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RULE PROPOSALS

**LABOR AND WORKFORCE DEVELOPMENT
WORKFORCE DEVELOPMENT**

42 N.J.R. 3043(a)

Proposed Readoption with Amendments: N.J.A.C. 12:35

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

Work First New Jersey and Food Stamp Employment and Training Program

Authorized By: Harold J. Wirths, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1-20, 34:1A-3(e)* and *44:8-114*.

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

Proposal Number: PRN 2010-316.

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

Thursday, January 13, 2011
10:00 A.M. to 12:00 Noon
NJ Department of Labor and Workforce Development
John Fitch Plaza
2nd Floor, Large Conference Room
Trenton, New Jersey

[page=3044] 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 February 18, 2011 to:

David Fish, Regulatory Officer
Office of Legal and Regulatory Services
NJ Department of Labor and Workforce Development
P.O. 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. 12:35*, Work First New Jersey and Food Stamp Employment and Training Program, is scheduled to expire on May 8, 2011. The Department of Labor and Workforce Development has reviewed these rules and, with the exception of technical amendments made throughout the chapter, which would reflect the elimination of the title "Deputy Assistant Commissioner, Division of One-Stop Programs and Services," has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated. Specifically, due to the elimination of the title "Deputy Assistant Commissioner, Division of One-Stop Programs and Services," the Department is proposing that this title be replaced throughout the chapter with the title, "Assistant Commissioner, Workforce Development." Accordingly, the Department proposes that *N.J.A.C. 12:35* be readopted, with amendments.

A summary of the subchapters proposed for readoption follows:

Subchapter 1 addresses the purpose and scope of the chapter and contains definitions of words and terms used throughout the chapter.

Subchapter 2 prohibits the replacement or displacement of a regular employee by a Work First New Jersey recipient who participates in the Community Work Experience Program (CWEP) or the Alternative Work Experience Program (AWEP), or by a Food Stamp Employment and Training Program (FSETP) participant. The subchapter also sets forth the complaint procedure for employees who believe that they have been adversely affected by a violation of *N.J.A.C. 12:35-2.1*, which is to say, that they have been adversely affected by the replacement or displacement of a regular employee by a Work First New Jersey recipient who participates in the CWEP or AWEP programs, or by a FSETP participant.

As the Department has provided a 60-day comment period on 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 readoption with amendments would have a positive social impact in that they would explain to CWEP, AWEP and FSETP participants, employers and employees the appropriate manner for placement of CWEP, AWEP and FSETP participants in the workplace. Furthermore, the rules proposed for readoption with amendment would have a positive social impact in that they would explain the procedures for State employees and non-State employees to file complaints when they believe that they have been adversely affected by the placement of a CWEP, AWEP or FSETP participant in the workplace in a manner which violates *N.J.A.C. 12:35-2.1*. The better informed are employers, employees and CWEP, AWEP and FSETP participants regarding the appropriate use of CWEP, AWEP and FSETP participants in the workplace, the more likely that these programs will succeed in the manner envisioned under the law.

Economic Impact

The rules proposed for readoption with amendments would have a positive economic impact not only for CWEP, AWEP and FSETP participants, but also for taxpayers, in that that they assist CWEP, AWEP and FSETP participants in obtaining valuable work experience, which may lead to permanent employment opportunities and thereby enable those individuals to maintain an adequate standard of living, eliminating their need for public assistance. Furthermore, the complaint procedures contained in the rules proposed for readoption with amendments would protect regular employees from instances of inappropriate displacement by CWEP, AWEP and FSETP participants.

Federal Standards Statement

The rules proposed for readoption with amendments would not exceed standards or requirements imposed by Federal law. The rules would simply implement the requirements of the Work First New Jersey Act, P.L. 1997, c. 38, and

would be consistent with the Federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," P.L. 1004-193. As a result, a Federal standards analysis is not required.

Jobs Impact

The Department does not anticipate an increase or decrease in the number of current jobs as a result of the rules proposed for readoption with amendments. However, it is hopeful that the valuable work experience obtained by CWEP, AWEP and FSETP participants would make them eligible for future employment opportunities.

Agriculture Industry Impact

The rules proposed for readoption with amendments would have no impact on the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments would not impose reporting, recordkeeping or compliance requirements on small businesses as that term is defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. The rules proposed for readoption with amendments would explain the prohibition against replacing or displacing regular employees with CWEP, AWEP or FSETP participants and would establish complaint procedures for regular employees who believe they have been adversely affected by the placement of CWEP, AWEP or FSETP participants in a manner that does replace or displace a regular employee.

Smart Growth Impact

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

Housing Affordability Impact

The rules proposed for readoption with 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 with amendments pertain to the Work First New Jersey and Food Stamp Employment and Training programs, not to housing.

Smart Growth Development Impact

The rules proposed for readoption with 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 with amendments pertain to the Work First New Jersey and Food Stamp Employment and Training programs, 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. 12:35*.

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

12:35-1.2 Definitions

The following words and terms, when used in this chapter, 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.

...

12:35-2.3 Complaint procedures: Non-State service employees

(a) Any non-State employee who believes he or she has been adversely affected by a violation of *N.J.A.C. 12:35-2.1*, or his or her duly authorized union representative, may file a complaint with the [Deputy Assistant Commissioner, Division of One-Stop Programs and Services, [page=3045] within the Department of Labor and Workforce Development] **Assistant Commissioner**.

1.-5. (No change.)

(b) The [Deputy Assistant Commissioner, Division of One-Stop Programs and Services, or his or her designee,] **Assistant Commissioner** shall investigate the complaint and render a written decision as to the appropriateness of the Work First/FSETP participant's placement or use at the workplace within 10 days of receipt of the complaint.

1. If the [Deputy Assistant Commissioner, Division of One-Stop Programs and Services, or his or her designee,] **Assistant Commissioner** determines that the placement or use of the Work First/FSETP participant violates *N.J.A.C. 12:35-2.1*, he or she shall notify the agency responsible for placement that the placement or use is not appropriate and that the participant should be immediately removed from the position.

2. The decision of the [Deputy Assistant Commissioner, Division of One-Stop Programs and Services, or his or her designee,] **Assistant Commissioner** shall advise the parties of the right to appeal to the New Jersey State Board of Mediation for an expedited binding arbitration.

(c) A complainant or his or her duly authorized union representative may appeal the final decision of the [Deputy Assistant Commissioner, Division of One-Stop Programs and Services] **Assistant Commissioner** to the Board of Mediation within 10 days of receipt of the decision.

1.-3. (No change.)