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RULE ADOPTIONS

**LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF WORKFORCE DEVELOPMENT
STATE EMPLOYMENT AND TRAINING COMMISSION**

43 N.J.R. 2618(a)

Adopted New Rules: N.J.A.C. 12:42-3

Local Workforce Investment Areas and Local Workforce Investment Boards: Performance, Technical Assistance, Corrective Actions and Penalties

Proposed: November 15, 2010 at *42 N.J.R. 2715(a)*.

Adopted: September 2, 2011 by Harold J. Wirths, Commissioner, Department of Labor and Workforce Development and Dennis M. Bone, Chair, State Employment and Training Commission.

Filed: September 2, 2011 as R.2011 d.247, **with substantial changes** not requiring additional public notice or comment (see *N.J.A.C. 1:30-4.3*).

Authority: *N.J.S.A. 34:1-20, 34:1A-3(e)* and *34:15C-8*; *29 U.S.C. § 2871* and *20 CFR 666.420*.

Effective Date: October 3, 2011.

[page=2619] Expiration Date: August 1, 2014.

Summary of Hearing Officer's Recommendations and Agency Response:

A public hearing regarding the proposed new rules was held on December 8, 2010 at the Department of Labor and Workforce Development. David Fish, Regulatory Officer, was available to preside at the public hearing and to receive testimony regarding the proposed new rules. After reviewing the testimony presented at the public hearing and the written comments submitted directly to the Office of Legal and Regulatory Services, the hearing officer recommended that the Department and the State Employment and Training Commission (the Commission) proceed with the new rules with two substantive changes not requiring additional public notice or comment. The record of the public hearing may be reviewed by contacting David Fish, Regulatory Officer, Office of Legal and Regulatory Services, Department of Labor and Workforce Development, P.O. Box 110, Trenton, New Jersey 08625-0110.

Summary of Public Comments and Agency Responses:

The following individual testified at the December 8, 2010 public hearing:

Dan Passarella, Garden State Employment and Training Association, Eatontown, New Jersey.

COMMENT: The commenter asserted that, "[t]he State's 17 WIBs [also referred to herein as local boards] will, through this proposed new set of rules, be held accountable and potentially sanctioned for the actions and outcomes of organizations and partners outside of their direct control and purview." Specifically, the commenter stated that the "primary focus" of the WIBs has been "over the provider(s) of services under Title I B, especially section 134," adding, "... there are other diverse workforce programs such as those under Title I - Subtitle C (Job Corps), Subtitle D - National Program which include the Native American, Migrant and seasonal Farm workers, Veterans, and certain Youth Opportunity Grants, as well as National Emergency Grants, the Title II Adult Education and Literacy, Title III dealing with workforce investment related activities under Wagner Peyser, Trade Readjustment, Veteran's employment, Older American's Act and Title IV, Rehabilitation Act, which should come under the jurisdiction of the WIB, but from a program administration, implementation and oversight perspective, they are not within the purview of the Board."

RESPONSE: The new rules hold local areas and local boards accountable, as required by 29 U.S.C. § 2871, for meeting "local performance measures," as that term is defined at 29 U.S.C. § 2871(c). Specifically, 29 U.S.C. § 2871(c) indicates that "local performance measures" shall consist of the core indicators of performance described in 29 U.S.C. § 2871(b)(2)(A), and the customer satisfaction indicators of performance described in 29 U.S.C. § 2871(b)(2)(B), **for activities described in those subsections**, other than Statewide workforce investment activities. In turn, 29 U.S.C. § 2871(b)(2)(A), regarding core indicators of performance, makes reference solely to employment and training activities authorized under section 134 (29 U.S.C. § 2864) and youth activities authorized under section 129 (29 U.S.C. § 2854), both Title I, Subtitle B (referred to earlier as Title I B), activities which are conceded by the commenter to be within the local WIBs' control and purview. Similarly, 29 U.S.C. § 2871(b)(2)(B), regarding customer satisfaction indicators, provides that, "the customer satisfaction indicator of performance shall consist of customer satisfaction of employers and participants with services received from the workforce investment activities authorized under this subtitle;" that is, activities authorized under Title I, Subtitle B, which again, are conceded by the commenter to be within the local WIBs control and purview.

