202 CMR: 7.00 DIVISION OF STANDARDS

202 CMR 7:00: Price Disclosure

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7.01: Purpose and Authority

202 CMR 7:00 is promulgated pursuant to Chapter 138 of the Acts of 2012, An Act Relative to Clear and Conspicuous Price Disclosure. The purpose of the regulation is to clarify and implement amendments to M.G.L. c. 94, §§ 184B to 184E, inclusive, and M.G.L. c. 98, §56D, and to establish standards for price disclosure in food stores and food departments and the process for waiver from individual item pricing in food stores or food departments utilizing a consumer price scanner system.

The provisions of 202 CMR 7:00 are severable, and should any provision be declared invalid, such invalidity shall not affect other provisions of 202 CMR 7:00.

7.02: Definitions

Advertised price. "Advertised price" means the price of an item published or disclosed in any circular, newspaper, magazine, television or radio commercial, or in any other medium, or any published correction thereof.

Automated checkout system. "Automated checkout system" means a cash register, computer terminal, or other device capable of determining the price of an item from the item's code after searching the electronic price database and printing an itemized sales receipt for a customer.

Card price. "Card Price" means the price a loyalty card holder will be charged if different from the non-card price.

Checkout price. "Checkout price" means the price of an item to be charged to the consumer whether purchased or not as listed on an automated checkout system display or an itemized sales receipt.

Clear and conspicuous. "Clear and conspicuous" means that the matter being disclosed is of such size and color contrast and so placed as to be legible and readily noticed by the purchaser or prospective purchaser.

Code. "Code" means an identifier of an item including, without limitation, symbols, letters, numbers, bars or combinations thereof.

Consumer price scanner. "Consumer price scanner" means an electronic scanner provided for consumer use that is capable of reading an item's code and displaying a description of the item and its correct price after searching the electronic price database.

Correct price. "Correct price" means the advertised price in any circular, newspaper, magazine, television or radio commercial, or in any other medium, or any published correction thereof. If an item is not advertised, the correct price shall be the lowest display price indicated on any store sign for the item, but not if the checkout price is lower. If an item has no display price, the correct price shall be the price of the item on its unit price label, but not if such item is rung up at a lower price. If no unit price label is displayed the correct price shall be the price rung up by the food store's or a food department's automated checkout system. If the foregoing provisions for establishing the correct price are not determinative in a particular situation, the correct price shall be the price on the seller's current price list.

Director or deputy director. "Director or deputy director" means the deputy director of the division of standards established pursuant to section 5 of chapter 24A, or the director's designee, including an inspector, a sealer, or a deputy as defined in section 1 of chapter 98.

Discount. "Discount" means a percentage off or a special price reflected in the checkout price and indicated on the itemized sales receipt.

Display price. "Display price" means the price on a sign or label affixed to a display, table, shelf or other surface upon which the unit is placed.

Division. "Division" means the Division of Standards established pursuant to Section 5 of Chapter 24A.

Dual pricing system. "Dual pricing system" means a separate pricing system that allows for one correct price for non-loyalty cardholders and one correct price for loyalty card holders.

Food. "Food" means anything edible.

Food department. "Food department" means any seller, other than a warehouse club or a food store, with any grocery item section, area, or display and which sells 100 or more different food items for consumption off the seller's premises at least in part to individuals for their own personal, family, or household use; provided, however, that any food section which is within a larger business and is the functional equivalent of a food store with its own separate checkout, may be deemed a food store by the Division of Standards.

Food store. "Food store" means any store, shop, supermarket, grocer, convenience store, or other seller, whose primary business is selling either food for consumption off the seller's premises alone or in combination with grocery items or other nondurable items typically found in a supermarket, and such items are sold at least in part to individuals for their own personal, family, or household use. A food store shall not include a warehouse club.

Grocery item. "Grocery item" means any food, pet food or supply, soap, household cleaner of any type, laundry product, light bulbs, or disposable paper or plastic products.

Immediate. "Immediate" or "immediately" as used in these regulations means as soon as is practicable, but in no event more than 2 hours after notification.

