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RULE PROPOSALS

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

41 N.J.R. 1671(a)

Proposed Readoption with Amendments: *N.J.A.C. 13:47B*

Proposed Repeals: *N.J.A.C. 13:47B-1.4* and *1.12*

Click here to view Interested Persons Statement

Authorized By: Louis E. Greenleaf, State Superintendent, Office of Weights and Measures.

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

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

Proposal Number: PRN 2009-115.

Submit written comments by June 19, 2009 to:

Louis E. Greenleaf
State Superintendent
Office of Weights and Measures
1261 Routes 1 and 9 South
Avenel, New Jersey 07001

The agency proposal follows:

Summary

The Office of Weights and Measures (OWM) is proposing to readopt *N.J.A.C. 13:47B* with amendments and repeals. Pursuant to *N.J.S.A. 52:14B-5.1c*, the rules at *N.J.A.C. 13:47B* will expire on November 10, 2009. As required

by Executive Order No. 66 (1978), the Office of Weights and Measures has reviewed these rules and determined that they are necessary, reasonable and proper for the purposes for which they were originally promulgated, to protect New Jersey consumers and [page=1672] businesses from the use of false or malfunctioning weighing and measuring devices in all commercial transactions.

A summary of the rules proposed for readoption with amendments and repeals follows. The current reserved sections of the existing rules have been omitted from this Summary discussion. The words "this State" have been changed to State of New Jersey in several sections for purposes of consistency. In all places where the term "State Superintendent" appears the language has been changed to the "State Superintendent of Weights and Measures." Non-substantive changes, including grammatical changes, have been made throughout the chapter.

Subchapter 1 deals with general weighing and measuring devices. *N.J.A.C. 13:47B-1.1* requires gas station owners and operators to use a five-gallon test measure to determine whether the fuel-measuring devices are dispensing accurately. *N.J.A.C. 13:47B-1.2* bans the use of counter tacks as length measures and requires that all length measures conform to the requirements set forth in the National Institute of Standards and Technology (NIST) Handbook 44, Specifications, Tolerances and other Technical Requirements for Weighing and Measuring Devices. *N.J.A.C. 13:47B-1.4* provides for the sizes of different types of containers used for selling ice cream, ices or other frozen products or for liquid or semi-liquid commodities, sold or offered for sale by liquid measure. OWM proposes to repeal this section because packaged commodities are also governed by other laws and rules. *N.J.A.C. 13:47B-1.5* provides that all new, modified or altered commercial weighing and measuring devices must be submitted to the State Superintendent of Weights and Measures for inspection and approval of type and operation, except for those devices that have been inspected, tested and approved under the NIST, National Type Evaluation Program. *N.J.A.C. 13:47B-1.6* provides that the weighing, indication and recording elements of commercial scales must be located in full view of customers. *N.J.A.C. 13:47B-1.9* regulates the use of portable self-contained vehicle scales for commercial purposes, setting forth the only circumstances under which they may be used. A grammatical change has been made to this section to delete "and" after each requirement. This grammatical change does not alter the requirement that each of the conditions under *N.J.A.C. 13:47B-1.9(c)* must be met. *N.J.A.C. 13:47B-1.10* bans the use of household-type scales for commercial purposes and requires certain labeling of the scale when sold or offered for sale. *N.J.A.C. 13:47B-1.12* sets the limits of weighing on wagon scales. OWM proposes to repeal this section because wagon scales are governed by the applicable requirements for the vehicle scales. *N.J.A.C. 13:47B-1.14* limits the use of uncompensated spring scales to the sale of fruits and vegetables and provides for a legend that must be permanently placed on the scale. *N.J.A.C. 13:47B-1.16* requires that certificates of inspection, issued by any State, county or municipal weights and measures officer, be retained by the owner or operator of commercial weighing and measuring devices at the place of business where the weighing or measuring devices are installed or carried on the vehicle if the weighing or measuring device is installed on the vehicle.

