

**NEW JERSEY DEPARTMENT OF THE TREASURY**

**DEVELOPMENT OF SMALL, WOMEN AND MINORITY BUSINESSES**

**Proposed Readoption and Recodification with Amendments: N.J.A.C. 12A:9 as 17:45**

Authorized By: R. David Rousseau, State Treasurer

Authority: N.J.S.A. 52: 27H-21.15, 52:18A-30(d), 52:27H-21.24 , P.L. 2008, c. 27, and Executive Order No. 34 (2006)

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

Proposal Number: PRN 2008\_\_\_\_\_.

Submit written comments by [date] to:

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The agency proposal follows:

## Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 12A:9, Development of Small Business and Women and Minority Businesses, would otherwise expire on September 4, 2008. Pursuant to N.J.S.A. 52:14B-5.1c, submission of this notice of proposed re-adoption with amendments to the Office of Administrative Law extends that expiration date by 180 days to March 2, 2009.

N.J.A.C. 12A:9 was promulgated by the New Jersey Commerce Commission. The objective of N.J.A.C. 12A:9 was the implementation of the Division of Development for Small Businesses, and Women's and Minority Businesses Act, N.J.S.A. 52:27H-21.7, et seq. (the Act). P.L. 2008, c. 27 abolished the New Jersey Commerce Commission and transferred the functions, powers and duties of the Division of Development for Small Businesses and Women's and Minority Businesses to the Department of the Treasury, to be administered within that Department as the State Treasurer so determines. The State Treasurer has determined to allocate such functions, powers and duties and the authority for this chapter to the Division of Minority and Women Business Development in the Department of the Treasury (Division). P.L. 2008, c. 27 also abolished the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises and transferred its functions to the New Jersey Economic Development Authority. The Division has reviewed these rules, including the following amendments, and it has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated.

The proposed amendments are technical and substantive in nature. They are technical in that they replace references to the New Jersey Commerce and Economic Growth Commission and the Chief Executive Officer and Secretary with references to the Division and the Director of the Division. They also replace references to the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises with references to the New Jersey Economic Development Authority (the Authority). The amendments are substantive in that they conform the regulations more closely to the Act. The Act authorizes, but does not mandate, the Division and the Authority to undertake certain services. Therefore, the amendments reflect that the Division has the authority to undertake certain services and they describe how the Division will proceed if it determines to provide such services. The Division is allowing a 60-day comment period for this notice of proposal; therefore, the proposal falls under the N.J.A.C. 1:30-3.3(a) exception to the requirement for calendar notice.

Chapter 9, Development of Small Business and Women and Minority Businesses, was adopted as R. 2003 d.380, effective September 4, 2003. See 35 N.J.R. 1831(c), 35 N.J.R. 4734(c). The rules have not been amended since. As mentioned above, the objective of the rules was then and continues to be the implementation of the Division of Development for Small Businesses, and Women's and Minority Businesses Act, N.J.S.A. 52:27H-21.7 et seq. The purposes of the Act and these rules is to set forth the manner in which the Division may provide consolidated state services to small businesses and women and minority businesses. A further objective of the rules is to update the references to the State entities implementing the Act, pursuant to P.L. 2008, c. 27.

Following is a summary of the provisions of each section of the chapter proposed for re-adoption:

[12A:9]**17:45**-1.1 Applicability and scope

This section sets forth the scope of the Division's role in the New Jersey Department of the Treasury.. N.J.A.C. 17:45 – 1.1 references P.L. 2008, c.27 which authorized the transfer of the functions, powers, and duties of the Division of Development for Small Businesses and Women's and Minority Businesses to the Division of Minority and Women Business Development in the Department of the Treasury and the transfer of the functions, powers and duties of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises to the New Jersey Economic Development Authority .

