

CHAPTER 27

EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION RULES

Authority

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

Source and Effective Date

R.2004 d.450, effective November 9, 2004. See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Chapter Expiration Date

Chapter 27, Equal Employment Opportunity and Affirmative Action Rules, expires on November 9, 2009.

Chapter Historical Note

Chapter 27, Affirmative Action Rules, was adopted as R.1977 d.364, effective November 27, 1977. See: 9 N.J.R. 191(a), 9 N.J.R. 543(c). Pursuant to Executive Order No. 66(1978), Chapter 27 expired on May 24, 1983.

Chapter 27, Affirmative Action Rules, was adopted as new rules by R.1983 d.506, effective November 7, 1983. Subchapter 13, Effective Date, was not adopted as a part of the new chapter. See: 15 N.J.R. 1459(a), 15 N.J.R. 1872(a).

Pursuant to Executive Order No. 66(1978), Chapter 27, Affirmative Action Rules, was readopted as R.1988 d.522, effective October 7, 1988. See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b), 20 N.J.R. 2934(a).

Pursuant to Executive Order No. 66(1978), Chapter 27, Affirmative Action Rules, was readopted as R.1993 d.531, effective October 6, 1993. See: 25 N.J.R. 3706(a), 25 N.J.R. 4927(a). Pursuant to Executive Order No. 66(1978), Chapter 27 expired on October 6, 1998.

Chapter 27, Affirmative Action Rules, was adopted as new rules by R.1999 d.256, effective August 2, 1999. See: 31 N.J.R. 939(a), 31 N.J.R. 1310(a), 31 N.J.R. 2238(a).

Chapter 27, Affirmative Action Rules, was readopted as R.2004 d.450, effective November 9, 2004. See: Source and Effective Date. See, also, section annotations.

Chapter 27, Affirmative Action Rules, was renamed Equal Employment Opportunity and Affirmative Action Rules; Subchapter 4, Affirmative Action Plan for Goods and Services Contractors and Subcontractors, was renamed Affirmative Action Plan for Vendors and Goods and Services Subcontractors; Subchapter 5, Minority and Women Employment Goal Obligations for Goods and Services Contractors and Subcontractors, was renamed Targeted Minority and Women Employment Goals for Determining Good Faith Equal Employment Opportunity Efforts by Vendors and Goods and Services Subcontractors; and Subchapter 7, Minority and Women Employment Goal Obligations for Construction Contractors and Subcontractors, was renamed Targeted Minority and Women Employment Goals for Determining Good Faith Equal Employment Opportunity Efforts by Construction Contractors and Subcontractors by R.2008 d.307, effective October 20, 2008. See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. INTRODUCTION AND POLICY

17:27-1.1 Policy

SUBCHAPTER 2. DEFINITIONS

17:27-2.1 Definitions

SUBCHAPTER 3. GENERAL REQUIREMENTS FOR PUBLIC AGENCIES AWARDED CONTRACTS

- 17:27-3.1 Awarding of public agency contracts
17:27-3.2 Public agency requirements; generally
17:27-3.3 Designation of public agency compliance officers
17:27-3.4 Advertisement for bids and/or solicitation for proposals
17:27-3.5 Mandatory language for goods and services bid specifications and contracts
17:27-3.6 Mandatory language for construction bid specifications and contracts
17:27-3.7 Mandatory bid specification and contract language for good faith efforts toward achieving equal employment opportunities in goods and services contracts
17:27-3.8 Mandatory bid specification and contract language for good faith efforts toward achieving equal employment opportunities in construction contracts
17:27-3.9 Emergency purchases
17:27-3.10 State-approved public agency affirmative action construction programs

SUBCHAPTER 4. AFFIRMATIVE ACTION PLAN FOR VENDORS AND GOODS AND SERVICES SUBCONTRACTORS

- 17:27-4.1 Goods and services contracts, including professional services contracts, subject to affirmative action plan requirements
17:27-4.2 Elements of an affirmative action plan for vendors
17:27-4.3 Procedure for establishing an approved affirmative action plan by contract
17:27-4.4 Affirmative action plan requirement for goods and services subcontractors
17:27-4.5 Exemptions to requirement for Affirmative Action Plan for goods and services subcontractors
17:27-4.6 Procedures for the issuance and renewal of a certificate of employee information report
17:27-4.7 Public agency authority to set time periods