It further provides that the certificates of inspection are the official authority to allow the use of these officially inspected, tested and sealed weighing or measuring devices in commercial transactions. *N.J.A.C. 13:47B-1.17* sets the maximum height at which a hanging scale must be positioned to insure customer access to and the visibility of the weight indications. *N.J.A.C. 13:47B-1.19* provides that a gasoline dispenser that was previously type-approved by the State Superintendent of Weights and Measures, if converted, altered or modified, will have its type-approval rescinded. The rule further provides that notification to weights and measures officers of the installation of an altered gasoline dispenser must clearly state that the gasoline dispenser has been altered. *N.J.A.C. 13:47B-1.20* incorporates by reference the provisions of NIST Handbook 44 as the legal requirement for all weighing and measuring devices used for commercial and law enforcement purposes in the State and reserves the right of the State Superintendent of Weights and Measures to amend or supplement those provisions. A technical change is proposed to update the reference to the most current edition of NIST Handbook 44, which is incorporated by reference as amended and supplemented. *N.J.A.C. 13:47B-1.24* provides for a registry for security sealing devices to be used by licensed repairmen to block or prevent entry to the adjustable elements of any weighing and measuring device. Further, the registry provides a means to trace faulty or fraudulent repairs or adjustments to commercial weighing and measuring devices through an identification

system controlled by the State Superintendent of Weights and Measures.

Subchapter 3 sets forth the chapter penalties. *N.J.A.C. 13:47B-3.1* provides that any person who violates the rules of the chapter will be subject to the statutory penalties at *N.J.S.A. 51:1-89*.

Subchapter 4, General Provisions, at *N.J.A.C. 13:47B-4.1* sets forth the minimum training requirements for a new weights and measures officer before either a badge or credential may be issued to that person by the State Superintendent of Weights and Measures.

OWM has determined that the comment period for this notice of proposal is 60 days; therefore, pursuant to the provisions of *N.J.A.C. 1:30-3.3(a)5*, this notice is excepted from the rulemaking calendar requirement.

Social Impact

The rules proposed for readoption with amendments and repeals will allow OWM to continue regulating the use of commercial weighing and measuring devices for the protection of New Jersey consumers. Because OWM is able to exercise control over the use of weighing and measuring devices used to buy and sell commodities in the marketplace, the general public benefits from the protections offered by these rules. Since these rules apply to all weighing and measuring devices used for commercial purposes, it is estimated that 40,000 businesses are impacted by these rules. The readoption of these rules is important to the businesses and consumers in the State because the rules provide for equity in the marketplace.

Economic Impact

OWM anticipates that the rules proposed for readoption with amendments and repeals will continue to have the same economic impact on business owners and consumers as in the past. OWM does not anticipate additional economic impact. *N.J.A.C. 13:47B-1.1* requires gasoline dealers to purchase a standard measure in a five-gallon capacity to test whether the measuring device delivers the correct quantity. Under *N.J.A.C. 13:47B-1.5*, manufacturers of new weighing and measuring devices assume the costs of shipping the devices to the Superintendent for inspection and approval; however, a minimal reduction in cost to certain manufacturers may result from the provision of this section that allows the manufacturers to by-pass a duplicative evaluation process. Pursuant to *N.J.A.C. 13:47B-3.1*, any person violating any provision of the rules will be subject to the penalty provisions of *N.J.S.A. 51:1-89*. Training required by *N.J.A.C. 13:47B-4.1* will continue to be provided without charge to the agencies that employ the weights and measures officer trainees.

Although not readily quantifiable, failure to readopt these rules may result in New Jersey consumers being short-changed in commercial transactions where a weighing or measuring device is used; and also, may result in a loss of consumer confidence in the use of weighing and measuring devices in the marketplace. Any economic burden placed on those businesses that use weighing and measuring devices is outweighed by the likelihood that buyers and sellers will exchange goods and services in the marketplace on an equitable basis.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments and repeals are governed by *N.J.S.A. 51:1-61*. Although the rules are not subject to any mandated Federal requirements or standards, OWM has voluntarily adopted, by reference, the standards for weighing and measuring devices, which were developed by NIST and are set forth in Handbook 44.

Jobs Impact

The rules proposed for readoption with amendments and repeals will not directly result in the generation or loss of

jobs in the State.

Agriculture Industry Impact

The rules proposed for readoption with amendments and repeals will have no impact on the agriculture industry in the State.

[page=1673] **Regulatory Flexibility Analysis**

If, for purposes of the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq., any of the approximately 40,000 businesses to which these rules apply are small businesses, then the following analysis applies.