As to the list of activities alleged by the commenter to be outside of the "control and purview" of the local WIBs, each is **not** included within the definition of "local performance measures" described above, in that each is either authorized under a Subtitle of Title I (of WIA) **other than Subtitle B**, or is authorized under a separate Title of WIA altogether. Specifically, "Job Corps" is authorized under Subtitle C of Title I; "National Programs" is authorized under Subtitle D of Title I; "Adult Education and Literacy" is authorized under Title II; "Workforce Investment-Related Activities" is authorized under Title III; "Rehabilitation Act" is authorized under Title IV. Consequently, again, there is no evidence that the new rules would hold local areas or local boards accountable through the imposition of technical assistance, corrective actions or penalties for activities outside of the local boards' or local areas' "control and purview."

COMMENT: The commenter asserted that "one significant factor of program/system accountability" is that under WIA local performance measures are to be negotiated with the WIB and the chief local government officials and are to be established taking into consideration certain factors which are listed within WIA. The commenter asserted that "[t]he proposed new rules as set forth purport to take only a limited number of factors into consideration, which appears to be in contradiction to the WIA legislation." The commenter added, "[w]e urge you to ensure that the proposed new rules include the factors as stated in the WIA Act and that a mutually inclusive, fair process of negotiating and reaching the 'common measures' numeric goals be instituted."

RESPONSE: The new rules do not address the method for establishment of "local performance measures," as maintained by the commenter. Rather, the new rules hold local areas and local boards accountable for meeting "local performance measures," and define the term "local performance measures" to mean "local performance measures," as that term is defined at 29 U.S.C. § 2871(c). 29 U.S.C. § 2871(c), in turn, states in pertinent part that "the local board, the chief elected official, and the Governor shall negotiate and reach agreement on the local levels of performance based on the State adjusted levels of performance established under subsection (b)," adding, "[i]n determining such local levels of performance, the local board, the chief elected official, and the Governor shall take into account the specific economic, demographic and other characteristics of the population to be served in the local area." Consequently, no change to the new rules is necessary.

COMMENT: The commenter stated that as written the new rules make it "difficult to discern which corrective action would apply to which 'failure.'" He added, "[w]e strongly suggest that there should be a ranking or ascending order for corrective action to be imposed that would correspond to a similar order for the 'performance measures' as well as the other causes for sanctioning set forth in the proposed new rules."

RESPONSE: Neither Federal law, State law, nor Federal regulations require the use of "a ranking or ascending order for corrective action." The Department and the Commission have chosen, instead, to include within the rules a comprehensive list of corrective actions along with a stated "standard for appropriateness of corrective actions," the latter standard including an evaluation of the nature of the act(s) giving rise to the imposition of corrective actions - that is the severity, duration or extent of the act(s) - and the history of corrective actions and/or penalties imposed on the local area and/or the local board. See N.J.A.C. 12:42-3.7. The use of this standard, coupled with the appeal rights contained within new N.J.A.C. 12:42-3.11, should be sufficient to ensure that no corrective action is imposed that is arbitrary, capricious or unreasonable. Consequently, the Department and the Commission decline to make the change suggested by the commenter.

COMMENT: The commenter stated: The rules further seek reimbursement for failure to meet performance measures as a remedy as a result of sanctioning, yet WIA itself provides that States who fail to meet their measures would only be reduced on a sliding scale to a maximum of 5% in a subsequent year's allocation, a criterion currently lacking in the proposed new rules. The reimbursement action would have far reaching implications for a WIB, since generally in NJ WIBs have very minimal operating funds. It is felt that this provision should be deleted from that section.

RESPONSE: The commenter mistakenly reads new N.J.A.C. 12:42-3.9(a)1 to indicate that the local board or local area will be required under that paragraph to return (or reimburse) monies to the State when cause exists under N.J.A.C. 12:42-3.5 or 3.6 for the imposition of a penalty. Rather, N.J.A.C. 12:42-3.9(a)1 would give the Department the discretion for cause to require that the local area and/or local board be paid by the Department through reimbursement for expenses with supporting documentation after such costs have been incurred, rather than the local area being granted monies at the outset of a given fiscal period based on projected costs. This is simply an alternate method for disbursement of [page=2620] funds - one which would ensure a greater degree of accountability by the local area to the Department. Disbursement of funds in this manner would not necessarily result in any diminution of funding.

COMMENT: The commenter objected to inclusion among the penalties listed at N.J.A.C. 12:42-3.9 the unilateral merging of a local area into one or more other local areas. He asserted, "[w]hile it is recognized that this may be an allowable action by the Governor, this *must* be done in consultation with an agreement of the workforce area that is being asked to assume this additional responsibility."

