



FOOD INDUSTRY ALLIANCE OF NEW YORK STATE, INC.

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**Comments
By the Food Industry Alliance of New York State, Inc.
Regarding
Proposed Int. No. 436-A-2014**

Thank you for the opportunity to submit comments with regard to Proposed Int. No. 436-A-2014. My name is Jay Peltz and I am the General Counsel and Vice President of Government Relations for the Food Industry Alliance of New York State (FIA). FIA is a nonprofit trade association that promotes the interests statewide of New York's 21,000 grocery stores (and the grocery wholesalers that supply them), as well as drug and convenience stores.

Our understanding is that item pricing laws were originally enacted in the 1970s when the regulatory and operating landscapes were very different. Unlike the 1970s, price data (and the related signs and shelf tags) are now generated through technology that allows stores to comply with state unit pricing and price accuracy laws. The state unit pricing law generally mandates disclosure of unit and retail prices on shelf tags. The state price accuracy law requires 100% accuracy at the point of sale. Retailers have spent millions of dollars complying with these laws. Consequently, grocery store customers have the consistency and transparency they need to make informed decisions about their purchases.

None of this – computerized price information, state unit pricing and price accuracy laws – existed when the original item pricing laws were enacted. That is why the state permitted its statewide item marking law to expire in the 1990s.

When the state let its item pricing law expire, preemption of localities with regard to item pricing also ended. Even though localities have been free to require item pricing since then, to our knowledge, only 12 of New York's 62 counties have item pricing laws. Each of those counties, as well as the City of Mount Vernon, have amended their item pricing laws to include a waiver provision. Under a typical waiver clause, the item pricing mandate is waived if the retailer pays a minimum fee per store and meets a minimum price accuracy standard. Accordingly, NYC is the only locality in the state without an item pricing law that allows for a waiver of compliance when retailers meet a high accuracy standard and pay a fee.

NYC is also the only major city in the state that has a local item pricing law. The economic impacts have been enormous: Millions of dollars have been spent, in the aggregate, attempting to comply with a law that is not only unnecessary, but has led to additional millions being paid by the industry in fines. This is because in a store with thousands of items that are restocked weekly, marking every item that is

required to be marked is a very significant challenge. Accordingly, a store that attempts to comply with an item pricing law ultimately pays substantial fines on top of the heavy labor costs incurred as part of a good faith attempt to comply.

These unnecessary costs make it much more difficult to meet ongoing obligations, including enacted minimum wage increases that will reach \$15.00 an hour. In addition, we believe that the burdens of item pricing are a reason that NYC has areas that are underserved by grocery stores.

Accordingly, FIA, on behalf its members, advocates for the repeal of local item pricing laws. In lieu of repeal, we support meaningful reform. One example of significant reform is a waiver provision, as generally described above.

Another example would be cure periods. We appreciate the inclusion of a cure period in the bill. However, we respectfully request that the legislation be amended to provide that an alleged violation that is cured is not deemed a "violation" for purposes of paying an escalated penalty under proposed section 20-708.1(f)(2)(b). If not, the violation is effectively deemed uncured for penalty purposes. In addition, as noted in our testimony submitted in December 2015 regarding the original version of this legislation, we believe, given the millions of dollars spent by retailers to date on computerized price information and compliance with state unit pricing and price accuracy laws as well as the NYC item pricing law, a mandatory penalty waiver should apply to the first 20 stock keeping units that are noncompliant.

Finally, the bill extends the period that retailers pay escalated penalties from two weeks from an initial inspection to within 60 days of a violation. For the reasons stated above, we respectfully request that this period remain two weeks from an initial inspection.

Thank you again for the opportunity to submit these comments. We look forward to working with Chairman Espinal on regulatory reform that will allow food retailers to expand in the City and provide wider assortments at cheaper prices, including healthier choices, to more NYC consumers.

Respectfully submitted,

Food Industry Alliance of New York State, Inc.
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