The rules proposed for readoption with amendments and repeals do not impose reporting or recordkeeping requirements. Several rules do impose compliance requirements; however, these same requirements have been in effect for many years. *N.J.A.C. 13:47B-1.1* requires dealers who use liquid measuring devices to obtain a five-gallon standard measure to determine whether the device is delivering the correct quantity. *N.J.A.C. 13:47B-1.2* forbids the use of counter tacks as linear measures and requires that all linear measures be in conformance with NIST Handbook 44. *N.J.A.C. 13:47B-1.5* requires that all new types of weighing and measuring devices and any older devices to which any new feature has been added be submitted by the manufacturer to the State Superintendent of Weights and Measures. *N.J.A.C. 13:47B-1.6* requires that commercial weighing and measuring devices be placed, so as to be in full view of the customer. *N.J.A.C. 13:47B-1.9* sets forth the requirements for the use of portable self-contained vehicle scales. *N.J.A.C. 13:47B-1.10* prohibits the use of household-type scales in any commercial establishment for weighing any commodity sold to the public. *N.J.A.C. 13:47B-1.14* prohibits the use of spring scales in the retail sale of food other than fruits and vegetables, unless they are equipped with a device to compensate for changes in the elasticity of the springs due to changes in temperatures. *N.J.A.C. 13:47B-1.16* requires that certificates of inspection, issued by State, county or municipal weights and measures officers, be retained by the owner or user of the weighing and measuring device and must be available at the place where the weighing or measuring devices are installed. *N.J.A.C. 13:47B-1.17* requires that hanging-type spring scales, used in commercial establishments, must be positioned so that the maximum height from the floor to the top of the scale pan does not exceed 48 inches. *N.J.A.C. 13:47B-1.24* requires that trained repairman incorporate their registry mark into or upon any security sealing device used to block access to the adjustable elements of a weighing or measuring device, after the device has been repaired by that repairman.

No professional services are needed to comply with the rules proposed for readoption with amendments and repeals. Any costs of compliance will not be great. OWM considers the proposed readoption of the rules to be necessary to preserve the health, safety and welfare of consumers, therefore, no differentiation, based upon size, is provided since that would adversely impact the goals and purposes of the rules, to assure equity in the marketplace for businesses and consumers.

Smart Growth Impact

The rules proposed for readoption with amendments and repeals will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan, otherwise known as the State Plan.

Housing Affordability Impact

The rules proposed for readoption with amendments and repeals will have an insignificant impact on affordable 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 rules proposed for readoption with amendments and repeals concern the duties of OWM.

Smart Growth Development Impact

The rules proposed for readoption with amendments and repeals will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules 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 rules proposed for readoption with amendments and repeals concern the duties of OWM.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 13:47B*.

Full text of the proposed amendments and repeals follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL WEIGHING AND MEASURING DEVICES

13:47B-1.2 Length measuring devices

The use of counter tacks as linear measures is forbidden in [this] **the State of New Jersey** and all measures of length shall be in conformance with the requirements set forth in the National Institute of Standards and Technology Handbook 44, Specifications, tolerances and other technical requirements for weighing and measuring devices.

13:47B-1.4 [Liquid measure containers] (**Reserved**)

[(a) All containers such as cartons, pails, boxes or similar containers composed of cardboard, paper or other similar materials, of every type and description whatsoever, used in the State of New Jersey for the sale of ice cream, ices or kindred frozen products, or for liquid or semi-liquid commodities customarily sold or offered for sale by liquid measure, shall be of legal standard capacities of one gallon, a multiple of the gallon or a binary submultiple of the gallon; that is, a measure by dividing the gallon by the number two or by a power of the number two; provided, however, that nothing in the Section shall be construed to prevent the use of containers for ice cream exclusively, in five pint or three pint sizes.

(b) Containers of the following standard capacities only may, therefore, be employed: one gallon, 2 1/2 quarts, two quarts, 1 1/2 quarts, one quart, one pint, 1/2 pint and one gill. All containers shall have conspicuously stamped, printed or indelibly expressed on the outside thereof the capacity in terms of liquid measure only, together with the name and address of the manufacturer.]

13:47B-1.5 Type approval

(a) All new types of weighing and measuring devices of any description whatsoever and all devices of older types to which may be added any alteration or new feature intended or designed as an improvement to such equipment shall, before distribution or installation thereof in the State of New Jersey, be submitted by the manufacturer thereof to the State Superintendent of Weights and Measures for inspection and approval of type and operation, except as provided in (a)1 below.

1. Weighing and measuring devices approved by the National Institute of Standards and Technology (NIST), National Type Evaluation Program (NTEP) need not be submitted for prior inspection and approval of type and operation; however, the **State Superintendent of Weights and Measures** reserves the right to require the manufacturer to submit a prototype for evaluation at any time for cause.

(b) The provisions of this [Section] **section** shall be construed to include and apply to all weighing and measuring equipment designed for the determination of quantities in commodities sold or offered for sale in [this] **the State of New Jersey**, or for the determination of quantities where service is sold or offered for sale on the basis of weight or measurement.

