

RULE 5.7 Disclosure of Information

Information acquired by an administrative law judge in an administrative judicial capacity shall not be used or disclosed by the judge in financial dealings or for any purpose not related to judicial duties.

Commentary: In the course of performing administrative judicial duties, an administrative law judge may acquire information of commercial or other value that is unavailable to the public. Judges shall not reveal or use such information for personal gain or for any purpose unrelated to their administrative judicial duties.

This rule is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, or other judicial officers when consistent with other provisions of this Code.

RULE 5.8 Fiduciary Activities

An administrative law judge shall not serve as an executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only when such service will not interfere with the proper performance of judicial duties. "Member of the judge's family" includes a spouse, civil union partner, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains or maintained a familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(A) The administrative law judge shall not serve as a fiduciary if that service is likely to result in litigation that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or under its appellate jurisdiction.

(B) While acting as a fiduciary for a member of the judge's family, an administrative law judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.

(C) On becoming an administrative law judge, persons serving as fiduciaries shall comply with this rule as soon as reasonably practicable, upon notice to and approval by the Director of the Office of Administrative Law.

Commentary: When an administrative law judge who is a beneficiary of an estate serves as an executor or administrator as permitted by this rule and receives a fee solely for the purpose of reducing the tax liability of the estate, receipt of that fee does not constitute "compensation" under Canon 6.

RULE 5.9 Serving as Arbitrator or Mediator

An administrative law judge shall not act as an arbitrator or mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.

Commentary: This Rule does not prohibit an administrative law judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties is prohibited unless it is expressly authorized by law.

RULE 5.10 Practice of Law

An administrative law judge shall not practice law, with or without compensation.

RULE 5.11 Appointments to Governmental Positions

An administrative law judge shall not accept appointment to a governmental committee, commission, or other position, except with prior approval of the Director of the Office of Administrative Law.

CANON 6

AN ADMINISTRATIVE LAW JUDGE SHALL NOT RECEIVE COMPENSATION FOR QUASI-JUDICIAL AND EXTRAJUDICIAL ACTIVITIES

RULE 6 Compensation for Quasi-Judicial and Extrajudicial Activities

(A) Except as otherwise provided in (B) below, an administrative law judge shall not receive compensation for quasi-judicial and

extrajudicial activities permitted by this Code, but may receive reimbursement of actual expenses that the judge reasonably incurred for travel, food, and lodging, provided that the source or amount of such reimbursement, or the location of the activity, does not give the appearance of influencing the judge in the exercise of judicial duties or otherwise create an appearance of impropriety.

(B) Upon notice to, and approval by, the Director of the Office of Administrative Law, an administrative law judge may receive compensation for teaching at law schools or colleges, provided that the source of the payment does not give the appearance of impropriety.

CANON 7

AN ADMINISTRATIVE LAW JUDGE SHALL REFRAIN FROM POLITICAL ACTIVITY

RULE 7 Political Activity

(A) An administrative law judge shall not engage in any political activity, including, but not limited to:

- (1) Holding membership or office in a political organization;
- (2) Making speeches for a political organization or candidate, or publicly endorsing a candidate for public office;
- (3) Attending political functions that are likely to be considered as political in nature; or
- (4) Soliciting funds, paying an assessment, or making a contribution to a political organization or candidate, or purchasing tickets for political party dinners or other functions.

(B) An administrative law judge shall resign from office when the judge becomes a candidate for an elective public office or is nominated thereto.

Commentary: The proscription against membership in a political organization does not prohibit an administrative law judge from registering with a political party to vote.

Applicability

All administrative law judges, including temporary assignment administrative law judges and administrative law judges on recall, shall comply with the Code of Conduct for Administrative Law Judges.

AGRICULTURE

(a)

DIVISION OF MARKETING AND DEVELOPMENT

Dairy Licensing Fees and Penalties

Proposed Amendments: N.J.A.C. 2:56-1.1 and 1.2

Authorized By: State Board of Agriculture and Douglas H. Fisher, Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:1-11.1.

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

Proposal Number: PRN 2018-069.

