

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

N.J.S.A. 4:12A-1 et seq., specifically 4:12A-6 and 20.

Source and Effective Date

R.2000 d.438, effective October 4, 2000.
See: 32 N.J.R. 2635(a), 32 N.J.R. 3973(b).

Executive Order No. 66(1978) Expiration Date

Chapter 53, Stores, expires on October 4, 2005.

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Subchapter 3, Sales Below Cost; Stores, and Subchapter 4, Notice of Intent to Change Source of Supply, were repealed and Subchapter 6, Sales Below Cost; Stores, and Subchapter 7, Notice of Intent to Change Source of Supply, were adopted as emergency new rules by R.1990 d.252,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: Source and Effective Date. See, also, section annotations.

Administrative change: Pursuant to Reorganization Plan No. 003-2002, the Division of Dairy and Commodity Regulation was re-named Division of Marketing and Development, effective February 27, 2003. See: 35 N.J.R. 3(a), 35 N.J.R. 1539(b).

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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.

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) Unless the licensed store and the present supplier(s) mutually agree to different credit and notice terms, a licensed store may change source of supply or engage an additional supply of milk and milk products once it has complied with each of 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 present supplier(s).

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

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

(c) A store changing suppliers without complying with the requirements of (a) 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".