

202 CMR 5.00: UNIT PRICING AND AUTOMATED RETAIL CHECKOUT SYSTEMS

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5.01: Definitions

- (1) Packaged Commodity. Means any food, drug, device or cosmetic and any other article, product, or commodity of any kind or class which is customarily necessary for personal, family or household use and offered for sale at retail and is offered for sale by weight, measure, count, quantity, or combination thereof.
- (2) Price Label. A physical or electronic sign, sticker, stamp, label, or other medium containing the unit price and item price of the packaged commodity and any other information required by 202 CMR 5.00 or M.G.L. c. 98, §§ 184B through 184E.
- (3) Shelf Tag. A price label that meets the requirements of 202 CMR 5.00 that is affixed to the front shelf on which a packaged commodity is displayed for sale.
- (4) Unit Price. The price of each packaged commodity per measure.
  - (a) The declaration for the unit price of a particular commodity in all package sizes offered for sale in a retail store shall be uniformly and consistently expressed in terms of either:
    - 1. Price per kilogram of 100 g, or price per pound or ounce, if the net quantity of the contents of the commodity is in terms of weight.
    - 2. Price per liter or 100 mL, or price per dry quart or dry pint, if the net quantity of the contents of the commodity is in terms of dry measure or volume.
    - 3. Price per liter or 100 mL, or price per gallon, quart, pint, or fluid ounce, if the net quantity of contents of the commodity is in terms of liquid volume.
    - 4. Price per individual unit or multiple units if the net quantity of the contents of the commodity is in terms of count.
    - 5. Price per square meter, square decimeter, or square centimeter, or price per square yard, square foot, or square inch, if the net quantity of contents of the commodity is in terms of area.
  - (b) The declaration of the unit price shall reflect the unit of measure as it most commonly appears displayed on the particular commodity and it shall be applied uniformly and consistently for all package sizes and brands offered for said commodity.
- (5) Item Price. The total current price of the single packaged commodity, inclusive of any temporary discounts, available rebates, loyalty club discounts, temporary price reductions, or bulk/combo purchasing options.
- (6) Retail Store. Any retail outlet, either as a sole location or chain of stores, including a wholesale club and membership warehouse, that sells or offers for sale any packaged commodity and has a sales volume of not less than \$5,000,000.00 per year of in-store sales excluding the sale of motor fuels; only retail outlets whose owners or authorized operators have submitted to the Division, no later than January 31<sup>st</sup> of any given year, a sworn affidavit executed by an outside auditor, corporate officer, or retail store owner attesting to the annual sales for the preceding calendar or most recent fiscal year for each retail store seeking an exemption under M.G.L. c. 6A, § 115A and 202 CMR 5.00 shall be excluded from the definition of retail store for that calendar year. The Division shall maintain and publish a listing of all retail stores qualifying for an exemption under this definition.

### 5.02: Applicability

- (1) 202 CMR 5.02 shall apply to retail stores that offer packaged commodities for sale.
- (2) The unit price and item price of a package commodity must be disclosed on all price labels, except window signs, and must meet the requirements of 202 CMR 5.04. Nothing in 202 CMR 5.02 shall prevent a retail store from including other information on a price label provided that all required information is displayed prominently. Retail stores are strongly encouraged to include design elements on price labels to increase accessibility for visually impaired consumers, such as Quick Response ("QR") codes or other similar additions.
- (3) If the packaged commodity is displayed on a shelf or hanging display, the price label shall appear on a shelf tag directly below or immediately adjacent to one or more of the packaged commodities displayed for sale or shall be attached directly to the packaged commodity. If it is physically impossible to meet the foregoing requirement, the unit price may appear on a price sign or list that is displayed as close as practicable to the packaged commodity.
- (4) In the event a store elects to utilize electronic shelf labels to meet the requirements of 202 CMR 5.00 such automatic shelf labels may only be automatically updated during such period in which the retail store is closed to consumers for not less than five consecutive hours; in the event a retail store is open to consumers for between 19 and 24 hours per day, inclusive, such electronic shelf labels may only be automatically updated between the hours of 1:00 A.M. and 3:00 A.M.
- (5) If the packaged commodity is displayed in an electronic format, such as on a website or mobile application, the item price and unit price shall be prominently displayed on the same screen as the packaged commodity.
- (6) If a packaged commodity is displayed in an enclosed heated or refrigerated case, the price label shall be affixed to the case, to a shelf edge, or to the packaged commodity. If it is physically impossible to meet the foregoing requirement, the unit price may appear on a price sign or list that is displayed as close as practical to the packaged commodity.

### 5.03: Exemptions

The following packaged commodities need not comply with the requirements of 202 CMR 5.00:

- (1) Medicine sold by prescription only;
- (2) Beverages subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act.
- (3) Such packaged commodities which are required to be marked individually with the cost per unit of weight under the provisions of M.G.L. c. 94, § 181.
- (4) Commodities packaged in quantities of less than 28 g (1 oz) or 29 mL (1 fl. oz) or when the total retail price is \$.50 or less;
- (5) When only one brand and in only one size of the packaged commodity is offered for sale in a particular retail store;
- (6) Infant formula. Unit price information may be based on the reconstituted volume. "Infant formula" means a food that is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or suitability as a complete or partial substitute for human milk.
- (7) Packaged commodities intended for retail sale containing two or more individual packages or units of dissimilar commodities;

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(8) Packaged commodities intended for retail sale containing two or more individual packages or units of similar, but not identical, commodities specifically items that are generically the same, but that differ in weight, measure, volume, appearance, or quality, are considered similar, but not identical.

