize the requirements of the Act. The Department is allowing a 60-day comment period for this notice of proposal; therefore, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

The following is a summary of the provisions of each section of the proposed new chapter:

N.J.A.C. 17:51-1.1 sets forth the scope of the Department’s role in the certification of socially and economically disadvantaged businesses.

N.J.A.C. 17:51-1.2 sets forth the definitions used in this subchapter to reflect operational practices and business requirements, as well as to incorporate definitions from the statute. In addition, the definitions specify rights of appeal or challenge to certification determinations.

N.J.A.C. 17:51-1.3 outlines the standards of certification for socially and economically disadvantaged businesses, covering both the social and economic dimensions of certification.

N.J.A.C. 17:51-1.4 sets forth the certification procedures for socially and economically disadvantaged businesses. Included are elements, such as: online filing of applications; required documentation; initial and

renewal certification periods (five years); annual verification process; and grounds for denial of an application.

N.J.A.C. 17:51-1.5 states that when a business is determined to be a socially and economically disadvantaged business, it is added to the State's electronic database, thus denoting its status as a socially and economically disadvantaged business and becomes eligible for all appropriate State programs and initiatives that are designed to ensure opportunities for socially and economically disadvantaged businesses. The section also notes that the Department shall notify the business of its certification status.

N.J.A.C. 17:51-1.6 provides a process for withdrawal from the certification program.

N.J.A.C. 17:51-1.7 provides a process and rules for appeal of a denial or revocation of certification pursuant to the program for reasons other than a challenge.

N.J.A.C. 17:51-1.8 outlines the procedures for a third-party challenge to the Department's determination that a business is eligible for certification as a socially and economically disadvantaged business.

N.J.A.C. 17:51-1.9 requires submission of accurate information and sets forth penalties for supplying false information or withholding required information.

N.J.A.C. 17:51-1.10 sets forth that the Department may form reciprocal agreements with, or accept certifications by, other public and private certifying entities, to facilitate the development and growth of socially and economically disadvantaged business enterprises.

Finally, N.J.A.C. 17:51-1.11 specifies that, beyond certain information that must be publicly disseminated, information submitted to the Department as part of a certification application is deemed confidential and not subject to disclosure.

#### **Social Impact**

The proposed new rules will provide for implementation of the Department's socially and economically disadvantaged business program as required at P.L. 2023, c. 300. The purpose of the Act and this chapter is to foster participation by qualified socially and economically disadvantaged businesses in the purchasing and procurement processes of the State. The proposed new rules will help businesses interested in certification understand how the process works, and, through this, foster increased participation in the certification program. In doing so, the proposed new rules will help to support and further increase equity, inclusion, and diversity in governmental procurement programs.

#### **Economic Impact**

The proposed new rules will impact the State's economy by providing guidance to firms seeking to be certified as socially and economically disadvantaged businesses. Certification in this category will enable these businesses to participate in set-aside or goal-based contracting initiatives offered by State agencies and other public and private sector procurement initiatives. Participation in these programs and initiatives will help to foster the health of the businesses.

#### **Federal Standards Statement**

There are no Federal standards or requirements applicable to the proposed new rules. As a result, an explanation or analysis of the proposed new rules pursuant to Executive Order No. 27 (1994) is not required.

#### **Jobs Impact**

The proposed new rules will result in services provided by the Department. These services enable socially and economically disadvantaged businesses to maintain, grow, and expand their employment.

#### **Agriculture Industry Impact**

The proposed new rules may have a limited impact on the agriculture industry, although the extent to which the industry is affected is unknown.

#### **Regulatory Flexibility Analysis**

The proposed new rules create a voluntary program within the Department; therefore, the rules do not impose any reporting, recordkeeping, or other compliance requirements on small businesses and a further regulatory flexibility analysis is not required.

#### **Housing Affordability Impact Analysis**

The proposed new rules will have no impact on the affordability of housing in New Jersey, nor will they involve a change in the average costs associated with housing, as the proposed new rules specify services provided by the Department to socially and economically disadvantaged businesses.

#### **Smart Growth Development Impact Analysis**

Any impact with respect to the achievement of smart growth and the implementation of the State Development and Redevelopment Plan would be a result of the participation of socially and economically disadvantaged businesses in projects within designated smart growth areas. In and of themselves, the proposed new rules will have no impact on Planning Areas 1 or 2, or in designated centers, pursuant to the State Development and Redevelopment Plan, as the proposed new rules only specify services to be provided by the Department to socially and economically disadvantaged businesses.

#### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Department has evaluated this rulemaking initiative and determined that the proposed new rules will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text of the proposed new rules follows:**

### **CHAPTER 51 SOCIALLY AND ECONOMICALLY DISADVANTAGED BUSINESS CERTIFICATION**

#### **SUBCHAPTER 1. CERTIFICATION**

##### **17:51-1.1 Application and scope**

This subchapter is promulgated by the Department of the Treasury to implement the certification provisions at P.L. 2023, c. 300 (the Act). The Act creates a program for qualified socially and economically disadvantaged business owners. The program is intended to promote equal opportunity for socially and economically disadvantaged businesses to participate in State contracting agency goal-based purchasing and procurement processes. Certification of businesses as socially and economically disadvantaged (qualified business enterprise) will enable such firms to participate in the contracting agency programs. Accordingly, the Department will administer a certification program and monitor the policies and practices through which socially and economically disadvantaged businesses may be certified.

##### **17:51-1.2 Definitions**

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Appeal" means a timely filed written challenge to a denial or revocation of a certification as a socially and economically disadvantaged business.

"Applicant" means an owner, or their authorized representative, who applies for certification as a socially and economically disadvantaged business, in accordance with the provisions at P.L. 2023, c. 300, and this chapter.

"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 determination by the Department that an applicant has met the standards as a socially and economically disadvantaged business pursuant to the Act and this chapter.

"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 Department selection, operating responsibility, financial transactions, and the rights of other shareholders or joint partners.

"Day" or "business day" means any weekday, excluding Saturdays, Sundays, State or Federal legal holidays, and State-mandated furlough days.

“Denial” means an administrative decision by the Department to reject an application for reasons such as the submission being incomplete, inaccurate, or failing to meet the eligibility standard for a socially and economically disadvantaged business.

“Department” means the Department of the Treasury.

“Economically disadvantaged” means that the owner or owners of a business enterprise demonstrate that the ability to compete for State contracts has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business who are not socially disadvantaged; and demonstrate a personal net worth that does not exceed the level established by the Department in this chapter, but does not include equity in any personal residence or business for which the person is applying for certification.

“Hearing officer” means a State of New Jersey, Department of the Treasury employee designated by the New Jersey State Treasurer to hear cases involving an appeal of a denial of a certification or a challenge to a certification, pursuant to the provisions of this chapter, and to render decisions on those appeals and challenges.

“Qualified business enterprise” means a business that has its principal place of business in the State, is independently owned and operated, meets all other qualifications as established in accordance with this chapter, and is certified for participation in the program by the Department.

“Socially disadvantaged” means that the owner or owners of a business enterprise demonstrates membership in a racial minority group or shows personal disadvantage due to color, ethnic origin, gender, sexual orientation, gender identity, physical disability including, but not limited to, a service-connected disability declared by the United States Department of Veterans Affairs, or its successor, long-term residence in an environment isolated from the mainstream of American society, or location in an area of high unemployment, with such demonstration creating a presumption that may be rebutted; or demonstrates a business location in a qualified census tract having a poverty rate of 20 percent or more; or a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

“State contracting agency” or “contracting agency” means any board, commission, committee, authority, instrumentality, Department, college, university, department, or agency of the State that possesses the legal authority to enter into, or award, contracts for goods and services or construction contracts. A list of State contracting agencies is maintained at <https://business.nj.gov/pages/government-contracting> and updated, as necessary, to reflect the addition or elimination of agencies.

#### 17:51-1.3 Standards for eligibility for certification as socially and economically disadvantaged businesses

(a) In order to be eligible as a qualified business enterprise, a business must be a sole proprietorship, partnership, joint venture, corporation, or other business entity authorized pursuant to the laws of the United States, which is at least 51 percent owned, operated, and controlled by a person or persons who are both socially and economically disadvantaged, as determined by the Department. Control shall not include absentee ownership. Control shall be deemed not to exist where an owner or owners are not a socially and economically disadvantaged person. Additionally, control shall not be deemed to exist where someone other than a socially and economically disadvantaged person is disproportionately responsible for the operation of a business, or for policy and contractual decisions.

