

## NEW JERSEY STATE EMPLOYMENT AND TRAINING COMMISSION

### **POLICY RESOLUTION: SETC #2011-03**

**SUBJECT:** Chapter 42 Workforce Investment Act Rules, Subchapter 4, Local Workforce Investment Boards: Certification, Recertification, and Decertification.

***Purpose:***

The NJ Department of Labor and Workforce Development and the State Employment and Training Commission are jointly proposing new Rules to establish a policy that will enable the State to carry out its statutory responsibilities for the Certification, Recertification and Decertification of local Workforce Investment Board Areas.

***Background:***

The Workforce Investment Act (WIA) of 1998 requires that the Governor shall, once every 2 years, certify one local board for each local area in the State. Such certification shall be based on meeting membership criteria and the extent to which the local board has ensured that workforce investment activities carried out in the local area have enabled the local area to meet the local performance measures.

Subsequent to the implementation of the Workforce Investment Act, 17 Workforce Investment Boards were certified by the Governor of New Jersey.

The proposed new Rules in summary establish requirements for the Certification, Recertification and Decertification of local Boards. Applications submitted every two years for Recertification shall include: 1) a current list of board members appointed by the chief local elected official, 2) the local board's budgets for the extant and two preceding program years, 3) the local board's annual reports for the extant and two preceding program years; and 4) other documentation and/or information as may be required by the Commission.

Where the Commission determines that 1) the local board has failed to satisfactorily meet its application requirements; 2) failed to ensure the local area's ability to meet local performance requirements; 3) the board or any of its members has engaged in fraud or abuse; and/or 4) the board or any of its members has engaged in any prohibited conduct as set forth in the Rules, the Commission shall deny the chief elected official's application for recertification of the local board. The Commission may recommend in writing to the Assistant Commissioner that the current local board be decertified and a new board be certified according to a reorganization plan developed by the Assistant Commissioner in consultation with the chief elected official.

**Resolution:**

**It is hereby resolved that the State Employment and Training Commission formally approves Chapter 42 Workforce Investment Act Rules, Subchapter 4, Local Workforce Investment Boards: Certification, Recertification, and Decertification.**

**Attachment:** Draft Rules for Chapter 42 Workforce Investment Act Rules, Subchapter 4, Local Workforce Investment Boards: Certification, Recertification, and Decertification.

**Approved: March 24, 2011**



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**RULE ADOPTIONS**

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

*43 N.J.R. 2670(b)*

**Jointly Adopted New Rules: N.J.A.C. 12:42-4**

**Local Workforce Investment Boards: Certification, Recertification and Decertification**

Proposed: July 5, 2011 at *43 N.J.R. 1494(a)*.

Adopted: September 22, 2011 by Harold J. Wirths, Commissioner, Department of Labor and Workforce Development and the New Jersey State Employment and Training Commission, Dennis M. Bone, Chair.

Filed: September 22, 2011 as R.2011 d.258, **without change**.

Authority: *N.J.S.A. 34:1-20, 34:1A-3(e)* and *34:15C-15* and *29 U.S.C. § 2832*.

Effective Date: October 17, 2011.

Expiration Date: August 1, 2014.

**Summary of Hearing Officer's Recommendations and Agency's Response:**

A public hearing regarding the proposed new rules was held on July 25, 2011, at the Department of Labor and Workforce Development. David Fish, Regulatory Officer, was available to preside at the public hearing and to receive testimony. No one testified at the public hearing and no written comments were submitted to the Office of Legal and Regulatory Services. Consequently, the hearing officer recommended that [page=2671] the Department proceed with the adoption of the new rules without change.

**Summary of Public Comment and Agency Response:**

**No comments were received.**

**Federal Standards Statement**

The adopted new subchapter would not exceed standards imposed by Federal law. Specifically, the subject rules are consistent with *29 U.S.C. § 2832*. Consequently, no Federal standards analysis is required.

**Full text** of the adopted new rules follows:

**SUBCHAPTER 4. LOCAL WORKFORCE INVESTMENT BOARDS: CERTIFICATION, RECERTIFICATION AND DECERTIFICATION**

**12:42-4.1 Purpose and scope**

(a) The purpose of this subchapter is to establish procedures for the certification, recertification and decertification of local boards in accordance with *N.J.S.A. 34:15C-15* and *29 U.S.C. §2832*.

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

**12:42-4.2 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.

"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 the same as defined at *29 U.S.C. §2871(c)*.