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

- 17:27-5.1 Exemptions
17:27-5.2 Establishment of targeted goals
17:27-5.3 Designation of approved minority referral agencies
17:27-5.4 Vendor and subcontractor compliance obligations
17:27-5.5 Criteria for determining good faith
17:27-5.6 (Reserved)

SUBCHAPTER 6. AFFIRMATIVE ACTION PLAN FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS

- 17:27-6.1 Construction contracts subject to affirmative action plan requirements
17:27-6.2 Elements of an affirmative action plan for construction contractors and subcontractors
17:27-6.3 Procedure for establishing an approved affirmative action plan by contract
17:27-6.4 Affirmative action plan requirement for construction subcontractors
17:27-6.5 (Reserved)

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

- 17:27-7.1 Exemption
- 17:27-7.2 Establishment of targeted goals
- 17:27-7.3 Contractor and subcontractor compliance obligations
- 17:27-7.4 Criteria for determining good faith
- 17:27-7.5 Construction project workforce reports
- 17:27-7.6 (Reserved)

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. MONITORING PUBLIC AGENCY CONTRACTS

- 17:27-9.1 Monitoring public works contracts
- 17:27-9.2 Attendance; on-site visits

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

- 17:27-10.1 Scope
- 17:27-10.2 Alert notices for contractors and/or subcontractors
- 17:27-10.3 Correction of alleged violations; violation notice for contractors and/or subcontractors
- 17:27-10.4 Advisement notices for public agencies
- 17:27-10.5 Enforcement; violations
- 17:27-10.6 Fines and penalties
- 17:27-10.7 Investigatory conference; hearings
- 17:27-10.8 Final determination against construction contractor; aggregate rating
- 17:27-10.9 Requested meetings

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

- 17:27-11.1 General provisions

SUBCHAPTER 12. TRAINING AND OUTREACH

- 17:27-12.1 Financing minority and women worker outreach and training programs
- 17:27-12.2 Assistance
- 17:27-12.3 Use of established public and private agencies
- 17:27-12.4 Minority and women referral agencies
- 17:27-12.5 Satisfaction of minority and women obligations

SUBCHAPTER 1. INTRODUCTION AND POLICY

17:27-1.1 Policy

(a) It has long been the policy of the State of New Jersey to promote equal employment opportunity by prohibiting discrimination in employment and requiring affirmative action in the performance of contracts funded by the State. That policy was reinforced and expanded by an act of the Legislature, signed into law by the Governor, June 23, 1975. The statute, N.J.S.A. 10:5-31 et seq., (P.L. 1975, c.127) provides that no public works contracts can be awarded nor any moneys paid until the prospective contractor has agreed to contract performance which complies with an approved affirmative action program. The law applies to each political subdivision and agency of the State and encompasses con-

tracts for goods and services, including professional services and construction contracts.

(b) These rules establish the affirmative action employment practices necessary for public agencies, contractors, subcontractors, and business firms to comply with the equal employment opportunity standards of N.J.S.A. 10:5-31 et seq. To assure effective implementation of the equal employment opportunity and affirmative action requirements of N.J.S.A. 10:5-31 et seq., these rules prescribe procedures designed to minimize administrative paperwork, delays and unproductive red-tape.

As amended, R.1983 d.506, effective November 7, 1983.

See: 15 N.J.R. 1459(a), 15 N.J.R. 1872(a).

Original text deleted, text at 1.2 recodified to 1.1.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section.

Amended by R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

In the last sentence of (b), inserted "equal employment opportunity and".

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 who has received delegated authority from the Division, a contractor, subcontractor, union, the State training and employment service, apprentice program, referral agency or other party acceptable to the Division as having experience and skills used in a particular craft or occupation, but lacking the skills to be qualified as a journey worker.

"Affirmative action," whether used separately or in combination with other words or phrases (including, but not limited to, "program," "equal employment opportunity" and "EEO/AA"), means good faith steps taken to ensure equal opportunity employment for women and minority workers but does not include employment quotas, except where otherwise permitted and appropriate under applicable law.