Individual item. "Individual item" means one of an item, to be used interchangeably with "unit."

Item. "Item" means a specific and distinct product, good or commodity available for sale having a different universal product code or SKU for other items so coded, and for items not so coded, an item having any distinguishing characteristics compared to another item.

Itemized sales receipt. "Itemized sales receipt" means a printed and dated sales receipt listing, at a minimum, the price charged to the consumer for each item and the quantity sold.

Loyalty card. "Loyalty card" means a card or other device issued that confers certain benefits to cardholders, including discount prices upon presentation of the card. A loyalty card shall not include membership cards issued by warehouse retailers. For purposes of price signs for dual pricing, a "loyalty card" shall not include a store card which provides the consumer with an overall discount on an entire order of goods.

Price list. "Price list" means an easily referenced list that indicates the code, the description and the current correct price of each item excluded under subsection (e) of section 184C. (Note change from reference in statute to section (c)).

Scanner price. "Scanner price" means the price of an item as displayed on a consumer price scanner.

Seasonal employment. "Seasonal employment" means services performed for wages for a seasonal employer during the seasonal period in the employer's seasonal operations, after the effective date of a seasonal determination with respect to a seasonal employer.

SKU. "SKU" means the stock-keeping unit, number or code used to identify each unique product or item for sale in a food store or food department.

Sticker price. "Sticker price" means the price on a sticker, ticket, tag or other label affixed to an individual item.

Warehouse club. "Warehouse club" means a retail store in which customers pay annual membership fees in order to purchase items at member-only prices.

7.03: Individual Item pricing

(1) The correct price of an item offered for sale by a food store or food department shall be disclosed to consumers in a clear and conspicuous manner. For those food stores and food departments utilizing an individual item pricing system:
   a) Prices for the same item shall be consistent with each other and the correct price;
   b) The correct price shall be affixed to each unit or item in a clear and conspicuous manner by means of a sticker; and
   c) The correct display price, not less than 1 inch high for each separate SKU or separately-coded item, must be posted in close proximity to the item(s) offered for sale;

(2) In the case of a food store or food department utilizing an individual pricing system which utilizes loyalty cards or otherwise maintains a dual pricing system:
   (a) The non-card price shall be affixed to the item if it differs from the loyalty card price; and
   (b) A clear and conspicuous sign at the point of display must include both the loyalty card price and the non-loyalty card price, each such price not less than one inch high, so labeled if they differ, as well as the savings per unit, listed either as an amount or as the percentage of savings per unit.

(3) Exemptions from individual item pricing for food stores or food departments utilizing individual item pricing:
   Upon a determination by the Division that:
   (a) A clear and conspicuous sign disclosing the item's code, its description and its correct display price, such price not less than one inch high, for each separate SKU or separately coded item is posted in close proximity to the item(s) offered for sale;
   (b) The cashier can readily discern the item's correct price;
   (c) The food store or food department maintains a price list for all exempted items; and
   (d) The price list is available in written format at each checkout and can be reviewed by a customer upon request, or, in the alternative, is available either in written format or electronically at one or more customer-accessible locations at the food store or food department's service desk and a sign is conspicuously posted at eye level and above eye level identifying the location of the price list, the food store or food department may exempt the following classes of items from its individual pricing system:
      (1) Unpackaged: produce, meat, fish, poultry, delicatessen, bakery items, and any other items that are unpackaged and offered from a bulk display, provided, however, that any such item weighed or wrapped to order by a food store or food department but paid for at a place other than at the point of such weighing or wrapping shall have the correct price marked on the item immediately upon its being weighed and/or wrapped;
      (2) Gallons and half-gallons of milk;
      (3) Eggs;
      (4) Cigarettes, cigars, tobacco and tobacco products;
      (5) Individual items within a multi-item package, as long as the package is marked with the correct price;

(6) Cakes, gum, candy, chips, nuts and other snack foods, if offered for sale individually, and located at the checkout area;

(7) Individual greeting cards, if marked with a price code readily understandable by the consumer;

(8) Individual containers of baby food of the same brand and price where vegetable or fruit is the predominant ingredient other than water, but not including juices;