RESPONSE: 29 U.S.C. § 2934(b)(1)(B)(iv) expressly states that if as a result of financial and compliance audits **or otherwise**, the Governor determines that there is a substantial violation of a specific provision of Title 29 of the U.S.C., and a corrective action has not been taken, the Governor shall issue a notice of intent to revoke approval of all or part of the local plan affected, or "impose a reorganization plan, which may include ... merging the local area into one or more other local areas." Furthermore, 29 U.S.C. § 2871(h)(2) states that where a local area fails to meet levels of performance for a second consecutive year, the Governor shall take corrective actions, which may include development of a reorganization plan through which the Governor may require the appointment and certification of a new local board, prohibit the use of eligible providers and one-stop partners identified as achieving a poor level of performance or "take such other action as the Governor determines are appropriate." N.J.A.C. 12:42-3.9 as proposed is consistent with Federal law. Consequently, no change to the new rules is necessary.

COMMENT: The commenter objected to use within both the headings and text of proposed new N.J.A.C. 12:42-3.4 and 3.5 of the phrase "fails to meet or exceed local performance measures," suggesting instead that the following phrase should be used, "fails to meet local performance measures." The commenter explained, "[w]hile 'not exceeding' a performance measure would be an acceptable ground for ineligibility for incentive dollars it should not be the benchmark for failure and consequently cause for sanctioning a WIB."

RESPONSE: The Department and the Commission agree with the commenter and will on adoption delete the words, "or exceed" from the pertinent text. This change on adoption does not enlarge or curtail either the scope of the proposed new rules or those who will be affected by the new rules. Consequently, the Department and the Commission assert that this modification is appropriate at adoption.

Written comments were submitted by the following individuals:

1. Executive Committee of the Middlesex County Workforce Investment Board, New Brunswick, NJ.
2. Janet Moran, Chair, Camden County Workforce Investment Board, Camden, NJ.

3. John E. Gagliano, Chair, and Eileen M. Higgins, Executive Director, Monmouth County Workforce Investment Board, Eatontown, NJ.

4. Fred Schneeweiss, Chair, Ocean County Workforce Investment Board, Toms River, NJ.

5. Joseph B. Donnelly, Freeholder, Burlington County Board of Chosen Freeholders (also on behalf of the Burlington County Workforce Investment Board), Mount Holly, NJ.

6. Jamie Reichardt, Director (Tax and Education Policy), New Jersey Business and Industry Association, Trenton, NJ.

COMMENT: The Executive Committee of the Middlesex County Workforce Investment Board attached and endorsed a written version of Mr. Passarella's comments.

RESPONSE: The Department's and Commission's response to the comments of the Executive Committee of the Middlesex County Workforce Investment Board is identical to their response to Mr. Passarella's comments. Those responses are listed above.

COMMENT: Ms. Moran expressed support for the testimony of Mr. Passarella.

RESPONSE: The Department's and Commission's response to the comments of Ms. Moran is identical to their response to Mr. Passarella's comments. Those responses are listed above.

COMMENT: Mr. Gagliano repeated each of Mr. Passarella's remarks and expresses three additional concerns. First, Mr. Gagliano observed that new N.J.A.C. 12:42-3.6 includes a list of "other causes for corrective actions and penalties" - that is, other than failure to meet local performance measures - and stated that "[w]hile the six items appear to be broad and lacking specifics, we suggest that somehow the language include a provision that, before the State begins initiating 'other actions,' the Local WIB be fully informed with the specific 'other' concern(s) and be given the opportunity to remedy the finding and/or provide concurrence with the finding."

Second, Mr. Gagliano requested that the Department "strike" new N.J.A.C. 12:42-3.8(a)9, which permits the imposition of "any other corrective action deemed appropriate by the Department." He asserted that this provision is "unreasonable, subject to arbitrary interpretation, and beyond the letter and spirit of the law."

Third, relative to incentives for high levels of performance, Mr. Gagliano suggested that "the proposed policy be revised to provide details for such incentives, in order to balance its current sole focus on sanctions," adding, "[i]n other words, both a carrot and stick approach is recommend, instead of just the stick."

RESPONSE: Regarding those comments of Mr. Gagliano which mirror the remarks of Mr. Passarella, the Department's and Commission's response is identical to their response to Mr. Passarella's comments. Those responses are listed above.

