

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

AGRICULTURE

(a)

DIVISION OF MARKETING AND DEVELOPMENT

Producers

Proposed New Rules: N.J.A.C. 2:50

Authorized By: Joseph Atchison, Division of Marketing and Development, the State Board of Agriculture, and Douglas H. Fisher, Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:1-11.1, 4:1-25, and 4:12A-1 et seq., specifically 4:12A-7 and 4:12A-20.

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

Proposal Number: PRN 2022-058.

Submit written comments by July 1, 2022, to:

Joseph Atchison, Director
Division of Marketing and Development
New Jersey Department of Agriculture
PO Box 330
Trenton, NJ 08625-0330
Email: pr-markets@ag.nj.gov

The agency proposal follows:

Summary

Chapter 50 was promulgated to regulate the purchase and sale of raw milk between producers and dealers in the State of New Jersey, thereby providing protection to producers who sell, and dealers who buy, New Jersey raw milk. As such, the rules proposed for adoption primarily affect New Jersey dairy producers and milk dealers licensed by the State of New Jersey to buy milk from New Jersey dairy producers and will also benefit New Jersey milk dealers, producers, and consumers. Inadvertently, N.J.A.C. 2:50 expired on January 1, 2022, pursuant to P.L. 2021, c. 103. However, the Department of Agriculture (Department) has reviewed these rules and has found them to be necessary, reasonable, and proper for the purpose for which they were promulgated. Accordingly, all provisions of Chapter 50, as they existed prior to their expiration on January 1, 2022, are proposed as new rules without any changes to the provisions then in effect.

N.J.A.C. 2:50-1.1 provides that a dairy farmer must notify the dealer to whom he or she sells milk at least 28 days prior to his or her intent to discontinue the sale of milk to the dealer. This provision assures that the dealer has an adequate supply of fresh milk.

N.J.A.C. 2:50-2.1 and 2.2 assure that dairy farmers will not suddenly find themselves without a market for their milk. N.J.A.C. 2:50-2.1 states that a dealer may not arbitrarily discontinue buying milk, and must provide the farmer with a 28-day notice. N.J.A.C. 2:50-2.2 requires a milk dealer to notify the Division of Marketing and Development (Division) of

any new dairy farmers from whom the dealer buys milk and the discontinuation of purchases from any dairy farmer.

N.J.A.C. 2:50-3.1, 3.2, and 3.3 set forth the procedures for the licensing of weighers and samplers to assure that the persons picking up raw milk are competent to take milk samples and to weigh and measure the milk picked up from the dairy producer, in order to assure proper payment to the producer. N.J.A.C. 2:50-3.4 states that the automated light scattering methods, as set forth in "Official Methods of Analysis of the Association of Official Analytical Chemist," incorporated herein by reference, as amended and supplemented, 17th edition, is an approved method for the determination of butterfat of milk or cream. Butterfat or milkfat, the natural fatty portion of milk and cream, is used as a basis for payment. It is a requirement of the Federal Food and Drug Administration (FDA) Pasteurized Milk Ordinance (PMO) to have a functioning regulatory sampling and weighing license program in place for persons taking a food safety sample of raw milk for processing.

Subchapter 4 mandates the payment of a fuel adjustment add-on to be paid to New Jersey producers by licensees who purchase New Jersey-produced raw milk to provide assistance to cover New Jersey dairy producers' costs of production. N.J.A.C. 2:50-4.1 sets forth the definitions for this subchapter. N.J.A.C. 2:50-4.2 delineates the requirements and calculations for the payment of the fuel adjustment add-on. N.J.A.C. 2:50-4.3 clarifies how adjustments will be made for Class I utilization for the fuel adjustment add-on payments made by processors. Premium program reporting requirements for licensees are set forth at N.J.A.C. 2:50-4.4. This section also details the means of petitioning the Department for assistance when a producer feels a premium program change has been made for the purpose of circumventing the fuel adjustment add-on. N.J.A.C. 2:50-4.5 addresses the penalties to be imposed for violating or intentionally circumventing the provisions at N.J.A.C. 2:50-4.2.