[12A:9]**17:45**-1.2 Definitions

This section sets forth the definitions of words and terms used in the rules and amends certain terms to conform to statutory changes. N.J.A.C. 17:45-1.2 deletes the term "CAU" – Certification and Approvals Unit. It contains a new defined term, "Department," which replaces the deleted term, "Commission." The definition of the term "Director" is modified to clarify that the term refers to the head of the Division of Minority and Women Business Development. The term "Division" is modified to reference the "Division of Minority and Women Business Development," which replaces the "Division of Development for Small Businesses and Women's and Minority Businesses." Also, the term "Eligible Businesses" is modified to reference the term "Division" which replaces the deleted term "CAU." The term "Secretary" is deleted. The term "Small Business" is modified to include the term "Department of the Treasury" which replaces the deleted term "Secretary."

[12A:9]**17:45**-1.3 Nature of Division service

This section sets forth the nature of the Division's services. N.J.A.C. 17:45-1.3 is amended to reflect that the Act gives the Division the authority to undertake certain services. It is also amended to reference P.L. 2008, c27, Executive Order No. 34 (2006), and other authority consistent with the Act.

The following is a summary of the remainder of the chapter. Throughout the language has been amended to reflect that Division has the authority to undertake certain services and how the Division will proceed if it determines to provide such services:

A loan referral and packaging program—N.J.A.C. 17:45-1.4; a listing of qualified professionals to provide services to small, women, and minority businesses with a caveat that inclusion on any list does not imply endorsement by the Division.—N.J.A.C. 17:45-1.5; internship programs—N.J.A.C. 17:45-1.6; market research and analysis projects—N.J.A.C. 17:45-1.7; advertising and marketing assistance —N.J.A.C. 17:45-1.8; provision of training and information to eligible businesses on bidding for government contracts—N.J.A.C. 17:45-1.9; the Division's liaison role with other departments and agencies of State, Federal and local government—N.J.A.C. 17:45-1.10; assistance in obtaining legal counsel for eligible business—N.J.A.C. 17:45-1.11; financial assistance and accounting assistance—N.J.A.C. 17:45-1.12; assistance in obtaining insurance—N.J.A.C. 17:45-1.13; assistance for eligible businesses in obtaining and arranging contracts with franchises—N.J.A.C.

17:45-1.14; assistance in arranging commercial loans such as in the form of a clearinghouse—N.J.A.C. 17:45-1.15; assistance in negotiating license agreements—N.J.A.C. 17:45-1.16; assistance for eligible businesses in procuring bonding—N.J.A.C. 17:45-1.17; referrals to private consultants, institutions and other providers of services—N.J.A.C. 17:45-1.18; assistance in finding sources of financing from government sources—N.J.A.C. 17:45-1.19; assistance in gaining information about employee training and development programs plus web access to a list—N.J.A.C. 17:45-1.20; the provision of centralized information concerning laws and rules plus web access—N.J.A.C. 17:45-1.21; educational programs—N.J.A.C. 17:45-22; uniform certification—N.J.A.C. 17:45-23; and the role of the Minority and Women’s Business Development Advisory Council, created by Executive Order 34 (2006), which will operate in lieu of the advisory councils previously authorized by the Act, the authorization for which was repealed pursuant to P.L. 2007, c.39 —N.J.A.C. 17:45-24.

### **Social Impact**

The readoption and recodification of N.J.A.C. 12A:9 as 17:45 will provide for the continued implementation of the Division of Development for Small Businesses, and Women’s and Minority Businesses Act, N.J.S.A. 52:27H-21.7, *et seq.*, as the functions of the Commerce Commission under that Act have been transferred to the Department of the Treasury, pursuant to P.L. 2008, c. 27. Under the Act, “it is the public policy of this State to provide a source of technical assistance and financial assistance in order to encourage the establishment and growth of the small business and businesses owned by minorities and women.” N.J.S.A. 52:27H-21.7c. The readoption and recodification of these rules will continue to facilitate the achievement of this objective by defining the scope of services authorized in the Act.

### **Economic Impact**

The readoption of these rules will impact the State’s economy by offering continued assistance for small, women, and minority owned businesses. 96.6 percent of New Jersey companies employ fewer than 100 workers and 37 percent of New Jersey workers are employed by these small businesses. The continuation of these services is vital to the growth and stability of New Jersey’s economy.