Submit comments by October 5, 2018, to:

Thomas L. Beaver, Director
 Division of Marketing and Development
 New Jersey Department of Agriculture
 PO Box 330
 Trenton, NJ 08625-0330
 or to: proposedrulesMarkets@ag.nj.gov

The agency proposal follows:

Summary

The State Board of Agriculture (State Board) and the Department of Agriculture (Department) are proposing amendments to the licensing fees for milk dealers, milk processors, and stores pursuant to N.J.S.A. 4:1-11.1. The State Board and Department find the proposed

amendments to be necessary, reasonable, and adequate, to assure an adequate funding level for administration of the Dairy Program, the purpose for which they are promulgated. The Department is permitted to amend its fees by rule pursuant to N.J.S.A. 4:1-11.1. The current fees were last revised in 2003.

The proposed amendments revise licensing fees for milk dealers, milk processors, and stores by approximately 22 percent to reflect the changes in operating costs due to inflation as reported by the U.S. Department of Labor, Bureau of Labor Statistics.

Proposed amendments to Subchapter 1 will increase the license fees to milk processors, milk dealers, and stores. The proposed amendment to N.J.A.C. 2:56-1.1 increases the annual licensing fee for dealers who buy for shipment, sale, resale, or manufacture from \$50.00 to \$100.00.

The proposed amendments to N.J.A.C. 2:56-1.2(a) will increase the annual licensing fees for stores selling 500 quart equivalents or less per week from \$25.00 to \$30.00, stores selling 501 to 1,500 quart equivalents per week from \$50.00 to \$60.00, stores selling 1,501 to 3,000 quart equivalents per week from \$75.00 to \$90.00, and stores selling more than 3,001 quart equivalents per week from \$100.00 to \$120.00.

The proposed amendment to N.J.A.C. 2:56-1.2(b) will increase the annual licensing fee for a store in a new location from \$25.00 to \$30.00 for the first year. The proposed amendments to N.J.A.C. 2:56-1.2(c) will increase the annual licensing fees for milk dealers from \$0.02 to \$0.025 per hundredweight of milk sold for consumption within the State, excluding dealer-to-dealer sales, and will increase the annual minimum licensing fees for milk dealers processing milk for sale to other dealers from \$1,300 to \$1,625 and for milk dealers selling to stores and consumers from \$60.00 to \$75.00.

The proposed amendments to N.J.A.C. 2:56-1.2(d) will increase the annual licensing fee for milk dealers handling milk only in another state or engaged only in manufacturing from \$300.00 to \$375.00.

The Department proposes the amendments as they have been found to be necessary, reasonable, and proper to establish an increased funding level for effective administration of the Dairy Program to assure that the dairy industry and consumers continue to receive the benefits of effective milk control regulations protecting against unstable markets and destructive competition. These goals are attained through implementation of the Department's Dairy Program rules, N.J.A.C. 2:48, 2:50, 2:52, 2:53, and 2:55.

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

Social Impact

The proposed amendments will ensure an increased funding level to assure that the dairy industry and consumers will continue to receive the benefit of an effective milk control regulation and ensure a stable, competitive milk marketing system through effective administration of the Department's Dairy Program rules. Failure to adopt these amendments will damage the Department's ability to administer fair and effective service and regulatory programs that benefit New Jersey dairy farmers, milk dealers, processors, retail stores, schools, and consumers.

Economic Impact

The proposed amendments are driven by economics and provide increased funding for the continuation of programs that protect New Jersey dairy farmers, milk dealers, processors, retail stores, and consumers from potential economic harm, and foster agricultural economic growth and profitability. Milk is a highly perishable and bulky commodity that must be harvested at least twice daily to maintain its wholesome qualities and marketability. Some of the programs these fees support are summarized below.

Approximately 53 New Jersey dairy farmers with average investments exceeding \$600,000 per farm receive direct benefits from these programs. These benefits occur by insuring that the farmers receive fair payments and have a stable buyer for their product, maintenance of the marketing and production infrastructure conducive to the maintenance of efficient farming operations, maintenance of the Federal and State marketing orders with respect to the guarantees of payment from milk handlers, and by defining marketing areas that

correspond with the Federal Milk Marketing Order No. 1 (Northeast Marketing Area). Revenues of approximately \$38 million, generated by New Jersey dairy farmers each year, are important contributions to the State's economy, particularly for rural communities.