(9) Carbonated non-alcoholic soft drink bottles and cans;

(10) Frozen food products;

(11) Items sold by length, area, weight or volume, including, without limitation, chain, rope, flooring, lumber, fabric, stone or soil, that are unpackaged;

(12) Items that must be retrieved for the consumer by store staff, including without limitation large electronics or appliances, or display or representative items or items displayed in a locked case or out of reach of consumers;

(13) Packaged self-service items that are small in size and offered for sale in a display located at the checkout area;

(14) Live animals;

(15) Items sold in a coin operated vending machine; and

(16) Not more than 60 additional items that are accessible to the consumer in a free-standing or end-aisle display that has at least 50 units of the same item.

(17) Provided, however, that unless the deputy director determines otherwise, individual items that differ only by color, flavor or scent shall be counted as the same item if they are identical in all other aspects, including price, size, and brand.

(18) Additional items, the exact number of which shall be based on the number of operable cash registers located at the main checkout location and whether the entity exempting such items is a food store or a food department. These additional exemptions shall be granted provided that:

a) The food store or food department maintains an automated checkout system which has been determined to be at least 95 percent accurate during a price accuracy inspection conducted by the division or the division's designee;

b) The food store or food department maintains a dated, written price list of the items it has chosen to exempt under this section;

c) The price list includes a clear description of each item and the code number understood by the seller's automated checkout system for each item to be exempted;

d) The list is maintained so that any item may be referenced easily by a consumer;

e) Deletions from the list may be made at any time, but additions, substitutions, or changes may not be made to the list except twice a year, in January and July;

f) No seller may exempt items required to be price-marked by other laws or regulations governing specific types of items;

g) Items not on the list may not be exempted from item pricing, and no exemptions shall apply unless the exempted items price list has been established and is available on request to any consumer or any representative authorized by the deputy director;
h) The dated, written price list is available in written format at each checkout and can be reviewed by a customer upon request, or, in the alternative, is available either in written format or electronically at one or more customer-accessible locations at the food store or food department's service desk and a sign is conspicuously posted at eye level and above eye level identifying the location of the price list; and
i) No seller may exempt more than 200 items in any one department, except a grocery department.
    (1) Food stores with 1 operable cash register shall be allowed to exempt 20 additional items of their own choosing;
    (2) Food stores with 2 operable cash registers shall be allowed to exempt 50 additional items of their choosing;
    (3) Food stores with 3 to 4 operable cash registers shall be allowed to exempt 100 additional items of their choosing;
    (4) Food stores with 5 to 6 operable cash registers shall be allowed to exempt 200 additional items of their choosing;
    (5) Food stores with 7 or more operable cash registers may exempt up to 400 additional items of their choosing.
    (6) In the case of a food department, the number of items exempted pursuant to 202 CMR 7:03 (18) shall be reduced by 75 percent. In no case shall the number of exemptions permitted pursuant to 202 CMR 7:03 (18) exceed 4.5 percent of the number of packaged grocery items carried by the seller.

<u>7.04: Waiver</u>

(1) Each food store or food department seeking to convert from an individual item pricing system to a consumer price scanner system shall seek a waiver from the Division, on a form to be provided by the Division.
(2) The waiver shall be granted, provided that the food store or food department has no outstanding fines under sections G.L. c. 94, §§184B to 184D, inclusive, or G.L. c. 98, § 56D, and pays the required fee to the Division, which shall be:
    a. $250 annually if the retail grocery item sales space is less than 15,000 square feet;
    b. $500 annually if the retail grocery item sales space is greater than or equal to 15,000 square feet but less than 30,000 square feet; or
    c. $1,000 annually if the retail grocery item sales space is 30,000 square feet or more;
(3) The food store or food department completes and files with its application a "no job loss" affidavit, which shall include:
    a. The number of people employed in the food store or food department at the time of the application process;
    b. The terms of a complaint process available through the food store or food department to ensure that full and part-time employees do not suffer any

wage or benefit loss due to the transfer from an individual item pricing system to a consumer price scanner system;

(4) The food store or food department includes with its application additional information required by the Division, including a schematic map of proposed locations for consumer price scanners throughout the food store or food department.