"Affirmative action plan" means a plan that complies with the provisions of N.J.A.C. 17:27-4 or 6.

"Certificate of employee information report" means the certificate issued by the Division upon the initial receipt of a properly completed employee information report, Form AA302, from a vendor, including professional services contractors.

"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.

Repeal and New Rule, R.2008 d.307, effective October 20, 2008.
See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Section was "Financing minority and women worker outreach and training programs".

17:27-7.5 Construction project workforce reports

The Division shall provide to the public agency that has awarded a construction contract initial project workforce reports (Form AA201) 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 shall provide construction contractors and subcontractors monthly project workforce reports that must be submitted to the public agency and the Division by the seventh business day of each month. The Division, the public agency compliance officer, construction contractors and subcontractors shall use these project workforce reports in accordance with N.J.A.C. 17:27-3.7, to monitor compliance with the requirements of this subchapter, and the Division 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.

Recodified from N.J.A.C. 17:27-7.6 and amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Former N.J.A.C. 17:27-7.5, Financing minority and female worker outreach and training programs, recodified to N.J.A.C. 17:27-7.4.

Amended by R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Updated the first N.J.A.C. reference.

17:27-7.6 (Reserved)

Recodified to N.J.A.C. 17:27-7.5 by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Section was "Project workforce reports".

SUBCHAPTER 8. (RESERVED)

SUBCHAPTER 9. MONITORING PUBLIC AGENCY CONTRACTS

17:27-9.1 Monitoring public works contracts

If a contractor or subcontractor is operating under an affirmative action plan 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, and the Division to insure compliance with these rules and its affirmative action plan.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

17:27-9.2 Attendance; on-site visits

(a) An official of the Division shall be allowed to conduct on-site visits and/or to attend all project 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 standard operating procedures, whether the contractor or subcontractor is complying with the affirmative action plan.

(b) An official of the Division, 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 standard operating procedures, whether the public agency is complying with the affirmative action rules.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section.

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

17:27-10.1 Scope

(a) The provisions of this subchapter shall apply to contractors and subcontractors who are awarded public contracts and to public agencies that award public contracts.

(b) The Division 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.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section.

Amended by R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

In (a), substituted "who are" for a comma following "subcontractors" and inserted "to" preceding "public"; and in (b), substituted "which" for "whom" and updated the N.J.A.C. reference.

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

The Division or public agency compliance officer designated by a public agency who has received authority from the Division, 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 plan. If the Division or public agency compliance officer designated by a public agency who has received authority from the Division 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.

Amended by R.1988 d.522, effective November 7, 1988.
See: 20 N.J.R. 1780(a), 20 N.J.R. 2795(b).

Deleted text “The public agency compliance officer” and substituted “A public agency ... action construction program”.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section.

Amended by R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Substituted “any” for “the” preceding “complaint”, “approved” for “applicable” and “facts” for “fact”, inserted “a” preceding both “violation” and “substantial”, and inserted “that” following “determines”.

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 or public agency compliance officer designated by a public agency who has received authority from the Division issuing the notice, within three business days after it is received by the contractor or subcontractor, said Division or public agency compliance officer designated by a public agency who has received authority from the Division shall issue a violation notice to said contractor or subcontractor. Said violation notice shall explain in sufficient detail the facts of the continuing violation.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section.

Amended by R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Inserted a comma following the second occurrence of “notice”.

17:27-10.4 Advisement notices for public agencies

The Division, 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 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.

New Rule, R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Former N.J.A.C. 17:27-10.4, Written statements; hearing, recodified to N.J.A.C. 17:27-10.6.

Amended by R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Inserted “that” following “determines”.

17:27-10.5 Enforcement; violations

(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 plan, which may form the basis for a finding of a violation by the Division. These indicia are a representative sampling of indicia, but are not intended to constitute the only indicia that may be considered

by the Division in its determination as to whether a violation has occurred:

1. For construction contractors:

i. Failure to submit Affirmative Action Form 201 (Initial Project Workforce Report);

ii. Failure to submit Affirmative Action Form 202 (Monthly Project Workforce Report);

iii. Failure to submit documentation of good faith efforts to provide equal employment opportunity in the hiring of minorities and women in each trade such as that noted at N.J.A.C. 17:27-7.4;

iv. Failure to provide additional requested information to determine compliance;

v. Failure to respond to an Alert or Violation Notice; or

vi. Failure to attend an investigatory conference.

