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DEPARTMENT OF AGRICULTURE AND MARKETS
DIVISION OF FOOD SAFETY AND INSPECTION
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CIRCULAR 942

**UNIT PRICING OF CERTAIN
CONSUMER COMMODITIES
SOLD AT RETAIL**

**Article 17 of the Agriculture and Markets Law
With Rules and Regulations Relating
To Unit Pricing in Retail Stores**

Revised as of February 13, 2013

Article 17

UNIT PRICING

Sections

- 214-h-1. Consumer information.**
- 214-h-2. Definitions.**
- 214-h-3. Exemptions.**
- 214-h-4. Means of disclosure.**
- 214-h-5. Promulgate regulations.**
- 214-h-6. Limitations.**
- 214-h-7. Violations and penalties.**
- 214-h-8. Preemption.**

214-h. Unit Pricing

1. Consumer information required. Each person who sells, offers or exposes for sale in a retail store a consumer commodity shall disclose to the consumer the unit price and the total price of the commodity as provided in this section.

2. Definitions.

a. "Consumer commodities" shall mean the following, however packaged or contained:

(1) food, including all material, solid, liquid or mixed, whether simple or compound, used or intended for consumption by human beings or domestic animals normally kept as household pets and all substances or ingredients to be added thereto for any purpose; and

(2) napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper toweling, disposable plates; and

(3) detergents, soaps and other cleansing agents; and

(4) non-prescription drugs, female hygiene products and toiletries.

b. "Retail store" shall mean a store which sells consumer commodities at retail, which store is not primarily engaged in the sale of food for consumption on the premises, or which is not primarily engaged in a specialty trade which the commissioner determines, by regulation, would be inappropriate for unit pricing. An establishment which sells consumer commodities only to its members shall be deemed to be included within this definition unless the members must pay a direct fee to qualify for membership and the establishment is not required to collect sales tax on transactions with members, pursuant to article twenty-eight of the tax law.

c. "Unit price" of a consumer commodity shall mean the price per measure.

d. "Price per measure" shall mean:

(1) price per pound for commodities whose net quantity is expressed in units of weight,

except for such commodities whose net weight is less than one ounce which shall be expressed as price per ounce and commodities in powdered form which purport to be or are represented for special dietary use solely as a food for infants by reason of its simulation of human milk or suitability as a complete or partial substitute for human milk which shall be expressed as price per reconstituted fluid ounce; provided that the same unit of measure is used for the same commodity in all sizes;

(2) price per pint or quart for commodities whose net quantity is stated in fluid ounces, pints, quarts or gallons or a combination thereof, except for such commodities in concentrated liquid or ready to feed form which purport to be or are represented for special dietary use solely as a food for infants by reason of its simulation of human milk or suitability as a complete or partial substitute for human milk which shall be expressed as price per reconstituted fluid ounce for commodities in concentrated liquid form and price per fluid ounce for commodities in ready to feed form; provided that the same unit of measure is used for the same commodity in all sizes sold in the retail establishment;

(3) price per one hundred for commodities whose net quantity is expressed by count, except as otherwise provided by regulation;

(4) price per foot for commodities whose net quantity is stated in units of length, except for such commodities whose net quantity exceeds one hundred feet, which shall be expressed as price per one hundred feet, and the "ply" count, if any, provided that the same unit of measure is used for same commodity in all sizes;

(5) price per square foot or square yard, as appropriate, for commodities whose net quantity is expressed in units of area and the "ply" count, if any, provided that the same unit of measure is used for the same commodity in all sizes; or

(6) such other price per measure, including metric equivalents of the customary measures, as the commissioner shall by regulation permit. The commissioner shall establish such metric equivalents whenever he determines that any commodity subject to the provisions of this section is being sold, offered or exposed for sale by metric measure.

3. Exemptions.

a. The provisions of this section shall not apply to the following consumer commodities:

(1) food sold for consumption on the premises;

(2) prepackaged food containing separate and identifiable kinds of food segregated by physical division within the package; and any other foods for which the commissioner determines, by rules and regulation, that unit pricing would not be meaningful;

(3) any food which is primarily or exclusively a gourmet or specialty food, provided that the commissioner determines by regulation that unit pricing would be impractical for such food, and provided further that such food is segregated and displayed as a gourmet or specialty food;

(4) any commodity whose net quantity as offered for sale is one pound, one ounce, one pint or quart, one hundred count, one foot, one hundred feet, one square foot, one square yard or

equivalent metric units established by the commissioner, provided that it has the retail price marked plainly thereon;