### **Federal Standards Statement**

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

### **Jobs Impact**

The readoption of these rules will result in continued services provided by the Division of Minority and Women Business Development in the Department of the Treasury. These services enable small businesses and women and minority businesses to grow these businesses and to maintain and to expand their employment.

### **Agriculture Industry Impact**

It is anticipated that the readoption of these rules will have no impact on the agriculture industry.

### **Regulatory Flexibility Statement**

Since the rules proposed for readoption with amendments specify services to be provided by the Division to small businesses and women and minority businesses, the impact on small businesses will continue to be positive. No reporting, recordkeeping or other compliance requirements are imposed on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

### **Smart Growth Impact**

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 small businesses, women and minority businesses in projects within designated smart growth areas.

### **Smart Growth Development Impact**

The impact of the rules proposed for readoption with amendments on the availability of affordable housing or housing production within Planning areas 1 or 2, or within designated centers, under the State Development and Redevelopment Act would be a result of the participation of small businesses, women and minority businesses in housing production within these areas.

### **Housing Affordability Impact**

The impact of the rules proposed for readoption with amendments on the change of average costs associated with housing would be a result of the participation of small businesses, women and minority businesses in housing production .

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12A:9.

**Full text** of the proposed recodification with amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 1. SERVICES TO SMALL BUSINESSES AND WOMEN AND MINORITY BUSINESSES

### [12A:9]17:45-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the [Commerce and Economic Growth Commission] **Division of Minority and Women Business Development in the Department of the Treasury (the Division)** to implement P.L. 1987, c.55 (**the Act**), an Act to establish within the Commerce and Economic Growth Commission a Division of Development for Small Businesses and Women and Minority Businesses **and P.L. 2008, c. 27, which abolishes the Commerce Commission and in section 18 transfers the functions, powers, and duties of the Division of Development for Small Businesses and Women's and Minority Businesses to the Department of the Treasury.** These rules are promulgated pursuant to [the Commission's authority under *N.J.S.A. 52:27C-71(q); 52:27C-73(a), (f) and (h);* **N.J.S.A. 52:27H-21.15, 52:18A-30(d),** [and] *52:27H-21.24*, **and P.L. 2008, c. 27.**

(b) (No change.)

(c) [The Act provides that] **Under the Act and P.L. 2008, c. 27,** the Division **may** provide certain services to small businesses and women and minority businesses those services being: the establishment of a loan referral and packaging program; a compiled list of qualified professionals in specific areas of expertise; to coordinate managerial and technical assistance programs in the state; establish internship programs; serve as liaison on behalf of businesses with the agencies and departments of the state, federal, and local governments; provide assistance in obtaining legal counsel; provide financial analysis and accounting assistance; provide assistance in obtaining insurance; provide assistance in arranging contracts with franchisees; provide assistance in arranging for loans from commercial banks; assist in negotiating license agreements; assist in procuring bonding; make referrals to private consultants, institutions, and other business services; assist in finding sources of financing from federal, state and local sources; provide a central resource for eligible businesses in their dealings with various levels of governments; initiate and encourage education programs for eligible businesses; and establish a uniform procedure for certification of minority and women businesses.

(d) [The Act also provides for the establishment of the office of the Director of the Division for the Development of Small Businesses and Women and Minority Businesses, and the Office of Women Business Enterprise.] **Under P.L. 2008, c. 27, the office and term of the director of the Division for the Development of Small Businesses and Women and Minority Business terminated July 1, 2008; the functions, powers, and duties of that division are continued and transferred to the Department of the Treasury to be administered within that department as the Treasurer so determines. The State Treasurer has determined to administer those functions, powers and duties in the Division. P.L. 2008, c. 27 also abolished the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises and continued and transferred its functions, powers, and duties to the New Jersey Economic Development Authority (the Authority).**

### [12A:9]17:45-1.2 Definitions

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

"Authority" means the New Jersey [Development Authority for Small Businesses and Minority and Women Enterprises] **Economic Development Authority, established by P.L. 1974, c. 80 (N.J.S.A. 34:1B-1 et seq.)**.

