

The rules are necessary, reasonable, adequate, and responsive for the purpose for which they were originally promulgated. The Department of Transportation has reviewed the rules and determined that they should be readopted without amendment. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c, these rules are readopted and shall continue in effect for a seven-year period.

(a)

**DIVISION OF CAPITAL PROGRAM MANAGEMENT
BUREAU OF RIGHT OF WAY AND ACCESS
MANAGEMENT**

**Notice of Readoption
Junkyards Adjacent to the Interstate and National
Highway System**

Readoption: N.J.A.C. 16:43

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:5E-1 et seq., particularly 27:5E-6; and 23 U.S.C. § 136.

Authorized By: Richard T. Hammer, Commissioner, Department of Transportation.

Effective Date: July 28, 2017.

New Expiration Date: July 28, 2024.

Take notice that, pursuant to N.J.S.A. 52:14B-5.1, the rules found at N.J.A.C. 16:43 were scheduled to expire on September 16, 2017. This chapter regulates the establishment, operation, and maintenance of junkyards in areas adjacent to the interstate and national highway systems within the State. The rules meet but do not exceed the standards found in 23 U.S.C. § 136 and the regulations issued by the Federal Highway Administration at 23 CFR Part 751.

The rules are necessary, reasonable, adequate, and responsive for the purpose for which they were originally promulgated. The Department of Transportation has reviewed the rules and determined that they should be readopted without amendment. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c, these rules are readopted and shall continue in effect for a seven-year period.

TREASURY—GENERAL

(b)

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

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

Proposed: April 17, 2017, at 49 N.J.R. 729(a).

Adopted: August 4, 2017, by Ford M. Scudder, Treasurer, State of New Jersey.

Filed: August 4, 2017, as R.2017 d.161, **without change**.

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

Effective Dates: August 4, 2017, Readoption;
September 5, 2017, Amendments.

Expiration Date: August 4, 2024.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

The rules readopted with amendments do not exceed standards or requirements imposed by Federal law, as there are no Federal standards or requirements applicable to the rules readopted with amendments. In fact, the rules readopted 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.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 17:27.

Full text of the adopted amendments follows:

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.

“Division” means the Division of 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 (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 Department, a contractor, subcontractor, union, the State training and employment service, apprentice program, referral agency, or other party acceptable to the Department as having mastered a craft or trade.

“Program Monitoring Unit” means the Construction Unit, Procurement Unit, or Public Agency Unit, within the Division 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, 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 Department, a contractor, subcontractor, union, the State training and employment service, apprentice program, referral agency, or other party acceptable to the 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 Department.

SUBCHAPTER 3. GENERAL REQUIREMENTS FOR PUBLIC AGENCIES AWARDDING 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 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 Department an initial project workforce report (Form AA201) electronically provided to the public agency by the 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 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 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 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. 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 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 Department, and minority and women referral organizations listed by the 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 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 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 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 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 Department an initial project workforce report (Form AA201) electronically provided to the public agency by the 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 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 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 applied to construction contracts and subcontracts involving said public agency.

(b) The 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 Department a complete description of its program, copies of the relevant forms and administrative and regulatory documents, and any other information requested by the Department. Within 60 business days of receiving all necessary information, the 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 Department and the public agency. If an affirmative action program submitted by a public agency is disapproved, the 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 Department and correcting any defects as stated in the Department's written response.

(d) Any change that a public agency intends to make in a State-approved program shall first be submitted in writing to the Department for approval. The 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 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 Department shall evaluate the public agency's compliance with the State-approved program in determining whether the approved designation should be renewed.

(f) The 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 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 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 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 Department shall individually establish the minority and women employment goals for each construction contractor and subcontractor for each trade on each contract. The 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 State's website at www.state.nj.us/treasury/contract_compliance or request the employment goals from the Department after submitting the initial project workforce report to the Department.

(c) When it is notified of a preconstruction or initial job meeting, the 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 Department determines not to attend the preconstruction or initial job meeting, a representative of the 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 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 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 Department for a determination of what employment goals should apply for a particular contract. The determination made by the 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 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 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 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 women applicants;

17.-18. (No change.)

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

The 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 Department shall provide construction contractors and subcontractors monthly project workforce reports that must be submitted to the public agency and the Department by the seventh business day of each month. The 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 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 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 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 Division or Department shall consider the following factors:

1.-7. (No change.)

8. Any other factors which the 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 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 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 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 Division or Department may disregard any appeal that is filed after the 10-day period. The Division or Department shall resolve an appeal of the program monitoring unit's initial determination by written decision on the basis of the Division's or Department's review of the written record (including any timely submission from the alleged violator) and information obtained by the 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 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 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 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 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 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, which shall be advisory in nature and not binding on the 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 Division or Department. Subsequent to the 10-business-day period for comments or exceptions, the 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 Division or Department, or the 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 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 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 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 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.