

**Smart Growth Development Impact Analysis**

The proposed amendments will not have an impact on smart growth and it is extremely unlikely that they would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments concern the operational requirements for casinos, racetracks, and online operators within the casino gaming and sports wagering industries.

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

The proposed amendments will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State of New Jersey because the proposed amendments concern the operational requirements for casinos, racetracks, and online operators within the casino gaming and sports wagering industries. This rulemaking does not impact on the ability of people subject to the criminal justice system to work in the casino or sports wagering industries. Accordingly, no further analysis is required.

**Full text** of the proposal follows (additions indicated in boldface **thus**):

## SUBCHAPTER 1. GENERAL PROVISIONS

13:690-1.4 Internet or mobile gaming system standards and operational controls

(a)-(w) (No change.)

**(x) An online operator, including an internet gaming operator and an online sports wagering operator, shall be capable of permitting deposits and withdrawals to or from an online account at the premises of the casino or racetrack with whom the online operator is partnered.**

**1. Whenever a patron requests a withdrawal of \$500.00 or more, at the racetrack or casino with whom an online operator is partnered, a still image of the patron shall be captured by surveillance or by camera. In addition, the operator shall require the patron to produce identification that satisfies the requirements at N.J.A.C. 13:69D-1.5A. The operator shall retain a copy of the identification.**

**2. The operator shall be required to maintain the still image and the identification of the patron. Such identification and still image shall be produced upon the demand of the Division, a law enforcement agency, or upon the order of a court of competent jurisdiction.**

**OTHER AGENCIES****(a)****NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY****Section 13(a) Delegation Agreement****Proposed Redoction with Amendments: N.J.A.C. 19:34A**

Authorized By: Manuel M. Da Silva, New Jersey Schools Development Authority (NJSDA), Chief Executive Officer (with the approval of the NJSDA Board).

Authority: P.L. 2007, c. 137, § 4k (N.J.S.A. 52:18A-238.k and 52:18A-240) (rulemaking authority); P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.); and P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.) (enabling statutes).

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

Proposal Number: PRN 2023-048.

Submit written comments by August 4, 2023, to:

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The agency proposal follows:

**Summary**

The New Jersey Schools Development Authority (“SDA” or “Authority”) proposes to readopt N.J.A.C. 19:34A, Section 13(a) Delegation Agreement, with substantive amendments. Chapter 34A, that implements Section 13.a of the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.), and P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.) (the Act), governs SDA’s discretionary delegation of capital maintenance projects to school districts pursuant to a section 13(a) delegation agreement. Chapter 34A, as previously readopted by SDA with amendments and repeals was scheduled to expire on May 26, 2023, pursuant to N.J.S.A. 52:14B-5.1. Pursuant to N.J.S.A. 52:14B-5.1.c(2) that date is extended 180 days to November 22, 2023, as the SDA filed this notice of readoption with the Office of Administrative Law prior to May 26, 2023.

Chapter 34A provides the conditions, eligibility criteria, and process for capital maintenance projects to be delegated to an SDA school district by the Authority, pursuant to N.J.S.A. 18A:7G-13.a. This chapter sets forth the requirements for grant disbursements to fund such delegated capital maintenance projects and addresses grant oversight. The process spans the initiation of delegation to the final completion and closeout of a capital maintenance project and is intended to balance the goal of expediting the funding and construction of capital maintenance projects with prudent oversight of the State share expended.

The SDA proposes to readopt Chapter 34A with amendments, to a single section of the rules (N.J.A.C. 19:34A-2.3, Execution and other conditions for delegation). The proposed amendments are intended to facilitate the use of electronic submissions in applications for delegation of capital maintenance projects to SDA districts and to delete an obsolete signage requirement. The SDA has reviewed Chapter 34A and has determined that, with the addition of the proposed amendments, this chapter remains adequate, reasonable, and necessary for the purposes for which it was originally promulgated: to provide a mechanism by which SDA can, in its discretion, delegate to SDA school districts the ability to perform capital maintenance projects funded by an SDA grant pursuant to a section 13(a) delegation agreement.

