

and summary suspension or revocation of a license affirmed by the Commission shall be considered a final agency decision subject to judicial review as provided in the Rules of the Court by, and of which jurisdiction and venue for such review are vested in, the Superior Court, Appellate Division.

1. An individual has the right to appeal a final agency decision within 45 days to the New Jersey Superior Court, Appellate Division, Richard J. Hughes Justice Complex, PO Box 006, Trenton, NJ 08625-0006.

(a)

DIVISION OF REVENUE AND ENTERPRISE SERVICES

Business Certification for Lesbian, Gay, Bisexual, Transgender, Queer, Questioning+ (LGBTQ+) Businesses

Adopted New Rules: N.J.A.C. 17:47

Proposed: November 7, 2022, at 54 N.J.R. 2074(a).

Adopted: February 3, 2023, by Elizabeth Muoio, State Treasurer.

Filed: February 8, 2023, as R.2023 d.033, **without change**.

Authority: Executive Order No. 295 (2022); N.J.S.A 10:5-36.g and o.

Effective Date: March 6, 2023.

Expiration Date: March 6, 2030.

Summary of Public Comment and Agency Response:

The official comment period ended January 6, 2023. **No comments were received.**

Federal Standards Statement

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

Full text of the adopted new rules follows:

CHAPTER 47

BUSINESS CERTIFICATION FOR LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, QUESTIONING+ (LGBTQ+) BUSINESSES

SUBCHAPTER 1. CERTIFICATION

17:47-1.1 Application and scope

(a) This subchapter is promulgated by the Department of the Treasury to establish the procedures for the certification program set forth and directed by Executive Order No. 295 (2022) (EO 295). EO 295 calls for the establishment of a procedure for the certification of LGBTQ+ businesses.

(b) Applications and questions regarding certification of LGBTQ+ businesses should be addressed to the New Jersey Division of Revenue and Enterprise Services, at the contact address listed on its website at www.nj.gov/njbgs.

(c) EO 295 applies to every LGBTQ+ business that wishes to participate in the certification program.

17:47-1.2 Definitions

The following words and terms, as used in this chapter, 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 an LGBTQ+ business.

“Applicant” means a business that applies for certification as an LGBTQ+ business pursuant to 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 Division that an applicant has met the standards for certification as an LGBTQ+ business, per these procedures.

“Control and managerial and operational control” mean authority over the affairs of a business, including, but not limited to, capital investment, property acquisition, employee hiring, contract negotiations, legal matters, officer and director selection, operating responsibility, financial transactions, and the rights of other shareholders or joint partners. Control shall not include absentee ownership. Control shall be deemed not to exist where an owner does not identify as LGBTQ+. Additionally, control shall not be deemed to exist where someone, other than someone who identifies as LGBTQ+, is disproportionately responsible for the daily operation of a business, or for policy and contractual decisions.

“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 Division to reject an application for reasons, such as the submission being incomplete, inaccurate, or failing to meet the eligibility standard for an LGBTQ+ business.

“Department” means the Department of the Treasury.

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

“Director” means the head of the Division of Revenue and Enterprise Services, in the Department of the Treasury.

“Division” means the Division of Revenue and Enterprise Services, in the Department of the Treasury, which has been allocated the authority by the State Treasurer to certify businesses pursuant to this chapter.

“EO 295” means Executive Order No. 295 (2022), issued by Governor Murphy on May 3, 2022.

“Filed” means received by the Director or a Division representative.

“Joint venture” means a business undertaking between two or more entities who share risk and responsibility for a specific project while otherwise retaining their distinct identities.

“LGBTQ+” means a person who identifies as lesbian, gay, bisexual, transgender, queer, questioning +, or who otherwise does not identify as heterosexual or cisgender.