Mr. Gagliano's concern regarding new N.J.A.C. 12:42-3.6, the "other causes" listed within that section are neither broad, nor lacking specifics. Each of the six "other causes" is clearly delineated. As to the issue of notice, N.J.A.C. 12:42-3.10 contains the procedure for issuing corrective action and penalty determinations. It states that in each instance where the Assistant Commissioner intends to issue a corrective action and/or penalty determination, he or she must first transmit to the Commission a written proposed corrective action and/or penalty determination. The Commission returns to the Assistant Commissioner a written recommendation with regard to the proposed corrective action and/or penalty. The Assistant Commissioner then issues a written corrective action and/or penalty determination, which must contain the following information: (1) the cause for the corrective action and/or penalty; (2) for corrective actions, the corrective action required, including the timeline for completing the corrective action; (3) for penalties, the penalty and the effective date of the penalty; and, (4) appeal rights under N.J.A.C. 12:42-3.11. Furthermore, under new N.J.A.C. 12:42-3.11, the local area and/or local board has appeal rights to the Commissioner and, beyond the Commissioner, to the Secretary of the United States Department of Labor. These procedures provide more than adequate due process protection, including the involvement of two government bodies in the initial corrective action and/or penalty determination, with a written proposal, a written recommendation and a written determination; as well as a right of appeal to the Commissioner and, beyond the Commissioner, to the Secretary of the United States Department of Labor. The Department and the Commission, therefore, decline to make the change suggested by the commenter.

Regarding Mr. Gagliano's suggestion that the Department and the Commission strike N.J.A.C. 12:42-3.8(a)9, pertinent Federal law - specifically, 29 U.S.C. § 2971(h)(2) - states that if failure to meet local performance measures con-

tinues for a second consecutive year, the Governor shall take corrective actions, which may include development of a reorganization plan through which the Governor may require the appointment and certification of a new board, prohibit the use of eligible providers and one-stop partners identified as achieving a poor level of performance, or "take such other actions as the Governor determines are appropriate." Furthermore, 29 U.S.C. § 2934(b) provides that if, as a result of financial and compliance audits or otherwise, the Governor determines that there is a substantial violation of a specific provision of Title 29, and corrective action has not been taken, the Governor shall issue a notice of intent to revoke approval of all or part of the local plan affected or impose a reorganization plan, which may include, among other things, "making other such changes as the Secretary or Governor determines necessary to secure compliance." Thus, when the commenter asserts that new N.J.A.C. 12:42-3.8(a)9 is "beyond the letter and spirit of the law," he is mistaken; since the Federal law, itself, contains the same sort of provisions as embodied by N.J.A.C. 12:42-3.8(a)9, which is to say, provisions which give broad discretion to the responsible agency to take "other" action that it deems necessary or appropriate. Consequently, [page=2621] the Department and the Commission decline to make the change suggested by the commenter.

Regarding the last of Mr. Gagliano's suggestions, the new rules state that "a local area's achievement of high levels of performance may result in the Department providing incentives for the local area." The Department and the Commission do not believe that it is necessary to include any additional information within the rules as to the incentives program.

COMMENT: Mr. Schneeweiss submitted comments that mirror the testimony of Mr. Passarella.

RESPONSE: The Department's and Commission's response to the comments of Mr. Schneeweiss is identical to their response to Mr. Passarella's comments. Those responses are listed above.

COMMENT: Mr. Donnelly submitted comments that mirror the testimony of Mr. Passarella.

RESPONSE: The Department's and Commission's response to the comments of Mr. Donnelly is identical to their response to Mr. Passarella's comments. Those responses are listed above.

COMMENT: Ms. Reichardt fully supports the proposed new rules.

RESPONSE: The Department and the Commission thank the commenter for her support.

Federal Standards Statement

In that the adopted new subchapter establishes a procedure for imposing sanctions on local areas for poor performance, it does not exceed standards or requirements imposed by Federal law. That is, 29 U.S.C. § 2871 and 20 CFR 666.420 expressly require the State to develop a system for the imposition of such sanctions against local areas for failure to meet local performance measures. As to that portion of the adopted new subchapter that also imposes sanctions for "other causes"; that is, causes other than failure to meet local performance measures, the adopted new subchapter exceeds requirements imposed by Federal law. However, it is the Commission's and the Department's firm belief that in order to effectively oversee the Statewide workforce investment system, local areas must be held accountable for the latter conduct in addition to being held accountable for poor performance. There is no additional cost to the State for imposing sanctions against local areas on the basis of the "other causes" listed above, whereas the possible cost to taxpayers in terms of misspent funds in the event that the Department allowed such onerous conduct to go unaddressed could be significant.