(b) In order to be eligible as a socially and economically disadvantaged business, a business must be independently owned, operated, and controlled. A business shall meet the following standards to be certified as a qualified business enterprise:

1. Ownership: A business shall be deemed to be independently owned, operated, and controlled, if its management, as specified in its certification application, 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 a person or persons who are both socially and economically disadvantaged shall be real, substantial, and continuing, demonstrating authority over the affairs of the business, and shall go beyond the proforma ownership of the business as reflected in its ownership documents;

2. Business entity: Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as a socially and economically disadvantaged business. In determining whether a potential socially and economically disadvantaged business 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 non-socially and economically disadvantaged businesses, taking into consideration differences from industry to industry;

3. Licensing: When a professional or occupational license or certification is required by Federal or State law to perform the primary business operations of the applicant’s business, and the socially and economically disadvantaged owner, or owners, does not possess the applicable license or certification, the socially and economically disadvantaged business owner or owners shall demonstrate competence in the affairs of the business in order to satisfy the requirement for managerial and operational control; and

4. Personal net worth threshold: The net worth of the owner or owners of a potential socially and economically disadvantaged business shall not exceed \$1.32 million. The State Treasurer may modify this threshold periodically to adjust for changing general economic circumstances. The State Treasurer shall issue a notice of administrative change to be published in the New Jersey Register, after each such adjustment.

#### 17:51-1.4 Certification procedures for socially and economically disadvantaged businesses

(a) To apply for certification as a socially and economically disadvantaged business, an owner, or their authorized representative, shall file the Uniform Certification Application on an online form provided by the State Treasurer.

(b) The documentation required for applicants seeking certification is as follows:

1. The information submitted shall include, but not be limited to:
  - i. The names and addresses of the owner, partners, or shareholders, as applicable, and their representative shares of ownership;
  - ii. The names and addresses of members of the board of directors, in the case of corporations;
  - iii. The names and addresses of the officers of the business;
  - iv. The number of shares of stock issued and outstanding, in the case of a corporation;
  - v. The articles of formation, incorporation, bylaws, partnership agreements, or joint venture agreements, as applicable;
  - vi. Organizational charts;
  - vii. An owner(s) certificate of birth, or motor vehicle driver’s license, passport, or other acceptable form of identification;
  - viii. An affidavit, signed by the individual seeking certification, certifying that the applicant is an economically and socially disadvantaged business enterprise; and
  - ix. A completed personal net worth statement, on a form provided by the State Treasurer that must be published on the Department’s website, for each socially and economically disadvantaged owner. The State Treasurer may update the form periodically to reflect personal net worth in connection with changing economic and financial conditions.

2. The Department may request and consider additional information from an applicant, including, but not limited to:

- i. The names and addresses of capital investors and the amount of capital contributed;
- ii. The bonding activity and history of the business;
- iii. The affiliation of the business or any of its owners, officers, or departments with any other business entity;
- iv. A complete list of major real and personal property holdings of the business;
- v. A complete listing of banking institutions with which the business is affiliated;
- vi. A complete listing of previously attained certifications and a listing of all legal entities that denied certification;
- vii. Copies of office/warehouse, lease/rental agreements, and/or deeds and mortgages, when home-based;

viii. Information showing that the owner or owners are long-term residents of an environment isolated from the mainstream of American society or are located in an area of high unemployment; and

ix. Information showing the business is located in a qualified census tract having a poverty rate of 20 percent or more; or a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

3. An applicant shall fully and accurately complete all relevant parts of the Uniform Certification Application, including providing supporting information and documentation listed in the application instructions and requested by the Department. Failure to complete an application may result in denial.

4. Upon approval, a certificate issued pursuant to this subsection shall be valid for five years, subject to annual verification that there has been no change in status. The business will also be listed on the State's electronic database, which shall display the business name, contact information, certification type (that is, socially and economically disadvantaged business), commodity code(s), and the line of business descriptions.

5. Every five years thereafter, prior to the expiration of the business's current certification, but not earlier than 90 calendar days prior to the expiration of such certification, a business shall reapply for a certification as a socially and economically disadvantaged business pursuant to the certification procedures in this subsection. If the business fails to comply with this requirement, the certification will lapse and the business will be removed from the State's electronic database, which lists qualified business enterprises.

6. Annually, the business shall submit, prior to the expiration of the business's current certification, but not earlier than 90 calendar days prior to the anniversary of the certification, an annual verification statement, in which it shall attest that there is no change in the personal net worth, ownership, control, or any other factor of the business affecting eligibility for certification as a socially and economically disadvantaged business.

i. If the business fails to submit the annual verification statement by the anniversary date, the certification will lapse and the business will be removed from the State's electronic database that lists qualified business enterprises. If the business seeks to be recertified, it will have to reapply.

ii. If the business submits the annual verification statement by the anniversary date, but either the verification statement or other information received by the Department indicates that the business is no longer eligible for certification as a socially and economically disadvantaged business, the Department shall revoke the certification pursuant to this section and, following revocation, the business' designation as a socially and economically disadvantaged business enterprise shall be removed from the State's electronic database. The business may appeal this revocation pursuant to the procedures set forth at N.J.A.C. 17:51-1.8.

