

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments are dictated by State statutes and are not subject to Federal requirements or standards.

Jobs Impact

Although the ZORF rules could theoretically have an impact upon the jobs of private autobus carrier employees and the bus-riding public, no specific number of jobs generated or lost as a result of these rules can be calculated. With limits on fare increases, private autobus carriers could conceivably adjust their employee levels to address financial constraints. Similarly, the ability of commuters to travel to their job sites could be affected by any changes made by such autobus carriers in bus routes or service to certain areas caused by shifts in employee staffing levels. However, it should be noted that rate change protection for both autobus carriers and commuters exists in other statutes and rules that govern rate changes outside the ZORF limits.

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 affect private autobus carriers that are small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Regular route private autobus carriers that seek ZORF fare adjustments are required to comply with N.J.A.C. 16:53D-1.2. That rule requires that such carriers notify the Commission of a ZORF fare adjustment by filing a complete schedule of all current fares and all fares that will be adjusted. The carrier must also provide public notice of the ZORF fare adjustment in accordance with N.J.A.C. 16:53D-1.2 and must file with the Commission an affidavit confirming its compliance with said public notice requirement.

These regulatory mandates constitute reporting, recordkeeping, and compliance requirements as defined in the Regulatory Flexibility Act. However, they affect only those private autobus carriers that choose to avail themselves of the ZORF fare adjustment procedure. The Commission believes that these reporting, recordkeeping, and compliance requirements are minimal and impose no burden on regular route private autobus carriers. No professional services, such as those provided by engineers, attorneys, or accountants, are required for compliance with the reporting and recordkeeping provisions of this rule. In fact, the ZORF fare adjustment mechanism is substantially less burdensome than the rate increase petition process to which autobus carriers are subject under N.J.S.A. 48:2-21 and 48:2-21.1.

Housing Affordability Impact Analysis

It is not anticipated that the proposed amendments will have any impact on housing affordability because the scope of the rules, inasmuch as they apply only to procedures for amending regular route autobus fares, is minimal, and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have no impact on smart growth and are extremely unlikely to 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 rules pertain to the procedures to apply for amendments to regular route autobus fares.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:53D.

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

SUBCHAPTER 1. GENERAL PROVISIONS

16:53D-1.1 General provisions

(a) Any regular route autobus carrier operating within the State, which carrier seeks to revise its rates, fares, or charges in effect as of the time of the promulgation of this rule, shall not be required to conform

with N.J.A.C. 16:51-[3.12]3.10, Tariff filings[,] that do not propose increases in charges to customers, or [3.13] 3.11, Tariff petitions[,] that propose increases in charges to customers, provided the increase or decrease in the rate, fare, or charge, or the aggregate of increases and decreases in any single rate, fare, or charge is not more than the maximum percentage increase (10 percent for [2016] 2017) or decrease (10 percent for [2016] 2017), upgraded to the nearest \$.05.

1. For illustrative purposes, the following chart sets forth the [2016] 2017 percentage maximum for increases to particular rates, fares, or charges and the resultant amount as upgraded to the nearest \$.05:

<u>Present Fare</u>	<u>Percent of Increase</u>	<u>Increase Upgraded To Nearest \$.05</u>
\$2.00 or less	10.0%	\$.20
\$2.05-\$2.50	10.0%	\$.25
\$2.55 upward	10.0%	\$.30+

2. For illustrative purposes, the following chart sets forth the [2016] 2017 percentage maximum for decreases to particular rates, fares, or charges and the resultant amount as upgraded to the nearest \$.05:

<u>Present Fare</u>	<u>Percent of Decrease</u>	<u>Decrease Upgraded To Nearest \$.05</u>
\$.50 or less	10%	\$.05
\$.55 to \$ 1.00	10%	\$.10
\$1.05 upward	10%	\$.15+

3. (No change.)

TREASURY—GENERAL

(a)

**DIVISION OF PURCHASE AND PROPERTY
Equal Employment Opportunity and Affirmative
Action Rules**

**Proposed Readoption with Amendments: N.J.A.C.
17:27**

Authorized By: Ford Scudder, State Treasurer.

Authority: N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127), specifically 10:5-36.

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

Proposal Number: PRN 2017-058.

Submit comments by June 16, 2017, to:

Maurice Griffin, Chief Hearing Officer
Division of Purchase and Property
33 West State Street
PO Box 039
Trenton, NJ 08625-0039
amy.davis@treas.nj.gov

The agency proposal follows:

Summary

Pursuant to its general rulemaking authority under N.J.S.A. 10:5-36.k, the New Jersey Department of the Treasury, Division of Purchase and Property proposes to readopt, with amendments, N.J.A.C. 17:27, which governs the affirmative action employment practices necessary for public agencies, contractors, subcontractors, and business firms to comply with equal employment opportunity standards mandated by

N.J.S.A. 10:5-36 et seq. (P.L. 1975, c. 127). The Department of the Treasury (Department) proposes to readopt these rules, which were scheduled to expire on March 9, 2017 pursuant to N.J.S.A. 52:14B-5.1. As the Department filed this notice of rules proposed for readoption prior to March 9, 2017, the expiration date is extended 180 days to September 5, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2). The rules proposed for readoption are proposed for amendment primarily to reflect the Department's transfer in 2011 of equal employment opportunity responsibilities to the Division of Purchase and Property for goods and services contracts and to the Department of Labor and Workforce Development for construction contracts. The proposed amendments also reflect editorial and grammatical changes. A summary of the rules and the proposed amendments follows:

Subchapter 1 delineates the policy of the Department regarding affirmative action in awarding of contracts funded by public agencies as defined herein. There are no amendments to this subchapter.

