



Comments Received by the Department of
Consumer and Worker Protection on

Proposed Rules related to Item Pricing

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As a consumer I am finding more and more stores that do not price items. Some stores don't price anything; others price some items but not all.

This is a new trend, along with all the other abrupt changes in our lives, but very disconcerting. My neighborhood has become quite wealthy and I am not aware that others are bothered by not knowing the price of things. I, however, need to pay attention and make wise choices in my spending. I have to stand in the check out line and ask the clerk to give me the price, which delays customers behind me, and causes confusion if I choose not to purchase the item/s.

The idea of stores having scanners for customers like me to check prices before purchase puts an unnecessary burden on us. We must look around for a scanner, walk around with items we may find too expensive, and then what? Return them to the shelves? Many stores do not have space for scanners. It is surprising that retailers would choose to do this and very unsatisfying for customers who should be able to make informed decisions.

Sincerely,
Mary Taylor

Sent from my iPad



FOOD INDUSTRY ALLIANCE OF NEW YORK, INC.

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**Testimony by the
Food Industry Alliance of New York State, Inc.
Amendment of Item Pricing Requirements for Retail Stores
Reference Number 2022 RG 008
June 15, 2022**

Thank you for the opportunity to testify on behalf of the Food Industry Alliance of New York State, Inc. (FIA) regarding proposed rule amendments titled “Amendment of Item Pricing Requirements for Retail Stores,” Reference Number 2022 RG 008 (Proposed Rule Amendments). FIA is a nonprofit trade association that advocates on behalf of grocery, drug and convenience stores throughout the state. We represent a broad spectrum of the NYC retail food sector, from independent, neighborhood grocers to large chains, including many unionized stores.

Requested language changes are highlighted in **yellow**.

These rule amendments were proposed by the department to implement Local Law 129 of 2021 (LL-129), approved by the Council by a 36-1 vote. LL-129 added a fifteenth category of exempt items under the city’s item pricing law.

The vote reflected the near unanimous consensus of the Council that, due to technological and regulatory developments after the city’s item pricing law was enacted in 1991, a broad exemption category was long overdue, since such changes allowed grocery store customers to identify prices without having to look for a tiny label on hundreds of items in a store. It was these improvements, not item pricing, that fixed any price transparency issues at grocery stores. These developments are discussed in detail in the testimony, dated May 2, 2022 (Original Testimony), submitted by FIA in response to the original version of this proposed rule, dated March 21, 2022. Accordingly, the legislative intent behind adding the new category of exempt items was to provide the city’s grocers (and other retailers) with a genuine opportunity to avoid the unnecessary costs and burdens of a long outdated and ineffective item marking requirement.

Localities have been free to decide whether item pricing should be mandated since the state allowed its item pricing law to expire in 1991. Because customers have generally not been relying on item marking to identify prices for decades, nearly all of New York’s municipalities have either not required item pricing or have provided broad exemption options.

Considering this history, the proposed rule is highly problematic, notwithstanding the revisions to proposed section 5-116(d). Since the limit on the number of customer price scanners per store was removed from proposed section 5-116(d), proposed section 5-116(b), which requires the deployment of a customer price scanner within 30 feet of every item sought to be exempted from item pricing, mandates the deployment of a very large number of such price scanners per store. This will clutter

stores with a lot of scanners that will never be used by customers and therefore unnecessarily impose substantial costs and maintenance burdens on neighborhood grocers. As a result, grocers will not be able to use proposed section 5-116(b) to rely on the new exemption in the item pricing law.

This leaves proposed section 5-116(c) as the only option enabling reliance on the new statutory exemption. Proposed section 5-116(c) states that “If a price scanner for consumer use is located more than 30 feet from an item sought to be exempted from item pricing in accordance with this section, a prominent and conspicuous sign must be posted *within view of such item* stating (emphasis added) ...” If “within view of such item” allows grocers to hang the required sign from the ceiling, so that there is one sign per aisle, or if one sign within 30 feet of each customer scanner satisfies the sign requirement, then compliance with this subdivision is feasible and grocers will be able to use the statutory exemption the way it was intended by a supermajority of the Council. If, however, a sign is required next to every item sought to be exempted from the item marking requirement, then compliance is not practicable. In that case, there would be no workable way for grocers to rely on the new item marking exemption and the will of the Council would be thwarted.

Accordingly, we respectfully request that proposed section 5-116(c) be amended to state “If a price scanner for consumer use is located more than 30 feet from an item sought to be exempted from item pricing in accordance with this section, a prominent and conspicuous sign must be posted within view of such item stating: “A Price Scanner for Customer Use to Check Prices is Located (location of price scanner). **Such requirement may be satisfied by hanging such sign from the ceiling of an aisle containing items for which an exemption is sought or by posting such sign within thirty feet of each price scanner for consumer use.”**

Finally, the broad exemption added under LL-129 applies to “Any stock keeping item that is capable of being scanned, and which is sold, offered for sale, or exposed for sale at a retail store that has, as determined by rule of the commissioner, a sufficient number, *in proportion to the retail store size*, of clearly marked and functioning price scanners for consumer use, in adequate locations (emphasis added).” Retail store size in the NYC retail food sector is determined solely by square footage. Rent and other lease obligations, the amount of inventory, fixtures and refrigerated equipment on hand and the layout of the store are all based on square footage, not the number of checkout stations. Many checkout stations in a store are not used most of the time, if ever; some are only used during major holidays. In addition, the Council selected store size as the benchmark to avoid unnecessarily cluttering city stores, many of which are small.

Despite this, and notwithstanding FIA’s request in its Original Testimony to base the number of required customer price scanners per store on square footage (which is the case in Nassau, Suffolk and Westchester counties), the Proposed Rule Amendments still condition reliance on the statutory exemption on deploying the number of customer price scanners required under a chart based on the number of checkout stations in a store. While we believe that, since retail store size is determined exclusively by square footage, this mandate exceeds the department’s statutory authority, this requirement would be acceptable if proposed section 5-116(d) is revised to expressly state that the maximum number of customer price scanners required in any store is five.

Historically, the city’s item pricing law has been primarily enforced against grocers. It is therefore imperative that the city’s food retailers support the Proposed Rule Amendments. FIA and its members

will support the Proposed Rule Amendments if they are revised as requested. Should the department choose not to make the changes we are seeking, please withdraw the rule so that the significant issues raised in this testimony can be addressed collaboratively.

Thank you for considering our testimony.

Respectfully submitted,

Food Industry Alliance of New York State, Inc.

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July 25, 2022