(5) milk, and other similar low fat products such as two percent milk, one percent milk and skim milk, cream, melloream and vegetable oil blend whose net quantity as offered for sale is one half pint, one pint, one quart, one half gallon, one gallon, one half liter, one liter; frozen desserts such as ice cream, light ice cream, low-fat ice cream, fat-free ice cream, sherbet, sorbet, frozen yogurt, and any other product similar in appearance, odor and taste to such products whose net quantity as offered for sale is one half pint, one pint, one quart, one half gallon, one gallon, and multiples of quarts and gallons; and butter, vegetable spread, oleo margarine and margarine whose net quantity is one fourth pound, one half pound, one pound or multiples of one pound, one hundred twenty-five grams, two hundred fifty grams, five hundred grams or multiples of five hundred grams, flour whose net quantity as offered for sale is in five or ten pound bags;

(6) fresh food produce.

b. The provisions of this section shall not apply to convenience stores which include small stores which typically sell motor fuel, tobacco products, fast food and beverages and do not offer sufficient quantity of consumer commodities to make unit pricing useful to consumers or to any retail store having had annual gross sales of consumer commodities in the previous calendar year of less than two and one-half million dollars, unless the store is a part of a network of subsidiaries, affiliates or other member stores, under direct or indirect common control, with five or more stores located in New York, which, as a group, had annual gross sales the previous calendar year of two and one-half million dollars or more of consumer commodities.

4. Means of disclosure. A consumer commodity sold, or offered for sale or exposed for sale, subject to this section, shall have the unit price and total price disclosed to the consumer in one of the following ways:

a. if the item is conspicuously visible to the consumer, by the attachment of a stamp, tag or label directly under the item on the shelf on which the item is displayed, or, in the case of refrigerated items not displayed on shelves, in a manner to be prescribed by regulation; or

b. if the item is not conspicuously visible to the consumer, by a sign or list conspicuously placed near the point of procurement, or by affixing the unit price and total price on the commodity itself.

5. The commissioner may promulgate regulations to effectuate this section.

6. Nothing in this section shall be construed to conflict with or limit section one hundred ninety of this chapter.

7. Violations and penalties.

a. A violation of this section shall be subject to the applicable penalties of this chapter except for the penalties specified in section forty-one thereof.

For purposes of this section, each group of identical consumer commodities for which on any single day the total selling price or price per measure is not displayed in accordance with this section

or the regulations promulgated thereunder shall be considered a violation of this section. Improper unit pricing caused by nonintentional technical errors, however, shall not constitute a violation.

b. Each group of units not unit priced or improperly unit priced shall constitute a violation. Each individual unit, however, not unit priced or improperly unit priced shall not constitute a violation unless displayed alone.

c. Each day a violation is continued shall constitute a separate violation.

d. The provisions of this section and the regulations promulgated hereunder may be enforced concurrently by the director of a municipal consumer affairs office or a municipal director of weights and measures.

8. Preemption. Except as provided in paragraph b of subdivision three of this section, any local law, ordinance, rule or regulation relating to labeling, displaying or other disclosure of the price per measure of any commodity must be consistent with the provisions of this section and the rules and regulations adopted hereunder.

RULES AND REGULATIONS FOR UNIT PRICING IN FOOD STORES

Part 345 of Title 1 of the Official Compilation of Codes, Rules and Regulations

UNIT PRICING

Section

345.1 Purpose

345.2 Means of disclosure of unit pricing information

345.3 Calculation and display of unit price

345.4 Price per measure

345.5 Exemptions

345.6 Nonintentional technical errors

345.7 Multiple pricing

Section 345.1 Purpose.

(a) The purpose of this Part is to effectuate the provisions of Agriculture and Markets Law, section 214-h, which relates to providing consumers with information needed to effectively compare retail product prices by instituting unit pricing of certain consumer commodities.

Section 345.2 Means of disclosure of unit pricing information.

All consumer commodities required to be unit-priced shall have the unit price and total selling price disclosed to the consumer in the following manner:

(a) If the item is displayed upon a shelf and conspicuously visible to the consumer, by attaching a stamp, tag or label on the shelf edge directly beneath the item offered for sale. If such attachment is impossible, a stamp, tag or label may be placed directly adjacent to or on the consumer commodity to which it relates.

(b) If the item is conspicuously visible to the consumer but is not displayed upon a shelf, such as items offered for sale in aisle displays, baskets, portable racks, or bins, by:

(1) affixing the unit price and total selling price on the commodity itself; or

(2) by placing a sign or list at or near the point at which the item is offered or exposed for sale and in such a manner that the unit pricing information contained thereon is plainly visible from such point.