As the SDA has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

A summary of the rules proposed for readoption, as well as the substantive amendments to such rules, follows.

**Subchapter 1. General Provisions****N.J.A.C. 19:34A-1.1, Purpose and Applicability of Rules**

This section, regarding the purpose and applicability of this chapter, sets forth that the rules are promulgated to implement N.J.S.A. 18A:17G-13.a, which provides that the Authority may, in its discretion, authorize an SDA school district to undertake a capital maintenance project funded through a grant agreement with the district for the payment of the State share.

**N.J.A.C. 19:34A-1.2, Definitions**

This section sets forth the meanings of the words and terms used throughout this chapter.

**N.J.A.C. 19:34A-1.3, Administration and Performance of Grant Agreements**

This section provides that the SDA school district, not the SDA, is responsible for the administration and success of the capital maintenance project.

**N.J.A.C. 19:34A-1.4, Noncompliance**

This section describes the events constituting an event of default, providing a cure process for some of these events, and further provides for broadly framed other non-compliance in addition to the events of default.

**N.J.A.C. 19:34A-1.5, Remedies for Events of Default and Noncompliance**

This section provides that, in addition to any other remedies as may be provided by law or by the section 13(a) delegation agreement, in the event of noncompliance, the SDA, after notice to the district, may take any of the actions or combinations of actions in this section: withholding of grant disbursements, suspension of the section 13(a) delegation agreement, termination, and any other remedies available pursuant to State law. The section further provides that the SDA may, at its option, take an assignment of any of the contracts in order to complete the capital maintenance project, and the SDA school district shall, on demand, pay to the Authority, reasonable fees and expenses incurred by the Authority in the collection of the repayment of the grant.

**N.J.A.C. 19:34A-1.6 (Reserved)**

This section is reserved.

**N.J.A.C. 19:34A-1.7, Termination by Mutual Agreement**

This section provides that the Authority and the school district may terminate the section 13(a) delegation agreement when both parties agree that the continuation of the capital maintenance project would not produce beneficial results commensurate with the further expenditure of funds.

**N.J.A.C. 19:34A-1.8, Waiver**

This section provides that any school district desiring a waiver or release from the express provisions of this chapter may submit a written request to the Authority, which may grant the waiver only when the Authority determines that such waiver would not contravene the provisions of the Act and would instead promote the statutory purposes of the Act.

**N.J.A.C. 19:34A-1.9, Appeals**

This section provides for an appeals process that anticipates a request to the SDA for a discretionary informal hearing on the papers, and subsequent appeal procedures in the instance of a contested case, involving a subsequent hearing before the Office of Administrative Law.

**Subchapter 2. Delegation to the District of the Design and Construction or Acquisition and Installation of the Capital Maintenance Project****N.J.A.C. 19:34A-2.1, Applicability**

This section provides that this subchapter establishes the Authority's procedures and requirements governing the eligibility determination of a section 13(a) delegation agreement, as well as the circumstances ending the delegation.

**N.J.A.C. 19:34A-2.2, Eligible Criteria for Delegation**

This section sets forth the eligibility criteria for delegation in three different circumstances: at the design phase after preconstruction approval, at the design phase after project approval, and prior to the construction phase for capital maintenance projects without a design phase.

**N.J.A.C. 19:34A-2.3, Execution and Other Conditions for Delegation**

This section provides the terms and conditions for Authority execution of the section 13(a) delegation agreement, such as receipt by the Authority of a certified copy of a district board resolution and proof of the district board's delegation to the school business administrator or other authorized officer for supervision of the capital maintenance project, as well as providing for signage to be posted by the district indicating that financing for the facilities project was made available to the district through the Authority. This section is proposed for amendment to delete a requirement that the district submit a "certified copy" of the district resolution authorizing entering into the grant agreement, in favor of requiring only the submission of a "true copy" of the resolution, to facilitate administration of the grant process utilizing electronic documents. An additional proposed amendment provides that, unless otherwise directed by the Authority, the resolution, certificate, and any other documentation required in support of the administration of the 13(a) delegation agreement shall be submitted electronically. A further proposed amendment deletes reference to the signage requirement.