**12:42-4.3 Certification required**

(a) There shall be established in each local area and certified by the Commission a local board to set policy for the portion of the Statewide workforce investment system within the local area.

(b) Immediately following establishment of a local board by the chief elected official in a local area in accordance with *N.J.S.A. 34:15C-15b* and *c*, the chief elected official shall submit to the Commission a list of members of the newly established local board and such other documentation and/or information as may be required by the Commission.

(c) Not later than 30 days following receipt by the Commission of the list of members of the newly established local board and such other documentation and/or information as may be required under (b) above, the Commission shall either grant or deny the chief elected official's request for certification of the local board.

(d) Where the Commission determines that the composition of the local board membership is in compliance with *29 U.S.C. §2832* and *N.J.S.A. 34:15C-15b*, and where the Commission is satisfied with the sufficiency of all other documentation and/or information submitted with the application for certification, the Commission shall grant the chief elected official's application for certification of the local board.

(e) Where the Commission determines that the composition of the local board membership is not in compliance with *29 U.S.C. §2832* or *N.J.S.A. 34:15C-15b*, or where the Commission is not satisfied with the sufficiency of any other documentation and/or information submitted with the application for certification, the Commission shall deny the chief elected official's application for certification of the local board.

**12:42-4.4 Recertification required**

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(a) Following certification of a local board under *N.J.A.C. 12:42-4.3*, the chief elected official of the local area shall once every two years thereafter apply to the Commission for recertification of the local board.

(b) The application for recertification submitted for review by the Commission under (a) above shall include:

1. A current list of local board members appointed by the chief elected official in a local area in accordance with N.J.S.A. 34:15C-15b and c;
2. The local board's budgets (required under N.J.S.A. 34:15C-15e(4)) for the extant and two preceding program years;
3. The local board's annual reports (required under N.J.S.A. 34:15C-15e(5)) for the extant and two preceding program years; and
4. Any other documentation and/or information as may be required by the Commission.

(c) Not later than 30 days following receipt by the Commission of the documentation and/or information required under (b) above, the Commission shall either grant or deny the chief elected official's application for recertification of the local board.

(d) Where the Commission determines that the local board has during the preceding two years ensured that the workforce investment activities carried out in the local area have enabled the local area to meet the local performance measures, that the local board has satisfactorily carried out its functions under N.J.S.A. 34:15C-15e and *20 CFR 661.305*, that neither the local board, nor any of its members, has engaged in fraud or abuse, as those terms are used within *29 U.S.C. §2832(c)(3)(A)*, and that neither the local board, nor any of its members, has engaged in any of the prohibited conduct listed as cause for corrective actions and penalties under *N.J.A.C. 12:42-3.6*, the Commission shall grant the elected official's application for recertification of the local board.

(e) Where the Commission determines that the local board has during the preceding two years failed to ensure that the workforce investment activities carried out in the local area have enabled the local area to meet the local performance measures, that the local board has failed to satisfactorily carry out its functions under N.J.S.A. 34:15C-15e and *20 CFR 661.305*, that either the local board, or any of its members, has engaged in fraud or abuse, as those terms are used within *29 U.S.C. §2832(c)(3)(A)*, or that either the local board, or any of its members, has engaged in any of the prohibited conduct listed as cause for corrective actions and penalties under *N.J.A.C. 12:42-3.6*, the Commission shall deny the chief elected official's application for recertification of the local board.

#### 12:42-4.5 Decertification

(a) Where the Commission denies a chief elected official's application for recertification of a local board under *N.J.A.C. 12:42-4.4(e)*, the Commission may recommend in writing to the Assistant Commissioner that the local board be restructured, including decertification of the current local board and appointment of a new local board pursuant to a reorganization plan developed by the Assistant Commissioner in consultation with the chief elected official in the local area, and in accordance with the criteria established under *29 U.S.C. §2832* and N.J.S.A. 34:15C-15b.

(b) The Assistant Commissioner, within 30 days of receipt of the Commission's recommendation under (a) above, shall issue a determination as to whether it will initiate a restructuring of the local board.

(c) All determinations under (b) 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.

#### 12:42-4.6 Appeals

Where a determination of the Commission or of the Assistant Commissioner under this subchapter results in either the denial of a chief elected official's application for certification, the denial of a chief elected official's application for

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recertification of a local board, or the decertification of a local board, the local area and/or local board may file an appeal pursuant to the procedures set forth at *N.J.A.C. 12:42-3.11*.