2. For goods and services and professional services vendors:

i. Failure to submit affirmative action evidence (that is, Form 302 (Employee Information Report), Certificate of Employee Information Report or Letter of Federal Approval) to public agency;

ii. Failure to submit Affirmative Action Form 302 (Employee Information Report) to the Division for issuance of a Certificate of Employee Information Report;

iii. Failure to submit documentation of good faith efforts to provide equal employment opportunity in the hiring of minorities and women;

iv. Failure to submit Affirmative Action Plan; or

v. Alteration or forgery of Certificate of Employee Information Report.

3. For public agencies:

i. Failure of a State agency to pay one-half of one percent of the total cost of the construction project that is the subject of one or more construction contracts and equal to or greater than \$1,000,000, to the Department of Labor and Workforce Development for the outreach and training of minorities and women in the construction trades in accordance with the notice required pursuant to N.J.A.C. 17:27-12.1;

ii. Failure to include mandatory language in bids, advertisements, contracts or specifications;

iii. Failure to obtain affirmative action evidence from vendor/contractor;

iv. Failure to submit the Public Agency Compliance Officer (PACO) Letter or to notify the Division of changes in PACO designation;

v. Failure to cooperate fully with the Division in the establishment and implementation of guidelines for determining whether a contractor or vendor has failed to provide equal employment opportunity in the hiring of minorities and women on public contracts; or

vi. Failure to provide the Division with such other information as it shall request and as shall be necessary to enable the Division to fulfill its mission.

(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 plan, 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 plan by ordering or taking part in any or all of the remedial actions in (a)1 through 4 below. A public agency acting under delegated authority may also enforce the obligations of the 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. Subject the contractor or subcontractor or public agency to a fine of up to \$1,000 for each violation for each day during which the violation continues, as delineated in N.J.A.C. 17:27-10.6, with said fine to be collected in a summary manner pursuant to the Penalties Enforcement Law of 1999, N.J.S.A. 2A:58-10 et seq.;

2. Refer the record of violation to the contracting agency for corrective action as provided by statute, regulation or contract, including, but not limited to, suspension, debarment, withholding payment and termination of a contract;

3. Refer the record of violation determination proceeding to the Attorney General or his or her designee for evaluation for action consistent with the "Law Against Discrimination"; and/or

4. The Director of the Division, as the designee of the Treasurer, may enforce in a court of law the provisions of N.J.S.A. 10:5-31, et seq., or join in or assist any enforcement proceeding initiated by any aggrieved person under said Act. A public agency acting under delegated authority also has said enforcement authority except with respect to other public agencies.

Recodified from N.J.A.C. 17:27-10.7 and amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section.

Recodified from N.J.A.C. 17:27-10.9 and amended by R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Added new (a); recodified former (a) as (b); in the introductory paragraph of (b), substituted "in violation of its" for "the" preceding "affirmative", "the Division" for "it", "requirements" for "requirement", "4" for "6", and "et seq." for " , et seq.," and inserted a comma following the second occurrence of "chapter"; in (b)1, inserted " , as delineated in N.J.A.C. 17:27-10.6, with"; deleted former (b)2 through (b)4; added new (b)2; recodified former (b)5 and (b)6 as (b)3 and (b)4; and rewrote (b)3.

Former N.J.A.C. 17:27-10.5, Correction of alleged public agency violations; show cause letter, repealed.

17:27-10.6 Fines and penalties

(a) When the Director 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. First Violation – \$250.00 per day for each violation during which the violation continues.

2. Second Violation – not more than \$500.00 per day for each violation for each day during which the violation continues.

3. Third and Subsequent Violations – not less than \$500.00 per day for each violation but not more than \$1,000 per day for each violation.

(b) All fines and penalties shall be paid within 30 business days of the date of the final order. Failure to pay such penalties and fines shall result in a judgment being obtained in a court of competent jurisdiction.

(c) All fines shall be made payable to the Treasurer. State of New Jersey. All payments shall be made by certified check or money order, or payable in a form suitable to the Treasurer.

