

**Response to
Draft Consumer Information Standards (Unit
Pricing For Grocery Products) Regulations
2023 Consultation Paper**

Submitted by:



United Fresh
New Zealand Incorporated

P.O. Box 66047, Beach Haven, Auckland 0749
0800 507 555 / 09 480 5057
info@unitedfresh.co.nz

Submitted to (consumer@mbie.govt.nz) on 12 May 2023

Introduction

United Fresh is the only pan-produce industry body in New Zealand. Our membership includes growers, grower organisations, pack-houses, wholesalers, and service & logistics providers, as well as retailers. Our industry aims to provide New Zealand a healthy and safe supply of quality produce. Our vision is to create a sustainable fresh fruit and vegetable industry for New Zealand.

United Fresh represents an industry that almost every New Zealander interacts with on a daily basis. The produce industry is one of the largest grocery categories in New Zealand, selling a mix of product sold by weight, and as individual items.

On behalf of the New Zealand Produce Industry, United Fresh therefore wishes to make a submission on the "*Draft Consumer Information Standards (Unit Pricing For Grocery Products) Regulations 2023 Consultation Paper*".

United Fresh also welcomes the opportunity to comment on the proposed changes by way of this submission, as it provides us, as the pan-produce industry body, with the opportunity to enhance our membership's understanding of the issues that have led to the proposed regulations.

Prepared by The United Fresh Technical Advisory Group,
Jacob Lawes, Projects Manager,

Peer reviewed by Dr Hans Maurer, Chair

Situation Overview

The process that has resulted in these draft regulations has been more than two years in the making. It began with the Commerce Commission (ComCom) launching its "Market Study Into The Retail Grocery Sector" at the end of 2020, which then progressed through to initial public submissions in March 2021, a Draft Report & the related submissions in August 2021, the October 2021 Conference, and the Final Report being released in March 2022.

Once the Final Report was released, the Ministry of Business, Innovation, and Employment (MBIE) then opened consultations on selected aspects of the Final Report, for consideration, as new sets of regulations, e.g., a Grocery Code of Conduct, were being proposed.

In May 2022, Cabinet agreed to implement mandatory unit pricing for grocery products. In November 2022, following public consultation, Cabinet also broadly agreed on the form, scope and content of the mandatory unit pricing rules.

This work has now led to the "Draft Consumer Information Standards (Unit Pricing For Grocery Products) Regulations 2023" being released for public consultation.

MBIE is now seeking feedback on an exposure draft of the Consumer Information Standards (Unit Pricing for Grocery Products) Regulations 2023 (the draft regulations), including any technical issues that may affect their workability and effectiveness.

The fresh produce industry represents a key segment of New Zealand's retail grocery offer, amounting to an average of 10-12% of store sales within the to-be-regulated major grocery retailers' revenue portfolio. As such, United Fresh has determined that it will need to submit on these regulations, as an affected party.

Question and Response Section

1. Question: Do you consider 12 months to be an appropriate transitional period before compliance is mandatory?

United Fresh believes that a 12-month period is a sufficient period of time.

2. Question: Please explain why you think a 12-month transition period is sufficient or not?

United Fresh believes that 12 months will give retailers sufficient time to update their pricing display system to meet the new requirements, including any changes to the software and hardware required for electronic pricing displays.

3. Question: Do you have any comments on the key definitions in regulation 3?

United Fresh is of the view that the definitions set out in regulation 3, as worded, are appropriate.

4. Question: Do you have any comments on regulation 5?

United Fresh has concerns about the clarity of wording in regulation 5, related to 5(1), 5(2), and 5(3).

5(1): At present, the wording of regulation 5 is such that a store must sell products in all the listed categories, in order to be regulated. Should a store not sell a single category of product, they would not be regulated, regardless of size or volume of product sold, and allowed to display units of measurement as they see fit. United Fresh does not believe this is appropriate, and instead suggests that the word "all" in 5(1) is replaced with "any", "more than 1", "the majority", or another more appropriate choice of words that eliminate unintended loopholes.

Secondly, the definition of what is a regulated product, based on 5(2), has United Fresh concerned about further issues related to the wording of 5(2) and 5(3).

5(2) and 5(3): These clauses, in their current order and wording, suggest that the regulated categories, such as fruit and vegetables, are automatically comprised of only regulated grocery products.

However, some produce items that are fruits and vegetables are not sold by a measure, but are instead sold individually/"per each". This includes items such as whole pineapples, capsicums, heads of lettuce, whole and half cauliflowers, and many other items.

United Fresh would therefore like to suggest that regulation 5, subclauses 5(1), 5(2), and 5(3) need to be amended to indicate more clearly what are/are not regulated products.