(5) Any food store or food department with more than 5,000 square feet of retail grocery item sales space that converts from an individual item pricing system to a consumer price scanner system shall within 3 months of such conversion hire or maintain not less than 2 employees whose responsibilities shall include the maintenance of all consumer price scanners within the food store or food department. Such maintenance shall include:

a. At a minimum, daily checks of each consumer price scanner in the food store or food department to ensure that each such scanner is plugged in and operating correctly, including conducting a test scan of at least one item for each scanner to ensure that the scanner is operational;
b. Maintaining data log entries to record any and all repair requests for out-of-order scanners;
c. Placing signs on out-of-order scanners until they have been repaired, that include information re-directing consumers to the nearest operational scanner;
d. Replenishing as needed materials used to provide individual pricing tags and the materials providing the means of affixing or attaching scanner-produced pricing information for printing scanners;
e. Ensuring that inoperable or malfunctioning scanners are repaired or replaced within 72 hours of notification of malfunction or inoperability;
f. Ensuring that shelf tags for merchandise are current and correct;
g. Maintaining data log entries for price discrepancies as outlined in 202 CMR 7:07(6).

<u>7.05: Scanner Specifications</u>

(1) Each food store or food department with more than 5,000 square feet of retail grocery item sales space that utilizes a consumer price scanner system shall have at least one fully operational consumer price scanner for every 5,000 square feet of retail grocery item sales space or part thereof;

(2) The location of a consumer price scanner shall be disclosed by one clear and conspicuous price sign at eye level, and one clear and conspicuous sign above eye level;

(3) Consumer price scanners shall be equally spaced throughout the store in fixed locations;

(4) All consumer price scanners shall comply with the Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A, and the Architectural Access Board regulations, 521 CMR 1.00, *et seq.*;

(5) A sign shall be posted by each consumer price scanner containing contact information for the Division of Standards so that consumers may report non-operating or otherwise defective consumer price scanners to the Division;

(6) Inoperable scanners shall be repaired or replaced as soon as is practicable, but in no event shall scanners go unrepaired or unreplaced for longer than 72 hours;

(7) A food store or food department with more than 5,000 and less than 15,000 square feet of retail grocery item sales space shall have at least one fully operational consumer price scanner capable of producing an individual item pricing tag, located at the front of the food store or food department;

(8) A food store or food department with more than 15,000 and less than 30,000 square feet of retail grocery item sales space shall provide at least two such printing scanners, with at least one located at the front of the food store or food department;

(9) A food store or food department with more than 30,000 square feet of retail grocery item sales space shall provide at least three such printing scanners, with at least one located at the front of the food store or food department.

(10) At all such printing scanner locations, the food store or food department shall provide the consumer with a means by which such pricing tag may be affixed or appended to the item or its packaging, such as tape or an adhesive pricing tag.

(11) Consumer price scanners shall be deemed fully operational if:

a. The consumer price scanner clearly and conspicuously identifies and displays the item by name or other distinguishing characteristics;

b. The consumer price scanner displays the item's correct price when the item is scanned;

c. In the case of a food store or food department that uses loyalty cards or otherwise maintains a dual pricing system, the consumer price scanner displays both the loyalty card price and the non-card price if they differ;

d. For scanners capable of producing an individual item pricing tag, the food store or food department provides the consumer with a means by which such pricing tag may be appended to the item or its packaging, such as tape or an adhesive price tag.

(12) Upon the review and approval of the Deputy Director, food stores or food departments may also deploy new technologies which further the intent of this section, including, but not limited to, hand held or shopping cart-attached scanners which retain in memory and itemize all scanned items. Such technologies may reduce the required number of consumer price scanners by no more than 50 percent. In order to reduce the otherwise required number of consumer price scanners, food stores or food departments must deploy such alternative scanner instruments at a ratio of 5 to 1, that is, the equivalent of 5 scanner instruments per five thousand square feet of retail selling space, or at a rate of 1 such scanner instrument for 1,000 square feet of retail selling space.