Milk dealers and processors selling to New Jersey schools and retail stores benefit from the maintenance of a stable source of milk, wherein implementation of the Department's rules results in the minimization of predatory, disruptive activities. The program's notice rules assist dealers with the collection of money owed for products delivered, help to insure a continuing source of supply for retail stores, and provide for the orderly transfer of business.

New Jersey public schools rely on the monthly publication of the Class I milk prices, so that they may ensure that their milk dealer is abiding by their contract to bill the schools for the proper contract price.

New Jersey has not raised the fees that fund the dairy program for 15 years, while expenses have continued to rise, so that the current fees do not cover the cost of the program. Due to the minimal amount of the increases, the proposed fees will not present a hardship for any of the regulated entities.

New Jersey consumers purchase over two billion pounds of fluid milk and milk products each year, which means the proposed increase would be .000501 per gallon sold in New Jersey.

For major supermarket chains, the average increase of \$20.00 per store will not create a hardship.

It is anticipated that neighborhood stores will have to pay an additional \$5.00 due to the proposed fees. While this represents a 20 percent increase, the dollar amount will not create a hardship.

Milk dealers and distributors will see the largest increase in dollars paid. However, the processors are in the best position to pass on the increased cost to their customers as most of their sales are covered by contracts that permit price increases to match increases in costs. Where the typical processor is processing in excess of 20 million pounds of milk per month, this fee increase would be less than \$0.00028 per gallon. Nearly 48 percent, or 147 of 309 dealers, will see only a \$15.00 increase in license fees.

Dairy farmers will not be affected by the increased license fees, but will benefit by the continuation of the program.

It is unlikely that New Jersey consumers will see any impact by these amended fees, since stores tend to use milk as a loss leader to stimulate sales of more profitable goods. For this reason, the Department has a rule in place that makes this marketing strategy a violation in order to prevent destructive competition. Consumers will continue to benefit from the effective administration of Dairy Program rules, including the regulating of the manner in which stores licensed by the Department display retail prices, so that consumers are properly informed, and by protecting against unstable markets and destructive competition, so that New Jersey consumers have access to quality milk at competitive prices. For a store that sells 250 quarts per week, the fee increase will be the equivalent of \$0.000385 per quart. Stores in the largest category, more than 3,000 quarts per week, the fee increase would be the equivalent of \$0.000128 per quart or less.

The dairy license fees collected are allocated for the Department's Dairy Program's operating costs, therefore, the proposed amendments benefit the State of New Jersey by setting fees at a level that will enable the Dairy Program to be a self-sustaining program.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-23 (P.L. 1995, c. 65) require administrative agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

The proposed amendments, which are solely related to an increase in State-regulated fees, are not subject to any Federal requirements or standards. Therefore, no Federal standards analysis is required.

Jobs Impact

It is not anticipated that the proposed amendments will result in the generation or loss of jobs. However, it is anticipated that maintaining an effective milk control program will positively affect New Jersey's agricultural industry, averting the permanent loss of jobs.

Agriculture Industry Impact

The proposed amendments will have a positive impact on New Jersey agriculture by helping to maintain a viable dairy industry in the Garden State, as described in the Social and Economic Impact statements above.

Regulatory Flexibility Analysis

The proposed amendments apply to approximately 309 milk dealers and processors of whom approximately 90 percent are small businesses as defined under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and approximately 10,100 retail stores of which approximately 85 percent are small businesses. However, no recordkeeping or reporting requirements are imposed by the proposed amendments on either large or small businesses, as described in the Summary and Economic Impact statement above. The fee structure reflects differing standards for small business, in that the fees are assessed based on volume of product sold.

The proposed amendments are essential to enable the continuation of a program that protects the interest of the dairy farmers (small businesses), as well as milk dealers, retail stores, and consumers.

Housing Affordability Impact Analysis

The proposed amendments will have an insignificant impact on the affordability of housing in New Jersey, and there is an extreme unlikelihood that the proposed amendments would evoke a change in the average costs associated with housing, because the proposed amendments increase dairy licensing fees.

Smart Growth Development Impact Analysis

The proposed amendments will have an insignificant impact on smart growth, and there is an extreme unlikelihood that the proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments are to dairy licensing fees.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

SUBCHAPTER 1. DAIRY LICENSING FEES

2:56-1.1 Licensing fees of dealers who buy for shipment, sale, resale, or manufacture

Persons licensed pursuant to N.J.S.A. 4:12-2 shall, in compliance with all other provisions of N.J.S.A. 4:12-3, pay a license fee of **[\$50.00] \$100.00**. This fee will supersede the fee required by N.J.S.A. 4:12-3 [as of July 21, 2003].