["CAU" means the Certification and Approvals Unit which has sole authority in the Division to register vendors for the New Jersey Set-Aside program and/or certify businesses under the Uniform Certification Act for State programs.]

["Commission" means the Commerce and Economic Growth Commission.]

**"Department" means the Department of the Treasury.**

"Director" means the [Director] **head** of the [Division of Development for Small Businesses and Women and Minority Businesses] **Division of Minority and Women Business Development in the Department of the Treasury.**

"Division" means the [Division of Development for Small Businesses and Women and Minority Businesses] **Division of Minority and Women Business Development in the Department of the Treasury. The Division has been allocated the authority by the State Treasurer to register vendors for the New Jersey Set-Aside program and/or certify businesses under the Uniform Certification Act for State programs**

"Eligible businesses" means a minority and/or women business certified [and/or registered] by [CAU] **the Division** or a small business registered by the Division and/or determined to be eligible to receive assistance and/or to participate in various State programs.

...

["Secretary" means the Chief Executive Officer and Secretary of the Commerce and Economic Growth Commission.]

"Small business" means a sole proprietorship, partnership, or corporation which is a size and type as defined by the [Secretary] **Department of the Treasury.**

...

[12A:9]**17:45**-1.3 Nature of Division service

The **Division may** provide such services to small businesses, minority and women businesses as enumerated by the Act, **P.L. 2008, c.27, Executive Order No. 34 (2005), and other authority consistent with the Act.** Where specified, these services shall be subject to standards of Federal programs and be coordinated with the Authority. Services shall be limited in their scope to prevent the [Commission] **Division** from incurring adverse liability and to ensure that the services do not compete with those private businesses traditionally providing services to the enumerated businesses.

[12A:9]**17:45**-1.4 Loan referral and packaging

(a) The Division **may develop** a loan referral and packaging program for small businesses, minority and women businesses which shall be subject to standards established by the Authority.

(b) **In the event that the division establishes a loan referral and packaging program, [T]the Division shall make referrals to private sector sources for loans without prejudice to those sources.**

1. The referrals shall, where market conditions permit, include a minimum of three private source referrals.

2. The Division shall not directly involve itself in negotiations between the referred business and the private sector financing source.

3. The Division may, based on market conditions and needs, negotiate with private sector financing sources to provide loan packages or programs.

[12A:9]**17:45**-1.5 Qualified professional listing

(a) The Division **may** compile a list of qualified professionals who can or have provided services to small businesses, minority and women businesses. This list of qualified professionals, **if complied,** shall include:

1.-6. (No change.)

(b)-(d) (No change.)

**(e) Inclusion on the Qualified Professionals List shall not imply endorsement by the Division, the Department, or the State of New Jersey.**

[12A:9] **17:45**-1.6 Internship programs

(a) The Division, in cooperation with institutions of higher education, **may** establish internship programs for candidates pursuing undergraduate and graduate degrees **in accordance with the provisions of this section.**

(b)-(d) (No change.)

[12A:9]**17:45**-1.7 Market research and analysis

(a) The Division **may,** in conjunction with or at the request of the [a] **A**uthority, undertake market research projects **in accordance with the provisions of this section.**

(b)-(c) (No change.) (d) To the extent possible, the market research projects pursuant to (a) above shall use existing pools of data and/or be coordinated with other entities within the State which have relevant information or the means of collecting the information.

[12A:9]**17:45**-1.8 Advertising and marketing

(a)The Division **may, in** conjunction with or at the request of the Authority, provide advice to eligible businesses as to advertising, marketing, and selecting sales and distribution channels **in accordance with the provisions of this section.**



(b)-(c) (No change.)