<u>7.06: Consumer Price Scanner System Pricing Disclosures</u>

(1) A food store or food department that implements a consumer price scanner system shall have the code of an item affixed to each individual unit by means of a sticker,

ticket, tag or other label that can be read by the consumer price scanner and automated checkout system, to display the correct price;

(2) All prices represented to the consumer for the same item shall be consistent with each other and the correct price; and

(3) The item's code, its unabbreviated description and its correct price must be clearly and conspicuously posted in close proximity to the item(s) offered for sale, with the correct display price not less than 1 inch high.

(4) A food store or food department that implements a consumer price scanner system and utilizes loyalty cards or otherwise maintains a dual pricing system shall post a sign at the point of display that includes both the loyalty card price and the non-loyalty card price, each such price not less than one inch high, so labeled if they differ, as well as the savings per unit, listed either as an amount or as the percentage of savings per unit.

(5) Exemptions from price display

Upon a determination by the Division that:

(1) A clear and conspicuous sign disclosing the item's SKU or code, unabbreviated description and its correct price, which price is not less than one inch high, is posted in close proximity to the item(s) offered for sale;

(2) The cashier can readily discern the item's correct price;

(3) The food store or food department maintains an itemized list for all exempted items; and

(4) The list is available at each checkout, or, in the alternative, is available either in written format or electronically at one or more customer-accessible locations at the food store or food department's service desk and a sign is conspicuously posted at eye level and above eye level identifying the location of the price list, the food store or food department may exempt the following items from displaying the correct price at its consumer price scanners:

(a) Unpackaged and uncoded items to which a price sticker cannot reasonably be affixed; and

(b) Loose produce with SKU numbers.

(5) Prior to their display, the Director of Standards must approve any deviation from the requirement of clear and conspicuous signs disclosing an item's unabbreviated description and its correct price not less than one inch high. The Director will render a decision within four weeks of receipt of the label or alternative method of display. This exemption shall apply solely to the use of an understandable abbreviation of item description in locations where shelf space devoted to the item is limited, such as in spice display locations. In reaching a decision, the Director of Standards shall take into consideration the prominence of the price segment of the label, the boldness and size of the characters, and the overall design of the label.

<u>7:07 Lowest Price Requirements</u>

(1) If there is a discrepancy between the advertised price, the sticker price, the scanner price, or the display price and the checkout price on any grocery item, a food store or food department shall charge a consumer the lowest price, regardless of the pricing system employed by the food store or food department.

(2) In the case of food stores or food departments utilizing a consumer price scanner system, if the checkout price or scanner price is not the lowest price or does not reflect any qualifying discount, the seller:
    a. Shall not charge the consumer for one unit of the grocery item, if the price is $10 or less;
    b. Shall charge the consumer the lowest price less $10 for one unit of the grocery item, if the lowest price is more than $10; and
    c. Shall charge the consumer the lowest price for any additional units of the grocery item.
(3) Section 7.06(2) shall not apply if:
    a. There is evidence of willful tampering, which shall include, but not be limited to: removing or moving price display signs, or deliberately disabling a consumer price scanner.
    b. The discrepancy is a gross error, in that the lowest price is less than half of the checkout price and the seller, in the previous 30 days, did not intend to sell the grocery item at the lowest price.
    c. A consumer seeks multiple discounts at any food store or food department after his or her initial grocery item purchases on the same items within 24 hours. Contested matters may first be brought to the attention of the store manager, and if not thereby resolved, may be filed as a consumer complaint with the Division of Standards and/or the Office of the Attorney General.
(4) All food stores and food departments which use a consumer price scanner shall clearly and conspicuously post the provisions of 202 CMR 7:06 (2) at each register.
(5) For each register that fails to display appropriate signage, the food store or food department shall be subject to a fine of $200, up to a maximum of $500 per inspection by the deputy director.
(6) All food stores and food departments, regardless of the pricing system utilized, shall maintain data on price discrepancies, which shall be provided to the division upon request.
    a. The data shall be recorded on a daily log, signed or initialed by the employee who enters the data;
    b. The log shall reference the time and date of the discrepancy, the name and brand of the item and the SKU or UPS code of the item, the price charged, the price differential, the steps taken to rectify the pricing error, and the time elapsed from discovery of the error to time it is corrected;
    c. For those errors in a food store or food department using consumer price scanners which result in providing the consumer with a free item, a discounted item, and/or additional units provided to the consumer at the correct price, the log should also reflect the quantities of free or discounted items provided.