(c) No weighing or measuring device as indicated shall be permitted to be sold or leased for use in the State of New Jersey unless submitted for inspection and approved by [said] **the** State Superintendent of Weights and Measures as specified in (a) above and any equipment distributed or installed contrary to the provisions of this section shall be subject to condemnation.

13:47B-1.6 Location of commercial weighing equipment

(a) All weighing equipment of every kind [whatever] **whatsoever**, used for quantity determination in the sale of commodities to the purchasing public, in commercial establishments or in connection with any commercial enterprise in the State of New Jersey shall be so placed or located as to be in full view of the customer at all times and in such position as to facilitate the reading of charts, dials[,] and similar equipment with which scales may be equipped[,] or for observing the balance where scales are of such type in which balance is a factor [or] **for** correct weighings.

(b) (No change.)

13:47B-1.9 Portable self-contained vehicle scales

(a) [A] **For purposes of this section, a** "portable self-contained vehicle scale" is defined as a portable self-contained scale enclosed and [page=1674] supported by its own frame marketed as a complete weighing unit adapted to weighing highway and off-highway vehicles. The indicating element may be packaged separately, which element is attached and connected at the installation site.

(b) Except as hereinafter provided, the use of a portable self-contained vehicle scale is hereby prohibited for determinations of weight for all commercial purposes.

(c) The use of portable self-contained vehicle scales may be permitted on construction projects where a contract requires on-site weighings[;], and where the weighings are performed by a New Jersey Weighmaster appointed pursuant to *N.J.S.A. 51:1-74*[; and], subject to **all of** the following requirements:

1. No scale may be placed into operation until approved by the State Superintendent **of Weights and Measures** in accordance with *N.J.S.A. 51:1-83*; [and]

2. The use of the scale is limited to a maximum of six months at any one location; [and]

3. The scale is securely bolted to a foundation; [and]

4. The installation is constructed pursuant to the National Institute of Standards and Technology Handbook 44, section 2.20, Scales, paragraph UR. 2.6.1(c) incorporated by reference in *N.J.A.C. 13:47B-1.20*. The standard may be obtained by contacting the United States Department of Commerce, National Institute of Standards and Technology, PO Box 4025, Gaithersburg, MD 20899; [and]

5. The indicating element must be protected from all environmental effects; [and,]

6. The scale is to be checked and inspected by a mechanic licensed pursuant to *N.J.S.A. 51:1-114* when installed at each site; and[,]

7. (No change.)

(d) A penalty incurred in violation of this [regulation] **section** may be enforced pursuant to *N.J.S.A. 51:1-83*, [or]

51:1-89[, or 51:1-93[, or any] or all of these sections.

13:47B-1.12 [Wagon scales] (**Reserved**)

[All weighings of motor vehicles, with or without load contents thereof made on wagon-type platform scales, shall not exceed 60 per cent of the represented or beam capacity of the scales.]

13:47B-1.20 National Institute of Standards and Technology Handbook 44

All specifications, tolerances and other technical requirements for weighing and measuring devices contained in the National Institute of Standards and Technology Handbook 44, [2001] **2008** edition and all future editions together with all amendments and supplements thereto, adopted by the National Conference on Weights and Measures are hereby adopted and promulgated as the legal requirements for all weighing and measuring devices used for commercial purposes and law enforcement in the State of New Jersey; provided, however, that the **State** Superintendent of [the Office of] Weights and Measures [of the Division of Consumer Affairs, Department of Law and Public Safety] may from time to time further amend or supplement said specifications, tolerances and other technical requirements for the purpose of conforming the needs of any situation affecting the interests of the State **of New Jersey** and its people.

13:47B-1.24 Registry for security sealing devices

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

(d) The State Superintendent of Weights and Measures[, in the Division of Consumer Affairs, Department of Law and Public Safety, State of New Jersey,] shall design and adopt an official registry for security sealing devices. Said registry shall be used to issue to any and all licensed repairmen a distinct and individual combination of letters and numerals, which will be that licensed repairman's registry mark.

(e)-(f) (No change.)

(g) Any licensed repairman who shall issue a false certificate of inspection and test of a commercial weight or measure or weighing or measuring device or who shall delegate his or her authority or registry mark[,] to any person, shall be subject to the revocation or suspension of his or her license as provided in *N.J.S.A. 51:1-122*, [including] **after** a hearing in accordance with the Administrative Procedure Act, *N.J.S.A. 52:14B-1* et seq., and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*.

(h) (No change.)