

202 CMR: DIVISION OF STANDARDS

202 CMR 5.00: UNIT PRICING AND AUTOMATED RETAIL CHECKOUT SYSTEMS

Section

- 5.01: Definitions
- 5.02: Exemptions
- 5.03: Means of Disclosure
- 5.04: Price Per Measure
- 5.05: Packaged Commodities Regulated and Unit of Measure to be Used
- 5.06: Extension of Time for Compliance
- 5.07: Responsibility for Compliance
- 5.08: Determination of Label Acceptability
- 5.09: Severability Provision
- 5.10: Inspection of Automated Retail Checkout Systems

5.01: Definitions

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 or used for personal, family or household use and offered for sale at retail and which is listed in 202 CMR 5.05.

(a) Unit Price means the price per measure

(b) Item Price means the total sales price

For the purpose of enforcing 202 CMR 5.00:

1. Goods sold in case lots will be considered one whole unit.
2. Multipacks will be considered one whole unit, provided the items comprising the Multipack, are not sold individually.
3. Case lot and pallet displays - items contained therein sold individually. All items, unless exempted, must be marked with the retail price. For enforcement purposes, only those items in the layers of cases exposed for sale in the display will have to be price marked.

(c) Retail Store means any retail outlet including wholesale clubs and membership warehouses that sells or offers for sale any packaged commodity that is listed in 202 CMR 5.01.

5.02: Exemptions

Sellers at retail need not comply with the provisions of 202 CMR 5.00 as to the following packaged commodities:

(1) Medicine sold by prescription only:

(2) Beverages subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act.

202 CMR: DIVISION OF STANDARDS

- (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) Packaged commodities which are sold in packages containing one or two of the units of measure prescribed in 202 CMR 5.00 and which have an item price plainly marked thereon; but only the particular packaged commodity in such units shall be exempt. All other items in excess of two multiples of the unit of measure must be unit priced.
- (5) Packaged commodities sold by any retail establishment operated by a person as his sole place of business shall be exempt from 202 CMR 5.00 if gross annual sales are less than \$1,000,000.
- (6) "Deal Items", such as, Cents Off, Bonus Packs, Percent Off, Half Price, or manufacturer "Pre-Priced" Items, if the same as or lower than regular selling price, provided the unit price is posted as required for "Non Deal" items.

202 CMR: DIVISION OF STANDARDS

5.03: Means of Disclosure

All retail establishments subject to 202 CMR 5.00 shall disclose the unit price and item price to consumers in the following manner:

- (1) The unit price label, stamp or tag must consist of no more than two dominant segments.
 - (a) The left-hand segment of the label, stamp or tag must be orange: the other part of the label must be primarily white:
 1. Orange shall be defined for purposes of 202 CMR 5.00 as being measured inclusively between the wavelengths of 595 and 620 mill microns (or between 5950 and 6200 angstroms) on a normal color spectrum. For purposes of everyday recognition and operation, only the following identifying numbers for orange, as found in the U.S. Government General Services Administration Federal Standards Publication (Color-card) #595a and change notice 3, revised January 2, 1968, will be considered in compliance with the above specification: #22510, #12473, and #32246.
 2. When a label at any time fails to fall within the color range specified in 202 CMR 5.03(1)(b)1., even though it may be due to the fading of the color, said label shall not be considered in compliance with 202 CMR 5.00.
 - (b) The unit price label, stamp or tag must appear on the item itself or directly under the item on the shelf on which the item is displayed for items which are not specially displayed or stored. The Unit Price label must not in any way be obscured and must be visible at all times.
 - (c) For specially stored or displayed items such as frozen and cold storage commodities, and goods which are marketed on end displays, the unit price label, stamp, or tag shall appear on the shelf or display space contiguous with the area where the item is displayed.
- (2) The orange segment of the label, stamp, or tag must be conspicuously visible to the customer carrying the following data and no other:
 - (a) The words "Unit Price" as a heading directly above the numerical unit price;
 - (b) The unit price expressed in the following manner:
 1. \$X.XX per unit for all commodities whose unit price is \$1.00 or greater.
 2. XX.X¢ per unit for all commodities whose unit price is less than \$1.00 but greater than 10¢.
 3. X.XX¢ per unit for all commodities whose unit price is 10¢ or less.
 4. ¢ Cents, cnts, if expressed in cents.
 5. \$, dollars, dols., dlrs., if expressed in dollars.
 - (c) The applicable "ply" count or thicknesses, for items such as paper products which are manufactured in numbers of folds showing such information.