<u>7:08 Sales Receipts</u>

(1) Items purchased at a food store or food department shall appear on an itemized sales receipt that shall be provided to the consumer, regardless of whether the food store or food department utilizes individual item pricing or a consumer price scanner system.
(2) If the consumer purchases a sale item or qualifies for a discount, including discounts granted for presenting a loyalty card, the amount saved shall be reflected in the

checkout price and printed on the consumer's itemized sales receipt, regardless of whether the food store or food department utilizes individual item pricing or a consumer price scanner system.

7:09 Consumer Rights Disclosures

(1) All food stores and food departments shall post a sign providing consumers with contact information for the Division of Standards, and notice of the rights provided G.L. c. 94, §§ 184B to 184E;
(2) All food stores and food departments using consumer scanners shall post a notice at each register of the rights provided under 202 CMR 7:07;
(3) All food stores and food departments using consumer scanners shall post a notice by each consumer scanner containing the contact information for the Division of Standards;
(4) The Division of Standards will make available on its website its approved notices. Any deviation therefrom must be approved by the Director of Standards prior to its posting.
(5) The Division of Standards will also make available a consumer complaint form on its website for consumers who wish to file a complaint regarding pricing accuracy, scanner overcharging, missing price signs or malfunctioning in aisle scanners for use by consumers.

7:10 Inspections; Violations; Penalties; Appeals

(1) The Deputy Director or the Deputy Director's inspectors and sealers of weights and measures and those deputies, as defined in section 1 of chapter 98, shall inspect each food store or food department for compliance with G.L. c. 94, sections 184B-184E, inclusive.
(2) The inspections shall be conducted pursuant to the national industry standards adopted by the National Conference on Weights and Measures of the National Institute of Standards and Technology, or any other rules or guidelines promulgated by the Division pertaining to the implementation and enforcement of sections 184B to 184E, inclusive.
(3) Nothing shall inhibit the oversampling of sale items during inspections.
(4) A food store or food department shall provide the inspector with access necessary to conduct an inspection.
(5) The Deputy Director shall notify the food store or food department in writing of violations of this section and of any fines imposed pursuant to sections 184B to 184E, inclusive.
(6) Violations of sections 184B to 184E, inclusive, for which fines shall be levied include, but shall not be limited to:
    a. Having no price marked on a unit that is required to be price and is not exempted;
    b. Having an incorrect price on a unit;
    c. Having an incorrect or missing sign;
    d. Overcharging on a unit: A unit shall be deemed to be overcharged once it is rung up at a price higher than any represented price. As in "checkout price,"

the price shall be the price displayed on an automated checkout system or an itemized sales receipt, regardless of whether the item is purchased or not;

(7) Notwithstanding the method for determining the amount of civil fines under section 29A of chapter 98, a civil citation may be issued for $200 for each violation, up to a maximum of $5,000 per inspection.

(8) For purposes of 202 CMR 7.10, each occasion that an item scans erroneously during an inspector's attempt to verify its correct price shall constitute a separate civil violation. Inspectors shall not scan any identical individual item more than once per inspection. The seller shall immediately correct all violations.

(9) If an item is advertised either in a food store, food department or in a circular as on sale or discounted because of a loyalty card price and the item registers at a higher price at the checkout counter than indicated by a sale or loyalty card price, a civil citation shall be issued for $300 for each violation, up to a maximum of $5,000 per inspection. Said loyalty card violations shall be calculated separately from other pricing violations for purposes of the $5,000 caps.

(10) The Deputy Director shall not issue a fine under sections 184B to 184E, inclusive, and section 56D of chapter 98 for the same violation.