Full text of the adopted new rules follows (deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. LOCAL WORKFORCE INVESTMENT AREAS AND LOCAL WORKFORCE INVESTMENT BOARDS: PERFORMANCE, TECHNICAL ASSISTANCE, CORRECTIVE ACTIONS AND PENALTIES

12:42-3.1 Purpose and scope

(a) The purpose of this subchapter is to ensure accountability of local areas in meeting the needs of employers and job seekers, to ensure that local areas meet local performance measures, and to ensure adequate return from local areas on Federal and State investments.

(b) This subchapter applies to all local areas and local boards throughout the State.

12:42-3.2 Definitions

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

"Assistant Commissioner" means the Assistant Commissioner of Workforce Development within the New Jersey Department of Labor and Workforce Development or his or her designee.

"Commission" means the New Jersey State Employment and Training Commission.

"Commissioner" means the Commissioner of the New Jersey Department of Labor and Workforce Development or his or her designee.

"Corrective action plan" means a plan developed and imposed by the Department, which directs the local area to take Department-identified actions within a specified time frame, which actions are designed to correct specific instances of non-compliance by the local area or other local area deficiencies.

"Department" means the New Jersey Department of Labor and Workforce Development.

"Local area" means a local workforce investment area designated under *29 U.S.C. §2831*.

"Local board" means a local Workforce Investment Board as described in *29 U.S.C. §2832(b)*.

"Local performance measures" means "local performance measures" as that term is defined at *29 U.S.C. §2871(c)*.

12:42-3.3 Performance

(a) A local area shall meet or exceed local performance measures.

(b) When setting local performance measures for a particular local area, local conditions may be taken into consideration including, but not limited to, specific economic conditions and demographic characteristics of the local area.

(c) A local area's achievement of high levels of performance may result in the Department providing incentives for the local area.

(d) A local area's failure to meet local performance measures may result in technical assistance under N.J.A.C. 12:42-3.4, corrective actions under N.J.A.C. 12:42-3.8 and/or penalties under N.J.A.C. 12:42-3.9.

12:42-3.4 Year one--failure to meet *[or exceed]* local performance measures

(a) If in a program year, a local area fails to meet *[or exceed]* local performance measures, the Department shall offer a series of interventions including basic technical assistance and development of a performance improvement plan.

(b) A performance improvement plan is a plan that is jointly developed between the Department and the local area to assist the local area with improving compliance or performance through specific technical assistance or training, which may include the following:

1. Identification of one or more specific performance improvement issues;
2. Assessment of specific technical assistance or training needs;
3. Selection of one or more specific technical assistance or training activities to be implemented;

4. Identification of the appropriate entities to provide the technical assistance or training, including the Department, the Commission, other local areas or other entities;
5. Identification of a timeline for completion of the technical assistance or training; and
6. Specific dates for reassessment of technical assistance or training needs and completion of the specific technical assistance or training.

12:42-3.5 Year two--failure to meet *[or exceed]* local performance measures

If for two consecutive program years, a local area fails to meet *[or exceed]* the same local performance measure, the Department may assess corrective actions under N.J.A.C. 12:42-3.8 and/or penalties under N.J.A.C. 12:42-3.9 against a local area and/or a local board.

12:42-3.6 Other causes for corrective actions and penalties

(a) The Department may assess corrective actions under N.J.A.C. 12:42-3.8 and/or penalties under N.J.A.C. 12:42-3.9 against a local area and/or a local board for any of the following:

1. Failure to cooperate or comply with the Department's performance review and technical assistance activities and services, including the performance improvement plan;
2. Failure to cooperate or comply with a corrective action plan;
3. Willfully hindering the Commissioner or any Department representative in the performance of his or her duties in the enforcement of this subchapter;
4. Failure to comply with Federal law or regulations;
5. Failure to comply with State statutes or rules; or
6. Failure to comply with one or more contract provisions.