202 CMR: DIVISION OF STANDARDS

(3) The primarily white segment of the label, stamp, or tag must carry the following data:

- (a) Item Price.
- (b) The description of the packaged commodity
- (c) The size of the commodity being sold.

Other stocking information may also be included thereon at the option of the retail establishment PROVIDED that said information does not in any way obscure, de-emphasize or confuse the unit price information.

(4) The Unit Price of commodities regulated hereunder shall be displayed in type no smaller than that used for the item price, but in no event shall the unit price appear in size less than 3/8 inch unless approved by the Director of Standards.

- (a) PROVIDED, that when the retail establishment employs display material at or near the point of sale and the item price appears thereon in sizes larger than 3/8 inch, the unit price required hereunder must appear in a size no less than 3/8 inch or 1/4 the size used for the item price, whichever is greater.
- (b) PROVIDED FURTHER, that the unit price shall be printed in bold solid figures which must be clear, conspicuous and legible.
- (c) EXCEPTIONS: the retail establishment shall not be required to comply with the provisions of 202 CMR 5.03(1) and (2) as to color and (4) as to size of type, where the product or commodity carries an item price and unit price on its package, and where the unit price appears thereon in a size no smaller than that used for the item price, or.
- (d) Electronic shelf displays which display unit price, item price and other required information simultaneously, when incorporated in an electronic price scanning system and have been approved for retail use by the Director.
- (e) When the display space used for the packaged commodity is inadequate to set forth separate unit and item price legends as required hereunder, or where the retailer believes unit price information may be usefully conveyed to consumers by alternative method, the required disclosures may be set forth on such legends as are required hereunder on display cards or other material used for the display of prices for such commodities. However any such alternative method must be approved by the Director, as specified in 202 CMR 5.06, prior to being displayed. The display of the unit price in any event shall be conspicuously visible at all times and appear on an orange background. The size of

202 CMR: DIVISION OF STANDARDS

type used for the unit price legend shall be no less than 1/4 the size used for the retail price, or 3/8 inch, whichever is greater.

5.04: Price Per Measure

Unless otherwise specified in 202 CMR 5.05, the unit price shall be expressed as:

- (1) Price per pound for commodities whose net quantity is customarily expressed in units of pounds or
- (2) For purposes of price comparison all semi-viscous commodities of the same generic kind, if packaged in both terms of weight and fluid measure, shall be unit priced by the pound if packaged in terms of weight or by the pint if packaged in terms of fluid measure.
- (3) Price per pint, quart, or gallon for commodities whose net quantity is customarily expressed in units of pints, quarts, gallons or fluid ounces, or a combination thereof.
- (4) Price per 100 feet or 100 square feet, as appropriate, for commodities whose net quantity is customarily expressed in units of feet, inches, square feet or square yards.

5.05: Packaged Commodities Regulated and Unit of Measure to be Used

The following commodities shall be labeled in accordance with 202 CMR 5.05. Each commodity must be unit priced only in the unit of measure listed below, unless otherwise approved by the Director. In addition, the Director may, upon written request of any multi-state retailer, may authorize a different unit of measure to be used for an item or items in order to provide uniformity and compatibility throughout that retailer's multi-state distribution system.

<u>Commodity</u>	<u>Unit of Measure</u>
Aluminum, plastic wraps, and waxed paper	100 square feet
Baby foods	Quarts if sold by fluid measure Pounds if sold by weight
Baby formula concentrate (liquid or powder)	Quarts if liquid Pounds if sold by weight. Label must also have a statement of the total fluid volume concentrate will make <i>i.e.</i> makes 128 fl. oz.
Baking mixes and supplies	Pounds

202 CMR: DIVISION OF STANDARDS

Bottled and canned beverages	Gallons
Bread and pastry products	Pounds
Candy in sizes greater than three ounces	Pounds
All poultry, fish and meat products including canned, fresh or frozen.	Pounds
Cereals, dry, ready-to-eat	Pounds
Cocoa	Pounds
Coffee - instant and ground	Pounds
Convenience dinners, "one pan" meals	Pounds
Cookies and crackers	Pounds
Dairy products:	Gallons if sold by fluid measure Pounds if sold by weight
Cream, non dairy coffee cream	Pounds if sold by weight Quarts if sold by fluid measure
Sour cream and yogurt	Pounds if sold by weight Quarts if sold by fluid measure
Deodorants solid and liquid	Ounce
Detergent and soaps	Pounds if sold by weight Gallons if sold by fluid measure
Flour	Pounds
Fresh vegetables and produce	May be sold by measure, weight or per each PROVIDED that the total measured quantity, item price and unit price are clearly marked for every item. Individual items sold per each shall be exempt from 202 CMR 5.00.
Frozen dairy products	Gallons if sold by fluid measure Pounds if sold by weight