N.J.A.C. 2:50-5.1 describes the conditions under which information will be held confidential and references privileges and limitations set forth at 7 CFR 205.501 and 205.504 and N.J.S.A. 47:1A-1 et seq., regarding access to information.

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

Social Impact

For the reasons set forth in the Summary above and Economic Impact below, the expired rules proposed herein as new rules have a positive social impact by assuring that both the dairy producers and New Jersey consumers will continue to receive the benefit of effective milk control rules. New Jersey dairy producers are important for maintaining locally produced, high quality milk for consumption, supporting rural economies, providing taxpaying open space, and maintaining the aesthetic value of rural New Jersey. Failure to continue this chapter would leave dairy farmers unprotected from the arbitrary loss of buyers of their milk and remove the assurance for the dairy farmer of accurate recording of the amount of milk picked up and accurate reporting of multiple milk

components and the payment of a fuel adjustment add-on. These are significant factors in determining the value of the producers' product.

Economic Impact

The expired rules proposed herein as new rules beneficially affect New Jersey dairy farmers, milk dealers, and New Jersey schools.

This rulemaking provides for the continuation of protection of dairy producers from potential economic harm in case of the abrupt dismissal of farmers by milk dealers. Milk is a highly perishable and bulky commodity that must be harvested at least twice daily to maintain its wholesome qualities and marketability.

The dairy producer's milk payments are based on the pounds of skim milk and the multiple components of the milk. Improper weighing and sampling would cause severe economic harm to individual dairy producers. In addition, these rules directly increase income to dairy producers through the fuel adjuster add-on.

New Jersey public schools are required under the School Milk Purchase Law to buy New Jersey milk. The expired rules proposed herein as new rules benefit school children by creating a market environment, wherein supplies of New Jersey-produced milk are available.

Approximately 39 commercial and eight independent value-added and institutional New Jersey dairy producers receive a direct benefit from the expired rules proposed herein as new rules by ensuring that the producers receive fair payments and have a stable buyer for their product. New Jersey's dairy industry is an important segment of the agricultural economy, supplying almost six and six-tenths percent of the fluid milk and dairy products used by New Jersey consumers. New Jersey dairy producers are important to the State's economy, particularly for rural communities. According to 2021 raw milk production data compiled by the New Jersey Department of Agriculture from all markets within New Jersey, the 39 commercial and eight independent value-added and institutional dairy farms produced approximately 88.3 million pounds of milk and 3.5 million pounds of milk fat, valued in excess of \$15.8 million (Federal minimum raw value). The expired rules proposed herein as new rules are important tools in ensuring that dairy producers receive payment for their products. This rulemaking will have an economic benefit to New Jersey consumers as well, by stabilizing milk prices and ensuring a strong dairy industry for the supply of quality milk and milk products.

Milk processors selling to New Jersey schools benefit from the maintenance of a stable source of milk, wherein implementation of the Department's rules results in the minimization of disruptive changes in the source of supply.

Compliance costs associated with the expired rules proposed herein as new rules are minimal. There is no additional cost for compliance as a result of this rulemaking, as described more fully in the Summary above. In fact, the expired rules proposed herein as new rules will help ensure more stable business operations for dairy producers and milk dealers. There will be a positive economic impact to all parties involved, by ensuring the orderly flow of milk without disruption.

Federal Standards Analysis

Executive Order No. 27 (1994) and P.L. 1995, c. 65, require State agencies that adopt, readopt, or amend State rules exceeding any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. As the expired rules proposed herein as new rules increase the minimum price payable to the dairy producer above the price established by the Federal Milk Marketing Order in effect in New Jersey, the expired rules proposed herein as new rules might be considered to exceed the Federal standards.

