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RULE ADOPTIONS

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

Readoption with Amendments: N.J.A.C. 13:47K

Commodities in Package Form; Weights and Measures

Proposed: September 3, 2013, at 45 N.J.R. 2025(a).

Adopted: November 6, 2013, by Robert Campanelli, Acting State Superintendent, Office of Weights and Measures,.

Filed: May 1, 2014, as R.2014 d.095, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 51:1-29 and 51:1-61.

Effective Date: May 1, 2014, Readoption;

June 2, 2014, Amendments.

Expiration Date: May 1, 2021.

[page=1362] **Summary** of Public Comment and Agency Response:

The official comment period ended November 2, 2013. **The Office received no comments.**

Federal Standards Statement

The rules readopted with amendments are consistent with the Fair Packaging and Labeling Act, 15 U.S.C. §§ 1351-1461, and the regulations promulgated thereunder, as well as other Federal standards. The rules proposed for readoption at N.J.A.C. 13:47K-1.2(a) and (c) and 1.5(a) reference Federal standards related to butter-like and/or margarine-like spreads; oleomargarine and margarine; and non-fluid milk products contained in 9 CFR Part 319, 319.700; 21 U.S.C. §§ 301 et seq.; and the Pasteurized Milk Ordinance of the U.S. Public Health Service, respectively. The rules readopted with amendments at N.J.A.C. 13:47K-5.2(b)5 contain the same standards as the Federal rules for maximum allowable variations for Federally inspected meat and poultry packages that move in interstate commerce. The Federal rules have been adopted by the U.S. Department of Agriculture pursuant to the Poultry Products Inspection Act and the Meat Inspection Act. The other rules readopted with amendments are consistent with standards developed by NIST in standards Handbook 130. Additionally, the rules readopted with amendments voluntarily adopts by reference many standards in Handbook 133 related to maximum allowable variations for certain food and nonfood packages in the State of New Jersey. NIST is an agency of the U.S. Department of Commerce.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 13:47K.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. FOOD PRODUCTS

13:47K-1.4 Fluid milk products

(a) All fluid milk products, including, but not limited to, milk, lowfat milk, skim milk, cultured milks, and cream shall be packaged for retail sale only in volumes per (a)1 below. Expressions of volume per (a)2 below may also appear on the packaging. Inch-pound sizes less than one gill and metric sizes less than 100 milliliters shall also be permitted.

1.-2. (No change.)

13:47K-1.5 Other milk products

(a) Cottage cheese, cottage cheese products, and other milk products that are solid, semi-solid, viscous, or a mixture of solid and liquid, as defined in the Pasteurized Milk Ordinance of the U.S. Public Health Service, as amended and supplemented (see Public Health Service, Food and Drug Administration, Publication 229, Title PMO grade A, 2011 Revision), shall be sold in terms of weight; provided, that cottage cheese, cottage cheese products, sour cream, and yogurt shall be packaged for retail sale only in weights per (a)1 or 2 below and, provided further, that the total net weight of multi-unit packages need not comply with (a)1 or 2 below if their individual units comply:

1.-2. (No change.)

SUBCHAPTER 2. NONFOOD PRODUCTS

13:47K-2.3 Paper napkins, paper towels, facial tissues, and toilet tissues

The declaration of quantity on a package of paper napkins, paper towels, facial tissues, or toilet tissues shall indicate the numerical count of usable units (a sheet of two- or three-ply shall be considered a single usable unit), the number of ply, and the dimensions of the individual unit contained in the package.

13:47K-2.4 Writing paper, notebook paper, envelopes, and office paper

(a)-(b) (No change.)

(c) A package of bond, mimeo, spirit duplicator, xerographic, and other paper, including cut-sized office paper and computer paper, shall bear a label that includes a declaration of quantity, in terms of sheet length and width and count, in the lower 30 percent of the principal display panel, and a declaration of identity including the "Basis Weight." "Basis Weight" as used in this subsection for labeling means the grade, category, or identity of the paper determined according to Technical Association of the Pulp and Paper Industry (TAPPI) (URL: www.tappi.org/) TAPPI - T410om-13, "Grammage of Paper and Paperboard (Weight per Unit Area)," which is incorporated herein by reference, as amended and supplemented. [" "] "Basis Weight" is used as a standard of identity and is not to be considered a net weight declaration.

13:47K-2.11 Multi-unit packages

Multi-unit packages of paper products shall bear on the outside wrapper, clearly and conspicuously, a quantity declaration indicating the number of individual rolls or packages, the usable unit count and sheet size for each individual roll or package, and the total quantity of the multi-unit package.

13:47K-2.21 Polyethylene products

(a)-(b) (No change.)

(c) The labeled statement of weight for polyethylene sheeting and film products under (a) above shall be not less than the weight calculated by using either of the following formulas:

1. For inch-pound dimensions:

...