(c) If the item is refrigerated and conspicuously visible to the consumer, but not displayed upon a shelf, by:

(1) affixing the unit price and total selling price on the commodity itself;

(2) by placing a sign or list at or near the point at which the item is offered for sale and in such manner that the unit pricing information contained thereon is plainly visible from such point; or

(3) by attaching a stamp, tag or label to the refrigerated case or to a refrigerated case divider, as appropriate, directly behind and above the item offered for sale.

(d) If the item is refrigerated, conspicuously visible to the consumer, and displayed upon shelves, the provisions of subdivision (a) of this section shall govern.

(e) If the item is not conspicuously visible to the consumer, by placing a sign or list at the point of procurement and in such a manner that the unit pricing information contained thereon is plainly visible from such point, or by affixing the unit price and total selling price upon the commodity itself.

Section 345.3 Calculation and display of unit price.

(a) The unit price shall be expressed in terms of dollars or cents, as applicable. If the unit price is one dollar or over, it is to be rounded off and stated to the nearest full cent, provided that where the unit price is rounded off from .005 cent, it shall be stated to the next highest cent. If the unit price is less than one dollar, it is to be rounded off and stated to the nearest cent and expressed by "¢", "cents" or "cnts".

(b) All information required to appear on a stamp, tag, label, sign or list for purposes of disclosing the unit price of a consumer commodity shall be clear and conspicuous.

(c) If the unit pricing information is displayed on a stamp, tag or label as required by subdivision (a) of section 345.2 of this Part, or as permitted by paragraph (3) of subdivision (c) of such section, the stamp, tag or label shall contain the following information in the manner indicated:

- (1) the total selling price in type no smaller than 3/8 of an inch in height;
- (2) the unit price in type no smaller than 3/16 of an inch in height;
- (3) the words "Unit Price" above or below the numerical price per measure;
- (4) the unit of measure;

(5) the words "You Pay," "Retail Price," "Total Price," "Item Price," or other words of similar meaning as may be approved by the commissioner, above, below or adjacent to the total selling price of the consumer commodity displayed for sale;

(6) the identity of the consumer commodity to which the information on each stamp, tag or label relates, including the common name and brand name of the product and the quantity of the item;

(7) the information required by paragraphs (3), (4), (5) and (6) of this subdivision in type no smaller than 1/16 of an inch;

(8) the unit price, the unit of measure, the words "Unit Price," the total selling price and the words required by paragraph (5) of this subdivision printed in a color that contrasts conspicuously with the background color of the stamp, tag or label;

(9) the background of the stamp, tag or label upon which the unit price and the unit of measure are placed, in a color which contrasts conspicuously with the background color upon which the total selling price of the item is placed;

(d) If the unit price and total selling price information is disclosed by means of a sign or list permitted by paragraphs (b)(2), (c)(2) and (e) of section 345.2 of this Part, all the information required to be contained on a stamp, tag or label pursuant to subdivision (c) of this section shall be included on such sign or list. Such sign or list shall be located near the point at which the item is displayed for sale, and may reflect the unit pricing information relating to the consumer commodities included thereon in one of the following manners:

(1) By affixing to the sign or list stamps, tags, or labels designed in the same manner as prescribed by subdivision (c) of this section, provided the information thereon is plainly visible and easily readable from the point at which the item is displayed for sale, and provided that the stamps, tags, or labels are arranged upon the sign or list in such a manner as to clearly indicate to which consumer commodity each one relates.

(2) By means of a vertical list in alphabetical order according to the brand name of the product with the common name, quantity, unit price, unit of measure and price of the item indicated, in that order, to the right of the brand name of the product. If this method of disclosure is used, all required information shall be printed in type large enough to be easily readable from the point at which the item is displayed for sale. The information shall be printed in a color which contrasts conspicuously with its background, and the background upon which is reflected the numerical unit price shall be in a color which contrasts conspicuously with the background upon which is reflected the numerical selling price.

(e) If the unit pricing information is disclosed by affixing the unit price and total selling price upon the commodity itself as permitted under section 345.2 of this Part, all the information required to be contained on the stamp, tag, or label pursuant to subdivision (c) of this section shall be indicated upon the commodity and in the same manner, except that the identity of the consumer commodity need not be included and the color the background upon which is printed the numerical unit price and unit of measure shall not be required to contrast with the background color upon which is reflected the total numerical selling price of the item.

(f) Logistical information such as order codes may appear on the stamp, tag, or label at the option of the retailer, provided that any such logistical information be no more prominent than and in type no larger than the type used to reflect the information required by subdivision (c) of this section. Such logistical information shall not in any way obscure, deemphasize or confuse the required unit pricing information.

