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Submitted by:
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RE: Comments on 202 CMR 7.00 - Item Pricing Regulations

While MASSPIRG opposes the new law allowing for the removal of the price sticker, we appreciate the Division's efforts in promulgating the regulations and including some strong consumer protections.

Simple, easy-to-find and -compare price information is a fundamental consumer protection which must be safeguarded and held in the highest regard. Without it, consumers will be subject to the marketing tricks of manufacturers and retailers, and lose their "consumer clout" in the market place.

I strongly recommend the Office of Consumer Affairs track and analyze compliance of the new regulations and prepare and release regular reports as to your findings. These reports should also include a review of the consumer concerns, complaints or issues and recommendations for improvements.

We would like to add our support to the detailed regulatory comments submitted by Edgar Dworsky of Consumer World, which are listed below.

The comments outlined serve to enhance the price disclosure law and make it easier for consumers to find and compare prices in supermarkets. This is especially important as the move away from price tags to scanners in other retail stores have failed.

1. Number of Scanners Required

The regulations have adopted a new concept of "grocery item retail sale space" in order to determine two things: (1) how many aisle scanners (and types) are required in any particular store, and (2) whether a store even has to install scanners to start with.

Historically, the food store item pricing law has applied to everything within the four walls of a supermarket, whether the item came within the definition of "grocery item" or not. That has not changed in the new law.

The problem is the new law allows supermarkets to exempt from item pricing all items it sells, grocery or not, but you are only counting “grocery space” in determining how many aisle scanners they have to install. By doing that, you are shortchanging consumers on the substitute -- requiring fewer scanners than the store’s actual space would dictate -- but still allowing stickers to be removed on everything. Obviously, this is unfair, and will cause inconvenience for shoppers.

The statute has a general 5,000 square footage exclusion for small stores. That is how small businesses and small size locations are spared the expense of installing scanners. Food departments in these smaller stores are thus exempt as well, but based on measuring the entire store.

Here is suggested replacement language for the critical part of the regulation that is problematic in 7.05:

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

Food departments, located in stores that are over 5,000 square feet in total retail space, shall install a minimum of one fully operational consumer price scanner. To determine the number of additional consumer price scanners required, the seller shall determine the amount of retail space devoted to grocery items wherever they are located within the store, including adjacent aisle space and the space devoted to non-grocery items but displayed within the confines of the section of the store devoted primarily to groceries. Said number shall be divided by 5000, and the quotient, excluding any fraction of one, shall determine the number of additional consumer price scanners, if any, required to be installed within the food department.

2. Number of *Printing* Scanners Required

The issue of the amount of retail space devoted to groceries also potentially reduces the number of printing scanners required. As suggested above, the actual store square footage should be the determinant, not the grocery square footage, except in a food department.

Additionally, and more importantly, while consumer advocates are happy you have interpreted the “at least one” requirement to mean that stores have to install one printing scanner roughly every 10,000 square feet, you capped the number at three for stores with 30,000 square feet or more. A typical super store today is twice that size. And a megastore, like the Market Basket in Chelsea is 130,000 square feet. It is unreasonable, and not protective of consumers to say that a 130,000 square foot store need only have as many scanners as a store one-fourth its size. I urge you to continue the brackets to include stores up to 150,000 square feet so that consumers in larger stores are not forced to travel over half the store to find a printing scanner.

3. Approval Process for Aisle Scanners

One of the biggest disappointments in the draft rules is their failure to require a pre-approval inspection of a store's new aisle scanners before a waiver is granted and the store is allowed to remove price stickers.

We learned in conventional retail stores that left to their own devices, stores install fewer scanners than required, and 45-70% of the time based on inspections, they do not work or otherwise comply with the law.

For example, under the AG's regulation, a typical Costco installed only about six aisle scanners, while a store that size is required to install approximately 24. Similarly, in the Medford BJ's which requires about 22 aisle scanners, only four were found, three of which were non-compliant.

Given the experience with other retail stores and the importance of good price disclosure, the Division ought not to approve scanners sight-unseen. Stores, or at least some stores per chain, should be required to pass an inspection before removing price stickers.

4. Daily Testing of Aisle Scanners

The Division is to be congratulated for requiring daily testing of aisle scanners. However, to ensure those tests are actually carried out, the regulations should require that the store's price monitors maintain a dated logbook of the daily tests of each machine, requiring the recording of the test results for each machine. And, in the case of printing scanners, a dated price tag from each machine should be affixed to the logbook. Upon inspection, the book can then be easily checked for compliance with the daily test requirement.

5. Identification of Aisle Scanners

The regulations should require a number or letter or combination thereof on each machine, so shoppers can report defective machines by its identification number to either store management or the Division when filing a complaint. The scanner number should also be required to appear in the price monitors' logbook to clearly identify which machines have been tested and/or exhibit a defect. And the scanner number should appear in the map the store maintains for the inspector's use.

6. Clarifying "Fully Operational"

Section 7.05 (11) (d) should be clarified to say, "For scanners capable of producing an individual item pricing tag, *it must do so, and* the food store or food department provides the consumer with a means by which such pricing tag may be appended."

Without that additional phrase, an inspector might pass a machine that in fact is broken and unable to print (but it is "capable" of printing).

7. Fines for Missing Scanners

As noted above, one of the common violations in some conventional retail stores is that the right number of scanners was never installed. However, 710 CMR 17(d), creates a

single fine capped at \$1000 for having insufficient numbers of scanners. It is unclear how this squares with 17(g) which would allow \$200 fines up to \$2500 for missing scanners (among other things). Are these additive?

If \$1000 is the only fine applicable to missing scanners, it would be cheaper for a store just to install a handful, rather than say the 20 or more that the law would require.

The fine has to be sufficient, if at all possible, to cover every missing scanner, not just a smaller number.

8. Price Guarantee

The regulations failed to provide a voluntary price guarantee to apply in situations where the store does not install aisle scanners.

As a result, during this interim period before aisle scanners are installed, some chains, like Stop & Shop, appear to have removed the former price guarantee from their stores. That means that consumers who are overcharged at the register no longer have an instant remedy of getting that item free.

The Division should give serious thought to implementing a voluntary price guarantee for situations like this, and for stores that continue to item price. An incentive for stores to adopt it, such as more lenient inspections, should also be considered.

Gone unnoticed previously is the restriction in the guarantee that only grocery items are covered. Whether the consumer buys a box of aluminum foil or a can of tuna fish, he or she should have the same rights to an instant remedy if overcharged, but they don't. The Division should consider some type of voluntary expanded price guarantee to protect the public, while offering supermarkets an incentive to offer it.