The Agricultural Marketing Agreement Act of 1937 (AMAA), 7 U.S.C. §§ 601 et seq., authorizes the United States Secretary of Agriculture to issue Federal milk market orders based on geographic locations, which establish minimum uniform producer prices for milk, 7 U.S.C. § 608c(1) and (5). New Jersey is subject to the Northeast Milk Marketing Order, which sets a Class I milk price each month, as well as a statistical blend price which is the minimum amount of payment to producers for three and a half percent butterfat milk. With a classified pricing system, such as that used in the Federal Milk Marketing Order, processors pay different prices for milk in each category of use, all of which is collected in a central location, "the pool," by the Federal Market Administrator's Office. Producers are paid a weighted average, or

"blend," price for all uses of milk in a particular order or market. Processors pay into or draw out of the pool on the basis of their utilization of milk relative to market average utilization. Producers participating in the pool receive identical uniform blend prices, with adjustments for butterfat content and location of the plant to which the milk is delivered (the zone). In markets with multiple component pricing, adjustments also are made for protein and other solids.

For example, the price of Class I milk for September of 2021 was \$21.59 per hundred-weight (cwt) for the \$3.15 zone price, while the New Jersey producers received a statistical blend price of \$16.60 to \$16.70 per cwt of raw milk produced in September 2021. Although the Federal Milk Marketing Order establishes the minimum price at which milk can be purchased from a producer, it does not prohibit states from setting a higher price to be paid to producers.

The New Jersey Milk Control Law of 1941, N.J.S.A. 4:12A-1 et seq., independently authorizes the Director of the Department of Agriculture (Director) to fix the minimum prices of milk to be paid to New Jersey producers to ensure a sufficient quantity of fresh, pure, and wholesome milk to the inhabitants of the State. N.J.S.A. 4:12A-22. In so doing, the Director may take into consideration the amount of money necessary to yield a reasonable return to the producer. N.J.S.A. 4:12A-22.

The Federal Milk Marketing Order for the Northeast does not fully protect New Jersey producers economically. The Northeast Federal Milk Marketing Order is only designed to fix the monthly blend price of milk a producer is due to receive from a handler, directly, or through an operating cooperative. In particular, the Federal Milk Marketing Order does not provide adequate compensation to the New Jersey producer because it fails to take into consideration the variation in cost of production based on location. New Jersey has higher than average costs of living, including high labor prices and high property taxes, and cost of production and processing is more expensive in New Jersey than elsewhere in the Northeast.

The expired rules proposed herein as new rules seek to provide financial assistance above the Federal minimum by mandating that producers receive a fuel adjustment add-on that is in addition to the Federal market minimum price and any premiums currently received by the producer. This additional payment will be used by producers to support their costs of production and lessen the impact of the high cost of production in these times of low milk prices.

The benefits of the expired rules proposed herein as new rules to New Jersey's dairy producers and the New Jersey citizens are substantial. Unless the expired rules proposed herein as new rules are adopted, many of the remaining dairy producers will be forced to go out-of-business. Ultimately, the loss of the availability of local milk could cause much higher prices to consumers and loss of quality New Jersey milk, as dealers will be required to bring milk from more distant locations and pass the additional transportation costs on to the consumer.

Jobs Impact

The expired rules proposed herein as new rules are not expected to result in the generation or loss of jobs in the State. However, failure to adopt the expired rules proposed herein as new rules would adversely affect the dairy producers and others associated with the dairy industry, resulting in the permanent loss of jobs. These adverse effects would be due to the loss of the benefits, protections, and assurances provided in the expired rules proposed herein as new rules, including, but not limited to, an effective milk control rule, an adequate supply of fresh milk, accurate reporting of milk components for proper payment to producers, fuel adjustments add-on payments, and the protection from the arbitrary loss of buyers of milk.

Agriculture Industry Impact

For the reasons set forth in the Summary, Social Impact, and Economic Impact statements above, the expired rules proposed herein as new rules will have a positive impact on the agriculture industry.

