

~~the layers of cases exposed for sale in the display will have to be price marked.~~

~~(3)(5)~~ **Retail Store:** means 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 that is listed in 202 CMR 5.04 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 documentation 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 or corporate officers attesting to the annual sales limits of each retail store shall be sufficient for compliance.

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5.02 Applicability:

(1) These regulations shall apply to all retail stores that offer packaged commodities for sale.

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(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.

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(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.

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(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 the retail store is not open to consumers, or the event that a retail store is open to consumers for twenty-four (24) hours per day, such electronic shelf labels may only be automatically updated between the hours of 1:00 a.m. to 3:00 a.m.

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(5)

(6) 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.

(7) 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.

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5.032: Exemptions

~~Sellers at retail need not comply with the provisions of 202 CMR 5.00 as to the following packaged commodities:~~ The following packaged commodities are exempt from the requirements of 202 CMR 5.00:

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(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.

(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.

5.043: Means of Disclosure Price Label Requirements

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 shall consistinclude 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

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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.

(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 millimicrons (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)(3) The orange unit price segment of the price label, stamp, or tag must be conspicuously visible to the customer carrying shall include the following data 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: e expressed in the following manner:

\$X.XX per unit for all commodities whose unit price is \$1.00 or greater.

1. to the nearest cent when the unit price is one dollar or greater;

1.2.

2. XX.X¢ per unit for all commodities whose unit price is less than \$1.00 but greater than 10¢, either to the tenth of one cent or to the whole cent when the unit price is 99 cents or less.

3. X.XX¢ per unit for all commodities whose unit price is 10¢ or less.

4. ¢ Cents, cents, if expressed in cents.

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(c) ~~The applicable "ply" count or thicknesses, for items such as paper products which are manufactured in numbers of folds showing such information.~~

(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 other color approved by the Commissioner/Deputy Director of Standards upon written request of the retail store or chain of retail stores;~~

(3)(5) ~~The primarily white item price -segment of the price label, stamp, or tag must carry the following data 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;~~

(a)(b) ~~The item price;~~

(a) ~~The description of the packaged commodity;~~

(c) ~~The total size, weight, or volume of the commodity being sold~~

(b) ~~;~~

(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;~~

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

(4)(5) ~~The largest font size possible should be used based on the size of the price label utilized. The unit price of commodities regulated hereunder shall be displayed in type 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 size less than 8.00pt 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.~~

(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 D inch, the unit price required hereunder must appear in a size no less than D inch or ¼ the size used for the item price, whichever is greater.~~

(a) ~~PROVIDED FURTHER, that the unit price shall be printed in bold solid figures which must be clear, conspicuous and legible.~~

(6)

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, —
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~~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.~~

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

5.03: Price Per Measure

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— 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) 5.03~~ 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.

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

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— 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, 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.

— Commodity Unit of Measure

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— Aluminum, plastic wraps, 100 square feet and waxed paper

—

— Baby foods Quarts if sold by fluid measure Pounds if sold by weight

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~~Baby formula concentrate Quarts if liquid~~

~~(liquid or powder) Pounds if sold by weight.~~

~~Label must also have a statement of the total fluid volume concentrate will make i.e. makes 128 fl. oz.~~

~~Baking mixes and supplies Pounds~~

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	<div>continued</div>	
	<div>Commodity</div>	<div>Unit of Measure</div>
	<div>Bottled and canned beverages</div>	<div>Gallons</div>
	<div>Bread and pastry products</div>	<div>Pounds</div>
	<div>Candy in sizes greater than three ounces</div>	<div>Pounds</div>
	<div>All poultry, fish and meat products including canned, fresh or frozen.</div>	<div>Pounds</div>
	<div>Cereals, dry, ready to eat</div>	<div>Pounds</div>
	<div>Cocoa</div>	<div>Pounds</div>
	<div>Coffee instant and ground</div>	<div>Pounds</div>
	<div>Convenience dinners, "one pan" meals</div>	<div>Pounds</div>
	<div>Cookies and crackers</div>	<div>Pounds</div>
	<div>Dairy products:</div>	<div>Gallons if sold by fluid measure Pounds if sold by weight</div>
	<div>Cream, non dairy coffee cream</div>	<div>Pounds if sold by weight Quarts if sold by fluid measure</div>
	<div>Sour cream and yogurt</div>	<div>Pounds if sold by weight Quarts if sold by fluid measure</div>
	<div>Deodorants solid and liquid</div>	<div>Ounce</div>
	<div>Detergent and soaps</div>	<div>Pounds if sold by weight Gallons if sold by fluid measure</div>
	<div>Flour</div>	<div>Pounds</div>
	<div>Fresh vegetables and produce</div>	<div>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.</div>
	<div>Frozen dairy products</div>	<div>Gallons if sold by fluid measure Pounds if sold by weight</div>
	<div>Frozen foods except dairy products</div>	<div>Pounds</div>
	<div>Fruits, vegetables, canned, jarred, or boxed</div>	<div>Pounds</div>
	<div>Fruit Juices</div>	<div>Gallons</div>

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Commodity

Unit of Measure

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

Pounds if sold by weight
Gallons if sold by fluid measure

and bleaches

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 to napkins, facial
tissues, bathroom tissues

100 count
100 square feet

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

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5.05 : continued

_____ Commodity Unit of Measure

_____ Snack foods, including but Pounds not limited to potato

_____ chips, pretzels, and nuts

_____ 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

5.065.05 : 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 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~~

~~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 Commissioner/Deputy Director of Standards for such period of time as ~~he~~they may deem reasonable.

(3) ~~Concurrence 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.~~

5.07 : 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.~~

5.08 : Determination of Label Acceptability

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~~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.~~

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5.005.06 : 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.

5.10: 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 the most recent edition of “National Conference on Weights and Measures Publication 19, Examination Procedure for Price Verification October 1996 Edition,” 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. 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.

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