

of a protected class is prohibited unless, in accordance with N.J.A.C. 13:16-2.2, a respondent shows it is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even then, a practice or policy of a place of public accommodation may still be prohibited if a complainant shows there is a less discriminatory{, equally effective} alternative that would achieve the same interest.

13:16-5.3 Educational practices or policies

(a) Educational practices or policies may have a disparate impact on members of a protected class. An educational practice or policy that has a disparate impact on members of a protected class is prohibited, unless it is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even then, an educational practice or policy may still be prohibited if a complainant shows there is a less discriminatory{, equally effective} alternative means of achieving the substantial, legitimate, nondiscriminatory interest.

(b) (No change from proposal.)

(c) Student discipline. An educational institution's disciplinary practice or policy may have a disparate impact on members of a protected class. If a complainant shows that a particular practice or policy related to student discipline results in a disparate impact based on membership in a protected class, a school would then have the burden to show that the policy is necessary to achieve a substantial, legitimate, nondiscriminatory interest, for example, in creating a safe learning environment for all students or teachers. A complainant would then have the opportunity to show that a less discriminatory{, equally effective} alternative exists that would achieve the same interest, for example, non-exclusionary disciplinary measures that have been shown to be {equally or more} effective at addressing minor or subjective infractions.

1. (No change from proposal.)

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

13:16-5.4 Law enforcement practices and policies

(a) Law enforcement practices or policies may have a disparate impact on members of a protected class. A law enforcement practice or policy that has a disparate impact on members of a protected class is prohibited, unless it is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even then, a law enforcement practice or policy may still be prohibited if a complainant shows there is a less discriminatory{, equally effective} alternative means of achieving the substantial, legitimate, nondiscriminatory interest.

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

13:16-5.5 State and county correctional facility and municipal jail practices and policies

(a) State correctional facility, county correctional facility, and municipal jail practices or policies may have a disparate impact on members of a protected class. A State or county correctional facility or municipal jail practice or policy that has a disparate impact on members of a protected class is prohibited, unless it is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even then, a State or county correctional facility or municipal jail practice or policy may still be prohibited if a complainant shows there is a less discriminatory{, equally effective} alternative means of achieving the substantial, legitimate, nondiscriminatory interest.

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

SUBCHAPTER 6. CONTRACTING

13:16-6.1 Disparate impact discrimination in contracting

(a) Contracting practices and policies may have a disparate impact on members of a protected class. A contracting practice or policy that has a disparate impact on members of a protected class is prohibited, unless, in accordance with N.J.A.C. 13:16-2.2, a respondent shows it is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even then, a contracting practice or policy may still be prohibited if a complainant shows there is a less discriminatory{, equally effective} alternative that would achieve the same interest.

(b) (No change from proposal.)

13:16-6.2 Contract bid selection and recruitment

(a) A contractor's use of bid selection procedures or selection criteria may have a disparate impact on members of a protected class. It is an unlawful contracting practice for any contractor to make use of any bid selection procedure or selection criteria that has the effect of screening out members of a protected class, unless the contractor shows it is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Whether a practice or policy of using a bid selection procedure or selection criteria is necessary to achieve a substantial, legitimate, nondiscriminatory interest is equivalent to whether the practice or policy is job related and consistent with a legitimate business necessity. A bid selection procedure or selection criteria may still be prohibited if necessary to achieve a substantial, legitimate, nondiscriminatory interest if a complainant shows there is a less discriminatory{, equally effective} alternative that would achieve the same interest. An alternative selection procedure is less discriminatory where it does not screen out, or screens out fewer, members of the protected class. For example, a contractor's practice of refusing bids from people who live in a city or geographic area where the majority of residents are people of color may have a disparate impact by screening out people of color with whom they could contract, and therefore, having the effect of excluding people on the basis of race or national origin. The use of geographic location as selection criterion that resulted in a disparate impact would be unlawful unless necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even if the contractor could show it was necessary to achieve a substantial, legitimate, nondiscriminatory interest, the bid selection criterion may still be prohibited if a complainant could show that alternative job-related tests or criteria that do not screen out, or screen out fewer, members of the protected class are available. The guidelines set forth in the Uniform Guidelines on Employee Selection Procedures, 29 CFR 1607 (1978), are incorporated herein by reference, and applied to all protected characteristics listed in the Act. Where there is a conflict between such guidelines and this chapter, the rules in this chapter shall control. Upon request, the Division will make the guidelines available for public inspection and make available a printed copy of the guidelines.

(b) (No change from proposal.)