Regulatory Flexibility Analysis

The expired rules proposed herein as new rules apply to approximately 47 New Jersey dairy producers, four New Jersey processors, and four New Jersey milk procurement operations, some of whom are considered small businesses as defined by the New Jersey Regulatory Flexibility Act,

N.J.S.A. 52:14B-16 et seq. There is no professional assistance required, nor initial capital outlays or annual cost to the producer for compliance. It is anticipated that the reporting requirements for New Jersey processors is minimally arduous in that most if not all the information required to be reported is information generally kept in business records. The reporting requirements imposed provide for the minimum amount of information required by the Department to implement and monitor the effect of the expired rules proposed herein as new rules.

No differing standards can be provided based on business size since all New Jersey producers need the financial assistance offered under the expired rules proposed herein as new rules. Moreover, if a differing standard were established based on business size, it would be too complicated to track the amount of money received by each producer and paid by each processor or milk procurement entity. This could result in some producers receiving less of the premium payments. This would disadvantage the producers to a greater extent than imposing differing standards based on business size; therefore, no differing standards have been provided.

Housing Affordability Impact Analysis

The expired rules proposed herein as new rules will have no impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rulemaking regulates the buying and selling of milk in New Jersey.

Smart Growth Development Impact Analysis

The Department believes that the expired rules proposed herein as new rules will have a positive impact on the achievement of smart growth relative to the preservation of farmland. Farmland preservation is one of the cornerstones of the “Agricultural Smart Growth Plan.” Farmland has a positive environmental impact locally and Statewide. Well-managed, productive farmland provides a portion of the land base necessary to manage watersheds, recharge aquifers, manage wildlife, and protect stream corridors. The New Jersey State Development and Redevelopment Plan outlines many agricultural policies and specific land use techniques that should be implemented in the agricultural regions of the State. These are the areas with most of New Jersey’s prime farmland, which has the greatest potential of sustaining the agricultural industry in the future. The expired rules proposed herein as new rules will have a positive impact on the State Development and Redevelopment Plan by protecting the economic viability of farms. It is not anticipated that this rulemaking will have any impact upon housing production within Planning Areas 1 and 2, or within designated centers, under the State Development Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

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

Full text of the proposed new rules follows:

CHAPTER 50
PRODUCERS

SUBCHAPTER 1. NOTICE TO DEALERS BY DAIRY FARMERS

2:50-1.1 Dairy farmers notice to dealers of intent to discontinue sales of milk

(a) Before a dairy farmer selling milk to New Jersey dealers may discontinue selling milk to such dealer, he or she shall give the dealer at least 28 days written notice of his or her intent to discontinue such sale.

(b) The notice of discontinuance shall be sent to the dealer by letter or on forms supplied by the Division of Marketing and Development (Division). A copy of such letter or form shall be filed with the Division of Marketing and Development and the 28-day period shall begin on the date such notice is received by the Division.

(c) The notice shall not be required from dairy farmers shipping to a cooperative association of which they are a member or when the termination is mutually agreeable to the dealer and the dairy farmer,

provided that the Division of Marketing and Development is notified by both parties in advance of the change.

(d) The notice shall not be required for dairy farmers shipping to dealers who fail to make full payment in the time and manner required by joint orders of the Division of Marketing and Development and the United States Department of Agriculture.

(e) Upon written request by a dairy farmer or cooperative association, the notice provisions of this subchapter may be waived by the Secretary of the Department of Agriculture (Secretary) upon a finding of the following:

1. Compliance with the notice provision at (a) above would adversely impact the dairy industry in New Jersey;

2. Reasonable belief that dealer will fail to make payment to dairy farmers or cooperative associations based on dealer’s failure to make timely payments to other dairy farmers or cooperative associations in New Jersey or other jurisdictions;

3. Filing of notice of bankruptcy by the New Jersey dealer; or

4. A reasonable belief that there is a risk of interruption in the availability of an adequate supply of fresh, wholesome milk to consumers, as required by the Milk Control Act of 1941, N.J.S.A. 4A:12-1 et seq.