“LGBTQ+ business” means a business, which is:

1. A sole proprietorship, owned and controlled by a person who identifies as LGBTQ+;

2. A partnership or joint venture, owned and controlled by individuals who identify as LGBTQ+ in which at least 51 percent of the ownership interest is held by individuals who identify as LGBTQ+, and the management and daily business operations of which are controlled by one or more of the individuals who identify as LGBTQ+ who own it; or

3. A corporation or other entity, whose management and daily business operations are controlled by one or more individuals who identify as LGBTQ+ who own it, and which is at least 51 percent owned by one or more individuals who identify as LGBTQ+ or, if stock is issued, at least 51 percent of the stock is owned by one or more individuals who identify as LGBTQ+.

“Selective Assistance Vendor Information (SAVI)” means the database in which the Division maintains a public listing of small businesses, veteran’s businesses, disabled veteran-owned businesses, minority, and women businesses and following the promulgation of this subchapter, LGBTQ+ businesses.

“State contracting agency” or “contracting agency” means any board, commission, committee, authority, division, 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 shall be maintained at www.newjerseybusiness.gov and updated, as necessary, to reflect the addition or elimination of agencies.

17:47-1.3 Standards of certification for LGBTQ+ businesses

(a) A business may be eligible to be certified as an LGBTQ+ business, as set forth in this section.

(b) In order to be eligible as an LGBTQ+ business, 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 persons who identify as LGBTQ+.

(c) In order to be eligible to be certified, an LGBTQ+ business must be independently owned, operated, and controlled and can demonstrate the ability to be considered a “going concern,” as the business has sufficient resources needed to continue operating indefinitely by normal industry standards. A business shall meet the following standards to be certified as an LGBTQ+ business:

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 and consists of individuals who identify as LGBTQ+. The ownership and control by members of the LGBTQ+ community shall be real, substantial, and continuing, demonstrating authority over the affairs of the business, and shall go beyond the pro forma 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 an LGBTQ+ business. In determining whether a potential LGBTQ+ 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-LGBTQ+ businesses vary from industry practice.

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 business, and the LGBTQ+ business does not possess the applicable license or certification, the LGBTQ+ owner shall demonstrate competence in the affairs of the business, in order to satisfy the requirement for managerial and operational control.

17:47-1.4 Certification procedures for LGBTQ+ businesses

(a) The documentation required for first-time applicants seeking certification may be abbreviated. The documentation requirements in this subsection only apply to first-time applicants for certification.

1. A first-time applicant for certification as an LGBTQ+ business must submit documentation necessary to determine the applicant’s eligibility for certification.

2. The Division shall prepare a New Jersey Uniform Certification Application. The application shall be an online application available from the Division website. A business seeking to be certified as an LGBTQ+ business must be registered to do business in New Jersey at <https://www.state.nj.us/treasury/revenue/gettingregistered.shtml>.

3. The information submitted in support of an application 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 incorporation, bylaws, partnership agreements, or joint venture agreements, as applicable;
- vi. Organizational charts;
- vii. The certificate of birth, or motor vehicle driver’s license, passport, or other acceptable form of identification of the owners, partners, shareholders, or in the case of corporations, members of the board of directors, as applicable to the applicant entity; and
- viii. An affidavit, signed by the individual seeking certification, certifying that the signer owns the business and identifies as LGBTQ+. In the case of a business with multiple owners, a single affidavit certifying that at least 51 percent of ownership identifies as LGBTQ+ shall be sufficient.

4. A first time applicant’s certification shall be provisional and shall be operative for one year from the date of approval.

(b) Following a provisional/initial certification year, pursuant to (a) above, a business shall reapply for certification no later than 20 days prior to the expiration of the business’s current certification, and not earlier than 60 days prior to the expiration of such certification.

1. The Division shall prepare an application form for recertification. The application shall be an online application available from the Division website. A business seeking to be certified as an LGBTQ+ business shall first register at <https://www.state.nj.us/treasury/revenue/gettingregistered.shtml>.

