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RULE ADOPTIONS

Reporter

51 N.J.R. 411(a)

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Agency

LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > OFFICE OF WEIGHTS AND MEASURES

Administrative Code Citation

Adopted Repeals and New Rules: N.J.A.C. 13:47K-1 and 4.3 through 4.11

Adopted Recodifications: N.J.A.C. 13:47K-2.3, 2.5, 2.6, 2.7, 2.10 through 2.15, and 2.26 as 13:47C-3.7 through 3.17, Respectively

Adopted Amendments: N.J.A.C. 13:47C-1.1, 2.1, and 3.1 and 13:47K-5.2

Adopted New Rule: N.J.A.C. 13:47C-1.1

Adopted Repeals: N.J.A.C. 13:47C-2.5, 2.7, 3.3, and 3.6 and 13:47K-2.2, 2.4, 2.8, 2.9, 2.16 through 2.25, 3, 4.2, and 5.3

Text

General Commodities; Weights and Measures; Commodities in Package Form; Weights and Measures

Proposed: October 15, 2018, at 50 N.J.R. 2143(a).

Adopted: December 18, 2018, by the Office of Weights and Measures, David Freed, Acting State Superintendent, Office of Weights and Measures.

Filed: February 22, 2019, as R.2019 d.028, **without change**.

Authority: N.J.S.A. 51:1-61.

Effective Date: March 18, 2019.

Expiration Dates: March 20, 2024, N.J.A.C. 13:47C;

May 1, 2021, N.J.A.C. 13:47K.

Summary of Public Comments and Agency Responses:

The official comment period ended December 14, 2018. The Office of Weights and Measures (OWM) received two comments from the following:

1. The New Jersey Food Council; and
2. Walmart.

1. The New Jersey Food Council and Walmart expressed their support for the proposed changes to N.J.A.C. 13:47C and 13:47K. They viewed the incorporation of standards in the National Institute for Standards and Technology (NIST) Handbook 130 as a positive step in enhancing national uniformity and modernizing New Jersey's requirements for businesses. The commenters requested that OWM provide clarity at N.J.A.C. 13:47K-4.6(i), which addresses supplemental declarations to the required quantity declarations. The rulemaking incorporated, at N.J.A.C. 13:47K-4.6(i), the NIST standard IV.A.6, which includes a provision that does not allow "any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of commodity contained in the package." Both commenters asked that OWM include a provision at N.J.A.C. 13:47K-4.6(i) stating that terms such as "about," "approximately," or words of similar import are not terms that tend to exaggerate and are, therefore, permissible under OWM's regulations. Additionally, each commenter requested that OWM update N.J.A.C. 13:45A-14, which governs unit pricing.

RESPONSE: OWM thanks the commenters for their comments. In regards to N.J.A.C. 13:47K-4.6(i), OWM is incorporating the national standards developed by the National Conference on Weights and Measures (NCWM) and published by NIST. Because the national standard does not make exceptions for specific terms, OWM will not incorporate exceptions into its rules. Concerns over IV.A.6 in NIST Handbook 130 should be submitted to the NCWM, which accepts comments regarding changes to handbooks through submission of a Form 15 request.

In regards to the requested updates to N.J.A.C. 13:45A-14, OWM notes that these rules are outside of the scope of this rulemaking. If deemed necessary, following a review of the rules in N.J.A.C. 13:45A-14, a separate rulemaking to amend these rules will be published.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments, new rules, repeals, and recodifications are governed by N.J.S.A. 51:1-61 and OWM voluntarily adopts by reference the standards developed by NIST Handbook 130 related to methods of sale and packaging and labeling. NIST is an agency of the U.S. Department of Commerce.

Regulations

Full text of the adoption follows:

CHAPTER 47C

GENERAL COMMODITIES; WEIGHTS AND MEASURES

SUBCHAPTER 1. GENERAL COMMODITIES; DEFINITIONS

13:47C-1.1 General commodities

The Uniform Regulation for the Method of Sale of Commodities contained in the National Institute of Standards and Technology (NIST) Handbook 130, 2018 edition, at pages 95 through 140, adopted by the National Conference on Weights and Measures, is incorporated herein by reference, as amended and supplemented. The Uniform Regulation for the Method of Sale of Commodities may be found at <http://nvlpubs.nist.gov/nistpubs/hb/2018/NIST.HB.130-2018.pdf>. All general commodities sold or offered for sale in this State shall comply with these regulations. Notwithstanding the incorporation of the NIST Handbook 130, 2018 edition, the State definitions and requirements in this chapter shall be followed by those who sell or offer for sale general commodities.

13:47C-1.2 Definitions

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

...

"Page" means one side of a sheet of paper used for writing purposes.

...

"Sheet" means the separate, individual piece of tissue or paper. In the case of writing materials, "sheet" shall not be construed to mean "page."

"State Superintendent" means the State Superintendent of the Office of Weights and Measures in the Division of Consumer Affairs, New Jersey State Department of Law and Public Safety.

...

"Usable unit" means an individual sheet or unit or any combination of sheets or units that can be removed or dispensed from any type of roll, container, or other package form in a single operation.

...

SUBCHAPTER 2. FOODSTUFFS

13:47C-2.1 Meat, poultry, fish, and/or shellfish sold by net weight: methods of sale

(a) (No change in text.)

(b) (No change in text.)

13:47C-2.5 (No change in text.)