(f) This rule shall not affect or interfere with any private contractual obligations between dairy farmers, cooperative associations, and milk dealers.

SUBCHAPTER 2. NOTICE TO DAIRY FARMERS BY DEALERS

2:50-2.1 Dealer notice to dairy farmers of intent to discontinue purchase of milk

(a) Before a dealer purchasing milk from New Jersey dairy farmers may discontinue such purchase, he or she shall give the dairy farmer(s) at least 28 days written notice of his or her intent to discontinue such purchase.

(b) The notice of discontinuance shall be sent to the dairy farmer and a copy filed with the Division of Marketing and Development on forms supplied by the Division for this purpose. The 28-day notice period shall begin on the day that such notice is received by the Division of Marketing and Development.

(c) The notice shall not be required for a dealer to temporarily discontinue purchasing milk from a dairy farmer whose milk does not meet the quality standards of the appropriate health authority or when the termination is mutually agreeable to the dealer and the dairy farmer, provided that the Division of Marketing and Development is notified by both parties in advance of the change.

2:50-2.2 Dealer to report names of new or discontinued dairy farmers

A milk dealer purchasing milk from New Jersey dairy farmers shall send a notice to the Division of Marketing and Development of any new dairy farmer(s) and of any dairy farmer(s) discontinuing to sell milk to the dealer. Such information shall be filed monthly on or before the 10th day of each month.

SUBCHAPTER 3. MEASURING AND SAMPLING OF MILK FROM FARM BULK TANKS

2:50-3.1 Applicant for weigher and sampler certificate to pass examination

(a) Before a person shall be approved by the Secretary of the Department of Agriculture, or authorized representative, to be competent to weigh, measure, and sample milk and cream pursuant to the provisions of N.J.S.A. 4:12-41.5, said person shall satisfactorily complete an examination to be conducted by the Secretary, or authorized representative. The examination shall consist of both a written test and satisfactory demonstration of proper performance of the actual weighing or measuring and sampling techniques herein required.

(b) Failure to satisfactorily complete the written test shall make the applicant ineligible for the performance test, but failure to satisfactorily complete the performance test shall not require the applicant to be reexamined for the written test. Reexamination for either the written test or the performance test shall be made at the request of the applicant to the Secretary, or authorized representative, orally or, in writing, and will be

given as soon as practicable at a time and place mutually agreeable to the Secretary, or authorized representative, and the applicant.

(c) Upon the satisfactory completion of the examination, a certificate shall be issued to the applicant. Certificates shall be issued for the fiscal year ending June 30. Certificates, when renewed, shall be renewed for a period of two years. As a condition to renewal of the certificate, the Secretary may require attendance at a refresher course designed to train milk samplers in proper procedures and techniques of weighing, measuring, and sampling milk.

2:50-3.2 Milk weighing, measuring, and sampling procedures

(a) Weighing, measuring, and sampling milk should be performed pursuant to the procedures as set forth in the current "Standard Methods for Examination of Dairy Products," published by the American Public Health Association, Inc., and, at a minimum, shall include the following:

1. Before starting the agitator, carefully insert a clean, dry measuring stick, seating fully; withdraw and read to the nearest 1/32 inch. Record the measurement, weight, temperature, time of pickup, date, and producer's name, and number. One copy of the weight ticket shall be left with the producer;

2. Agitate for not less than five minutes and longer, if necessary, to disperse the butterfat uniformly throughout the tank.

i. The person holding the weigher and sampler certificate issued by the Division of Marketing and Development shall be responsible for ascertaining that the milk is agitated for not less than five minutes and should periodically check the tank timer to determine whether it may be used as a guide; and

ii. It is suggested that each truck carry a timing device that may be used for timing the agitation; and

3. After milk has been agitated for at least five minutes with agitator running and before the outlet is open, take a universal sample. The sample shall be taken with a properly cleaned and sanitized stainless-steel dipper that is first dipped two or three times into the milk. This sample shall be at least one ounce (30 cubic centimeters). If composite samples are taken, on every day pickup, a 10 cubic centimeter dipper of milk shall be added to the composite daily. On every other day pickup, a 20 cubic centimeter sample shall be added to the composite at each pickup.