[12A:9]**17:45**-1.9 Training for bidding on government contracts

(a) The Division **may**, in conjunction with or at the request of the Authority, provide training and information to eligible businesses on bidding for government contracts **in accordance with the provisions of this section.**

(b)-(d) (No change.)

[12A:9]**17:45**-1.10 Liaison with other departments and agencies of State, Federal and local government

(a) The Division shall serve as liaison with **other divisions in** the Department of Treasury and other departments and agencies of State, Federal and local government to promote procurement of contracts and purchases from eligible businesses.

(b) –(e) (No change.)

[12A:9]**17:45**-1.11 Obtaining legal counsel

(a) The Division **may**, in conjunction with or at the request of the Authority, provide assistance in obtaining legal counsel to eligible businesses **in accordance with the provisions of this section.**

(b) –(c) (No change.)

[12A:9]**17:45**-1.12 Financial analysis and accounting assistance

(a) The Division **may**, in conjunction with or at the request of the Authority, provide financial analysis and accounting assistance to eligible businesses **in accordance with the provisions of this section.**

(b) Financial analysis and accounting assistance shall be limited to:

1. (No change.)
2. [Analysis or] [a] **A**ssistance provided by staff of the Division;
3. (No change.)

(c) (No change.)

[12A:9]**17:45**-1.13 Assistance in obtaining insurance

(a) The Division **may**, in conjunction with or at the request of the [a]**A**uthority, provide assistance to eligible businesses in obtaining insurance **in accordance with the provisions of this section.**

.

(b)-(d) (No change.)

[12A:9]**17:45**-1.14 Assistance in arranging contracts with franchises

(a) The Division **may**, in conjunction with or at the request of the Authority, provide assistance to eligible businesses in arranging contracts with franchises **in accordance with the provisions of this section.**

(b)-(c) (No change.)

[12A:9]**17:45**-1.15 Assistance in arranging commercial loans

(a) The Division **may**, in conjunction with or at the request of the Authority, provide assistance in arranging for loan referral and packaging programs for eligible businesses **in accordance with the provisions of this section.**

(b) [The Division shall develop] **Such assistance shall be in the form of providing a clearing-house for** commercial loan programs with State or Federal chartered banks, savings banks, or savings and loan associations.

(c) (No change.)

[12A:9]**17:45**-1.16 Assistance in negotiating license agreements

(a) The Division **may**, in conjunction with or at the request of the Authority, provide assistance to eligible businesses for purposes of negotiating license agreements **in accordance with the provisions of this section.**

(b)-(c) No change.

[12A:9]**17:45**-1.17 Assistance in procuring bonding

(a) The Division **may**, in conjunction with or at the request of the Authority, provide assistance in procuring bonding **in accordance with the provisions of this section.**

(b) (No change.)

(c) [The Division where applicable shall seek to ease bonding requirements and availability.

(d) The Division shall, at the request of an eligible business, provide counseling and information relevant to a business procuring substitutes for bonding.

[12A:9]**17:45**-1.18 Referrals to private consultants, institutions and other providers of services

(a) The Division **may**, in conjunction with or at the request of the Authority, make referrals to private consultants, institutions and other providers of services at the request of eligible business **in accordance with the provisions of this section.**

(b) All referrals in (a) above shall be made available from the Qualified Professionals List pursuant to N.J.A.C. [12A:9] **17:45**-1.5.

(a) (No change.)

[12A:9]**17:45**-1.19 Assistance in finding sources of financing from government sources

(a) The Division **may**, in conjunction with or at the request of the Authority, assist eligible businesses in finding sources of financing from Federal, State, and local sources **in accordance with the provisions of this section.** .

(b) For purposes of assistance in finding sources of financing from government entities pursuant to (a) above, the Division [shall] **may maintain** a listing of these financing sources and make them available to eligible businesses at their request. **In the event that such a list is maintained, it will be accessible via the web site at www.NewJerseybusiness.gov.**

[12A:9]**17:45**-1.20 Assistance in gaining information about employee training and development programs

(a) The Division **may**, in conjunction with or at the request of the Authority, assist eligible businesses in gaining information about employee training and development programs **in accordance with the provisions of this section.**

(b) The Division shall refer the eligible requesting business in (a) above to the Qualified Professionals List pursuant to N.J.A.C. [12A:9]**17:45**-1.5.