United Fresh proposes the following amendments for subclauses 5(1), 5(2), and 5(3):

5(1): "A product is a regulated grocery product if it is sold on the basis of a unit price, is not an exempt product under 5(3), and is a product within the defined categories of 5(2)..."

5(2): "A regulated grocery product, unless exempted under 5(3), is a product in one of the following categories—"

5(3): "A product is exempted from being a regulated grocery product under 5(1) and 5(2) if it is —"

5. Question: Do you have any comments on the “exempt products” set out in regulation 5(3)?

United Fresh does not believe that changes are required to the exempt products list as presented.

6. Question: Do you have any comments on the requirements for where unit pricing must be displayed, as set out in regulation 6?

United Fresh believes that the wording related to this section requires some clarification and rewording, as United Fresh has identified that the current wording creates unintended loopholes.

For regulation 6, subclause 6(1), United Fresh believes that this should require that all advertisements (when not exempted by regulation 9), physical or electronic, located anywhere, be covered.

For regulation 6, subclause 6(2), United Fresh is of the view that changing the wording of the referenced regulation 7 is required to prevent unintended loopholes. United Fresh will discuss this further in Question 8, which is focused on this regulation.

For regulation 6, subclause 6(3), United Fresh wishes to discuss this aspect of regulation 6 further in Question 7, which deals with regulation 9 in specific.

7. Question: Do you have any comments on the advertising exemption set out in regulation 9?

United Fresh believes that regulation 9, as worded, fails to cover most categories of online advertisements (such as semi/fully animated advertisements, online video advertisements, online audio advertisements, or offline electronic advertisements within mobile applications, including ads displayed in applications not owned by the grocery retailers), which regulation 6, subclause 6(1) suggests should be covered.

As worded, regulation 9 suggests that advertisements are only covered by 6(1) if they are physically printed, or online electronic advertisements that are fully static images with no sound or movement.

This therefore allows 6(1) to be bypassed by adding a small sound or motion into the advert, or allowing the ad to be displayed offline in mobile applications, and gaining protection under regulation 9.

As electronic advertising, both online and offline typically includes motion and/or sound to most effectively utilise the opportunities the medium provides, many common ad types would therefore not be covered.

Additionally, the current wording does not prevent confusing or inappropriate unit measurements being deliberately used by an advertiser in non-regulated advertisements, which would breach the regulations if the advertisement was regulated.

As an example, while in a static advertisement presented in a store window, the unit of measurement for selling an item by weight must be per 100 grams. However, reading the text of that same advertisement over the radio in a radio ad, the current draft regulations do not prevent the advertisement from declaring unit pricing as per kg, per 250g, or any other measurement of weight.

The current wording of regulation 9 therefore negates the purpose & viability of the entirety of the proposed regulations related to advertisement, by declaring regulation 6(1) to have essentially no realistic coverage, and preventing all other advertisement related regulations from being enforceable in many common situations.

United Fresh therefore suggests that regulation 9 needs significant rewording to avoid the regulations being toothless from the very beginning.

United Fresh proposes that regulation 9 should be updated to clearly state that regulation 9 only applies to electronic ads developed for the purpose of television or radio broadcast (whether via direct viewing/listening or online streaming), and that if a television or radio advertisement shows or announces a price per unit measurement, the regulations of 6(1) apply to this advertisement.

This, in United Fresh's view, is required to avoid the unintended loopholes identified.

8. Question: Do you have any comments on regulation 7?

United Fresh suggests moving the "unless the product is covered by subclause (2)" to the front of the sentence, to make it clearer that the products in subclause (2) have separate requirements to other products.

9. Question: Do you have any comments on the display requirements provided in regulation 8?

United Fresh believes regulation 8 is acceptable as worded.

10. Question: Do you have any general comments regarding the regulations?

United Fresh, in general, accepts the regulations as proposed. Where United Fresh has concerns, these relate to the potential for unintended consequences due to vague wording, and regulations and subclauses wording which suggests that they don't cover situations that they should under the stated scope & intent of these regulations as a whole.

United Fresh is of the view that these regulations will be workable, efficient, effective, and simple to implement, when worded correctly, and once the current unintended loopholes & scope limitations identified are corrected.

Summary

United Fresh welcomes the opportunity to share our views on this topic.

Effective regulations that work right mean our industry can continue to provide healthy and nutritious fruits & vegetables to all New Zealanders.

United Fresh believes that, if these regulations are crafted appropriately, the overall cost impact on industry will be minimal, and that clear & obvious wording will enable businesses to effectively comply with the regulations.

United Fresh is available to discuss our submission further with MBIE, should this be required.