D = density in grams per cubic centimeter as determined by ASTM Standard D1505-10 "Standard Method of Test for Density of Plastics by the Gradient Technique," as amended and supplemented, incorporated herein by reference, and ASTM Standard D883-12, "Standards Terminology Relating to Plastics," as amended and supplemented, incorporated herein by reference 0.03613 is a factor for converting g/cm³ to lb/in³.

2. For metric dimensions:

...

D = density in grams per cubic centimeter as determined by ASTM Standard D1505-10, "Standard Method of Test for Density of Plastics by the Density Gradient Technique," as amended and supplemented, incorporated herein by reference and ASTM Standard D883-12, "Standards Terminology Relating to Plastics," as amended and supplemented, incorporated herein by reference.

3. (No change.)

SUBCHAPTER 4. MARKING REQUIREMENTS

13:47K-4.1 Applications

(a) This subchapter shall apply to packages and to commodities in package form, but shall not apply to:

1. Shipping containers or wrapping used solely for the transportation of any commodities in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof, unless used in retail display;
2. Shipping containers or outer wrappings used by retailers to ship or deliver packages of such commodities to retail customers if such containers or wrappings bear no printed matter pertaining to any particular commodity;

Recodify existing 5. and 6. as 3. and 4. (No change in text.)

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

(a)-(b) (No change.)

(c) A declaration of net quantity of the commodity in the package, exclusive of wrappers and any other material packed with such commodity, shall appear on the principal display panel of a consumer package and, unless otherwise specified in this subchapter, shall be in terms of the largest whole unit.

1. The term "net weight" or "net mass" may be used in stating the net quantity of contents in terms of weight or mass. However, where the term "net weight" or "net mass" is not used, the quantity of contents shall always disclose the net quantity of contents. (For example: "453 g (1 lb)" or "Net Wt 1 lb (453 g)" or "Net Mass 453 g (1 lb)".)

2. (No change.)

(d) The declaration of the quantity of a particular commodity shall be expressed in terms of liquid measure if the commodity is liquid; dry measure if the commodity is dry; in terms of weight or mass if the commodity is solid, semi-solid, viscous, or a mixture of solid and liquid; or in terms of numerical count. However, if there exists a firmly [page=1363] established general consumer usage and trade custom with respect to the terms used in expressing a declaration of quantity of a particular commodity, such declaration of quantity may be expressed in its traditional terms, if such traditional declaration gives accurate and adequate information as to the quantity of the commodity.

1.-3. (No change.)

(e) When inch-pound units are used, the following shall apply:

1. (No change.)

2. Any of the following symbols and abbreviations, and none other, shall be employed in the quantity statement under (d) above on a package of a commodity:

...

i. Periods and plural forms shall be optional. Both upper and lower case letters are acceptable.

ii. (No change.)

(f) Packages subject to Federal regulations regarding the declaration of the net quantity of contents in inch-pound and/or System International (SI) metric units shall conform to such regulations. Packages not subject to such Federal regulations shall bear a statement of the net quantity of contents in either inch-pound or SI-metric units. Packages entering interstate commerce are restricted by Federal regulations to two decimal place quantity declarations.

1. (No change.)

2. Any of the following symbols of metric units, and none other, may be employed in the quantity statement on a package of commodity:

...

cubic centimeter	cm<3>
micrometer	#[micro]#
square decimeter	dm<2>
cubic decimeter	dm<3>

i.-ii. (No change.)

3. For prescribed units, using the inch-pound system, the declaration of quantity in (f)3i through iv below shall apply. The quantity declaration appearing on a random package may be expressed in terms of decimal fractions of the largest appropriate unit, the fraction being carried out to not more than three decimal places.

i.-iii. (No change.)

iv. In the case of liquid measure of less than one pint, fluid ounces, and fractions of fluid ounces.

4. On packages containing one pound or more but less than four pounds, the declaration shall be expressed in ounces and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit; provided, that the quantity declaration appearing on a random package may be expressed in terms of pounds and decimal fractions of the pound carried out to not more than three decimal places.

Recodify existing 3.-7. as 5.-9. (No change in text.)

10. For prescribed units, using the metric system, the declaration of quantity in (f)10i through iv below shall apply. The quantity declaration appearing on a random weight package may be expressed in terms of decimal fractions of the largest appropriate unit, the fraction being carried out to not more than two decimal places.

i.-ii. (No change.)

iii. In the case of weight of less than one kilogram, grams and decimal fractions of a gram, but if less than one gram, milligrams; and

iv. In the case of liquid or dry measure of less than one liter, milliliters.

11. For prescribed units, using the metric system, the declaration of quantity in (f)11 i through iv below shall apply. The quantity declaration appearing on a random weight package may be expressed in terms of kilograms and decimal fractions carried out to not more than two decimal places.

i.-iii. (No change.)

iv. In case of liquid or dry measure of one liter or more, in liters and decimal fractions to not more than two places.

12. (No change in text.)

Recodify existing (i)-(m) as (g)-(k) (No change in text.)

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

(a)-(c) (No change.)