(g) The format indicated in the following example is acceptable for use in designing a stamp, tag, or label for use in disclosing unit pricing information.

UNIT PRICE	RETAIL PRICE
77.3¢	29¢
PER QUART	DEES ORANGE DRINK 24589763 12 FL. OZ.

(h) A sample, in duplicate, of the format of the stamp, tag, or label proposed to be used to disclose unit pricing information shall be submitted to the commissioner for approval prior to its use in any store or stores.

Section 345.4 Price per measure.

In addition to the price per measure provided pursuant to section 214-h(2)(d) of the Agriculture and Markets Law, the following shall also be permitted:

(a) Price per dozen for commodities whose net quantity is commonly expressed by half dozen, dozen or a combination thereof, provided that the same unit of measure is used for the same commodity in all sizes.

(b) Price per 100 square feet, and the ply count, if any, for commodities whose net quantity is expressed in units of areas where the net quantity exceeds 100 square feet, provided that the same unit of measure is used for the same commodity in all sizes.

(c) Price per gallon in alternative to price per pint or quart for commodities whose net quantity is stated in fluid ounces, pints, quarts, or gallons, provided that the same unit of measure is used for the same commodity in all sizes.

Section 345.5 Exemptions.

(a) In addition to those consumer commodities exempted from unit pricing requirements pursuant to section 214-h(3) of the Agriculture and Markets Law, the following consumer commodities shall not be subject to unit pricing requirements:

- (1) Spices, flavor extracts and imitation flavorings, and bouillon cubes, where the total content of the package or container weighs three ounces or less.
- (2) Snack foods such as cakes, candies, chips and nuts offered for sale in single packages weighing five ounces or less.
- (3) Any food item displayed for sale in bulk and which is packaged for and served directly to the consumer by a store employee, provided that such food item is segregated and displayed as a specialty food.
- (4) Any food item for which there is no like or similar product to which it might be compared within the store, provided that such food item is segregated and displayed as a gourmet or specialty food.
- (5) Any commodity whose net quantity as offered for sale is one dozen, or 100 square feet, provided that it has the retail selling price marked plainly thereon.
- (6) Any fluid milk, or cream, or mellorealm product for which the capacity of the container used for the sale of such product is prescribed by section 191 of the law, where the net quantity as offered for sale is one-half pint, one pint, one quart, three quarts, one-half gallon or one gallon, provided that the retail price is marked plainly thereon or displayed on a sign or list at or near the point at which the item is offered or exposed for sale and in such a manner that the retail price contained thereon is plainly visible from such point.
- (7) Any frozen dessert for which the capacity of the containers used for the sale of such product is prescribed by section 193-d of the law, where the net quantity as offered for sale is one-half pint, one pint, one-half quart, one quart, one-half gallon or one gallon, provided that the retail price is marked plainly thereon or displayed on a sign or list at or near the point at which the item is offered or exposed for sale and in such a manner that the retail price contained thereon is plainly visible from such point.
- (8) Any milk product or product in semblance thereof which is required by law or regulation to be sold by net weight and in prescribed units of weight where the net quantity as offered for sale is one-half pound, one pound or two pounds, provided that it has the retail price marked plainly thereon or displayed on a sign or list at or near the point at which the item is offered or exposed for sale and in such a manner that the retail price contained thereon is plainly visible from such point.

Section 345.6 Non-intentional technical errors.

For the purpose of the enforcement of this Part, *non-intentional technical errors* shall mean inaccuracies in the unit pricing information reflected upon a stamp, tag, label, sign or list where such defects have resulted from a malfunction of a printing press, electronic data processing equipment or other mechanical equipment used to produce such stamps, tags, labels, signs, or lists, or from the mistake of a computer programmer or machine operator, where such malfunction or mistake was not within the knowledge or control of the owner or operator or management personnel of the store and where such owner or operator or management personnel could not with reasonable diligence have detected and corrected such errors.

Section 345.7 Multiple pricing.

Where identical consumer commodities are offered or exposed for sale at two or more prices within a store, the unit pricing information relating to such multiple priced items shall be calculated and displayed based upon either (a) each price at which the item is offered or exposed for sale or (b) the highest price at which the item is offered or exposed for sale. Where a consumer commodity is unit priced at its highest price only, a statement clearly indicating consumer commodities are available at more than one price and that the unit pricing information is based upon the highest selling price shall be included upon the sign required by subdivision (i) of section 345.3 of this Part.