



LEXSTAT 41 NJR 369(A)

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RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
ADMINISTRATION AND FINANCE**

41 N.J.R. 369(a)

Proposed Readoption with Amendments: N.J.A.C. 12:5

[Click here to view Interested Persons Statement](#)

Audits

Authorized By: David J. Socolow, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1-20* and *34:1A-3(e)*, *31 U.S.C. §§7500* et seq. and 29 CFR 96.501 et seq.

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

Proposal Number: PRN 2009-32.

A **public hearing** on the proposed readoption with amendments will be held on the following date at the following location:

Tuesday, February 10, 2009
10:00 A.M. to 12:00 Noon
NJ Department of Labor and Workforce Development
John Fitch Plaza
2nd Floor Conference Room
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by March 21, 2009 to:
David Fish, Regulatory Officer
Office of Legal and Regulatory Services
NJ Department of Labor and Workforce Development
PO Box 110--13th Floor
Trenton, New Jersey 08625-0110

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, *N.J.A.C. 12:5*, the chapter pertaining to Department audits (specifically, procedures for the resolution of audit findings), is scheduled to expire on June 9, 2009. The chapter sets forth procedures for the resolution of audit findings including, but not limited to, questioned costs and administrative deficiencies identified as a result of the audit of Federal grants, contracts and other agreements awarded by or on behalf of the New Jersey Department of Labor and Workforce Development. The Department has reviewed *N.J.A.C. 12:5* and, with the exception of technical amendments throughout the chapter, which reflect the change in the name of the Department from the Department of Labor to the Department of Labor and Workforce Development, the Department has determined the chapter to be necessary, reasonable and proper for the purposes for which it was originally promulgated.

Accordingly, the Department proposes that *N.J.A.C. 12:5* be readopted, with amendments.

A summary of the chapter (section-by-section) follows:

N.J.A.C. 12:5-1.1 sets forth the purpose and scope of the subchapter.

N.J.A.C. 12:5-1.2 contains definitions of words and terms used throughout the subchapter.

N.J.A.C. 12:5-1.3 sets forth the audit resolution procedures, including procedures and time limits for the challenging by grantees, contractors and sub-recipients of final written audit determinations.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to *N.J.A.C. 1:30-3.3(a)5*.

Social Impact

The rules proposed for re Adoption with amendments will have a positive social impact on all parties involved in audit reviews and determinations as they provide clear guidance to both the Director, Division of Accounting and any grantee, contractor or subrecipient for the prompt review and resolution of audit disputes and clarify and streamline the audit resolution process.

Before the existing resolution process came into effect, grantees, contractors or subrecipients tended to exhaust all the allowable time before pursuing an appeal of the Director, Division of Accounting's initial determination; this delay, in turn, would cause the matter to be decided beyond the 180-day cycle. Consequently, because of the length of time involved, the resolution process became more difficult.

The Department's experience over the last six years has been positive. The audit resolution procedures have achieved their intended purpose of preventing delays in the conduct of audit reviews and issuance of final determinations. Therefore, it is anticipated that the procedures and attendant time frames contained in the rules proposed for re Adoption will continue to provide for timely and expeditious decisions.

Economic Impact

Re Adoption of the rules governing audits will have a positive economic impact on all parties involved because the rules expedite the audit resolution process. The allocated time frames allow the Director, Division of Accounting, to conduct an efficient review of audits since review requests, data and arguments will be submitted in a timely [page=370] fashion. An efficient review and timely decision will reduce costs to the State and the grantees, contractors and subrecipients because the resolution will occur at a time when the information needed to conduct the reviews and render determinations will be more readily available. The procedures also benefit grantees, contractors and subrecipients by allowing corrective actions to be implemented at an earlier point in time, thereby mitigating the adverse financial impact, which may result by continuing an inappropriate or disallowed charge.

Federal Standards Statement

The rules proposed for re Adoption with amendments do not exceed standards or requirements imposed by Federal law. The rules are consistent with the Federal requirements for single audits codified at *31 U.S.C. §§7500 et seq.* and *29 CFR 96.501 et seq.* As a result, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for readoption with amendments will not have an impact on jobs. The Department does not anticipate an increase or decrease in jobs as a result of these rules.

Agriculture Industry Impact

No impact on the agriculture industry is expected based on the rules proposed for readoption with amendments.

Regulatory Flexibility Analysis

Readoption of the audit resolution procedures will impose compliance requirements on small businesses as that term is defined by the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. For example, *N.J.A.C. 12:5-1.3(b)* will require that if a grantee/contractor/subrecipient disagrees with the initial determination of the Director relative to an audit, the grantee/contractor/subrecipient may submit to the Director a written request for formal review of the audit findings, but must submit that request within 30 days of receipt of the initial determination. Similarly, under *N.J.A.C. 12:5-1.3(c)*, the grantee/contractor/subrecipient may challenge the Director's final written determination and request a formal hearing regarding same, but must submit that request for a hearing within 10 days of receipt of the final written determination. Regardless of size, all businesses that are awarded Federal and/or State grants, contracts and other agreements by or on behalf of the New Jersey Department of Labor and Workforce Development must comply with the procedures and time frames established by these rules. Since the rules are not burdensome, lesser requirements for small businesses are not necessary. Businesses will benefit by the rules because they will receive timely decisions concerning audit disputes, thereby reducing the potential for carrying forward into future years disallowed costs or other charges. It is noted that the readoption of the rules will not impose any new record keeping or bookkeeping requirements; businesses may continue to avail themselves of the audit resolution procedures through the use of information already required as a condition of the award.

Smart Growth Impact

The rules proposed for readoption with amendments will not have any impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for readoption and the proposed amendments would not evoke a change in the average costs associated with housing. The basis for this finding is that the rules proposed for readoption and the proposed amendments pertain to the resolution of Department of Labor and Workforce Development audits and have nothing whatsoever to do with housing.

Smart Growth Development Impact

The rules proposed for readoption and the proposed amendments would not evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the rules proposed for readoption and the proposed amendments pertain to the resolution of Department of Labor and Workforce Development audits and have nothing whatsoever to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 12:5*.

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

SUBCHAPTER 1. AUDIT RESOLUTION PROCEDURES

12:5-1.1 Purpose and scope

This subchapter sets forth procedures for the resolution of audit findings, including, but not limited to, questioned costs and administrative deficiencies, identified as a result of the audit of Federal and/or State grants, contracts and other agreements awarded by or on behalf of the New Jersey Department of Labor **and Workforce Development**.

12:5-1.2 Definitions

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

"Director" means the Director, Division of Accounting, New Jersey Department of Labor **and Workforce Development**.

"Final audit report" means an audit report received from the Office of Inspector General, United States Department of Labor, New York Regional Office, an audit report issued by the New Jersey Department of Labor **and Workforce Development** or an audit report that has cleared a desk review by the New Jersey Department of Labor **and Workforce Development** and for which no deficiencies on the auditor's part have been noted which could require correction or clarification.

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