**N.J.A.C. 19:34A-2.4, Initial Delegation and Engagement of the Design Consultant**

This section addresses the initial delegation in three different circumstances: at the design phase after preconstruction approval, at the design phase after project approval, and prior to the construction phase for capital maintenance projects without a design phase. It also addresses the requirements for district engagement of a design consultant for capital maintenance projects in the first and second of the aforementioned delegation phases.

**N.J.A.C. 19:34A-2.5, Design of the Capital Maintenance Project**

This section addresses the stages in the delegation from the time the Department of Education (Department) issues a preliminary project report, to the submission of detailed plans and specifications and final eligible costs recommendations to the Department, to the issuance by the Authority of an authorization-to-proceed to the construction phase, which permits the district to proceed with the procurement of contractors to perform the acquisition and installation for the capital maintenance project.

**N.J.A.C. 19:34A-2.6, Construction or Acquisition and Installation of the Capital Maintenance Project**

This section sets forth the Authority requirements for the district to proceed with the construction of the capital maintenance project, including a requirement that all contractors engaged by the district be prequalified with the Authority, and a requirement that before commencing the construction phase the district shall submit the following to the Authority for review and approval: a construction phase checklist, a contractor certification, acceptable documentation of insurance coverage, and an adjustment of the current working estimate (CWE) to reflect the construction award. This section further specifies that change orders affecting educational spaces must be submitted to the Department for approval, and change orders exceeding five percent of the grant amount must be submitted to the Authority for approval. Finally, this section specifies that the capital maintenance project must be constructed in accordance with the New Jersey Uniform Construction Code and the educational facility planning standards at N.J.A.C. 6A:26-6.2.

**Subchapter 3. Grant Amount and Disbursement of the Grant****N.J.A.C. 19:34A-3.1, Grant Amount**

This section addresses the full funding of approved design work prior to a determination of final eligible costs, the requirement that grant funds shall only pay for approved costs, the periodic adjustment of the grant amount and current working estimate, and the process for funding of change orders for which the district is not responsible.

**N.J.A.C. 19:34A-3.2, Disbursement Schedule**

This section addresses the schedule and the conditions upon which the Authority is obligated to disburse.

**N.J.A.C. 19:34A-3.3, Disbursement Documentation and Procedures**

This section addresses the documentation required for disbursement of grant funds (invoice, voucher, insurance coverage, certification, and/or checklists), the requirements for disbursement of grant funds upon final completion, and the conditions upon which the Authority is obligated to disburse funds.

**N.J.A.C. 19:34A-3.4, Closeout Procedures**

This section addresses the process of achieving closeout of a delegated capital maintenance project and provides that closeout shall occur when all applicable administrative actions and all required work have been completed by the district.

**Subchapter 4. Contract Award and Compliance****N.J.A.C. 19:34A-4.1, General Provisions**

This section requires a school district to design and construct a capital maintenance project pursuant to the plans and specifications and as approved by the Department. This section also addresses changes in the capital maintenance project impacting educational adequacy and the approval needed for change orders and consultant amendments.

**N.J.A.C. 19:34A-4.2, Contract Award and Compliance**

This section addresses the district's broad range of responsibilities in awarding contracts for the capital maintenance project, supervising design and construction, monitoring performance to ensure efficient and effective completion, exhausting remedies in the event of default, and taking action involving the contracted party deemed by the district to be reasonably necessary. This section requires the district to obtain and maintain licenses and certifications required by governmental authorities, to award contracts in accordance with the Public School Contracts Law, and to have construction contracts include provisions regarding compliance with the New Jersey Prevailing Wage Act, the New Jersey Law Against Discrimination, and the law establishing the Office of the State Comptroller. This section incorporates the School Ethics Law by reference, and also includes other conflict of interest provisions requiring reporting by the district. This section further addresses the maintenance plan of a capital maintenance project, proof of insurance, district responsibilities regarding the tax-exempt status of bonds issued by the New Jersey Economic Development Authority (NJEDA), a variety of required district certifications, bid guarantees, performance bonds, and general language providing that the Authority may impose such other conditions as may be necessary and appropriate to implement the laws of the State and effectuate the purposes and intent of the Act.