(11) A fine imposed by the Deputy Director shall be paid within 21 days of issuance of the notice, unless the seller appeals pursuant to the civil citation process found in section 29A of chapter 98.

(12) The food store or food department shall immediately correct any noncompliance with sections 184B to 184E, inclusive, when notified by the inspector.

(13) No food store or food department shall be inspected more than once a month, unless such inspection is intended to verify the correction of violations found during a recent inspection or to verify the validity of a specific consumer complaint.

(14) All food stores or food departments subject to sections 184B to 184E, inclusive, shall provide, upon request, a complaint form for a consumer to complete and submit. A consumer may submit a complaint to the Deputy Director and/or the Attorney General regarding noncompliance with sections 184B to 184E, inclusive. Consumer complaints submitted to the Deputy Director shall be investigated. In the case of any verified consumer complaint, fines for overcharging shall be limited to 1 violation per item. A fine shall be issued upon verification of any consumer complaint alleging overcharging or improper price marking.

(15) If the Deputy Director determines that a food store or food department is either intentionally or through gross negligence violating any provisions of sections 184B to 184E, inclusive, the Deputy Director shall provide written notice of such determination to the food store or food department and the food store or food department shall have 30 days to cure these violations. Provided, however, that pricing violations shall be corrected immediately upon notice. If upon re-inspection the Deputy Director determines that the food store or food department is still not in substantial compliance with 202 CMR 7:00 and sections 184B to 184E, inclusive, all of the food store's or food department's exemptions shall be rescinded for a period of 12 months, and the matter shall be referred to the Attorney General for action against that food store or food department.

(16) Sections 184B to 184E, inclusive, shall only apply to food stores and to grocery items in food departments. Said sections shall not diminish any obligations under

other laws or regulations regarding item pricing for sellers other than food stores or for items other than grocery items in food departments. If a seller is also subject to the item pricing regulations or guidelines of another agency, in cases where a specified number of items is allowed to be exempted under 2 similar exceptions to the requirement of item pricing, such similar provisions shall not be additive. Compliance with another agency's regulations or guidelines shall not be a defense to a violation of sections 184B to 184E, inclusive, or of 202 CMR 7:00.

(17) Special additional provisions applicable to food stores or food departments using a consumer price scanner system:

a. A food store or food department using a consumer price scanner system shall be subject to inspection by the Deputy Director.
b. The Deputy Director shall not cause any food store or food department using a consumer price scanner system to be inspected more than once per calendar month, unless within the previous 30 days there is a verified pattern of consumer complaints, or, upon regular inspection, the food store or food department is not in compliance with 202 CMR 7:00 or sections 184B to184E, inclusive, the division may inspect a food store or food department using a consumer pricing scanner system once every week until the food store or food department is found to be in compliance.
c. Upon inspection, the Deputy Director shall notify the store manager, who shall provide the inspector with a map of the food store or food department outlining the consumer price scanner locations and the food store or food department's square footage of grocery item retail sales space.
d. The food store or food department's number and type of scanners shall be sufficient for the food store or food department's size as defined by these regulations. Any violation of 202 CMR 7.10 (17)(d), lacking the requisite number and type of consumer pricing scanners shall result in a fine of $1,000, which shall not count toward the maximum fine established under section 202 CMR 7.10 (17)(g), provided, however, that the Deputy Director may reduce this fine consistent with section 29A of chapter 98.
e. An inspector may choose to test a consumer price scanner system for accuracy. The inspector may choose the sample size for accuracy tests provided that the size of sample is not less than 50 items and not more than 200 items.
f. Any scanning that yields an incorrect price that causes a food store or food department's consumer price scanner accuracy rating to fall below 98 percent shall constitute a separate violation. 202 CMR 7:10 (17) (d) shall not be used to impact a scanner's pass or fail grade, but the cumulative violations of this subsection in any particular store or department shall be used in contributing toward the maximum fine imposed.
g. Each consumer price scanner shall be graded on a pass or fail basis by inspectors. A failing consumer price scanner shall include, but not be limited to:
    i. Missing consumer price scanners;
    ii. Inadequate signage at eye level or above eye level;

