

**CHAPTER 53****STORES****Authority**

N.J.S.A. 4:1-11.1, 4:1-25, and 4:12A-1 et seq., specifically 4:12A-7 and 4:12A-20.

**Source and Effective Date**

R.2006 d.97, effective February 7, 2006.  
See: 37 N.J.R. 4094(a), 38 N.J.R. 1315(b).

**Chapter Expiration Date**

Chapter 53, Stores, expires on February 7, 2011.

**Chapter Historical Note**

Chapter 53, Stores, was adopted and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Subchapter 4, Notice of Intent to Change Source of Supply, was readopted as R.1985 d.336, effective June 7, 1985. See: 17 N.J.R. 1011(a), 17 N.J.R. 1645(a).

Pursuant to Executive Order No. 66(1978), Subchapter 3, Sales Below Cost; Stores, expired on November 1, 1985.

Pursuant to Executive Order No. 66(1978), Subchapter 3, Sales Below Cost; Stores, expired on November 1, 1985. Subchapter 3, Sales Below Cost; Stores, was adopted as emergency new rules by R.1985 d.648, effective November 26, 1985, expired January 25, 1986. See: 17 N.J.R. 3014(a). The provisions of R.1985 d.648 were readopted as R.1986 d.43, effective March 3, 1986. See: 17 N.J.R. 3014(a), 18 N.J.R. 476(a).

Subchapter 3, Sales Below Cost; Stores, and Subchapter 4, Notice of Intent to Change Source of Supply, were repealed and Subchapter 6, Sales Below Cost; Stores, and Subchapter 7, Notice of Intent to Change Source of Supply, were adopted as emergency new rules by R.1990 d.252, effective April 25, 1990, to expire June 24, 1990. See: 22 N.J.R. 1629(a). The provision of R.1990 d.252 were readopted as R.1990 d.355, effective June 22, 1990. See: 22 N.J.R. 1629(a), 22 N.J.R. 2138(a).

Pursuant to Executive Order No. 66(1978), Chapter 53, Stores, was readopted as R.1991 d.51, effective January 10, 1991. See: 22 N.J.R. 3609(a), 23 N.J.R. 294(a).

Pursuant to Executive Order No. 66(1978), Chapter 53, Stores, was readopted as R.1996 d.45, effective December 21, 1995. See: 27 N.J.R. 4477(a), 28 N.J.R. 259(a).

Pursuant to Executive Order No. 66(1978), Chapter 52, Stores, was readopted as R.2000 d.438, effective October 4, 2000. See: 32 N.J.R. 2635(a), 32 N.J.R. 3973(b).

Administrative change: Pursuant to Reorganization Plan No. 03-2002, the Division of Dairy and Commodity Regulation was renamed Division of Marketing and Development, effective February 27, 2003. See: 35 N.J.R. 3(a), 35 N.J.R. 1539(b).

Chapter 53, Stores, was readopted by R.2006 d.97, effective February 7, 2006. See: Source and Effective Date. See, also, section annotations.

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**SUBCHAPTER 1. (RESERVED)****SUBCHAPTER 2. PRICE POSTING****2:53-2.1 Price posted in store**

(a) Every licensed store shall post at the milk display case a current price list showing all the prices at which it will sell milk and milk products.

(b) The price posting shall be so placed in the store that it may be readily seen and read by all customers purchasing milk or milk products.

(c) Prices legibly marked on the individual containers of each and every package of milk or milk products offered for sale will be deemed as compliance with this provision.

**SUBCHAPTERS 3 THROUGH 4. (RESERVED)****SUBCHAPTER 5. STORE RECORDS AND REPORTS****2:53-5.1 Store books of record and account**

(a) Every store selling milk or milk products shall maintain such books and records, including records of any and all transactions relating to the licensee's business as are necessary for a determination by the Division of Marketing and Development that the store has complied with the applicable statutes and rules and regulations of the Division. These records shall include, but not be limited to, the following:

1. A purchase record including a detailed daily record of all purchases of milk and milk products showing the supplier's name and number of units and prices of all products with the value of each product extended and totaled;

2. A record of rebates, discounts or allowances received, directly or indirectly, from suppliers of milk and milk products;

3. A record of equipment, loans or other items of value received or purchased from suppliers of milk and milk products with applicable documentation;

4. A detailed daily record of all payments to suppliers of milk and milk products, directly or indirectly, for loans, purchases or leases of equipment, or any other purchases;

5. A record and documentation for any agreement, arrangement, contract or common understanding with any other division licensee;

6. All books and records shall be retained at the store or other convenient location within the State of New Jersey for a period of three years to begin at the end of the calendar month to which such books and records pertain; provided that, if within such three-year period the Director of the Division of Marketing and Development notifies the store in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under the act or a court action specified in such notice, the store shall retain such books and records until further written notice from the Director:

i. A store may maintain its books and records outside the State of New Jersey by notifying the director in writing and by agreeing in writing to make such records available for inspection and audit as if the records were physically located within this State.

Amended by R.2000 d.438, effective November 6, 2000.

See: 32 N.J.R. 2653(a), 32 N.J.R. 3973(b).

In (a), substituted "and Commodity Regulation" for "Industry" in the introductory paragraph and 6.

### 2:53-5.2 Reports by stores

Every store selling milk or milk products shall file such reports as the director may require in the administration and enforcement of N.J.S.A. 4:12A-1 et seq.