Subchapter 2 contains definitions used in the chapter. N.J.A.C. 17:27-2.1 is proposed for amendment to add a definition for "Department" meaning the Department of Labor and Workforce Development, Construction Contract Compliance Unit. Since the transfer of duties in 2011, the Department has been responsible for monitoring the EEO/AA compliance of construction contractors. The section is also proposed for amendment to change the definition of "Division," to remove the Division of Public Contracts Equal Employment Opportunity Compliance and replace it with the "Division of Purchase and Property." Since the transfer of duties in 2011, the Division has been responsible for monitoring the EEO/AA compliance of goods and services vendors.

Subchapter 3 contains the general requirements for public agencies that award contracts.

Subchapter 4 outlines affirmative action requirements for goods and services contractors and subcontractors. There are no amendments proposed to this subchapter.

Subchapter 5 describes minority and women employment goal obligations for goods and services contractors and subcontractors.

Subchapter 6 discusses the affirmative action plan requirements for construction contractors and subcontractors. There are no amendments proposed to this subchapter.

Subchapter 7 depicts minority and women employment goal obligation for construction contractors and subcontractors.

Subchapter 8 is reserved.

Subchapter 9 sets forth requirements related to the monitoring of public works contracts. There are no amendments proposed to this subchapter.

Subchapter 10 sets forth compliance procedures and sanctions applicable to public works contracts.

Subchapter 11 contains provisions regarding the furnishing of reports to the Division by public works contractors, subcontractors, and public agencies.

Subchapter 12 discusses training, referral, and outreach programs for minorities and women. It also lists several examples of organizations that may assist public works contractors and subcontractors in the recruitment, referral, and training of minorities and women.

As the Department 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.

Social Impact

The Division believes that the rules proposed for readoption with amendments will have a positive social impact. The rules proposed for readoption with amendments carry forward and implement the Legislature's intent, as set forth in N.J.S.A. 10:5-31 et seq., to promote equal employment opportunity and prohibit discrimination in employment in the performance of public contracts. The proposed amendments clarify the regulatory framework that implements the law by ensuring that construction contractors, vendors, and public agencies have a thorough understanding of the standards with which they must comply in order to ensure that minorities and women are given a fair chance for employment on public contracts, as well as the consequences for non-compliance. In comparison to overall population percentages, minorities and women continue to be under-represented in the

workforce, particularly in the construction industry. Given this under-representation, which is evidenced by empirical evidence maintained by the Department of Labor and Workforce Development, the rules proposed for readoption with amendments are not only reasonable and proper, but also necessary to ensure equal employment opportunity for minorities and women on public contracts.

The rules proposed for readoption with amendments will also have a positive social impact as they continue to help level the playing field for women and minorities who want to access apprenticeship and employment in the building trades. Building trades, which represent high wage/high skill careers, are among the occupational areas that continue to show a disproportionately low number of minorities and women among the workforce. By continuing to provide an on-going pool of funding for minority and women worker outreach and training programs, the rules proposed for readoption with amendments will increase the number of qualified minorities and women available to compete in high wage/high skill careers in the construction trades and help construction contractors fulfill their good faith efforts obligations. The outreach and training programs will also assist in decreasing the number of unemployed persons and those in need of public assistance.

Economic Impact

The rules proposed for readoption with amendments are expected to have a positive economic impact as they will assist in increasing the number of minorities and women employed on public works projects in New Jersey by clarifying requirements for ensuring equal employment opportunity that are imposed on construction contractors, vendors, and public agencies. As a result, the amendments are expected to have a positive impact on public agencies, contractors, and vendors including subcontractors, who will benefit from a decrease in sanctions and penalties resulting from non-compliance.

It is noted that the rules for readoption will continue to impose economic costs on public agencies, contractors, and vendors who fail to comply with the equal employment opportunity requirements. Specifically, the rules will continue to impose a \$150.00 fee to obtain a Certificate of Employee Information Report and a \$75.00 fee to obtain a duplicate or replacement Certificate of Employee Information Report. It is noted that this cost is only imposed on vendors with a workforce of 50 or more employees every three years and on vendors with a workforce of 50 or less employees every seven years. The fee is necessary to offset the Division's operating costs and will help improve the Division's effectiveness and efficiency in providing a fair and equitable system for monitoring contracts funded with public funds.

Of particular note is the positive economic impact that the rules proposed for readoption are expected to continue to have on the construction trades, where the number of minorities and women employed on public contracts is low.