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

1. The size of vendor/construction contractor's business or the population of the public agency;

2. The past history of compliance;

3. The frequency of violation for a third or subsequent violation;

4. The seriousness of the violation;

5. Indicia of good faith efforts to comply with equal employment opportunity requirements and/or affirmative action program;

6. The level of cooperation of the entity in exchanging information regarding its efforts to correct deficiencies that resulted in violation;

7. Indicia of any intentional or misleading conduct; and

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

(e) No fine or penalty shall be levied pursuant to this subchapter unless the Director 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. 17:27-10.7.

Repeal and New Rule, R.2008 d.307, effective October 20, 2008.
See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Section was "Written statements; investigatory conference".

17:27-10.7 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 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 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 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 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 practicable 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 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 may disregard any appeal that is filed after the 10-day period. The Director shall resolve an appeal of the program monitoring unit's initial determination by written decision on the basis of the Director's review of the written record (including any timely submission from the alleged violator) and information obtained by the Director 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

deems appropriate. Such review of the written record shall, in and of itself, constitute an informal hearing.

(e) At the discretion of the Director, 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. At such oral presentations, the program monitoring unit, shall be represented by pertinent members of the Division and by the Office of the Attorney General, if required. The Director 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, 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, 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. 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. Subsequent to the 10-business-day period for comments or exceptions, the Director 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, the determination shall be issued by the Director, or the Director's designee.

(g) An appeal of the Division'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.

Repeal and New Rule, R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Section was "Requested meetings".

17:27-10.8 Final determination against construction contractor; aggregate rating

Upon rendering a final determination against a construction contractor, the Division 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 public construction contracts.

New Rule, R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Section was "Reserved".

17:27-10.9 Requested meetings

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

New Rule, R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Former N.J.A.C. 17:27-10.9, Enforcement; violations, recodified to N.J.A.C. 17:27-10.5.

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 as may be requested by the Division 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 for conducting a compliance investigation pursuant to N.J.A.C. 17:27-10.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

SUBCHAPTER 12. TRAINING AND OUTREACH

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

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 shall notify all State agencies of the funding mechanism for these programs by no later than July 15th of each year.

New Rule, R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Former N.J.A.C. 17:27-12.1, Assistance, recodified to N.J.A.C. 17:27-12.2.

17:27-12.2 Assistance

The public agency compliance officer, in accordance with instructions from the Division, may assist contractors in the use of outreach, referral and training programs for minority and women workers.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Recodified from N.J.A.C. 17:27-12.1 by R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Former N.J.A.C. 17:27-12.2, Use of established public and private agencies, recodified to N.J.A.C. 17:27-12.3.

17:27-12.3 Use of established public and private agencies

Public works contractors and subcontractors shall make use of established public and private agencies, such as the New Jersey State Employment Service, WIB's (Workforce Investment Boards), Urban League, community action agencies, faith-based organizations, community based organizations, including, but not limited to, urban women centers, hispanic resource centers and displaced homemaker centers, county vocational schools and Workforce Investment Act (WIA) One Stop Career Centers, in order to facilitate the recruitment, referral and training of women and minorities for all employment positions.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Rewrote the section.

Recodified from N.J.A.C. 17:27-12.2 by R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Former N.J.A.C. 17:27-12.3, Minority and women referral agencies, recodified to N.J.A.C. 17:27-12.4.

17:27-12.4 Minority and women referral agencies

The Division 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.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Inserted "and women" following "minority" throughout.

Recodified from N.J.A.C. 17:27-12.3 by R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Former N.J.A.C. 17:27-12.4, Satisfaction of minority and women obligations, recodified to N.J.A.C. 17:27-12.5.

17:27-12.5 Satisfaction of minority and women obligations

Contractors and subcontractors shall satisfy their minority and women worker outreach and training obligations by complying with the requirements of N.J.A.C. 17:27-5 and 12.

Amended by R.2004 d.450, effective December 6, 2004.

See: 36 N.J.R. 2623(b), 36 N.J.R. 5443(b).

Amended the N.J.A.C. reference.

Recodified from N.J.A.C. 17:27-12.4 and amended by R.2008 d.307, effective October 20, 2008.

See: 40 N.J.R. 3601(a), 40 N.J.R. 6222(a).

Updated the N.J.A.C. reference.