2. As part of its recertification application to the Division, a business shall provide all required information and documents requested in the recertification, which may include, but not be limited to, the following, in addition to the information required at (a)3 above:

- i. Place of business;
- ii. Names and addresses of the officers of the business;
- iii. Names and addresses of capital investors and the amount of capital contributed. Gifted ownership shall not be considered;
- iv. Personal and corporate tax returns for each owner, director, and officer of the business for the past three consecutive years (including W2s);
- v. The bonding capacity and history of the business;
- vi. The affiliation of the business or any of its owners, officers, or directors with any other business entity;
- vii. A current organizational chart;
- viii. A representative list of current and prior clients for the past two years, where applicable;
- ix. A complete list of major real and personal property holdings of the business;
- x. A complete disclosure of financial statements and balance sheets;
- xi. A complete listing of banking institutions with which the business is affiliated;
- xii. A complete listing of previously attained certifications and a listing of all legal entities that denied certification; and
- xiii. Copies of office/warehouse, lease/rental agreements, and/or deeds, and mortgages, when home-based.

3. A business shall submit a completed application.

4. Upon approval or an application, 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.

i. Every five years thereafter, but no later than 20 days prior to the expiration of the business’s current certification, and not earlier than 60 days prior to the expiration of such certification, a business interested in remaining certified as an LGBTQ+ business shall comply with the certification procedures in this subsection.

5. An applicant shall fully and accurately complete all relevant parts of the Uniform Certification Application. Failure to complete an application may result in denial.

6. Annually, the business must submit, not more than 20 days prior to the anniversary of the certification, an annual Certification Verification Statement, in which it shall attest that there is no change in the ownership, control, or any other factor of the business affecting eligibility for certification as an LGBTQ+ business.

i. If the business fails to submit the annual Certification Verification Statement by the anniversary date, the certification will lapse and the business will be removed from the SAVI, which lists certified LGBTQ+ businesses. If the business seeks to be certified, it will have to reapply.

ii. If the business submits the annual Certification Verification Statement by the anniversary date, but either the Certification Verification Statement or other information received by the Division indicates that the business is no longer eligible for certification as an LGBTQ+ business, the Division shall revoke the certification pursuant to this section and, following revocation, the business shall be removed from the SAVI. The business may appeal this revocation, pursuant to the procedures at N.J.A.C. 17:47-1.8(d).

(c) Grounds for denial shall be as follows:

1. In the event that the Division, after reviewing the application, requests additional information or documentation that is necessary to make a determination, the applicant’s failure to comply with the request within 30 days of the request will result in denial; and

2. If the applicant knowingly supplies incorrect, incomplete, or inaccurate information, the applicant shall be disqualified under these procedures and barred from reapplying for certification for a period of 18 months from the date of notice of disqualification. An applicant who knowingly provides such incorrect, incomplete, or inaccurate information may also be subject to other sanctions, provided for by other State agencies or departments, the Attorney General, or other enforcement agencies.

17:47-1.5 Acceptance as an LGBTQ+ business

(a) When a business is determined by the Division to be an LGBTQ+ business, the business will be added to the State's SAVI database. Each business shall be placed on the database denoting its status as an LGBTQ+ business.

(b) When a business is placed on the SAVI database, that business shall be eligible for any appropriate State programs and initiatives for LGBTQ+ businesses.

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

17:47-1.6 Time for application to be certified as an LGBTQ+ business

A business may apply to be certified by the Division at any time, unless restricted pursuant to this chapter.

17:47-1.7 Right of withdrawal

An applicant for the State of New Jersey Unified Certification Program may request, in writing, to the Director, that its application be withdrawn. Such withdrawal shall 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. An applicant may withdraw once during a 12-month period.

17:47-1.8 Denial of initial certification and revocation of certification for reasons other than a challenge

(a) The Division may deny or revoke a certification as an LGBTQ+ business if it has determined that:

1. The applicant has failed to meet certification criteria;
2. The business has ceased to meet certification criteria;
3. The applicant has not timely renewed its certification; or
4. The applicant has knowingly provided incorrect or false information.

(b) The appeal procedures for denials or revocations pursuant to (a)1, 2, or 3 above are at (d) below. The appeal procedures related to a determination that an applicant or certificate-holder has knowingly supplied false or misleading information (see (a)4 above) are set forth at N.J.A.C. 17:47-1.10.

(c) In all cases, when a determination to deny or revoke is made, the Division shall notify the business through the mail or electronic means, including electronic mail. The denial or revocation shall be effective as of the date of the notice.