Federal Standards Statement

The rules proposed for readoption with amendments do not exceed standards or requirements imposed by Federal law, as there are no Federal standards or requirements applicable to the rules proposed for readoption with amendments. In fact, the rules proposed for readoption with amendments provide improved consistency with the equal employment opportunity requirements of the Office of Federal Contract Compliance Programs (OFCCP). As a result, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for readoption with amendments will have a positive impact on jobs as they will ensure that minorities and women have an equal opportunity for employment on public contracts including construction contractors and contracts for goods and services and professional services. Of particular note, however, are the rules at N.J.A.C. 17:27-12, which provide for the financing of minority and women worker outreach and training programs in the construction trades. The rules proposed for readoption continue to provide an on-going pool of funding for the Department of Labor and Workforce Development to administer an effective program. Upon completion of the training program, minorities and women trainees will be qualified for employment on any construction project. The ability of minorities and

women to obtain high skill/high wage positions in the construction trades will generally benefit all interested parties. As noted in the Economic Impact statement above, jobs in the construction trades offer wages and benefits that enable workers to sustain them and their families. In addition, the increase of job opportunities for minorities and women will benefit the State of New Jersey by reducing unemployment and public assistance rolls and increasing the number of wage earners that could contribute to the State's economy. Contractors and subcontractors will benefit from the skilled labor force necessary to perform work on projects located throughout the State. It is noted that many of these projects will be constructed in areas where there exists high unemployment and underemployment of women and minorities.

Agriculture Industry Statement

The rules proposed for readoption with amendments are not expected to have any impact on the agriculture industry in the State of New Jersey.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments affect contractors and subcontractors who are awarded public contracts in the State of New Jersey, some of which may be small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments do not impose new reporting, recordkeeping, or compliance requirements but rather continue existing reporting, recordkeeping, or compliance requirements that are mandated by N.J.S.A. 10:5-31 et seq., and are necessary to ensure equal employment opportunity in public contracts. The specific reporting, recordkeeping, and compliance requirements are set forth below and are based on the small businesses classification as a construction contractor or goods and services vendor. It is noted that no professional services are required to comply with these rules. Due to the need for equity, fairness, and consistency in the affirmative action program, no differentiation in the compliance, reporting, or recordkeeping requirements based on business size can be proposed.

All construction contractors desiring a contract with public agencies are required to complete an initial project workforce report, Form AA-201, which indicates the number of workers per trade anticipated for minorities and women on the construction project. The contractor is then required to submit monthly workforce reports, Form AA-202, to the Department of Labor and Workforce Development indicating the actual number of work hours per trade worked by minorities and women on the construction project. The contractor will be required to submit this information for every public works project over the bidding threshold that it is awarded.

Similarly, all vendors who desire to sell goods and services to public agencies are required to complete an initial employee information report, Form AA-302, to the Division of Purchase and Property, which indicates a breakdown of the goods and services vendor's workforce. Upon receipt of a properly completed form and the required \$150.00 fee, the Division will issue a Certificate of Employee Information Report. The goods and services vendor must also require any and all subcontractors it may have and who meet the requirements of the rules to submit a completed Form AA-302. After issuance of the Certificate of Employee Information Report, the prime goods and services vendor or its subcontractor has no further reporting requirements for a period of three years, if the prime vendor or subcontractor has 50 or more employees and for seven years, if the prime vendor or subcontractor has less than 50 employees. In the event the prime vendor or subcontractor fails to meet the employment goals set by the Division or fails to meet the employment goals in accordance with the good faith criteria set forth in N.J.A.C. 12:27-5, then the prime vendor or subcontractor will be required to prepare an affirmative action plan, so that the Division can monitor compliance.

With respect to the Certificate of Employee Information Report, it is important to note that the rules proposed for readoption with amendments do impose a \$75.00 fee to obtain a duplicate or replacement Certificate of Employee Information Report. This fee is necessary to offset the Division's operating costs and will help improve the Division's effectiveness and efficiency in providing a fair and equitable system for monitoring contracts funded with public funds. No

differentiation in the amount of this fee can be provided based on business size since it is necessary to ensure a fair, equitable, and comprehensive equal employment opportunity program. However, it is noted that the \$75.00 fee would be imposed only on vendors requiring a duplicate or replacement Certificate of Employee Information Report.

It is not anticipated that the construction contractor, goods and services vendor, or any of their subcontractors will be required to employ any professional consultants or contractors in order to meet the requirements of the rules proposed for readoption with amendments. Moreover, it is not anticipated that the construction contractor, goods and services vendor, or any of their subcontractors will incur any significant capital costs in complying with the rules proposed for readoption with amendments. All forms are supplied by the Division or the public agency and the information requested from the contractors, vendors, and subcontractors is readily available.

Housing Affordability Impact Analysis

The Department believes that there is an extreme unlikelihood that the rules proposed for readoption with amendments would effect a change in the affordability of housing or evoke a change in the average costs of housing because the rules proposed for readoption with amendments govern the affirmative action employment practices necessary for public agencies, contractors, subcontractors, and business firms to comply with equal employment opportunity standards mandated by N.J.S.A. 10:5-36 et seq., in the performance of contracts funded by the State.

Smart Growth Development Impact Analysis

The Department believes that there is an extreme unlikelihood that the rules proposed for readoption with amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan or on smart growth development because the rules proposed for readoption with amendments govern the affirmative action employment practices necessary for public agencies, contractors, subcontractors, and business firms to comply with equal employment opportunity standards mandated by N.J.S.A. 10:5-36 et seq., in the performance of contracts funded by the State.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:27.

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

SUBCHAPTER 2. DEFINITIONS

17:27-2.1 Definitions

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

"Advanced trainee" means a minority worker or woman worker who is classified by the public agency compliance officer, designated by a public agency that has received delegated authority from the Division **or Department**, a contractor, subcontractor, union, the State training and employment service, apprentice program, referral agency, or other party acceptable to the Division **or Department** as having experience and skills used in a particular craft or occupation, but lacking the skills to be qualified as a journey worker.