2:56-1.2 Licensing fees to operate as a milk dealer or store

(a) Persons licensed pursuant to N.J.S.A. 4:12A-33 shall, in compliance with all other provisions of N.J.S.A. 4:12A-36 pay a yearly license fee, as follows:

- 1. Stores selling 500 quart equivalents or less per week: **[\$25.00] \$30.00**;
- 2. Stores selling 501 to 1,500 quart equivalents per week: **[\$50.00] \$60.00**;
- 3. Stores selling 1,501 to 3,000 quart equivalents per week: **[\$75.00] \$90.00**;
- 4. Stores selling 3,001 quart equivalents or more per week: **[\$100.00] \$120.00**.

(b) Any person applying for a license to engage in business as a store at a new location shall pay a fee of **[\$25.00] \$30.00** for the first year of operation, but any person acquiring an existing store shall pay a fee based upon the average volume of milk sold during the previous two months in accordance with the store fee schedule in (a) above.

(c) Every milk dealer shall pay a fee of **[\$0.02] \$0.025** per hundredweight of milk sold for consumption within the State excluding

dealer to dealer sales, but a milk dealer processing milk for sale to other dealers shall pay a minimum fee of **[\$1,300] \$1,625** per year and a milk dealer selling to stores and consumers shall pay a minimum fee of **[\$60.00] \$75.00** per year.

(d) A milk dealer engaged in handling milk in the State of New Jersey but selling milk only in another state or engaged only in manufacturing shall pay a license fee of **[\$300.00] \$375.00** per year.

(e) These fees shall supersede the fees required by N.J.S.A. 4:12A-36 [as of July 21, 2003].

HUMAN SERVICES

(a)

OFFICE OF PROGRAM INTEGRITY AND ACCOUNTABILITY

Central Registry of Offenders Against Individuals with Developmental Disabilities

Proposed Readoption with Amendments: N.J.A.C. 10:44D

Proposed New Rule: N.J.A.C. 10:44D-3.4

Authorized By: Carole Johnson, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:11B-1 et seq., specifically 30:11B-4.

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

Proposal Number: PRN 2018-065.

Submit written comments by October 5, 2018, to:

Douglas Swan
Office of Program Integrity and Accountability
Department of Human Services
PO Box 700
Trenton, New Jersey 08625-0700
E-mail: doug.swan@dhs.state.nj.us

The agency proposal follows:

Summary

The Department of Human Services (Department) is proposing to readopt N.J.A.C. 10:44D, the Central Registry of Offenders Against Individuals with Developmental Disabilities, with amendments to comply with P.L. 2012, c. 69 (designated as Tara’s Law) and P.L. 2017, c. 238 (designated as Stephen Komminos’ Law). Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 10:44D was scheduled to expire on June 6, 2018. As the Department has filed this notice of re adoption prior to the expiration date, that date is extended 180 days to December 3, 2018, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The Central Registry of Offenders Against Individuals with Developmental Disabilities (Central Registry) creates a list of caretakers who have committed acts of abuse, neglect, or exploitation and, after being afforded due process rights, have been prohibited from employment working with individuals with developmental disabilities. P.L. 2012, c. 69 and P.L. 2017, c. 238 make changes to the scope and enforcement of the Central Registry necessitating the amendments. A summary of the rules proposed for re adoption with amendments follows:

N.J.A.C. 10:44D-1.1 sets forth the purpose and scope of the chapter.

N.J.A.C. 10:44D-1.2 sets forth definitions of the words and terms used within the rules proposed for re adoption. The proposed amendments add definitions for: “authorized family member,” “community-based residential program or residential program,” “day program,” “program,” “substantiated,” “unfounded,” and “unsubstantiated.”

N.J.A.C. 10:44D-1.3 sets forth the general policy of the chapter.

N.J.A.C. 10:44D-2.1 establishes the protocols by which allegations of abuse, neglect, or exploitation of individuals with developmental disabilities should be reported. The proposed amendments identify and add case managers and their supervisors as mandatory reporters at