(b) When taking bacteria samples, special care shall be taken to prevent contamination of sample containers and/or equipment. The sampler's clothes and hands must be clean and dry when sampling. Sterile sample containers and sampling equipment shall be kept protected at all times and properly identified. After milk has been agitated for taking butterfat samples, remove at least a 10 cubic centimeter portion with a properly sterilized device into the sterile sample container. This container shall be immediately placed in an insulated, properly iced, or refrigerated case ensuring that the water level is no higher than the milk in the sample container.

2:50-3.3 Maintenance of milk samples

(a) Each bulk tank truck used for farm pickup must be equipped with a sanitary compartment to hold the insulated sample case. This compartment must have a lock or the sample case itself must have a lock.

(b) The butterfat sample case must be kept locked at all times, unless under the direct supervision of the certified sampler.

(c) The insulated case shall have a rack which holds the sample container upright, and when bottles are used, a cover that rests on the sample bottle stoppers.

(d) The bottle stoppers shall be of the hooded plug type or of a type which gives equivalent protection from moisture entering the bottle.

(e) Each sample case shall contain one bottle filled with water for use in temperature checks.

(f) The temperature of butterfat samples shall be maintained at between 33 and 55 degrees Fahrenheit.

(g) The temperature of the bacteriological samples should be maintained at between 32 and 40 degrees Fahrenheit.

2:50-3.4 Additional methods for the determination of butterfat of milk or cream

The Secretary shall approve the use of the automated light scattering method as set forth in "Official Methods of Analysis of the Association of

Official Analytical Chemist," the 17th edition, 2000, Section 33.2.31, incorporated herein by reference, as amended and supplemented.

SUBCHAPTER 4. PREMIUMS AND OTHER PAYMENTS TO PRODUCERS

2:50-4.1 Definitions

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

"Department" means the New Jersey Department of Agriculture.

"Director" shall mean the Director of the Division of Marketing and Development for the New Jersey Department of Agriculture.

"Licensee" means any New Jersey processor required to be licensed pursuant to N.J.S.A. 4:12-2 and 4:12A-28.

"New Jersey processor" means any person, firm, partnership, association, or corporation who cans, freezes, dries, or otherwise preserves or processes, handles, hauls, carries, transports, or distributes New Jersey-produced milk and who is licensed pursuant to N.J.S.A. 4:12-2.

"New Jersey-produced milk" means milk produced by a New Jersey producer.

"New Jersey producer" means any person or entity meeting the definition of producer at N.J.S.A. 4:12-1.

2:50-4.2 Payments for a fuel adjustment add-on

(a) All licensees shall pay to a New Jersey producer a fuel adjustment add-on for all New Jersey produced milk, which shall be calculated monthly by the Director in accordance with (b) below. The new fuel adjustment add-on for Class I milk will be officially announced on the Department's website at www.state.nj.us/agriculture the Friday before the 23rd of each month and will also be published in the New Jersey Register for the month in which the fuel adjustment add-on is effective. Should the 23rd of the month fall on a Friday, it will be announced on that day.