(9) The retail store shall not be required to comply with the provisions of 202 CMR 5.00 where the packaged commodity carries the current item price and unit price displayed on its package.

5.04: Price Label Requirements

(1) The price label shall include a clear and comprehensible description of the packaged commodity including, but not limited to the brand name, product type and variety, and package size, and is comprised of no more than two dominant segments which clearly and prominently indicate the item price and unit price, respectively. In the event that the retail store elects to display multiple price labels for the same individual product to reflect a temporary price adjustment, both price labels must meet all the requirements stated herein.

(2) The price label shall include text that appears in the largest font or typeface sized possible; the unit price shall be displayed in font or typeface size that is no smaller than 50% of the font or typeface size that is used for display of the item price. In no event shall the unit price appear in font or typeface size smaller than 6.00 mm unless approved by the Commissioner/Deputy Director of the Division of Standards. The letters and numbers used to comply with the provisions of 202 CMR 5.04 shall appear in a font size and at a location on the price label that can be easily seen and read by consumers with average vision from normal viewing positions and distances.

(3) The unit price segment of the price label shall appear:

- (a) Clearly and conspicuously to the consumer;
- (b) Within the left segment of the price label;
- (c) In bold, black or white typeface, over a color-contrasting background of yellow, red, orange, or other color approved by the Commissioner/Deputy Director of the Division of Standards upon written request of the retail store or chain of retail stores. The color-contrasting background of the unit price segment shall be consistent for all price labels throughout the retail store but may vary among different locations of a chain of retail stores.

In the event a retail store elects to utilize electronic shelf labels to meet the requirements of 202 CMR 5.04, the use of black and white/grayscale only contrasting price labels shall be allowed only in freezer/refrigerated sections of retail stores or with the express authorization of the Commissioner/Deputy Director of the Division of Standards.

(4) The unit price segment of the price label shall include the following information and no other:

- (a) The words "Unit Price" as a heading directly above or below the numerical unit price;
- (b) The unit price for the packaged commodity as defined in 202 CMR 5.01(4) shall be displayed:
- (c) To the nearest cent when the unit price is one dollar or greater; or
- (d) Either to the tenth of one cent or to the whole cent when the unit price is \$.99 or less.

(5) The item price segment of the price label shall appear:

- (a) Clearly and conspicuously to the consumer;
- (b) Within the right segment of the price label;
- (c) In bold, black typeface over a white background unless otherwise approved by the Commissioner/Deputy Director of the Division of Standards upon written request of the retail store or chain of retail stores.

(6) The item price segment of the price label shall contain the following information:

- (a) The words "item price," "retail price," or other clear descriptor directly above or below the numerical item price;
- (b) The item price for the packaged commodity as defined in 202 CMR 5.01(5).

5.04: continued

- (c) The total size, weight, volume, or quantity of the commodity being sold;
- (7) Where a primary shelf tag is displayed along with a supplemental tag or tags promoting a price other than the item and unit price to reflect a temporary or promotional change, the predominant or segment color of the supplemental tag or tags must differ from the unit price segment color chosen by the retail store on the primary shelf tag.
- (8) If applicable, the primary or supplemental shelf tag shall include the date of expiration of any applicable temporary discounts, rebates, loyalty club discounts, or other temporary price reductions that impact the item price of the packaged commodity.
- (9) Other information may also be included on the price label at the option of the retail establishment provided that said information does not in any way obscure, de-emphasize or confuse the unit or item price information.

5.05: Waivers/Time for Compliance

- (1) Exemption from compliance with the requirements of any of the provisions of these regulations may be granted for cause by the Commissioner/Deputy Director of the Division of Standards upon the filing of a statement setting forth the reason for inability to comply with any of the requirements. Any such exemption, including requests for extensions of time, may be granted by the Commissioner/Deputy Director of the Division of Standards for such period of time as he or she may deem reasonable.
- (2) Concurrency period. Retail stores may conform, without violation, with 202 CMR 5.00 as it appears immediately preceding the most recent amendment(s) for a period of 120 days following final promulgation of the new regulations.

5.06: Severability Provision

If any section or portion of a section of 202 CMR 5.00, or the applicability thereof to any person or circumstances is held invalid by a court, the remainder of 202 CMR 5.00, or the applicability of such provision to other persons or circumstances, shall not be affected thereby.

5.07: Inspection of Automated Retail Checkout Systems

Pursuant to M.G.L. c. 98, § 56D, the Division of Standards adopts the most recent edition of the National Institute of Standards and Technology Handbook 130, Section V: *Examination Procedure for Price Verification* as the rules and regulations of the Division of Standards regarding the procedures for examining automated retail checkout systems.

REGULATORY AUTHORITY

202 CMR 5.00: M.G.L. c. 6A, § 115A; c. 98, § 29.

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