

costs for litigation (experts and transcripts) expenses, or replacing it with a flat case fee, both methods represent only a fraction of the cost to the OPD of providing client services. In view of the fact that OPD clients are indigent, as defined by the court pursuant to N.J.S.A. 2A:158A-14, any other increase is not appropriate at this time. No other agencies will be impacted by the proposed new rule.

Federal Standards Statement

A Federal standards analysis is not required, because there are no Federal requirements applicable to the subject matter of the proposed new rule.

Jobs Impact

The proposed new rule will not directly impact the number of jobs, either generated or lost. The rule applies to individuals only and not to business entities.

Agriculture Industry Impact

The proposed new rule will not have an impact on the agriculture industry of the State.

Regulatory Flexibility Statement

The proposed new rule imposes no reporting, recordkeeping, or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because it relates to those individuals represented by the OPD.

Housing Affordability Impact Analysis

The proposed new rule will not have an impact on housing affordability in the State. The proposed rule concerns fees for service charged by the OPD.

Smart Growth Development Impact Analysis

The proposed new rule will not have an impact on housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed rule concerns fees for service charged by the OPD.

Full text of the proposed new rule follows:

CHAPTER 17
OFFICE OF THE PUBLIC DEFENDER

SUBCHAPTER 1.-2. (RESERVED)

SUBCHAPTER 3. FEES FOR SERVICE

17:39-3.1 Office of the Public Defender fees

(a) Pursuant to N.J.S.A. 2A:158A-7(j), 16, and 19, the Office of the Public Defender (OPD) will charge its clients for the cost of attorney services, investigation, expert witnesses, and other actual costs of representation.

(b) In all cases, the Office of the Public Defender will charge its clients a flat fee based on the case type and/or degree of crime. These rates will apply to all attorney and investigator services, including any litigation (experts and transcripts) expenses, provided by the OPD to provide representation to its clients pursuant to N.J.S.A. 2A:158A-7(d). As used in this subsection, "day" shall mean any court day during which any portion of the trial takes place to include jury selection at the front end and deliberations at the back end. The billing rates used in criminal cases are as follows:

1. Criminal Court (Adult):
 - i. For 1st and 2nd degree crimes:
 - (1) Pre-indictment plea: \$250.00;
 - (2) Post-indictment plea: \$500.00;
 - (3) Trial (up to five days): \$750.00; and
 - (4) Trial (every three days beyond initial five): \$500.00; and
 - ii. For 3rd and 4th degree crimes:
 - (1) Pre-indictment plea: \$150.00;
 - (2) Post-indictment plea: \$250.00;
 - (3) Trial (up to five days): \$500.00; and
 - (4) Trial (every three days beyond initial five): \$500.00;
2. Family Court (Juvenile Delinquency):
 - i. For 1st and 2nd degree crimes:

- (1) Plea: \$250.00;
- (2) Trial (up to five days): \$750.00; and
- (3) Trial (every three days beyond initial five): \$500.00; and
- ii. For 3rd and 4th degree crimes:
 - (1) Plea: \$150.00;
 - (2) Trial (up to five days): \$500.00; and
 - (3) Trial (every three days beyond initial five): \$500.00;
3. Drug Court:
 - i. Plea: \$250.00; and
 - ii. Program completion: \$250.00;
4. Intensive supervision program: \$100.00;
5. Special hearings unit: \$200.00;
6. Title 9 child abuse and neglect cases: \$500.00; and
7. Title 30 termination of parental rights cases: \$750.00.
- (c) In cases where the OPD does not represent the defendant, but provides ancillary services and/or transcripts to the defendant pursuant to *Matter of Canady*, 126 N.J. 486 (1991) or *State v. Arenas*, 126 N.J. 504 (1991), the actual cost will be billed to the defendant.
- (d) The OPD will send the client a bill for all services rendered at the end of the case if the flat rate bill has not yet been paid.
- (e) No client will be denied services based on inability to pay any OPD fee.

(f) Nothing in this section shall preclude a client from arranging with the OPD to make partial or installment payments of any fee. Pursuant to N.J.S.A. 2A:158A-20, the Public Defender or the Public Defender's designee may compromise and settle any fee claim whenever the financial circumstances of the client involved are such that, in the judgment of the Public Defender or the designee, the best interests of the State will be served by such compromise and settlement.

(g) Notwithstanding the provisions of (b) above, all cases closed prior to (the effective date of this rule) will be billed at the hourly rate of \$30.00 per hour for attorney services, in- or out-of-court, \$15.00 per hour for investigator services, and actual costs for litigation (experts and transcripts) expenses. All cases that are open on or after (the effective date of this rule) will be billed at the flat fee rate.

TREASURY — TAXATION

(a)

DIVISION OF TAXATION

Motor Fuels – Retail Sales
Violations and Penalties

Proposed Amendment: N.J.A.C. 18:19-3.1

Authorized By: Michael J. Bryan, Director, Division of Taxation.
Authority: N.J.S.A. 56:6-6.

Calendar Reference: See Summary below for an explanation of rulemaking calendar exception.

Proposal Number: PRN 2014-045.

Submit comments by June 20, 2014, to:

Mitchell C. Smith
Administrative Practice Officer, Regulatory Services
Division of Taxation
50 Barrack Street
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The agency proposal follows:

Summary

The Division proposes to amend N.J.A.C. 18:19-3.1, Violations and penalties, in the rules dealing with the retail sales of motor fuels. N.J.S.A. 56:6-1 et seq. (the Act) was enacted into law by P.L. 1938, c. 163, and protects the interests of motorists and of retail dealers by facilitating and safeguarding the orderly distribution and marketing of motor fuels.