This section conforms with the Authority's contractor and consultant prequalification rules, Procedures for Prequalification of Contractors and Professional Services Consultants for the New Jersey Schools Construction Corporation, at N.J.A.C. 19:38A. This section further requires that the district comply with the requirements at N.J.S.A. 52:15C-10 concerning the notices to the State Comptroller and the timing of the procurement process relative to the award of contracts.

**N.J.A.C. 19:34A-4.3, Fraud and Other Unlawful and Corrupt Practices**

This section addresses the district's responsibilities in administering moneys pursuant to this chapter, the section 13(a) delegation agreement and any contracts entered into in connection with the capital maintenance project free from bribery, graft, and corrupt practices. This section also provides that the district must take appropriate remedial actions with respect to any allegations or evidence of such illegality or corrupt practices.

**N.J.A.C. 19:34A-4.4, Debarment**

This section provides that the district and its consultants or contractors shall not enter into a contract for work on a preconstruction activity or capital maintenance project with any person or firm that has been debarred, suspended, or disqualified from State, NJEDA, Authority, or Federal government contracting. This section also sets forth requirements for statements in contracts and bid specifications relating to debarment, suspension, or disqualification from contracting. Addressed, as well, is the district's affirmative obligation to notify the Authority, in writing, whenever it has knowledge that any contracted party, subconsultants, or subcontractor is on the debarment or suspension list maintained by the Authority, the Department of the Treasury, NJEDA, or the Federal government.

**N.J.A.C. 19:34A-4.5 (Reserved)**

This section is reserved.

**N.J.A.C. 19:34A-4.6, Disclosure and Publicity**

This section provides that submissions received by the Authority shall constitute government records and that public dissemination of information by the district concerning the capital maintenance project shall acknowledge the Authority's financial support.

**N.J.A.C. 19:34A-4.7, Access and Record Retention**

This section provides that the governmental entities with oversight responsibilities concerning the schools construction program shall have broad access to records pertaining to capital maintenance activities retained by the districts. This section also provides that the district must also include in all contracts a provision requiring contracted parties to permit the Authority and other governmental units to investigate, audit, examine, and inspect these records. This section additionally addresses

record retention requirements for records relating to capital maintenance projects that are funded through a section 13(a) delegation agreement.

**Social Impact**

The rules proposed for readoption with amendments will apply to SDA school districts that seek to manage and administer the performance of capital maintenance projects funded by an SDA grant and delegation of authority pursuant to a section 13(a) delegation agreement.

The SDA believes that the rules proposed for readoption with amendments will have a positive social impact and that no negative impact will result. The readoption of these rules can be expected to positively impact the students, teachers, and parents served by SDA school districts because they provide guidance on the roles and responsibilities of the SDA and SDA school districts with respect to State funding and delegation of capital maintenance projects pursuant to a section 13(a) delegation agreement. The rules provide flexibility sought by both SDA school districts and the SDA for delegating capital maintenance projects pursuant to section 13(a) delegation agreements. This will enable SDA school districts to better meet health and safety facilities standards, and by successfully undertaking capital maintenance projects, allow SDA school districts to build the capacity that will enable them to undertake other, more complex school facilities projects.

**Economic Impact**

The rules proposed for readoption with amendments address the SDA's discretionary delegation to SDA school districts of capital maintenance projects, pursuant to section 13(a) of the Act. The State share for section 13(a) delegated projects is funded with State contract bonds issued by the NJEDA pursuant to section 25 of the Act, the payment of which is conditioned on appropriations being made by the Legislature. The rules proposed for readoption with amendments will have a positive economic impact on the long-term economic growth of the State of New Jersey because significant activity in the planning, construction, architecture, and engineering professions will directly result from these rules, providing obvious Statewide economic benefits in the short term.

**Federal Standards Statement**

The rules proposed for readoption with amendments implement State statutes, namely P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.), and P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.), and specifically N.J.S.A. 18A:7G-13.a. There are no Federal standards or requirements governing the subject matter of these rules in as much as the rules proposed for readoption with amendments apply only to SDA school districts that are authorized by the SDA to manage and perform capital maintenance projects at school facilities within the State of New Jersey. A Federal standards analysis, therefore, is not required.