...
 "Construction contract" means any contract entered into by a public agency for the construction, alteration, repair, or demolition of any building or other public work. Excluded from this definition are contractual agreements between public agencies.

...
 "Construction project" means the construction, alteration, repair, or demolition of the specific building or other public work that is the subject of a construction contract.

...
"Department" means the Department of Labor and Workforce Development, Construction Contract Compliance Unit. The Department is responsible for monitoring the EEO/AA compliance of construction contractors.

“Director” means the State official in charge of the Division [of Public Contracts Equal Employment Opportunity Compliance].

“Division” means the Division of [Public Contracts Equal Employment Opportunity Compliance] **Purchase and Property** established in the State of New Jersey, Department of the Treasury. **The Division is responsible for monitoring the EEO/AA compliance of goods and services (including professional services) vendors and public agencies, respectively.**

“Exhibit A” means the mandatory EEO/AA language that must be included in all contracts for goods and services [and] (including professional services) awarded by a public agency in the State of New Jersey. See N.J.A.C. 17:27-3.5 and 3.7.

“Goods and services contract” means any contract entered into by a public agency for the acquisition of materials, equipment, supplies, or services, including a contract for professional services. Excluded from this definition are contractual agreements between public agencies.

“Journey worker” means a worker who has been certified by the public agency compliance officer designated by a public agency who has received delegated authority from the [Division] **Department**, a contractor, subcontractor, union, the State training and employment service, apprentice program, referral agency, or other party acceptable to the [Division] **Department** as having mastered a craft or trade.

“Program Monitoring Unit” means the Construction Unit, Procurement Unit, or Public Agency Unit, within the Division [of Equal Employment Opportunity in Public Contracts] **or Department**, which are responsible for monitoring the equal employment opportunity/affirmative action compliance of construction contractors, goods and services, and professional service vendors and public agencies, respectively.

“Public agency” means any State, county, municipality, school districts, or other political subdivisions of the State, or any agency of, or authority created by, any of the foregoing.

“Public works contract” means any contract to be performed for or on behalf of the State or any county or municipality or other political subdivision of the State, or any agency or authority created by any of the foregoing, for the construction, alteration, repair, or demolition of any building or public work or for the acquisition of materials, equipment, supplies, or goods and services, including professional services, with respect to which discrimination in the hiring of persons for the performance of work thereunder, or under any subcontract thereunder, by reason of race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex is prohibited under N.J.S.A. 10:2-1.

“Total workforce” means a contractor, vendor, or goods and services subcontractor’s full complement of employees, including anyone on the company’s payroll regardless of full-time, part-time, [and] **or** temporary status.

“Trainee” means a minority or woman worker who is not eligible for an apprentice program and who is certified by the public agency compliance officer designated by a public agency who has received delegated authority from the [Division] **Department**, a contractor, subcontractor, union, the State training and employment service, apprentice program, referral agency, or other party acceptable to the [Division] **Department** as having no previous experience and skills used in a particular craft or occupation, but has demonstrated an interest in acquiring same and has agreed to enter into an on-site or off-site training program approved by a contractor, subcontractor, public agency compliance officer, or the [Division] **Department**.

SUBCHAPTER 3. GENERAL REQUIREMENTS FOR PUBLIC AGENCIES AWARDED CONTRACTS

17:27-3.2 Public agency requirements; generally

(a) Public agencies shall comply with the following requirements in order to ensure equal employment opportunity in public contracting:

1. Comply with any rules promulgated by the Division **and Department** with respect to their obligations to assist with equal employment opportunity and affirmative action compliance and enforcement efforts;

2. Cooperate fully with the Division **and Department** in the implementation of guidelines for determining whether a construction contractor or vendor has failed to provide equal employment opportunity in the hiring of minorities and women on public contracts;

3.-5. (No change.)

6. Provide to the Division **or Department** any information [which] **that** indicates that a construction contractor or goods and services vendor is not in compliance with equal employment opportunity requirements and fully cooperate in any Division **or Department** investigation of such contractor or vendor’s compliance with these requirements;

7. Provide the Division **or Department** with such other information as it shall request and as shall be necessary to enable the Division **or Department** to fulfill its mission;

8.-9. (No change.)

17:27-3.4 Advertisement for bids and/or solicitation for proposals

Public agencies shall include in any advertisement for the receipt of bids, solicitation, and/or requests for proposals for a public contract, the following language: Bidders are required to comply with the requirements of N.J.S.A 10:5-31 et seq.

17:27-3.6 Mandatory language for construction bid specifications and contracts (Exhibit B)

(a) A public agency shall include in all bid specifications and contracts for construction the language required by N.J.A.C. 17:27-3.8(a). Also, all bid specifications and contracts for construction that are not subject to a Federally approved or sanctioned affirmative action program shall include the following additional language:

1. After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the [Division] **Department** an initial project workforce report (Form AA201) electronically provided to the public agency by the [Division] **Department**, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

2. During the performance of this contract, the contractor agrees as follows:

i. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause;

ii. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color,

national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality, or sex;

iii.-iv. (No change.)

(b) (No change.)

