

New York

Weights and Measures Law Article 16 of the Agriculture and Markets Law and Related Sections Issued September 22, 2006

Section 197-b. Retail Pricing Accuracy.

1. Definitions.

- a. "Retail store" shall mean a store that sells stock-keeping units directly to consumers and charges or is liable for the collection of sales tax. For the purposes of this section the term "retail store" shall include those stores that use universal product code (UPC) scanners or price-look-up (PLU) codes in checkout systems or use manual pricing of items.
- b. "Pricing accuracy inspection" shall mean an inspection of a retail store for the purpose of ensuring that customers are charged the correct price for the items they purchase.
- c. "Price charged" means the price a customer is charged for an item. For prices determined by an automated checkout device, the price charged means the price on the receipt issued to the consumer after the final total has been determined, whether the item is scanned or actually purchased, the device is computing or recording while in training mode, or by using a hand-held device connected to a store's database.
- d. "Stock-keeping unit" means each group of items offered for sale of the same brand, quantity of contents, retail price, and having different colors, flavors, or varieties.
- e. "Retail price" means the lowest advertised, written, posted, or marked price of a stock-keeping unit.
- f. "Overcharge" means a price charged that is higher than the retail price.
- g. "Undercharge" means a price charged that is lower than the retail price.
- h. "Large overcharge" means an error of twenty-five cents on any individual item up to two dollars and fifty cents and ten percent thereafter.

2. Pricing requirements. A retail store shall:

- a. Display the retail price of each stock-keeping unit offered for sale, either on each unit or on easy to read shelf tags, or signs, located directly above or below or immediately adjacent to every stock-keeping unit or group of stock-keeping units of the same brand, size and price.
- b. Assure that the price charged after the final total has been determined is equivalent to the retail price.
- c. If a UPC scanner system is used to determine the price charged, provide the appropriate inspection official access to the checkout system in use at such retail store to verify the price charged for items included in a pricing accuracy inspection. Access shall be provided to the system either in normal operating mode, in training mode, or through a hand-held or other device tied to the store's database.
- d. Post, in a conspicuous place, the refund policy of such retail store in the event of an overcharge.

3. Test procedures and accuracy requirements.

- a. The commissioner shall, by regulation, adopt test procedures utilizing randomized sampling techniques. Such procedures shall be consistent with the examination procedure for price verification developed by the national conference on weights and measures and published in the national institute of standards and technology handbook one hundred thirty. For purposes of this section, pricing accuracy inspections shall, to the extent possible, be conducted at a time and in a manner that does not interrupt the normal flow of retail business at the retail store.
- b. A retail store at least three hundred square feet in size shall be deemed in compliance if ninety-eight percent of the items in the sample selected are accurately priced. For purposes of this section retail stores that are less than three thousand square feet and employ a manual pricing system shall be deemed in compliance if, effective June first, two thousand seven through May thirty-first, two thousand eight, at least ninety-six percent of the items in the sample selected are accurately priced and beginning on June first, two thousand eight at least ninety-eight percent of the items in the sample selected are accurately priced.

c. In addition to establishing a standard frequency of inspection consistent with the provisions of paragraph a of this subdivision, the commissioner or a weights and measures official may conduct inspections of individual items in response to consumer complaints or as a follow-up on items ordered to be corrected in a previous inspection.

4. Enforcement procedures.

a. The commissioner or a weights and measures official shall advise the operator of the retail store of any pricing error encountered in an inspection. If the correction cannot be made immediately, then, the commissioner or a weights and measures official shall issue a stop removal order for items subject to overcharges and such stockkeeping units shall be removed from sale until correction is made.

b. Upon finding a violation of this section, the commissioner or the municipal director of weights and measures may impose civil penalties as prescribed in section thirty-nine of this chapter. Such penalty shall not exceed three hundred dollars per violation for violations assessed during an initial inspection in a calendar year and shall not exceed six hundred dollars per violation for violations assessed in a second or subsequent inspection during a calendar year. In determining the amount of any civil penalty imposed, the magnitude of the errors, corrective action taken by the retail store, history of such prior conduct, or other relevant information shall be considered. Penalties may only be imposed for:

(1) Overcharges found in a sample selected using the procedures adopted pursuant to subdivision three of this section, when overcharges number more than two percent of the sample. Each such overcharge may be considered a separate violation provided, however, that any overcharge for a single stock-keeping unit that includes more than one item in such unit shall count as a single violation and not as separate violations for each item in the stock-keeping unit.

(2) A large overcharge found on an individual item.

(3) An overcharge verified in response to a consumer complaint.

(4) Overcharges found on follow-up inspections of items ordered corrected.

(5) Failure to disclose the retail price of a stock-keeping unit pursuant to paragraph a of subdivision two of this section.

(6) Failure to conspicuously post a refund policy pursuant to paragraph d of subdivision two of this section.

5. Local pricing laws. Nothing in this section shall be construed to prohibit a political subdivision of the state from

continuing to implement and enforce any local pricing law or regulation in effect prior to the effective date of this section. Where a political subdivision has a local pricing law in effect prior to the effective date of this section, the provisions of this section shall have no force and effect until such time as the political subdivision repeals its local pricing law. Any political subdivision of the state not having any local pricing law or regulation in effect prior to the effective date of this section shall adopt and implement the pricing accuracy provisions set forth in this section or by regulations adopted pursuant to this section.

RELATED LAWS

From Agriculture and Markets Law Article 17

Section 214-h. Unit pricing

1. Consumer information required. Each person who sells, offers or exposes for sale at retail in a food 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, such 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 its 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 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 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 the 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

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(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, mellorcream 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, fatfree 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 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.

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.

UNIT PRICING

New York State Weights and Measures Regulations 1 NYCRR Part 345 Issued February 4, 2002

(Statutory authority: Agriculture and Markets Law, §§ 17; 18; 214-h)

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§345.1 Purpose.

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

§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 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.

§345.3 Calculation and display of unit price.

(a) The unit price shall be expressed in terms of dollar 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 price 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 of 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, de-emphasize 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 24589763	DEES ORANGE DRINK 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.

§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 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.

§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 mellorecream 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.

§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 correction such errors.

§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.