In 2007, the Legislature enacted P.L. 2007, c. 221, which amended the penalty provision of N.J.S.A. 56:6-3, in the Act. N.J.S.A. 56:6-3 applies

penalties to retail dealers of motor fuels for failure to display signage stating price per gallon of motor fuels sold by the dealer, for selling motor fuel at a price other than the price stated in the signage, and other requirements of N.J.S.A. 56:6-2 dealing with rebates and storing of equipment. The law substituted “not more than \$1,500 for the first offense and not more than \$3,000 for the second and any subsequent offense” for “not less than \$50.00 nor more than \$200.00 for each offense.” In order to bring N.J.A.C. 18:19-3.1 into conformity with N.J.S.A. 56:6-3, as amended by P.L. 2007, c. 221, the proposed amendment deletes the language regarding the amount of the prior penalty and adds language regarding the amount of penalty set forth in P.L. 2007, c. 221. The proposed amendment will state that a violation of N.J.S.A. 56:6-2 will bring a penalty of not more than \$1,500 for the first offense and not more than \$3,000 for the second and any subsequent offense.

Because the Division 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 Motor Fuels-Retail Sales rules were originally adopted to provide motorists, oil companies, and retail dealers of motor fuels with guidance and assistance in the administration of the Act. Because the Legislature has determined that regulation of the sale of motor fuels is in the public interest, the rules implement and carry out the legislative purposes in a manner consistent with such public purpose. The statute and the rules pursuant to it reflect a balancing of various interests including the motorists’ right to know the price of fuels available, and the prevention of potentially destructive competition among motor fuels dealers.

In 2007, the Legislature enacted P.L. 2007, c. 221, which amended the penalty provision of N.J.S.A. 56:6-3 to read as follows: “Every retail dealer who shall fail to post and publicly display, in the manner herein required, a sign stating the price per gallon, or per gallon and per liter, of all motor fuel sold by said retail dealer, or who shall sell motor fuel at a price other than the per gallon or per liter price, as provided in article II hereof, or who shall violate any other provisions of article II of this act, shall, upon conviction, be subject to a penalty of not more than \$1,500 for the first offense and not more than \$3,000 for the second and any subsequent offense, and his license shall be suspended for a period of not less than five (5) days nor more than thirty (30) days, and in default of the payment of such penalty shall be imprisoned for a period not to exceed 30 days. If there shall be a conviction upon a second or subsequent offense, the license of the convicted retail dealer, issued under the provisions and procedure in chapter thirty-nine of Title 54 of the Revised Statutes, shall be revoked by the Director of the Division of Taxation.” The proposed amendment will have a positive social impact by bringing the rule into conformity with the statute as amended, thereby avoiding confusion and potential litigation about the applicable penalty.

Economic Impact

The rules promulgated pursuant to the Act were adopted to provide for the orderly marketing of motor fuels in New Jersey and thus directly affect the economy of the State and region. However, the proposed amendment to N.J.A.C. 18:19-3.1 is not expected to have any economic impact because the proposed amendment is merely a technical correction to an existing rule on penalties, in order to bring the rule into conformity with the law, which has been in effect since January 3, 2008.

Federal Standards Statement

A Federal standards analysis is not required because State regulation of the retail sales of motor fuels is not subject to Federal regulatory standards. The administration of rules addressing these issues at the State level is an independent and separate jurisdiction.

Jobs Impact

The proposed amendment will not result in the creation or loss of jobs and is not expected to have any independent effect on jobs in this State.

Agriculture Industry Impact

The proposed amendment will have no impact on the agriculture industry.

Regulatory Flexibility Statement

The proposed amendment applies to all taxpayers subject to the statutory provisions regulating the trade practices of retail sales of motor fuels, whether or not they are small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment amends a rule that was promulgated pursuant to N.J.S.A. 56:6-1 et seq., which places certain trade practice requirements on retail sellers of motor fuels, such as requirements for the display of prices.

The proposed amendment does not impose new reporting, recordkeeping, or other compliance requirements. No accounting or other professional services are needed for a business to comply with the proposed amendment. The proposed amendment relates to a penalty provision of the Act. Each taxpayer is free to choose to make expenditures or to retain the services of a professional, to determine if the proposed amendment would apply to their own situation. The proposed amendment is intended to benefit sellers of motor fuels by providing accurate information on the penalty for failure to comply with statutory fair trade practices in the sale of motor fuels.

Housing Affordability Impact Analysis

The proposed amendment would not result in a change in the average costs associated with housing. The proposed amendment would have no impact on any aspect of housing because the proposed amendment deals with the retail sales of motor fuels.

Smart Growth Development Impact Analysis

The proposed amendment would not result in 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 proposed amendment has nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey. The proposed amendment deals with the retail sales of motor fuels.

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

SUBCHAPTER 3. PREPARATION OF FINES

18:19-3.1 Violations and penalties

(a) Rules concerning violations and penalties follow:

1.-2. (No change.)

3. Who violates any other provisions of N.J.S.A. 56:6-2, shall, upon conviction:

i. Be subject to a penalty of not [less] **more** than [\$50.00 nor] **\$1,500 for the first offense and not** more than [\$200.00] **\$3,000** for [each] **the second and any subsequent** offense; and

ii-iii. (No change.)

4. (No change.)

(a)

DIVISION OF TAXATION

Sales and Use Tax

Sales of Software and Related Services

Proposed Amendments: N.J.A.C. 18:24-25.1

Proposed Repeal and New Rule: N.J.A.C. 18:24-25.6

Proposed New Rule: N.J.A.C. 18:24-25.1 and 25.7

Authorized By: Michael J. Bryan, Director, Division of Taxation.

Authority: N.J.S.A. 54:32B-24 and 54:50-1.

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

Proposal Number: PRN 2014-049.