17:27-3.8 Mandatory bid specification and contract language for good faith efforts toward achieving equal employment opportunities in construction contracts (Exhibit B)

(a) Public agencies shall include in contracts and bid specifications the following mandatory language for equal employment opportunities:

1. When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the [Division] **Department** may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by (a)1i and 2 below, as long as the [Division] **Department** is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the [Division] **Department** that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

i. If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended from time to time.] If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities to minority and women workers directly, consistent with [the] this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the procedures prescribed under (a)2 below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

2. If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (a)1 above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

i. To notify the public agency compliance officer, the [Division] **Department**, and minority and women referral organizations listed by the [Division] **Department** pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

ii.-v. (No change.)

vi. To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(1) (No change.)

(2) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a

contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience as recognized by a union, apprentice program, or a referral agency, provided the referral agency is acceptable to the [Division] **Department**. If necessary, the contractor or subcontractor shall consider the recruitment and hiring or scheduling of minority and women workers who qualify as trainees pursuant to these rules. All of these requirements, however, are limited by the provisions of (a)3 below.

(3) The name of any interested woman or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (a)2vi(2) above, whenever vacancies occur. At the request of the [Division] **Department**, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(4) If, for any reason, a contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the [Division] **Department**.

vii. To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the [Division] **Department** and submitted promptly to the Division upon request.

3. (No change.)

4. After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the [Division] **Department** an initial project workforce report (Form AA201) electronically provided to the public agency by the [Division] **Department**, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of [this] the contract to the Division and to the public agency compliance officer. The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-the-job programs for outreach and training of minorities and women.

17:27-3.10 State-approved public agency affirmative action construction programs; delegated authority

(a) Notwithstanding any other provisions of this subchapter, a public agency may establish its own affirmative action program for construction contracts and submit said program to the [Division] **Department** for designation as a State-approved affirmative action construction program resulting in the delegation of authority to monitor its own construction projects for Equal Employment Opportunity/Affirmative Action compliance. Any public agency program so designated shall exclusively establish the State affirmative action procedures and requirements which implement N.J.S.A. 10:5-31 et seq., [as amended and supplemented from time to time,] as applied to construction contracts and subcontracts involving said public agency.

(b) The [Division] **Department** may designate a public agency's affirmative action construction program as State-approved only if the program requires the public agency's construction contracts to conform to the mandatory contract language requirements of N.J.A.C. 17:27-3.6(b). Said program requires the public agency's advertisement and solicitation of construction contract bids to contain the following language: "Bidders are required to comply with requirements of N.J.S.A. 10:5-31 et seq.," and said program establishes targeted employment goal, which is not lower than the targeted goal established by N.J.A.C. 17:27-7.2.

(c) A public agency that seeks to have its program designated as a State-approved program shall submit to the [Division] **Department** a complete description of its program, copies of the relevant forms and administrative and regulatory documents, and any other information requested by the [Division] **Department**. Within 60 business days of receiving all necessary information, the [Division] **Department** shall either designate a public agency affirmative action program as State-approved for an initial period of one year or reject said program in

accordance with the Division’s Standard Operating Procedures. Approval shall be conditioned upon the execution of a Memorandum of Understanding between the [Division] **Department** and the public agency. If an affirmative action program submitted by a public agency is disapproved, the [Division] **Department** shall[,] state, in writing, reasons for the disapproval and allow the public agency to seek reconsideration by making a request, in writing, to the [Division] **Department** and correcting any defects as stated in the [Division’s] **Department’s** written response.

(d) Any change [which] **that** a public agency intends to make in a State-approved program shall first be submitted in writing to the [Division] **Department** for approval. The [Division] **Department** shall approve all changes to a State-approved program in writing. Any changes to a State-approved program made without the written approval of the [Division] **Department** shall terminate the State approval.

(e) Within 60 business days prior to the expiration of State approval of a public agency’s affirmative action program, the public agency may request renewal of the State’s approval for a two-year period, in accordance with the procedures for obtaining initial approval set forth in (d) above. The [Division] **Department** shall evaluate the public agency’s compliance with the State-approved program in determining whether the approved designation should be renewed.

(f) The [Division] **Department** may review the operation of any State-approved program, and where appropriate, may issue a written notice of termination. Any such termination shall become effective 60 business days after the written notice of termination and opportunity to cure is issued.

(g) Any construction contractor or subcontractor that submits appropriate evidence, in accordance with N.J.A.C. 17:27-3.6(a)2iv, that it is operating under an existing Federally approved or sanctioned affirmative action program to a public agency, including a public agency [which] **that** is operating under its own State-approved affirmative action construction program, shall be deemed to have satisfied the affirmative action requirements of N.J.S.A. 10:5-31 et seq. The determination of the [Division] **Department** as to what constitutes such appropriate evidence shall be binding on the contractor or subcontractor.

SUBCHAPTER 5. TARGETED MINORITY AND WOMEN EMPLOYMENT GOALS FOR DETERMINING GOOD FAITH EQUAL EMPLOYMENT OPPORTUNITY EFFORTS BY VENDORS AND GOODS AND SERVICES SUBCONTRACTORS

17:27-5.4 Vendor and subcontractor compliance obligations

(a) (No change.)

(b) The vendor or subcontractor agrees to provide documentation that it has made good faith efforts to meet equal employment opportunity requirements, whenever the Division, **Department**, or public agency, upon its own initiative or upon the complaint of any member of the public, determines that such information is needed to determine whether the vendor or subcontractor has failed to comply with the applicable equal employment opportunity requirements.