SUBCHAPTER 3. NONFOODSTUFFS

13:47C-3.1 Wood for use as fuel or flavoring; delivery tickets and sale invoices; inspections

(a) The regulation addressing advertising quantity of wood for use as fuel is set forth in the NIST Handbook 130, 2018 edition, at IV.B.2.

(b) The regulation addressing the method of sale of wood for use as fuel or flavoring is set forth in the NIST Handbook 130, 2018 edition, at IV.B.2. In addition to the requirements of the NIST Handbook 130, the following State rules apply:

1. A delivery ticket or sales invoice is to include the serial number; and

2. (No change in text.)

(c) (No change in text.)

[page=412] 13:47C-3.3 (Reserved)

13:47C-3.6 (Reserved)

Recodify existing 13:47K-2.3, 2.5, 2.6, 2.7, 2.10 through 2.15, and 2.26 as 13:47C-3.7 through 3.17 (No change in text.)

CHAPTER 47K

COMMODITIES IN PACKAGE FORM; WEIGHTS AND MEASURES

SUBCHAPTER 1. COMMODITIES IN PACKAGE FORM

13:47K-1.1 Commodities in package form

The Uniform Packaging and Labeling Regulation contained in the National Institute of Standards and Technology (NIST) Handbook 130, 2018 edition, at pages 51 through 95, adopted by the National Conference on Weights and Measures, is incorporated herein by reference, as amended and supplemented. The Uniform Packaging and Labeling Regulation may be found at <http://nvlpubs.nist.gov/nistpubs/hb/2018/NIST.HB.130-2018.pdf>. All commodities in package form sold or offered for sale in this State

must comply with these regulations. Notwithstanding the incorporation of the NIST Handbook 130, 2018 edition, the State requirements in this chapter shall be followed by those who sell, or offer for sale, general commodities in package form.

SUBCHAPTER 2. NON-FOOD PRODUCTS: INCH-POUND UNITS REQUIREMENT

13:47K-2.2 through 2.26 (Reserved)

SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. MARKING REQUIREMENTS

13:47K-4.2 (Reserved)

13:47K-4.3 Declaration of identity: consumer package

The regulation addressing declaration of identity on a consumer package is set forth in the NIST Handbook 130, 2018 edition, at IV.A.3.

13:47K-4.4 Declaration of identity: nonconsumer package

The regulation addressing declaration of identity on a nonconsumer package is set forth in the NIST Handbook 130, 2018 edition, at IV.A.4.

13:47K-4.5 Declaration of responsibility: consumer and nonconsumer packages

The regulation addressing declaration of responsibility on consumer and nonconsumer packages is set forth in the NIST Handbook 130, 2018 edition, at IV.A.5.

13:47K-4.6 Declaration of quantity: consumer packages

The regulation addressing declaration of quantity on a consumer package is set forth in the NIST Handbook 130, 2018 edition, at IV.A.6.

13:47K-4.7 Declaration of quantity: nonconsumer packages

The regulation addressing declaration of quantity on a nonconsumer package is set forth in the NIST Handbook 130, 2018 edition, at IV.A.7.

13:47K-4.8 Prominence and placement: consumer packages

The regulation addressing the appearance and placement of the information to appear on a consumer package is set forth in the NIST Handbook 130, 2018 edition, at IV.A.8.

13:47K-4.9 Prominence and placement: nonconsumer packages

The regulation addressing the appearance and placement of the information to appear on a nonconsumer package is set forth in the NIST Handbook 130, 2018 edition, at IV.A.9.

13:47K-4.10 Requirements: specific consumer commodities, nonconsumer commodities, packages, containers

The regulation addressing the requirements for specific consumer containers, nonconsumer commodities, packages, and containers is set forth in the NIST Handbook 130, 2018 edition, at IV.A.10.

13:47K-4.11 Exemptions

The regulation addressing the exemptions for consumer and nonconsumer commodities, packages, and containers is set forth in the NIST Handbook 130, 2018 edition, at IV.A.11.

SUBCHAPTER 5. VARIATIONS

13:47K-5.2 Maximum allowable variations

(a) The maximum allowable variations below shall conform to the following or revised or later editions, if in effect, incorporated herein by reference:

1. The National Institute of Standards and Technology's (NIST's) Maximum Allowable Variations for Packages Labeled by Weight referenced as Table 2-5 of Appendix A of the 2018 Edition of NIST Handbook 133;
2. The NIST's Maximum Allowable Variations for Packages Labeled by Liquid and Dry Volume referenced as Table 2-6 of Appendix A of the 2018 Edition of NIST Handbook 133;
3. The NIST's Maximum Allowable Variations for Packages Labeled by Count referenced as Table 2-7 of Appendix A of the 2018 Edition of NIST Handbook 133;
4. The NIST's Maximum Allowable Variations for Packages Labeled by Length, Width, or Area referenced as Table 2-8 of Appendix A of the 2018 Edition of NIST Handbook 133;
5. The U.S. Department of Agriculture's Maximum Allowable Variations for Meat and Poultry Groups and Lower Limits for Individual Packages referenced as Table 2-9 of Appendix A of the 2018 Edition of NIST Handbook 133; and
6. The NIST's Maximum Allowable Variations for Polyethylene Sheeting and Film, referenced in Table 2-10 of Appendix A of the 2018 Edition of NIST Handbook 133.

(b) - (e) (No change.)

13:47K-5.3 (Reserved)