(b) The fuel adjustment add-on shall be calculated as follows:

1. Begin with the preceding month's diesel fuel price. The preceding month's diesel fuel price will be the price for the Central-Atlantic region as posted by the website of the Energy Information Administration of the U.S. Department of Energy, http://tonto.eia.doe.gov/dnav/pet/pet_pri_gnd_dcus_nus_w.htm, for the last full month prior to the month of calculation;

2. Subtract the base price of \$1.403, which is the 2002 diesel fuel price for the Central-Atlantic region as posted on the website of the Energy Information Administration of the U.S. Department of Energy, http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pets&s=emd_epd_2d_pte_nus_dpg&f=m;

3. Calculate the premium by adding three cents for each 10 cents the fuel price increases over the base price or subtracting three cents for each 10 cents the fuel price decreases. To do this, take the difference between the preceding month's price and the base price and divide by 10. Round to the nearest whole number and multiply by three; and

4. Adjust the premium calculation to reflect the existing average Class I utilization, which shall be calculated monthly. The actual average Class I utilization calculation will be announced on the Department's website at www.state.nj.us/agriculture on the 14th of the month for the preceding month using the preceding month's production and processing figures. If the 14th of the month falls on a weekend or holiday, it will, be announced on the next business day. The fuel adjustment add-on amount actually payable to the New Jersey producer per hundred-weight for the preceding month will also be announced on the 14th of the month.

(c) An example calculation of how the fuel adjustment add-on will be calculated for February 2007, is as follows:

1. Begin with the December 2006 diesel price of \$2.72 per gallon, which is the last full month prior to calculation;

2. Subtract the preceding month's diesel price from the base diesel price, as follows:

$$\$2.72 \text{ (December diesel price)} - \$1.403 \text{ (base diesel price)} = \$1.317;$$

3. Divide the price difference by 10 cent intervals and round to the nearest whole number, as follows:

$$\$1.317/10 \text{ cent intervals} = 13.17 \text{ intervals (rounded to 13)};$$

4. Multiply the number of intervals by three cents to arrive at the fuel adjustment add-on, as follows:

13 x \$.03 per interval = \$0.39;

5. Adjust the fuel adjustment add-on to reflect the current month's Class I utilization for New Jersey, as follows:

\$0.39 x 0.76 (sample average Class I utilization) = \$0.2964 (rounded to \$0.30). For purposes of this example, it was assumed that the Class I utilization was 76 percent; however, the actual Class I utilization for February may be different than that used in this example; and

6. Thus, the fuel adjustment add-on for February 2007 is \$0.30 per hundred-weight. Please note that as of the February 1, 2007, the original operative date of this subchapter, February's actual Class I Utilization has not yet been calculated and as a result, the actual fuel adjustment add-on amount payable to the New Jersey producer may differ from that listed in this subsection.

(d) This premium shall be payable directly to the New Jersey producer by the licensee in the final payment to the New Jersey producer in accordance with the final payment requirements at 7 CFR 1001.73. Adjustments shall be made for those licensees who overpay or underpay based on Class utilization in accordance with this subchapter. This premium will be in addition to and shall not replace any premiums paid to the New Jersey producer or those acting on behalf of the producer as of October 1, 2006.

(e) It shall be a violation of this subchapter for any licensee to change its premium program or divert milk to a different location for the purposes of circumventing this section or reducing the amount payable to a New Jersey producer pursuant to this section.

(f) The impact of the fuel adjustment add-on shall be reassessed by the Department beginning August 1, 2007.

2:50-4.3 Adjustment of the fuel adjustment add-on for Class I utilization

(a) By the 10th day of each month, all licensees or their designees shall report, on forms provided by the Department for such purposes, the following information:

1. The total volume of New Jersey milk purchased for the preceding month;
2. The total amount paid to New Jersey producers pursuant to N.J.A.C. 2:50-4.2;
3. The percent of Class I utilization of the plant for the preceding month; and
4. Such other information as the Director may deem necessary for the proper calculation of the amount of the fuel adjustment add-on required to be paid by a licensee.

(b) The Department will calculate the amount of fuel adjustment add-on required to be paid by the licensee based on its Class I utilization of all New Jersey-produced milk received, in accordance with the following:

1. The volume of milk actually used as Class I utilization milk will be multiplied by the fuel adjustment add-on required to be paid on Class I utilization milk; and
2. The figure derived at (b)1 above will be subtracted from the amount of the fuel adjustment add-on actually paid to producers.