#### 17:51-1.5 Acceptance as a Certified Socially and Economically Disadvantaged Business

(a) When a business is determined by the Department to be a socially and economically disadvantaged business, the business will be added to the State's electronic database. Each business shall be placed on the database denoting its status as a Certified Socially and Economically Disadvantaged Business Enterprise.

(b) When a business is placed on the State's electronic database, that business shall be eligible for all appropriate State programs and initiatives that are designed to ensure opportunities for socially and economically disadvantaged businesses to participate in State purchasing and procurement processes.

(c) When a business is placed on the State's electronic database, it shall be informed by the Department of its certification status. The Department shall also issue an individual certification number exclusive to the business as part of the certification procedure.

#### 17:51-1.6 Right of withdrawal

An applicant, pursuant to this chapter, may request, in writing, to the Department, that its application be withdrawn. Such withdrawal will not be prejudicial to any subsequent application. An applicant may reapply,

not sooner than 90 calendar days following the date of withdrawal, but not more than three times in a calendar year.

#### 17:51-1.7 Denial of certification and revocation of certification for reasons other than a challenge

(a) The Department may deny or revoke a certification as a socially and economically disadvantaged business if it has determined that:

1. The applicant has failed to meet certification criteria;
2. The Department, after reviewing the application, requests additional information or documentation that is necessary to make a determination and the applicant fails to comply with the request within 30 days of the request;
3. The business has ceased to meet certification criteria;
4. The applicant has not timely renewed its certification; or
5. The applicant has knowingly provided incorrect, incomplete, or inaccurate information.

(b) In all cases, when a determination to deny or revoke is made, the Department shall notify the business through electronic methods and first-class mail. The denial or revocation shall be effective as of the date of the notice.

(c) A business finding cause to challenge a denial or revocation made pursuant to (a)1, 2, 3, or 4 above shall submit an appeal to the Department setting forth, in detail, the grounds for such appeal in a written statement. The appeal shall be filed no later than 10 days following the effective date of the notice provided in this section. The appeal shall include the following items:

1. The specific grounds for challenging the denial of the certification or the revocation of the certification, including all arguments, materials, and/or other documentation that may support the appellant's position; and
2. A statement as to whether the appellant requests an opportunity for an in-person presentation and the reason(s) for the request.

(d) The Department may disregard any appeal filed after the 10-day period in this section.

(e) The appeal accepted by the Department shall be resolved by a written decision based on the Department's review of the written record including, but not limited to, the business's application, the written appeal, pertinent administrative rules, statutes, and case law, and any associated documentation the Department deems appropriate. In cases where no in-person presentation is given, such review of the written record shall, in and of itself, constitute an informal hearing. The Department has sole discretion to determine if an in-person presentation by the appellant is necessary to reach an informed decision on the matter(s) of the appeal. In-person presentations are fact-finding for the benefit of the Department. The Department has the discretion to limit attendance at an in-person presentation to those parties likely to be affected by the outcome of the appeal. The determination issued by the Department, or the Department's designee, shall be a final agency decision, which shall be appealable to the Appellate Department of the Superior Court.

(f) The Department is entitled to request, receive, and review copies of any and all records and documents deemed appropriate and relevant to the issues and arguments set forth in the appeal. Upon receipt of the Department's request, the business shall promptly provide the requested records or information. The Department may also consider relevant information requested and received from other parties deemed appropriate.

(g) An applicant who receives a decision from the Department that the denial or revocation has been reaffirmed may reapply one year after the original date of denial or revocation.

(h) If an applicant knowingly supplies false information, the applicant shall be disqualified pursuant to this subchapter and barred from reapplying for certification for a period of 12 months from the date of notice of disqualification.

#### 17:51-1.8 Procedure for a third-party challenge to a business certified as a socially and economically disadvantaged business enterprise

(a) A third-party may challenge the qualifications of an applicant or a certified entity pursuant to this subchapter for eligibility to be certified as a socially and economically disadvantaged business and included in the State's electronic database.

