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UNIT PRICING

New York State Weights and Measures Regulations

Issued February 4, 2002

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

Sec.

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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 Part 345 (7/2/99) 2

(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.

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(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.

(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.

UNIT PRICE RETAIL PRICE

77.3. DEES ORANGE DRINK

PER QUART 24589763 12 FL. OZ.

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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.