### 2:53-5.3 Confidentiality

The New Jersey Department of Agriculture will hold confidential any information obtained pursuant to this chapter, which constitutes proprietary commercial or financial information, or is otherwise protected from disclosure under 7 CFR Part 205.501 and 205.504 or the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., subject to the limitations set forth therein.

New Rule, R.2006 d.97, effective March 6, 2006.

See: 37 N.J.R. 4094(a), 38 N.J.R. 1315(b).

## SUBCHAPTER 6. SALES BELOW COST; STORES

### 2:53-6.1 Sales below variable cost prohibited

It shall be unlawful and a violation of this subchapter for any licensed store to offer for sale or sell milk or milk products at less than the variable cost thereof as defined in N.J.A.C. 2:53-6.2; but nothing in this section shall prevent a store from meeting the price or offer of a competitor for a product or products of like quality sold in similar quantities; provided, however, that the burden of proving and properly documenting the meeting of a competitive price shall rest with the licensee asserting the claim.

#### Case Notes

Rules prohibiting sale of milk below cost did not violate substantive due process; presumptive cost guidelines for pricing milk were not administrative rules subject to notice and hearing requirements of Administrative Procedure Act. *Cumberland Farms, Inc. v. Moffett*, 218 N.J.Super. 331 (App.Div.1987).

### 2:53-6.2 Variable cost defined

(a) Except as hereinafter provided, the term "variable cost" as used in this subchapter shall include the net invoice cost of the milk and milk products plus all other variable costs related to the sale of milk and milk products. Such costs will be determined in accordance with generally accepted accounting principles and be allocated proportionately to each unit of product sold. These costs shall include labor, receiving, cooling, storing, selling, distributing, maintenance, delivery, gifts, and free service allocated to each unit of product sold. Not included in these costs are salaries of those engaged in administrative functions, office expenses, interest, rent, depreciation, license fees, taxes, insurance and advertising.

(b) In the absence of proof of a smaller amount, a store may add (as a proxy for total variable cost) five percent of the net invoice cost to determine the lawful selling price for milk and milk products. Also, pursuant to N.J.A.C. 2:53-6.1, a store may meet any price or offer of a competitor.

## SUBCHAPTER 7. NOTICE OF INTENT TO CHANGE SOURCE OF SUPPLY

### 2:53-7.1 Notice of intent

(a) As used in this section, "supplier of record" shall mean any supplier of milk or milk products from whom a licensed store has accepted three or more deliveries of milk or milk products.

(b) A licensed store may change its supplier of record or engage an additional supplier of milk and milk products once it has complied with the following requirements:

1. A store shall pay all indebtedness, less any legal rebates and discounts earned, for fluid milk and milk products purchased from the supplier of record.

2. A store shall give the supplier of record at least 48 hours actual notice of intent to change suppliers. Actual notice shall be given in writing reasonably calculated to be received 48 hours prior to the date and time of the effective date as stated in the notice. Unless the store gives at least 48 hours prior notice to its supplier of record, the store shall not refuse to accept the next scheduled delivery from the supplier of record.

3. Notice to the supplier of record is not required in the following circumstances:

i. If the Director of the Division of Marketing and Development of the Department of Agriculture finds after investigation that the supplier of record is failing to provide adequate service or to supply products desired by the store or is supplying milk and milk products which do not meet minimum standards of State and Federal health authorities;

ii. If such change is mutually agreeable to all parties;

iii. If the licensed store account is changing ownership, and the new owner accepts two or less deliveries of milk and milk products from the supplier of record. (If the new owner accepts three or more deliveries of milk and milk products from the supplier of record, notice shall be required.) As used herein "changing ownership" must be a bona fide transfer of title to the new owner(s). Transfers of title to another member of the owner's immediate family or partial change of ownership shall not be considered a change of ownership for purposes of this section;

iv. If the supplier of record transfers the account to another supplier of milk and milk products; however, if the licensed store is notified in writing of the transfer and accepts three or more deliveries from the new supplier of milk and milk products after the date the written notice is received by the licensed store, notice shall be required; or

v. If yogurt is the only product involved.

(c) The licensed store shall give notice to the Division of Marketing and Development within three business days of an agreement to change its supplier of record or add suppliers of milk and milk products. Such notice shall be filed by the store, or the new supplier of milk and milk products on its behalf, on the forms provided for that purpose by the Director.

(d) A store changing its supplier of record or adding suppliers of milk and milk products without complying with the requirements of (b) above may be cited for a violation of this section. A cited store may request a hearing before an Administrative Law Judge pursuant to the Administrative Procedure Act and the Uniform Administrative Procedure Rules, or at an informal hearing pursuant to N.J.S.A. 4:12A-43 provided that, if the total amount owed is in controversy, the amount not in controversy must be paid and the balance referred to the Director for mediation pursuant to N.J.S.A. 4:12A-24.

Amended by R.2000 d.438, effective November 6, 2000.  
See: 32 N.J.R. 2653(a), 32 N.J.R. 3973(b).

In (b), substituted "and Commodity Regulation" for "Industry".  
Amended by R.2006 d.97, effective March 6, 2006.  
See: 37 N.J.R. 4094(a), 38 N.J.R. 1315(b).

Rewrote the section.