iii. Failing to clearly and conspicuously identify and display a scanned item by name or other distinguishing characteristics;
iv. Failing to disclose both the loyalty card price and the non-card price if they differ if applicable;
v. Failing to comply with the Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A, or the Architectural Access Board Regulations, 521 CMR 1.00 et seq.; or
vi. Failing to post a sign containing the contact information for the Division by the scanner;
vii. For each scanner capable of producing an individual item pricing tag, failing to provide the consumer with a means to print a pricing tag; or
viii. Failing to provide a means to affix or append the pricing tag to an item or its packaging.
ix. Each scanner found to have failed the test shall constitute a separate violation. Notwithstanding the method for determining the amount of civil fines under section 29A of chapter 98, a civil fine may be issued for $200 for each violation, up to a maximum of $2,500 per inspection; provided, however, that the Deputy Director may reduce any fine imposed under this section consistent with section 29A of chapter 98.

7.11: Retail Checkout Systems, all Massachusetts Retailers

(1) Pursuant to the terms of G.L. c. 98, section 56D, the Director or the Director's inspectors and sealers of weights and measures and their deputies shall, in every 24 month period, examine and test the operation of all automated retail checkout systems in all establishments with 3 or more cash registers.
(2) Upon complaint to such officials, those officials shall examine and test the operation of any automated retail checkout system to determine whether the price which an item is offered or advertised for sale, including any advertised special price offered to a customer with a store-issued discount or loyalty card, conforms to the unit or net prices displayed to the customer on the visual display and conforms to the price for which a purchaser is charged by the automated retail checkout system to determine whether the total price for items purchased is correctly represented.
(3) Nothing shall prohibit the Director or the Director's inspectors and sealers and inspectors of weights and measures and their deputies from examining and testing any system at any time irrespective of the number of cash registers within the establishment.
(4) The Director or the Director's inspectors and sealers of weights and measures may issue notices of violations of G.L. c. 98, section 56D under the terms of G.L. c. 98, section 29A.
(5) If such examination and test reveals that there is evidence of price misrepresentation or information misleading or deceptive to the purchaser of items, or that consumer price scanners, as defined in section 184B of Chapter 94, do not meet the operational standards defined therein, the owner, manager or the designee of the owner or manager of a retail establishment using such automated checkout system shall be punished for the first failed inspection a civil fine of $200, for the second failed inspection by a civil fine of $500 and for any subsequent failed inspection by a civil

fine of $1,000; provided, however, that there shall be no punishment for any inoperable consumer price scanner that is deployed for reasons other than to obtain an exemption from any law or regulation of the commonwealth requiring the individual price-marking of items offered for sale or for any inoperable consumer price scanner for which a retailer is able to demonstrate to the satisfaction of the inspecting individual that the retailer has communicated in writing with an authorized repair agent, prior to the examination and test, requesting that the inoperable electronic scanner be repaired.

(6) For purposes of this section, consumer price scanners shall be deemed fully operational if they operate in the following manner:
    a. The consumer price scanner clearly and conspicuously identifies and displays the item by name or other distinguishing characteristics;
    b. The consumer price scanner displays the item's correct price when the item is scanned, and;
    c. In the case of a retail establishment that uses loyalty cards or otherwise maintains a dual pricing system, the scanner displays both the loyalty card price and the non-card price if they differ.

(7) Each consumer price scanner shall display contact information for the division of standards to report broken scanners.

(8) Consumer price scanners shall be in compliance with the Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A and the Architectural Access Board Regulations, 521 CMR 1.00.

(9) Notwithstanding the method for determining the amount of civil fines under section 29A, a civil citation may be issued for $200 for each violation, up to a maximum of $2,500 per inspection. Each item which scans erroneously shall constitute a separate civil violation.

(10) For purposes of 202 CMR 7.12, an automated checkout system shall mean a cash register, computer, terminal, consumer price scanner or other device capable of interpreting the universal product code or any other code with is on an item offered for sale to consumers used to determine the price of the item being purchased, regardless of whether the code entry is accomplished manually or automatically by a machine.