17:27-5.5 Criteria for determining good faith efforts of vendors and goods and services subcontractors

(a) In addition to the vendor’s or subcontractor’s compliance with the requirements set forth in the mandatory language at N.J.A.C. 17:27-3.5 or 3.6, as applicable, the Division shall consider the following factors in its determination of whether a vendor or subcontractor has acted in good faith:

1. Whether the vendor or subcontractor has agreed to make a good faith effort to adhere to targeted minority and [female] **women** employment goals;
- 2.-18. (No change.)

SUBCHAPTER 7. TARGETED MINORITY AND WOMEN EMPLOYMENT GOALS FOR DETERMINING GOOD FAITH EQUAL EMPLOYMENT OPPORTUNITY EFFORTS BY

CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

17:27-7.2 Establishment of targeted goals

(a) The [Division] **Department** shall individually establish the minority and women employment goals for each construction contractor and subcontractor for each trade on each contract. The [Division] **Department** shall review the trades to be utilized during the completion of the work as reported on the initial project workforce report and determine the employment goals based upon the number of qualified minorities and women available as reported by the New Jersey Department of Labor, Division of Planning and Research in its report: EEO Tabulations—Detailed Occupations by Race/Hispanic Groups.

(b) The contractor shall obtain the targeted employment goals from the [Division’s] **State’s** website at www.state.nj.us/treasury/contract_compliance or request the employment goals from the [Division] **Department** after submitting the initial project workforce report to the [Division] **Department**.

(c) When it is notified of a preconstruction or initial job meeting, the [Division] **Department** has the discretion to attend the meeting for the purpose of informing the construction contractor of its responsibilities, the targeted employment goals and the good faith criteria used in determining compliance with this chapter. If the [Division] **Department** determines not to attend the preconstruction or initial job meeting, a representative of the [Division] **Department** shall discuss the contractor’s responsibilities, the targeted employment goals, and the good faith criteria used in determining compliance with this chapter during the first site monitoring visit. The [Division] **Department** shall evaluate compliance with the targeted employment goals and good faith requirements by reviewing the utilization of minorities and women as reported in the work hours per trade and the good faith efforts of each construction contractor. The [Division] **Department** shall calculate the work hours per trade based upon information in the monthly project workforce report submitted pursuant to N.J.A.C. 17:27-7.5 and verified by periodic site visits.

(d) Public agencies, contractors, subcontractors, or affected minority or women workers may submit written requests to the [Division] **Department** for a determination of what employment goals should apply for a particular contract. The determination made by the [Division] **Department** in such cases shall be binding on public agencies, contractors, subcontractors, or minority or women workers who submit the requests.

17:27-7.3 Contractor and subcontractor compliance obligations

(a) (No change.)

(b) The contractor or subcontractor agrees to provide documentation that it has made good faith efforts to meet equal employment opportunity requirements whenever the [Division] **Department** or public agency, upon its own initiative or upon the complaint of any member of the public, determines that such information is needed to determine whether the contractor or subcontractor has failed to comply with the applicable equal employment opportunity requirements.

17:27-7.4 Criteria for determining good faith efforts of construction contractors and subcontractors

(a) In addition to the contractor or subcontractor’s compliance with the requirements set forth in the mandatory language at N.J.A.C. 17:27-3.8, the [Division] **Department** shall consider the following factors in its determination of whether a contractor or subcontractor has acted in good faith.

1. Whether the contractor or subcontractor has agreed to make a good faith effort to adhere to minority and [female] **women** targeted employment goals;
- 2.-15. (No change.)
16. Whether the contractor or subcontractor has actively recruited beyond the traditional sources to attract minority and [female] **women** applicants;
- 17.-18. (No change.)

17:27-7.5 Construction project workforce reporting and compliance procedures

The [Division] **Department** shall electronically provide to the public agency that has awarded a construction contract initial project workforce reports (Form AA201), through its website, to be distributed to the contractor. Each initial project workforce report shall identify the estimated employment requirements, by trade or craft, of the construction contractors and subcontractors for the duration of the construction contract. The [Division] **Department** shall provide construction contractors and subcontractors monthly project workforce reports that must be submitted to the public agency and the [Division] **Department** by the seventh business day of each month. The [Division] **Department**, the public agency compliance officer, construction contractors and subcontractors shall use these project workforce reports in accordance with N.J.A.C. 17:27-3.8, to monitor compliance with the requirements of this subchapter, and the [Division] **Department** and the public agency compliance officer also may use these reports to engage in other related enforcement, compliance and reporting procedures as provided for in N.J.A.C. 17:27-9 and 10.

SUBCHAPTER 9. MONITORING PUBLIC AGENCY CONTRACTS

17:27-9.1 Designation of principal officer

If a contractor or subcontractor is operating under an affirmative action program prescribed by N.J.A.C. 17:27-4.2(a) or 6.2(a), said contractor or subcontractor shall designate a principal officer of its firm who shall meet, when necessary, with its staff, subcontractors, union representatives, the public agency compliance officer, **the Department**, and the Division to insure compliance with these rules and its affirmative action program.