TREASURY—GENERAL

(a)

OFFICE OF THE STATE TREASURER

Public Employee Charitable Fund-Raising Campaign

Proposed Readoption with Amendments: N.J.A.C. 17:28

Authorized By: Amanda Truppa, Director, Division of Administration.

Authority: N.J.S.A. 52:14-15.9c13 and 52:18A-30.

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

Proposal Number: PRN 2024-131.

Submit written comments by January 17, 2025, by email in Microsoft Word format or in a format that can easily be converted to Word to:

Amanda Truppa, Director of Administration at
Administration.Email@treas.nj.gov; or

On paper to:
Division of Administration
PO Box 211
Trenton, NJ 08625-0211

Summary

The Department of the Treasury (Department), Division of Administration (Division) is proposing to readopt its rules governing the Public Employee Charitable Fund-Raising Campaign found at N.J.A.C. 17:28. In accordance with N.J.S.A. 52:14B-5.1.c, these rules were

scheduled to expire on October 16, 2024. As the Division submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date was extended 180 days to April 14, 2025, pursuant to N.J.S.A. 52:14B-5.1.c(2). N.J.A.C. 17:28 provides guidance to charitable organizations seeking to participate in the Public Employee Charitable Fund-Raising Campaign (Campaign) or become a member of the Campaign Steering Committee. These rules proposed for readoption with amendments have served, over an extended period of time, in the regulation of public employee charitable fund-raising, subject to the jurisdiction of the Department of the Treasury, Division of Administration. The rules proposed for readoption with amendments are necessary, reasonable, and proper for the purpose for which they were originally promulgated, as they set forth definitions and procedures that are required for compliance with the Public Employee Charitable Fund-Raising Act, N.J.S.A. 52:14-15.9c1 et seq.

The substantive provisions of the rules proposed to be readopted with amendments by the Department of the Treasury are summarized below. It should be noted that the proposed amendments clarify the eligibility requirements of a charitable organization to participate in the Public Employee Campaign or the Campaign Steering Committee of the Campaign and the appeals process in the event that an initial determination is made by the Campaign Steering Committee that the organization is not eligible to participate. Additionally, the chapter includes proposed minor clarifying and/or technical amendments that do not change the meaning of the text.

Subchapter 1, General Provisions, describe the purpose and scope of the rules, sets forth definitions, and makes clear that the Campaign is the only authorized access to the public workplace for fund-raising solicitation.

At N.J.A.C. 17:28-1.3, Definitions, the proposed amendment is to clarify the definition of the term “State employee,” which is changed to “employee” and relocated alphabetically. The term is amended to include county and local (municipal) employees.

At N.J.A.C. 17:28-1.5, General provisions, the proposed amendment is to include the term “electronic” as an accepted form of communication.

Subchapter 2, Charitable Fund-Raising Campaign Steering Committee, outlines the terms of membership and the duties of the Campaign Steering Committee. The subchapter also clarifies the application process and criteria for charitable fund-raising organizations wishing to participate in the Campaign or the Campaign Steering Committee.

At N.J.A.C. 17:28-2.1, Steering Committee, the proposed amendment is to specify the timeframe for commencement of the Steering Committee’s first meeting of the year; and to clarify the quorum and method of meeting attendance required for Campaign Steering Committee members in order for the Committee to take official action.

At N.J.A.C. 17:28-2.4, Duties of a State or local Campaign Steering Committee, the proposed amendment is to update the duties of the Campaign Steering Committee to include approval, not just review, of applications of charitable agencies wishing to participate in the Campaign.

Subchapter 3, Charitable Fund-Raising Campaign, describes eligibility and the application procedure for charitable agencies.

At N.J.A.C. 17:28-3.2, Application procedure for unaffiliated agencies, which may be submitted electronically, the proposed amendments delineate the application procedure for charitable fund-raising organizations; empowers the Steering Committee, through the Campaign Manager, to notify each agency of eligibility or ineligibility to participate in the Campaign; and clarifies the participants to be included on a special appeal panel.

At N.J.A.C. 17:28-3.3, Application form, unaffiliated charitable agency, the proposed amendment aims to expand opportunities for participation by decreasing the revenue amount that an unaffiliated charitable agency must have raised in each of its two fiscal years preceding its application to participate in the Campaign; and includes the term “electronically” as an accepted form for application submission.

Subchapter 4, Campaign Administration, sets forth the administrative requirements of the Campaign, including the distribution of Campaign literature.

At N.J.A.C. 17:28-4.7, the proposed amendment clarifies requirements for distributions of undesignated contributions.