(c) If the licensee has underpaid, it will be required to pay the difference to the Department, or its designee. If the amount the licensee paid was an overpayment, it will receive a reimbursement from the Department, or its designee, for the amount overpaid.

(d) The Department, or its designee, must receive reimbursements from licensees who have underpaid based on the prior month's calculations no later than the 15th of each month. Licensees who have overpaid will receive reimbursements from the Department, or its designee, by the 20th of each month.

2:50-4.4 Reporting and requests for assistance

(a) All licensees must report on forms provided by the Department for such purposes, the following information by March 1, 2007, regarding their existing premium programs for New Jersey producers:

1. A list of all premiums paid to New Jersey producers under current premium programs in effect as of October 1, 2006;
2. A description of the purpose for each premium listed;
3. A description of how each premium is calculated to arrive at the amount payable to a New Jersey producer;
4. A description of any changes made to each premium program, if any, since October 1, 2006, and the reason for such change; and

5. Such other information as may be required by the Director in the administration and enforcement of N.J.A.C. 2:50-4.2 and 4.3.

(b) All licensees shall report any changes to their premium programs for New Jersey producers on forms provided by the Department for such purposes, at least 15 days prior to the effective date of the proposed change and shall set forth the basis for the proposed change.

(c) Any New Jersey producer who believes that a licensee has changed its premium program or has diverted milk to another location for the purposes of circumventing N.J.A.C. 2:50-4.2 or reducing the amount payable to a New Jersey producer pursuant to N.J.A.C. 2:50-4.2 may submit a request for assistance to the Department, on forms supplied by the Department for such purposes. The Department shall investigate said complaint, in accordance with N.J.S.A. 4:12-14 and 4:12-15.

2:50-4.5 Penalties

(a) When the Department receives evidence that any licensee has changed its premium program or diverted milk to another location for the purposes of circumventing N.J.A.C. 2:50-4.2, or reducing the amount payable to a New Jersey producer pursuant to N.J.A.C. 2:50-4.2, the Director shall hold a hearing pursuant to N.J.S.A. 4:12A-35.

(b) Any licensee who has been found to have changed its premium program or diverted milk to another location for the purposes of circumventing N.J.A.C. 2:50-4.2, or reducing the amount payable to a New Jersey producer pursuant to N.J.A.C. 2:50-4.2, in violation of any of the provisions of N.J.S.A. 4:12A-35, the licensee shall be subject to the following penalties:

1. First offense: suspension of the license required pursuant to N.J.S.A. 4:12A-28, until such time as the licensee fully corrects the violation as determined by the Director.

2. Each subsequent offense: suspension of the license required pursuant to N.J.S.A. 4:12A-28, until such time as the licensee fully corrects the violation, as determined by the Director, except that after the second violation of any of the provisions at N.J.S.A. 4:12A-35 by the same licensee within a three-year period, the Director shall permanently revoke the license required pursuant to N.J.S.A. 4:12A-28.

(c) The Director shall make the initial determination as to whether to suspend or revoke a license pursuant to N.J.S.A. 4:12A-35, as provided at (b)2 above.

(d) Any licensee who is aggrieved by the determination of the Director pursuant to this section shall, upon written request, transmitted to the Department within 20 days of the decision to suspend or revoke the license, be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

SUBCHAPTER 5. CONFIDENTIALITY

2:50-5.1 Confidentiality

The New Jersey Department of Agriculture will hold confidential any information obtained pursuant to this chapter, which constitutes proprietary commercial or financial information, or is otherwise protected from disclosure under 7 CFR 205.501 and 205.504 or the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., subject to the limitations set forth therein.

COMMUNITY AFFAIRS

(a)

DIVISION OF CODES AND STANDARDS

Uniform Construction Code

Proposed Amendment: N.J.A.C. 5:23-3.18

Authorized By: Lieutenant Governor Sheila Y. Oliver,
Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-119 and 52:27D-123.19.