17:27-9.2 [Division's] **Department's** on-site visits and attendance at job meetings

(a) An official of the Division **or Department** shall be allowed to conduct on-site visits and/or to attend all project and/or job meetings and, at reasonable times and in a reasonable manner, to enter the contractor's or subcontractor's business facility or facilities or construction project site for the purpose of determining, in accordance with the Division's **or Department's** standard operating procedures, whether the contractor or subcontractor is complying with the affirmative action program.

(b) An official of the Division **or Department**, with reasonable advance notice, shall be allowed to enter the public agency's business facility or facilities for the purpose of determining, in accordance with the Division's **or Department's** standard operating procedures, whether the public agency is complying with the affirmative action rules.

SUBCHAPTER 10. COMPLIANCE PROCEDURES AND SANCTIONS, APPLICABLE TO PUBLIC WORKS CONTRACTS

17:27-10.1 Scope

(a) (No change.)

(b) The Division, **Department**, and those public agencies to which it has delegated authority in accordance with N.J.A.C. 17:27-3.10 have the authority to issue sanctions pursuant to this subchapter.

17:27-10.2 Alert notices for contractors and/or subcontractors

The Division, **Department**, or public agency compliance officer designated by a public agency who has received authority from the Division **or Department**, on its own initiative or in response to an allegation from a public agency compliance officer, or in response to a written complaint or allegation from an interested party, shall investigate any complaint or allegation of a violation of this chapter or of an approved affirmative action program. If the Division, **Department**, or public agency compliance officer designated by a public agency, who has received authority from the Division **or the Department**, determines that there is a substantial probability that a violation is occurring, it may issue a written alert notice to a contractor or subcontractor and provide a

copy to the public agency. The alert notice shall explain in sufficient detail the facts of the alleged violation.

17:27-10.3 Correction of alleged violations; violation notice for contractors and/or subcontractors

If the alleged violation explained in the alert notice has not been corrected to the satisfaction of the Division, **Department**, or public agency compliance officer designated by a public agency who has received authority from the Division **or Department** issuing the notice, within three business days after it is received by the contractor or subcontractor, said Division, **Department**, or public agency compliance officer designated by a public agency who has received authority from the Division **or Department** shall issue a violation notice to said contractor or subcontractor. Said violation notice shall explain in sufficient detail the facts of the continuing violation.

17:27-10.4 Advisement notices for public agencies

The Division **or Department**, acting on its own initiative or in response to a written complaint or allegation from an interested party, shall investigate any written complaint or allegation of a violation of this chapter by a public agency. If the Division **or Department** determines that there is a substantial probability that a violation is occurring, it may issue an advisement letter to a public agency. The advisement letter shall explain in sufficient detail the facts of the alleged violation.

17:27-10.5 Correction of alleged public agency violations; show cause letter

If the public agency does not correct or sufficiently address to the satisfaction of the Division **or Department** the alleged public agency violation explained in the letter of advisement within 30 days of the agency's receipt of the letter of advisement, the Division **or Department** may conduct a further review or issue a show cause letter to said public agency. Said show cause letter shall explain in sufficient detail the facts of the continuing violation.

17:27-10.6 Contractor, vendor and public agency violations; remedial actions

(a) The following circumstances shall constitute some of the indicia of a party's failure to meet the requirements of this chapter or of an affirmative action program, which may form the basis for a finding of a violation by the Division **or Department**. These indicia are a representative sampling of indicia, but are not intended to constitute the only indicia that may be considered by the Division **or Department** in its determination as to whether a violation has occurred:

1.-3. (No change.)

(b) If the Division determines that a contractor, subcontractor or public agency is in violation of this chapter or in violation of its affirmative action program, the Division may enforce the obligations of N.J.S.A. 10:5-31 et seq., as implemented by this chapter, and the requirements of the affirmative action program by ordering or taking part in any or all of the remedial actions in (b)1 through 4 below. A public agency acting under delegated authority may also enforce the obligations of N.J.S.A. 10:5-31 et seq., as implemented by this chapter and the requirement of the affirmative action plan by ordering these remedial actions except with regards to other public agencies.

1.-4. (No change.)

17:27-10.7 Fines and penalties

(a) When the [Director] **Division or Department** finds that a construction contractor, vendor or public agency has violated the Act or its implementing rules, the Treasurer is authorized to assess and collect fines in the amounts and time frames that follow:

1.-3. (No change.)

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

(d) In assessing a fine or penalty pursuant to this chapter, the [Director] **Division or Department** shall consider the following factors:

1.-7. (No change.)

8. Any other factors which the [Director] **Division or Department** deems to be appropriate in determining the penalty assessed, with all such factors to be explicitly articulated by the Division **or Department** in its assessment of such penalty.

(e) No fine or penalty shall be levied pursuant to this subchapter unless the [Director] **Division or Department** provides the alleged violator with notification by certified mail which includes the amount of the penalty following the opportunity for an investigatory conference and the hearing process set forth in N.J.A.C. 17:27-10.8.

17:27-10.8 Investigatory conference; hearings

(a) When issuing a notice of violation or show cause order, the program monitoring unit or public agency compliance officer designated by a public agency who has received authority from the **Division or Department** shall provide written notice to the alleged violator that it shall submit within 10 business days of receipt of such notice a written response statement explaining why it is not in violation of this chapter or the affirmative action plan or provide a detailed explanation of how it will correct any such violation and the date by which it will do so.