(d) A business finding cause to challenge the denial or revocation shall submit an appeal to the Director, or designated hearing officer, setting forth, in detail, the grounds for such appeal in a written statement. The appeal shall be filed within 10 business days following the business's receipt of written notification that it was denied certification, or that its certification was revoked. The appeal shall contain 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.

(e) The Director, or designated hearing officer, may disregard any appeal filed after the 10-day period.

(f) The appeal accepted by the Director, or designated hearing officer, shall be resolved by a written decision based on a 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 Director, or designated hearing officer, deems appropriate. In cases where no in-person presentation is held, such review of the written record shall, in and of itself, constitute an informal

hearing. The Director, or designated hearing officer, 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 Director, or designated hearing officer. The Director, or designated 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 appeal. The determination issued by the Director, or designated hearing officer, shall be a final agency decision, which shall be appealable to the Appellate Division of the Superior Court.

(g) The Director, or designated 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 appeal. Upon receipt of the Director's, or designated hearing officer's, request, the business shall promptly provide the requested records or information. The Director or designated hearing officer may also consider relevant information requested and received from other parties deemed appropriate.

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

17:47-1.9 Procedure for challenges to a business certified as an LGBTQ+ business

(a) A third-party may challenge the qualifications of an applicant, or a certified entity, pursuant to this chapter for eligibility to be certified as an LGBTQ+ business and be included in the SAVI database.

(b) A third-party finding cause to challenge a business' certification as an LGBTQ+ business shall submit an appeal to the Director, or designated hearing officer, 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 contain 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 subsection is limited to the authenticity of a business pursuant to this chapter to be certified as an LGBTQ+ business. The right to challenge a currently certified LGBTQ+ business is, in addition to, and independent of, any protest hearing rights that are afforded by any State contracting agency.

(c) When the Division, or designated hearing officer, receives a challenge, the Division shall notify the affected business in writing.

(d) Upon proper notice, the Division or designated hearing officer shall conduct a hearing on the matter as follows:

1. The business must request the hearing within 10 days after receipt of notice that the business' certification is subject to a challenge;

2. The Director, or designated 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 Director, or designated hearing officer. The Director, or designated 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 Director, or designated 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 Director, or designated hearing officer, shall resolve any challenge received by written decision based on the Director's, or designated hearing officer'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 deemed appropriate. In cases where no in-person presentation is held, 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 Director, or designated hearing officer, may use his or her own resources to ascertain the viability of a challenge and the status of a business;

4. The determination issued by the Director, or designated hearing officer, shall be a final agency decision, which shall be appealable to the Appellate Division of the Superior Court;

5. The Director, or designated 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 the Director's, or designated hearing officer's request, the business shall promptly provide the requested records or information. The Director, or designated 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 Director, or designated hearing officer, that the certification has been revoked may reapply for certification one year after the date of revocation.

17:47-1.10 Obligations to provide information; penalties for failure to provide complete and accurate information; hearing procedures

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

(b) Any business certified by the Division as an LGBTQ+ business shall immediately apprise the Division 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 chapter.

(c) The failure of a business to report any such changed circumstances, or the intentional falsification, shall disqualify the business for inclusion on the SAVI database.

(d) When the Division determines that a business has been certified as an LGBTQ+ business on the basis of false information knowingly supplied, the Division shall notify the business that it has been removed from the SAVI database.

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

(f) Receipt of a proper appeal will constitute a contested case, eligible for hearing, pursuant to this section and in accordance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(g) 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 Certification Verification Statement, the business has the right to an appeal, pursuant to this section.

17:47-1.11 Certification reciprocity

(a) The Division may form reciprocal agreements with, or accept certifications by, other public and private certifying entities, to facilitate LGBTQ+ business development and growth.

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

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

(d) In the event that the Division 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.

17:47-1.12 Information confidentiality

(a) All information and documents submitted to the Division 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 required to be disclosed for purposes of inclusion in the SAVI 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 set forth in this chapter.

(c) Information and documents provided to the Division 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 subchapter.