At N.J.A.C. 17:28-4.8, the proposed amendment updates the requirement of the Campaign Manager to request the designation of Campaign volunteers from each department/agency and at paragraph (b)3, deletes “cash” to make the paragraph applicable to all contributions.

Subchapter 5, Campaign Accounts for State Employees, sets forth the general provisions, payroll deductions, Campaign accounting, and local government provisions.

At N.J.A.C. 17:28-5.2, the proposed amendment allows for different forms of payment by the State Treasurer, not just by check, for payroll deduction requirements.

Subchapter 6, Campaign Procedure for Boards, Commissions, and Authorities, provides procedural guidelines for boards, commissions, and authorities.

At N.J.A.C. 17:28-6.2, the proposed amendment clarifies the process for the collection of contributions, similar to N.J.A.C. 17:28-4.8.

Subchapter 7, Administrative Costs of the Campaign, describes how administrative costs are allocated, including the costs of operating the payroll deduction system and the costs for the design, preparation, and distribution of Campaign materials.

As the Division of Administration 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 rules proposed for readoption with amendments affect all charitable organizations seeking to participate in the Campaign or seeking to become a member of the Campaign Steering Committee - the operational unit of the Campaign. This rulemaking also has a positive impact on public employees by making a charitable donation easier, with the added option of automatic payroll deductions. Finally, the rules proposed for readoption with amendments facilitates social justice by providing funding to many charitable organizations, which provide beneficial services to the State’s citizens.

Economic Impact

The rules proposed for readoption with amendments may have a positive economic impact by increasing confidence and contributions by State and local employees into the charities participating in the Campaign. Charities applying to participate in the Campaign or the Campaign Steering Committee are not expected to incur administrative or other costs resulting from the rules proposed for readoption with amendments that they would not otherwise incur. The shift to electronic means may have a positive economic impact in reducing costs of printing, mailing, etc.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the rules proposed for readoption with amendments.

Jobs Impact

The State Treasurer believes that the rules proposed for readoption with amendments will neither increase nor decrease the number of jobs in the State.

Agriculture Industry Impact

The rules proposed for readoption with amendments will not have any impact on the agriculture industry in the State.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments concern charitable organizations, which are inherently not businesses pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Moreover, participation in the Public Employee Charitable Fund-Raising Campaign is entirely voluntary, thus, the chapter does not impose reporting, recordkeeping, or compliance requirements.

Housing Affordability Impact Analysis

The State Treasurer finds that the rules proposed for readoption with amendments would not have an impact on the average cost of housing or on the affordability of housing, as the rules proposed for readoption with amendments set forth the requirements pertaining to the Public Employee

Charitable Fund-Raising Campaign and would not evoke a change in the average costs associated with housing.

Smart Growth Developmental Impact Analysis

The State Treasurer does not believe that the rules proposed for readoption with amendments will have an impact on smart growth nor would they evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey, as the rules proposed for readoption with amendments set forth the requirements pertaining to the Public Employee Charitable Fund-Raising Campaign.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The State Treasurer finds that the rules proposed for readoption with amendments will have no impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:28.

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

SUBCHAPTER 1. GENERAL PROVISIONS

17:28-1.3 Definitions

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

...
“Employee” means any person employed by, or holding a public office, or position of, the State, a county, a municipality, or any board, body, agency, or commission thereof, whose compensation is payable by the State Treasurer or local unit of government.
 ...

[“State employee” means any person employed by, or holding a public office, or position of, the State or any board, body, agency or commission thereof, whose compensation is payable by the State Treasurer.]

17:28-1.5 General provisions

(a)-(d) (No change.)

(e) The limitations on the solicitation of funds and distribution of printed **or electronic** communications are as follows:

1. (No change.)

2. The distribution of any type of printed communication with any envelope or other container having within it a payroll check or other official communication shall be limited to: the distribution of announcements by the Governor; the head of a principal department in the Executive Branch of State Government for governmental purposes and not in conjunction with any charitable agency or charitable fund-raising organization, as approved by the State Treasurer, and to the distribution of printed **or electronic** materials related to the charitable fund-raising campaign, as approved by the Campaign Steering Committee or the head of a local unit of government.

SUBCHAPTER 2. CHARITABLE FUND-RAISING CAMPAIGN STEERING COMMITTEE

17:28-2.1 Campaign Steering Committee

(a)-(b) (No change.)

(c) The Campaign Steering Committee shall convene at least quarterly, with the first meeting of the year occurring on or before [March] **April 1**.

(d) (No change.)

(e) No official action can be taken if objected to by at least five of the members of the Campaign Steering Committee **that are in attendance for any virtual or in-person meeting**.