[page=2622] 12:42-3.7 Standard for appropriateness of corrective actions and/or penalties

(a) In determining the appropriate corrective actions and/or penalties to assess against a local area and/or a local board under N.J.A.C. 12:42-3.8 and 3.9, respectively, the Department may consider the following factors:

1. The nature of the act(s) giving rise to the imposition of corrective actions and/or penalties by the Department; that is the severity, duration or extent of that act(s); and
2. The history of corrective actions and/or penalties imposed by the Department on the local area and/or the local board.

12:42-3.8 Corrective action

(a) Where cause exists under N.J.A.C. 12:42-3.5 or 3.6, the Department may require the local area and/or the local board to engage in any or all of the following corrective actions:

1. Participation in technical and quality assurance activities;
2. Participation in training;
3. On-site visits by the Department to monitor and assist with daily operations of the local area and/or the local board;

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4. Cooperation with the Department in the Department's development of a corrective action plan for the local area;
5. Timely implementation of a corrective action plan;
6. Submission to the Department of additional and/or more detailed financial and/or performance reports;
7. Department-directed meetings between Department officials, the local board chair, local board members, the local board's Executive Director and/or the local area's elected officials;
8. Formal Department presentation to the local area's elected officials and/or local board members; or
9. Any other corrective action deemed appropriate by the Department.

12:42-3.9 Penalties

(a) Where cause exists under N.J.A.C. 12:42-3.5 or 3.6, the Department may impose any or all of the following penalties on the local area and/or the local board:

1. Require payment by reimbursement only, with required supporting documentation;
2. Delay, suspend or deny contract payments;
3. Reduce or deobligate local area funds;
4. Find local area ineligible for additional discretionary funds;
5. Terminate a contract between the Department and the local area and/or the local board;
6. Restructure the local board, including decertification of the current local board and appointment and certification of a new local board;
7. Merge the local area into one or more other local areas;
8. Prohibit the use of particular service providers or One-Stop partners that have been identified as achieving poor levels of performance; or
9. Any other penalty deemed appropriate by the Department.

12:42-3.10 Corrective action and penalty determinations

(a) In each instance where the Assistant Commissioner intends to issue a corrective action and/or penalty determination, he or she shall first transmit to the Commission a written proposed corrective action and/or penalty determination.

(b) The Commission shall, within 60 days of its receipt of a proposed corrective action and/or penalty determination from the Assistant Commissioner under (a) above, return to the Assistant Commissioner a written recommendation with regard to the proposed corrective action and/or penalty.

(c) The Assistant Commissioner shall, within 30 days of receipt of the Commission's recommendation under (b) above with regard to a particular proposed corrective action and/or penalty, issue a written corrective action and/or penalty determination.

(d) The Assistant Commissioner may, when issuing a written corrective action and/or penalty determination under (c) above, accept or reject any portion of the Commission's recommendation or may accept or reject the Commission's recommendation in its entirety.

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(e) All corrective action and penalty determinations under (c) above shall be issued in writing to the local board's Executive Director or administrative officer, to the local board's chair, to the chief elected official of the local area, to the fiscal agent of the local area and to the Commission.

(f) All corrective action determinations issued under (c) above shall contain the following information:

1. The cause for corrective action;
2. The corrective action required, including the timeline for completing the corrective action; and
3. Appeal rights under N.J.A.C. 12:42-3.11.

(g) All penalty determinations issued under (c) above shall contain the following information:

1. The cause for penalty;
2. The penalty and the effective date of the penalty; and
3. Appeal rights under N.J.A.C. 12:42-3.11.

12:42-3.11 Appeals

(a) If a local area and/or local board disagrees with the corrective action and/or penalty determination of the Assistant Commissioner under N.J.A.C. 12:42-3.10, the local area and/or local board may submit an appeal to the Commissioner in writing no later than 30 days after having received notice of the corrective action and/or penalty determination being appealed.

(b) All appeals submitted to the Commissioner in writing under (a) above shall state the basis for the appeal and shall include any documentary evidence that the local area and/or local board would like the Commissioner to review prior to rendering his or her decision.

(c) The Commissioner shall review the documentary evidence presented by the local area and/or local board and shall request any additional information or conduct any investigation necessary to render a decision.

(d) The Commissioner's decision shall be based on the written record and shall be rendered within 30 days after receipt of the appeal.

(e) If a local area and/or local board disagrees with the decision of the Commissioner under (d) above, it may appeal that decision to the Secretary of the United States Department of Labor under *20 CFR 667.650(b)* not later than 30 days after the local area receives the decision of the Commissioner.