(d) Requirements for the declaration of quantity on multi-unit packages are as follows:

1. (No change.)

2. The total quantity of the contents of the multi-unit package. (Example: soap bars, "6 Bars, Net Weight 3.4 ozs. (96.3 g) each; Total Net Weight 1lb. 4.4 oz. (578 g)"); and

3. (No change.)

(e)-(g) (No change.)

(h) The measurement of container-type commodities shall be expressed as follows:

1. Commodities designated and sold at retail to be used as containers for other material or objects, such as bags, cups, boxes, and pans, shall be labeled with the declaration of net quantity as follows:

i. For bag-type commodities, in terms of count followed by linear dimensions of the bag (whether packaged in a perforated roll or otherwise).

(1) (No change.)

(2) When the unit bag is gusseted, the dimensions will be expressed as width, depth, and length, as follows:

(A) For inch-pound units, in inches, except that a dimension of two feet or more will be expressed in feet, with any remainder in terms of inches or the common or decimal fractions of the foot. (Examples: "25 BAGS, 17 inches x 4 inches x 20 inches" or "100 BAGS, 20 inches x 12 inches x 2-1/2 feet");

(B) (No change.)

ii.-iv. (No change.)

2. (No change.)

(i)-(j) (No change.)

13:47K-4.11 Exemptions

(a) (No change.)

(b) A random package bearing a label conspicuously declaring the net weight, the price per kilogram or pound, and the total price shall be exempt from the type size, dual declaration, placement, and free area requirements of this subchapter. In the case of a random package packed at one place for subsequent sale at another, neither the price per unit of weight nor the total selling price need appear on the package, provided the package label includes both such prices at the time it is offered or exposed for sale at retail.

1. This exemption shall also apply to uniform weight packages of cheese and cheese products labeled in the same manner and by the same type of equipment as random packages exempt by this section, except that the labels shall bear a declaration of price per kilogram or pound and not price per specified number of kilograms or pounds.

2. (No change.)

(c)-(z) (No change.)

(aa) Those products, including pillows, cushions, comforters, mattress pads, and sleeping bags, that bear a permanent label as designated by the International Association of Bedding and Furniture Law Officials or by the California Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation shall be exempt from the requirements for location (N.J.A.C. 13:47K-4.8(a)1), size of letters or numbers (N.J.A.C. 13:47K-4.8(b)3 and (b)3i), free area (N.J.A.C. 13:47K-4.8(a)4), and the declarations of identity and responsibility (N.J.A.C. 13:47K-4.3(a) and 4.5), provided that declarations of identity, quantity, and responsibility are presented on a permanently attached label and satisfy the other requirements of this subchapter, and further provided that the information on such permanently attached label be fully observable to the purchaser.

(bb) (No change.)

(cc) When a packaged food consumer commodity is properly measured in terms of count only, or in terms of count and some other appropriate unit, and the individual units are fully visible to the purchaser, such packages shall be labeled in full accord with this subchapter, except that such packages need not include a statement of count. When a packaged nonfood consumer commodity is properly measured in terms of count only, or in terms of count and some other appropriate unit, and the individual units are fully visible to the purchaser, such packages shall be labeled in full accord with this [page=1364] subchapter, except that those containing two or more items must include a statement of count.

(dd) (No change.)

SUBCHAPTER 5. VARIATIONS

13:47K-5.1 Packaging variations

(a) (No change.)

(b) Variations from the declared weight or measure shall be permitted when caused by ordinary and customary exposure to conditions that normally occur in good distribution practice and that unavoidably result in change of weight or measure, but only after the commodity is introduced into intrastate or interstate commerce; provided that the phrase "introduced into intrastate or interstate commerce" as used in this subsection shall be construed to define the time and the place at which the first sale and delivery of a package is made within the State, or within any other state, the District of Columbia, the Commonwealth of Puerto Rico, or any territory *[of]* ***or*** possession of the United States, but shall not include exports to foreign countries, the delivery being either:

1. (No change.)

2. To a common carrier for shipments to the purchaser, and this paragraph shall be construed as requiring that, so long as a shipment, delivery, or lot of packages of a particular commodity remains in the possession or under the control of the packager or the person who introduces the package into intrastate or interstate commerce, exposure variations shall not be permitted.

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 2013 Edition of NIST Handbook 133 (November 2012);
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 2013 Edition of NIST Handbook 133 (November 2012);
3. The NIST's Maximum Allowable Variations for Packages Labeled by Count referenced as Table 2-7 of Appendix A of the 2013 Edition of NIST Handbook 133 (November 2012);
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 2013 Edition of NIST Handbook 133 (November 2012);
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 2013 Edition of NIST Handbook 133 (November 2012); and
6. The NIST's Maximum Allowable Variations for Polyethylene Sheeting and Film, referenced in Table 2-10 of Appendix A of the 2013 Edition of NIST Handbook 133 (November 2012).

Recodify existing (c)-(e) as ***(b)-(d)*** (No change in text.)

[(f)]* *(e) (No change in text.)