**Jobs Impact**

The rules proposed for readoption with amendments will support the creation of a number of new jobs in New Jersey as a result of facilitating the delegation of capital maintenance projects to SDA school districts pursuant to N.J.S.A. 18A:7G-13.a. Jobs will primarily be created in the construction and design sectors.

**Agriculture Industry Impact**

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

**Regulatory Flexibility Analysis**

The rules proposed for readoption with amendments primarily impact New Jersey SDA school districts, but may, through implication, impose compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., which are engaged by districts to support or perform delegated capital maintenance projects. The types of small businesses that may be affected by the rules include consultants (for example, design consultants, such as architects and engineers), contractors, and their subconsultants and subcontractors providing materials or services to the school district in connection with a school facilities project. Considering the scale of capital maintenance projects delegated to SDA school districts by the Authority, it is anticipated that the number of small businesses to which the rules will apply will be substantial. These rules, specifically N.J.A.C. 19:34A-4.7, impose records access and retention of records obligations that may affect

contractors and consultants that are small businesses; the requirement that consultant and contractors be prequalified by the Authority as a condition of Authority funding of a section 13(a) grant, and the contract award and compliance requirements set forth at N.J.A.C. 19:34A-4.2.

The majority of the aforementioned requirements are imposed by other laws and rules, in that the rules impose virtually no change to the way school districts procure goods and services. One exception is the record access and retention provisions (access to additional governmental entities, retention period of 10 years to correlate with the statute of limitations for architectural services claims). The costs incurred in the records provisions are not anticipated to be substantially more than the costs otherwise incurred for record retention. It is unlikely that a small business would have to employ professional services to comply with this requirement. The rules are designed to minimize any adverse economic impact on small businesses by making a few changes in the way school districts procure goods and services.

**Housing Affordability Impact Analysis**

The rules proposed for re-adoption with amendments address the discretionary delegation of authority to SDA school districts for capital maintenance projects and administration of a grant program for funding the State share of such capital maintenance projects and, therefore, will not have an impact on the affordability of housing or evoke a change in the average costs of housing in the State of New Jersey.

**Smart Growth Development Impact Analysis**

The rules proposed for re-adoption with amendments will have an insignificant impact on smart growth development because it is extremely unlikely that the rules proposed for re-adoption with amendments would evoke a change in housing production in the State of New Jersey Planning Areas 1 or 2, or within designated centers under the State Development and Redevelopment Plan.

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

The SDA has evaluated this rulemaking and determined that it 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 rules proposed for re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:34A.

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

SUBCHAPTER 2. DELEGATION TO THE DISTRICT OF THE DESIGN AND CONSTRUCTION OR ACQUISITION AND INSTALLATION OF THE CAPITAL MAINTENANCE PROJECT

19:34A-2.3 Execution and other conditions for delegation

(a) (No change.)

(b) The district shall execute the section 13(a) delegation agreement within such period of time and pursuant to such terms and conditions as the Authority may determine in its sole discretion, and return the section 13(a) agreement together with all applicable attachments to the Authority for execution by the Authority. Such terms and conditions shall include:

1. Delivery by the district to the Authority of a [certified] **true** copy of a resolution of the district board authorizing the execution and delivery of the agreement and proof of the district board's delegation of authority to the school business administrator or other authorized officer for supervision of the capital maintenance project; [and]

2. Delivery by the district to the Authority of a certificate executed by the school business administrator or other authorized officer as to the following:

i.-ii. (No change.)

iii. The agreement has been duly authorized, executed, and delivered by the district, and constitutes a valid and binding agreement of the district enforceable in accordance with its terms[.]; **and**

**3. Unless otherwise directed by the Authority, the resolution, certificate, and any other documentation required in support of the administration of the 13(a) delegation agreement shall be submitted electronically.**

(c) (No change.)

(d) Upon execution of the agreement, the Authority shall transmit to the district the section 13(a) delegation agreement [as well as a sign to the extent permitted by zoning laws indicating that financing was made available to the district through the Authority].