17:28-2.4 Duties of a State or Local Campaign Steering Committee

(a) The Campaign Steering Committee shall:

1.-3. (No change.)

4. Review **and approve** the applications of charitable agencies wishing to participate in the Campaign; and

5. (No change.)

SUBCHAPTER 3. CHARITABLE FUND-RAISING CAMPAIGN

17:28-3.2 Application procedure for unaffiliated agencies which may be submitted electronically

(a) (No change.)

(b) The application procedure for charitable agencies is as follows:

1. The Campaign Manager shall advertise, using the Internet or other contact mechanisms, to notify that applications are being accepted for charitable agencies wishing to participate in the Campaign at least 30 days prior to the application due date. These applications are due by the close of business on the date and at the location specified in the notice and may be submitted electronically. The current Campaign Steering Committee shall review **and approve** the applications.

2. Within 30 days of the close of the application due date, the Campaign Steering Committee, through the [State employee coordinator] **Campaign Manager**, shall notify each agency of its eligibility or ineligibility to participate in the Campaign. In cases of ineligibility, the notice shall set forth the reasons for such ineligibility.

3. (No change.)

4. Within 45 days of receipt of any additional information, the State Treasurer shall convene a special appeal panel consisting of the **Steering Committee Chair, representatives** of the Steering Committee, and, to the extent practicable, representatives of other groups composing of the Campaign Steering Committee, such as representative of the various labor unions representing State employees and the representative of the executive branch of State government, **may be called upon** to review the charitable agency’s appeal and any documentation or information submitted by the charitable agency.

5. (No change.)

17:28-3.3 Application form; unaffiliated charitable agency

(a) (No change.)

(b) In addition to the completed application form, the applicant must certify:

1. (No change.)

2. With respect to the requirements set forth [in] **at** N.J.S.A. 52:14-15.9c7e[,] **or** CRI 200 or CRI 1501, which demonstrate that the agency raised, in each of its two fiscal years preceding its application to participate in a Campaign, at least [\$15,000] **\$7,500** from individual citizens of New Jersey;

3.-8. (No change.)

(c) (No change.)

(d) Those wishing to [receive] **submit** an application can do so **electronically or** by downloading a copy from the New Jersey Employee Charitable Campaign website or contacting the Campaign Manager’s office for the local unit of government. **Applications may be submitted electronically.**

(e)-(f) (No change.)

SUBCHAPTER 4. CAMPAIGN ADMINISTRATION

17:28-4.7 Distribution of contributions

(a) (No change.)

(b) Undesignated contributions and designations to charitable agencies [not approved to participate in the Campaign] **that are found to be ineligible after the Campaign has concluded** shall be distributed to participating charitable fund-raising organizations and unaffiliated charitable agencies in the same proportion that these charitable fund-raising organizations/unaffiliated charitable agencies received designated funds.

(c) The [campaign manager] **Campaign Manager** shall maintain all funds in an interest-bearing account until their distribution. Interest earned on all Campaign accounts shall be distributed in the same manner [as undesignated contributions and designations to charitable agencies not approved to participate in the Campaign, pursuant to (b) above] **that these charitable fund-raising organizations/unaffiliated charitable agencies received designated funds.**

(d) (No change.)

17:28-4.8 Selection and use of campaign volunteers

(a) The Campaign Manager shall **request that department/agency heads** designate at least one campaign volunteer to represent each [payroll account] **department/agency**.

(b) At the close of the Campaign, the Campaign volunteers shall:
1.-2. (No change.)

3. Return to the Campaign Manager the designation portion of the pledge/designation cards and all [cash] contributions received by the [campaign] **Campaign** volunteers.

SUBCHAPTER 5. CAMPAIGN ACCOUNTS FOR STATE EMPLOYEES

17:28-5.2 Payroll deductions

(a)-(b) (No change.)

(c) The State Treasurer shall issue [a check] **payment** for the total amount of contribution to the Campaign Manager.

(d) (No change.)

SUBCHAPTER 6. CAMPAIGN PROCEDURE FOR BOARDS, COMMISSIONS, AND AUTHORITIES

17:28-6.2 Procedure for boards, commissions, and authorities

(a)-(c) (No change.)

(d) In order to facilitate charitable fund-raising among employees of the boards, commissions, and authorities, the Campaign Manager shall [select] **request** Campaign volunteers in the manner described [in] **at** N.J.A.C. [7:28]17:28-4.

(e) At the close of the Campaign, the Campaign volunteers shall:

1. Collect from employees of the boards, commissions, and authorities, the completed pledge designation cards and any [cash] **other** contributions;

2. (No change.)