[12A:9]**17:45**-1.21 Centralized information concerning laws and rules

(a) The Division **may** create a centralized source of information for eligible businesses in their dealings with Federal, State and local governments, **accessible via the web site at www.NewJerseybusiness.gov.** , which, **if created**, shall include:

1.-3. (No change.)

(b) The Division shall not provide materials to eligible businesses relevant to pending State legislation except as provided for at the direction of the [Secretary] **State Treasurer.**

[12A:9]**17:45**-1.22 Internship programs

(a). The Division, in conjunction with [requirements of] this subchapter, **may initiate** and encourage education programs for eligible businesses.

(b) (No change.)

[12A:9]**17:45**-1.23 Uniform certification

(a) The Division shall establish, pursuant to the requirements of the Uniform Certification Act, P.L. 1986, c.195, **and E.O. 34 (2006)** a uniform procedure for the certification of minority and women businesses wishing to participate in State programs [which require certification of authenticity of ownership and control of a business as a criteria for participation in State programs, state political subdivision programs, and casino set-aside programs pursuant to P.L. 1987, c.137] **intended to increase the participation of minorities and women in State purchasing and procurement processes.**

(b)-(c) (No change.)

(d) The political subdivisions of the State shall certify the eligibility of minority and women businesses for the political subdivision's programs which require certification of the authority of ownership and control of a vendor or firm.

1. (No change.)

2. The political subdivisions of the State may by specific assignment and agreement have the Division serve as its certifying authority pursuant to approval by the [Secretary] **Director**.

(e) The political subdivisions of the State shall utilize the uniform procedures formulated by the Division pursuant to (a) above.

1. Any political subdivision of the State choosing to establish its own certification program shall submit a plan to the Division for review and approval. The plan shall include:

i.-iv. (No change.)

v. Any other information the Director [or CAU administrator] may deem relevant.

2.-3. (No change.)

(f) The authority of the Division in matters relating to certification and vendor set-aside approval shall be vested in the [CAU administrator] **Director**.

1. The ruling of the [administrator] **Director** in these matters shall be final, except as may be provided by appeals of his **or her** decisions relating to the status of a business provided in regulation under those programs. **The procedures for implementing the Uniform Certification Act, including appeals of denial or revocation of a business are set forth at N.J.A.C. 17:46.**

[12A:9]**17:45**-1.24 Advisory Council

[(a) For the purpose of assisting the Division in development and establishment of financial and technical assistance policy; resource allocation; eligibility for assistance and program participation standards; and coordination of programs with the Authority there is established, pursuant to the Act, the Small Business Advisory Council, the Minority Business Advisory Council, and the Women Business Advisory Council.

(b) Each Council shall consist of members appointed pursuant to and in the manner described in the Act.

(c) The respective Councils shall elect a chairman from among their membership. The chairman shall preside over all Council meetings.

(d) Each Council shall meet at least six times a year.

(e) At their discretion, the Councils may meet together as a group to satisfy the meeting requirements in (d) above.

(f) The Council may not hold an official meeting without a quorum. A quorum shall consist of five members of the board being present.

(g) Each member of a Council shall have one equal vote.

(h) The Councils may form ad hoc committees for specific areas of concern by majority vote.

(i) The Division shall be represented at the Council meetings by the Director or his or her designee.

(j) The Councils shall hold meetings pursuant to the requirements of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.] **The Minority and Women's Business Development Advisory Council, created by Executive Order 34(2006), shall advise the Director and the Division on all matters referred to it by the Director, and make recommendations to the Director on other relevant policy and implementation matters as the Council deems appropriate. Pursuant to E.O 34, the duties of the Council include reviewing the State's current procurement and contracting practices and making recommendations for the improvement thereof.**