202 CMR: DIVISION OF STANDARDS

Frozen foods except dairy products	Pounds
Fruits, vegetables, - canned, jarred, or boxed	Pounds
Fruit Juices	Gallons
Frozen or unfrozen juice concentrate	Pounds if sold by weight Quarts if sold by fluid measure
Grains and Beans	Pounds
Hair conditioners and sprays	Pounds if sold by weight Quarts if sold by fluid measure
Household cleaners, waxes, deodorizers, starches and bleaches	Pounds if sold by weight Gallons if sold by fluid measure
Instant breakfast foods	Pounds
Jellies, jams, preserves, and sandwich spreads	Pounds
Ketchup, mustards, sauces, and condiments (including pickles and olives)	Pounds if sold by weight Pints if sold by fluid measure
Mouthwash	Quarts
Oleomargarine and butter	Pounds
Oils for cooking	Gallons
Pet food, canned and dried and kitty litter	Pounds
Plastic bags	100 count
Powdered mixes	Pounds
Salad dressings including mayonnaise and vinegar	Quarts if sold by fluid measure Pounds if sold by weight
Sanitary paper products, including but not limited	100 count 100 square feet

202 CMR: DIVISION OF STANDARDS

to napkins, facial tissues,
bathroom tissues
paper towels

Seasonings and spices in sizes
greater than 3 oz.

Pounds if sold by weight
Pints if sold by fluid measure

Shampoo

Quarts if sold by fluid measure
Pounds if sold by weight

Shaving cream

Pounds

Shortenings

Pounds if sold by weight
Gallons if sold by fluid measure

202 CMR: DIVISION OF STANDARDS

5.03: continued

<u>Commodity</u>	<u>Unit of Measure</u>
Snack foods, including but not limited to potato chips, pretzels, and nuts	Pounds
Soups	Pounds if sold by weight Quarts if sold by fluid measure
Sugar	Pounds
Syrups	Quarts if sold by fluid measure Pounds if sold by weight
Tea	Pounds if sold loose per 100 units if sold as tea bags
Toothpaste	Pounds

5.06: Extension of Time for Compliance

(1) Any retail establishment which is unable to comply with 202 CMR 5.00 within the time set forth herein, may apply to the Director of Standards for permission to extend such time for compliance for a period not to exceed 30 days. Such retail establishment shall set forth, in as much detail as possible, the reasons for its inability to comply. The Director of Standards may extend such period from time to time, upon such terms and conditions as he may deem reasonable.

(2) Exemption from compliance with the requirements of any of the provisions of 202 CMR 5.03 through 5.05 may be granted for cause by the Director of Standards upon the filing of a statement, setting forth the reason for inability to comply with any of the requirements of 202 CMR 5.03 through 5.05. Any such exemption shall be granted by the Director of Standards for such period of time as he may deem reasonable.

5.07: Responsibility for Compliance

In the event of a violation of 202 CMR 5.00, the manager, or individual in charge of such retail establishment, and the individual or corporation employing such manager or individual in charge where applicable shall be deemed to be responsible for compliance by such retail establishment with the requirements of 202 CMR 5.00.

202 CMR: DIVISION OF STANDARDS

5.08: Determination of Label Acceptability

All unit price labels and alternative display methods as allowed for in 202 CMR 5.03, prior to their display in retail establishments, must be approved by the Director of Standards in order to ensure accord with the stipulations laid out in 202 CMR 5.00. The Director of Standards will render a decision within four weeks of receipt of the label or alternative method of display. In reaching a decision, the Director of Standards shall take into consideration, but will be limited to, the prominence of the unit price segment of the label, the boldness of the figures which must be clearly and conspicuously printed and the overall design of the label.

202 CMR: DIVISION OF STANDARDS

5.09: 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.

5.10: Inspection of Automated Retail Checkout Systems

(1) Scope. The examination procedures set out in 202 CMR 5.10(2) shall be used by the director of the Division of Standards or his inspectors and sealers and inspectors of weights and measures and their deputies for all examinations required by M.G.L. c. 98, § 56D.

(2) Examination Procedures. Pursuant to M.G.L. c. 98, § 56D, the Division of Standards adopts “National Conference on Weights and Measures Publication 19, Examination Procedure for Price Verification October 1996 Edition,” as the rules and regulations of the Division of Standards regarding the procedures for examining automated retail checkout systems. The address for the National Conference on Weights and Measures is: 15245 Shady Grove Road, Suite 130, Rockville, MD 20850.

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