3. Return to the Campaign Manager, the designation portion of the pledge/designation cards and all [cash] **other** contributions received by the [campaign] **Campaign** volunteers.

(f)-(h) (No change.)

OTHER AGENCIES

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

**Authority Assistance Programs
Administrative Rules; Prevailing Wage Rules**

Proposed Amendments: N.J.A.C. 19:30-4.1 through 4.5

Proposed New Rule: N.J.A.C. 19:30-4.1A

Authorized By: New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Authority: N.J.S.A. 34:1B-5.1.

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

Proposal Number: PRN 2024-132.

Submit written comments by January 17, 2025, to:

Alyson Jones, Director of Legislative and Regulatory Affairs
New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990
Alyson.jones@njeda.gov

The agency proposal follows:

Summary

The New Jersey Economic Development Authority (“NJEDA” or “Authority”) is proposing amendments to its prevailing wage rules at N.J.A.C. 19:30-4.1 through 4.5, as well as a new rule at N.J.A.C. 19:30-

4.1A. The proposed amendments to the existing prevailing wage rules at N.J.A.C. 19:30-4.1 through 4.5 are proposed to update the rules to be consistent with the relevant statutory changes that have occurred over the past decade, including, but not limited to, the New Jersey Economic Recovery Act of 2020 (ERA), P.L. 2020, c. 156, as amended at P.L. 2021, c. 160, the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.58 et seq., and the Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

N.J.A.C. 19:30-4.1, Definitions, is proposed for amendment to define the following terms: “building services,” “building services contract,” “construction work,” “continuity of ownership,” “custom fabrication,” “maintenance work,” and “public work.” “Authority financial assistance” is proposed for amendment to clarify that funding by the Authority can be in whole or in part and to include the newly defined term “building services contract.” The definition of “construction contract” is proposed for amendment to update the definition to use the newly defined term “construction work.” The definition of “contractor” is proposed for amendment for clarity, to include the terms “building services” and “building services contract,” and to include the developer as a specific party referenced in the definition.

Proposed new N.J.A.C. 19:30-4.1A, Applicability and scope, is added to provide clarity that these rules are to act as a floor consistent with the Authority’s enabling statute, N.J.S.A. 34:1B-5.1, and compliance may also be required with other statutes, rules, and regulations, including the ERA.

N.J.A.C. 19:30-4.2, Payments of prevailing wages in projects receiving assistance, is proposed for amendment to be aligned with the numerous statutory updates that have occurred since these rules were last updated, as well as current Authority policies and practice. Subsection (a) is proposed for amendment to remove outdated references to the Municipal Rehabilitation and Economic Recovery Act and, in accordance with the ERA, lower the exception related to the percentage of the facility leased when construction work is performed by a landlord. Proposed new subsection (b) illustrates when the exemption at subsection (a) applies. Proposed new subsection (c) provides that the Authority’s prevailing wage requirements do not apply to construction contracts for an amount less than \$2,000, consistent with the Prevailing Wage Act. Proposed new subsection (e) requires payment of prevailing wage for building services work, if required by statute, rules, or conditions of the Authority financial assistance received. Recodified subsection (d) is proposed for amendment to update references to the ERA and provide clarification that that prevailing wage payment does not apply if the contract is either a subgrant or not primarily for construction work, consistent with current Authority practice, as well as updates for syntax.

N.J.A.C. 19:30-4.3(a), Assurances required, is proposed for amendment to codify the Authority’s prevailing wage documentation and completion certificate requirements for recipients of Authority financial assistance. New subsection (b) is proposed to codify the Authority’s prevailing wage documentation requirements for building services.

N.J.A.C. 19:30-4.4, Contract provisions required, is proposed for amendment to change the heading of the section and clarify the documentation requirements for contractors and subcontractors that are a party to a construction contract or building services contract with a recipient of Authority financial assistance.

N.J.A.C. 19:30-4.5, Violation, is proposed for amendment to codify and clarify the sanctions for violations of the Authority’s Prevailing Wage Rules to be consistent with current Authority practice. New paragraph (a)1 states that any violation shall be referred to the Department of Labor and Workforce Development, as appropriate. New paragraph (a)2 prescribes the sanctions that the Authority may initiate for violations of this subchapter, in accordance with current Authority policies and practice. New paragraph (a)3 states that the Authority may refer a violation to any other applicable government entity for relevant action.

As the Authority 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 Authority anticipates that the proposed amendments and new rule will have a positive social impact by updating the rules to be current with