(b) If the program monitoring unit or public agency compliance officer designated by a public agency who has received authority from the **Division or Department** determines that the contractor or subcontractor has not adequately explained why it is not in violation or if the program monitoring unit or public agency compliance officer designated by a public agency who has received authority from the **Division or Department** determines that the violation is continuing to occur, then it shall conduct an investigatory conference to determine whether there is a violation, if corrective measures must be taken and/or whether it would recommend to the [Director] **Division** that financial penalties should be imposed in accordance with N.J.S.A. 10:5-35 and 36. Such investigatory conference shall be conducted within 30 business days of the contractor's and/or subcontractor's submission of its written statement. The program monitoring unit may conduct interviews and request from appropriate parties the submission of additional information as is considered necessary to determine whether the alleged violation has occurred. As soon as practical after conclusion of the investigatory conference, the program monitoring unit shall issue an initial determination to the alleged violator.

(c) If the alleged violator intends to appeal the initial determination, it must submit a written appeal to the [Director] **Division or Department** within 10 days of receipt of the initial determination from the program monitoring unit. Any such appeal must identify the specific bases for seeking review, including all reasons that support the alleged violator's position.

(d) The [Director] **Division or Department** may disregard any appeal that is filed after the 10-day period. The [Director] **Division or Department** shall resolve an appeal of the program monitoring unit's initial determination by written decision on the basis of the [Director's] **Division's or Department's** review of the written record (including any timely submission from the alleged violator) and information obtained by the [Director] **Division or Department** including, but not limited to, the violation notice, field monitoring reports, affirmative action data, pertinent standard operating procedures, administrative rules, statutes, case law and any associated information/documentation the [Director] **Division or Department** deems appropriate. Such review of the written record shall, in and of itself, constitute an informal hearing.

(e) At the discretion of the [Director] **Division or Department**, the alleged violator or any other relevant party may be called upon to make an oral presentation, which may include an opportunity to submit additional documentation relevant to the issues set forth in the violation notice or show cause order. Oral presentations as convened under these rules are fact-findings for the benefit of the [Director] **Division or Department**. At such oral presentations, the program monitoring unit, shall be represented by pertinent members of the **Division or Department** and by the Office of the Attorney General, if required. The [Director] **Division or Department** has the discretion to limit attendance at an oral presentation to those parties likely to be affected by the outcome of the appeal.

(f) The [Director, or the Director's designee from within or outside the Division] **Division or Department**, may perform a review of the written record or conduct an oral presentation directly. In the case of a review or oral presentation being handled by a hearing officer designee from outside the **Division or Department**, the determination of such designee shall be in the form of a report [to the Director], which shall be

advisory in nature and not binding on the [Director] **Division or Department**. All parties shall receive a copy of the hearing officer's report and shall have 10 business days to provide written comments or exceptions to the [Director] **Division or Department**. Subsequent to the 10-business-day period for comments or exceptions, the [Director] **Division or Department** shall issue an initial written decision on the matter. In the case of a review or oral presentation being handled by a designee from within the **Division or Department**, the determination shall be issued by the [Director] **Division or Department**, or the [Director's] **Division's or Department's** designee.

(g) An appeal of the **Division's or Department's** determination may be made to the Office of Administrative Law in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

17:27-10.9 Final determination against construction contractor; aggregate rating for State contract awards

Upon rendering a final determination against a construction contractor, the [Division] **Department** shall notify the Division of Property Management and Construction of such determination and the Division of Property Management and Construction shall consider such adverse finding as a factor in determining the contractor's aggregate rating for the award of State construction contracts.

17:27-10.10 Requested meetings

A meeting with, or technical assistance provided by an official of the **Division or Department** may be requested by a contractor and/or subcontractor or public agency at any time, whether or not a violation has been alleged.

SUBCHAPTER 11. REPORT FOR PUBLIC WORKS CONTRACTORS, SUBCONTRACTORS AND PUBLIC AGENCIES

17:27-11.1 General provisions

The contractor and its subcontractors shall furnish such reports and other documents to the **Division or the Department** as may be requested by the **Division or the Department** from time to time in order to carry out the purposes of these rules, and public agencies shall furnish such information as may be requested by the **Division or the Department** for conducting a compliance investigation pursuant to N.J.A.C. 17:27-10.

SUBCHAPTER 12. TRAINING AND OUTREACH

17:27-12.1 Financing minority and women worker outreach and training programs

(a) Annual funding for on-the-job and/or off-the-job outreach and training programs for minorities and women in the construction trades administered by the Department of Labor and Workforce Development shall be set forth in the Appropriations Act, by statute, and/or other means permitted by law, by no later than July 1st of each year. The [Director of the Division] **Department** shall notify all public agencies of the funding mechanism for these programs by no later than July 15th of each year.

(b) Public agencies that are required to allocate and release funds for outreach and training programs for minorities and women in the construction trades, in accordance with (a) above, shall notify the [Division] **Department** of the allocation and release of training funds to the Department of Labor and Workforce Development in writing and within 10 business days of the release.

17:27-12.2 Assistance

The public agency compliance officer, in consultation with the [Division] **Department**, may assist contractors in the use of outreach, referral and training programs for minority and women workers.

17:27-12.4 Minority and women referral agencies

The **Division and the Department** shall designate approved minority and women referral, training and outreach agencies for each region. Contractors and subcontractors shall list, as is appropriate, employment

opportunities with the minority and women referral agency or agencies designated for its region.
