

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 or used for personal, family or household use and offered for sale at retail and is offered for sale by weight, measure, quantity, count, 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 such other information required by 202 CMR 5.00 or M.G.L. c. 98, §§ 184B-184E. Shelf Tag: a price label that meets the requirements contained in 202 CMR 5.00 that is affixed to the front of the shelf on which a packaged commodity is displayed for sale.
- (3) **Unit Price**: the price of each packaged commodity per measure.
  - (a) The declaration of 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 or 100 g, or price per pound or ounce, if the net quantity of 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 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 contents of the commodity is in terms of count.
  - (b) 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. The declaration of the unit price shall reflect the unit of measure as it most commonly appears displayed on the particular commodity.
- (4) **Item Price**: the total, current sale price of the packaged commodity, inclusive of any temporary discounts, available rebates, loyalty club discounts, or other temporary price reductions.
- (5) **Retail Store**: any retail outlet, either as a sole location or part of a chain of stores, including wholesale clubs and membership warehouses that sells or offers for sale any packaged commodity and has a sales volume of not less than \$5,000,000 (five-million dollars) per year of in-store sales excluding the sale of motor or vehicle fuels; only retail outlets whose owners have submitted requested by the Division to ensure the retail outlet's compliance with the sales limits contained in M.G.L. c. 6 §115A and 202 CMR 5.00 shall be excluded from the definition of retail store. For the purposes of compliance with this requirement, sworn and notarized affidavits completed by independent auditors attesting to the annual sales limits of each retail store shall be sufficient for compliance.

5.02: Applicability:

- (1) These regulations shall apply to all retail stores that offer packaged commodities for sale.
- (2) The unit price and item price of a packaged commodity must be disclosed on a price label that meets the requirements of 202 CMR 5.04. Nothing in these regulations 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 to price labels to increase accessibility to pricing information for visually impaired consumers, such as Quick Response (QR) codes or other similar additions.
- (3) If the packaged commodity is displayed on a shelf, the price label containing the unit price shall either appear on a shelf tag directly below one or more of the packaged commodities displayed for sale or shall be attached 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 is practical to the packaged commodity.
- (4) In the event a retail store elects to utilize electronic shelf labels to meet the requirements of these regulations, such electronic shelf labels may only be automatically updated during such period in which in the retail store is not open to consumers; in the event that a retail store is open to consumer for twenty-four (24) hours per day, such electronic shelf labels may only be

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- automatically updated between the hours of 1:00 a.m. to 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 are exempt from 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 cents 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;
- (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 an 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, 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 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 black typeface over a contrasting-color background of yellow, red, orange or other color approved by the Commissioner/Deputy Director of Standards upon written request of the retail store or chain of retail stores. The contrasting-color background of the unit price segment shall be consistent for all price labels throughout the retail store location but may vary among different locations of a chain of retail stores.
    - 1. In the event a retail store elects to utilize electronic shelf labels to meet the requirements of these regulations, the use of black and white-only contrasting price labels are only allowed in freezer sections of retail stores or with the express written authorization of the Commissioner/Deputy Director of Standards.
- (3) 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 the numerical unit price;
  - (b) The unit price as defined in 202 CMR 5.01(3) shall be displayed:
    - 1. To the nearest cent when the unit price is one dollar or greater;
    - 2. Either to the tenth of one cent or to the whole cent when the unit price is 99 cents or less.
- (4) 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 black typeface over a white background unless otherwise approved by the Commissioner/Deputy Director of Standards upon written request of the retail store or

chain of retail stores.

- (5) The item price segment of the price label shall include the following information:
  - (a) The words "Item Price," "Retail Price," or other clear descriptor as a heading adjacent to the numerical item price;
  - (b) The item price;
  - (c) The total size, weight, or volume of the commodity being sold;
  - (d) The date of expiration of any applicable temporary discounts, available rebates, loyalty club discounts, or other temporary price reductions that impact the Item Price of the packaged commodity, if applicable;
  - (e) 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) The largest font size possible should be used based on the size of the price label utilized. The unit price shall be displayed in font size no smaller than 50% of the font size that used for the item price, but in no event shall the unit price appear in font size less than 6.00 mm unless approved by the Commissioner/Deputy Director of Standards. Both the unit price and item price as appearing on the price label shall be printed in bold typeface in a clear and conspicuous manner. 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

#### 5.05 Extension of Time for Compliance

- (1) Any retail establishment which is unable to comply with 202 CMR 5.00, may apply to the Commissioner/Deputy Director of Standards, in writing, 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 Commissioner/Deputy 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 these regulations be granted for cause by the Commissioner/Deputy Director of Standards upon the filing of a statement setting forth the reason for inability to comply with any of the requirements. Any such exemption shall be granted by the Commissioner/Deputy Director of Standards for such period of time as they may deem reasonable.
- (3) 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 one hundred and twenty (120) days following final promulgation of the new regulations.

#### 5.06 Severability Provision

- (1) 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

- (1) Scope: The examination procedures set out in 202 CMR 5.10(2) shall be used by the Commissioner/Deputy 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 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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