(b) A third-party finding cause to challenge a business' certification as a socially and economically disadvantaged business shall submit an appeal to the Department setting forth, in detail, the grounds for such challenge in a written statement with copies to the challenged business and to the appropriate contracting agency if a specific contract is at issue. The challenge shall set forth the specific grounds for challenging the certification, including all arguments, materials, and/or other documentation that may support the challenger's position. A challenge pursuant to this section is limited to the authenticity of a business pursuant to this subchapter to be certified as a socially and economically disadvantaged business. The right to challenge a currently Certified Socially and Economically Disadvantaged Business is, in addition to, and independent of, any protest hearing rights that are afforded by any State contracting agency.

(c) When the Department receives a challenge, upon the request of the socially and economically disadvantaged business whose certification is at issue, the Department shall notify the affected business, in writing, and forward all records pertaining to the matter to the Department's hearing officer.

(d) Upon proper notice, the Department's hearing officer shall conduct a hearing on the matter as follows:

1. If the business whose status is challenged desires a hearing, the business must request the hearing within 10 days after receipt of notice that the business's certification is subject to a challenge;

2. The Department's hearing officer has sole discretion to determine if an in-person presentation is necessary to reach an informed decision on the matter(s) of the appeal. In-person presentations are fact-finding for the benefit of the Department. The Department's hearing officer has the discretion to limit attendance at an in-person presentation to those parties likely to be affected by the outcome of the proceeding. The Department's hearing officer 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;

3. The Department's hearing officer shall resolve any challenge received by written decision based on his or her review of the written record including, but not limited to, the business's application, the written appeal, pertinent administrative rules, statutes, and case law, and any associated documentation deemed appropriate. In cases where no in-person presentation is given, such review of the written record shall, in and of itself, constitute an informal hearing. The burden of proof lies with the third-party challenger. However, the Department's hearing officer may use the Department's own resources to ascertain the viability of a challenge and the status of a business;

4. The determination issued by the Department's hearing officer on behalf of the Department shall be a final agency decision, which shall be appealable to the Appellate Department of the Superior Court;

5. The Department's hearing officer is entitled to request, receive, and review copies of any and all records and documents deemed appropriate and relevant to the issues and arguments set forth in the challenge. Upon receipt of a request from the Department's hearing officer, the business shall promptly provide the requested records or information. The Department's hearing officer may also consider relevant information requested and received from other parties deemed appropriate; and

6. An applicant who receives a decision from the Department's hearing officer that the certification has been revoked may reapply for the certification one year after the date of revocation.

#### 17:51-1.9 Obligations to provide information; penalties for failure to provide complete and accurate information; information and hearing procedures

(a) Applicants for certification pursuant to this chapter shall accurately and honestly supply all information required by the Department.

(b) Any business certified by the Department as a socially and economically disadvantaged business shall immediately apprise the Department of any circumstances that in any way affect the ownership composition of the business, or the control over the business, or otherwise affect the eligibility of the business pursuant to this subchapter.

(c) 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 pursuant to this chapter and may subject the business to other sanctions provided for by other State agencies or departments, the Attorney General, or other enforcement agencies.

(d) When the Department determines that a business has been certified as a socially and economically disadvantaged business on the basis of false information knowingly supplied, the Department shall provide notice, including notice of the finding and that the business is no longer certified as a socially and economically disadvantaged business.

(e) The certificate holder shall have 10 days to file a notice of appeal with the Department. The notice of appeal shall provide specific grounds for appealing the determination, including all relevant documentation.

(f) Revocation of the certification of the business shall result in the business's designation as a socially and economically disadvantaged business being removed from the State's electronic database.

(h) When a business's request for certification has been denied or its certification has been revoked based upon false information knowingly provided by that business in its submitted Uniform Certification Application or its annual verification statement, the business has the right to an appeal pursuant to (e) above.

#### 17:51-1.10 Certification reciprocity

(a) The Department may form reciprocal agreements with, or accept certifications by, other public and private certifying entities, to facilitate the development and growth of socially and economically disadvantaged businesses.

(b) All reciprocal agreements must provide that the quality of the program of the other certifying agency is the relative equal of the Department's program.

(c) Documentation from the reciprocal agency showing certification shall be provided.

(d) In the event that the Department forms reciprocal agreements with, or accepts certifications by, other public and or private certifying entities, it shall post information on its website including the names of the entities, the effective date of accepting certifications by other entities, and links to such entities.

#### 17:51-1.11 Information confidentiality

(a) All information and documents submitted to the Department 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. The information required to be disclosed for purposes of inclusion in the State'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 Department may be made available, subject to confidentiality limitations, pursuant to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., where required during a challenge or appeal proceeding pursuant to this chapter.