

**Reprint
as at 12 December 2012**



**Commodity Levies (Kiwifruit)
Order 2012**
(SR 2012/24)

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 27th day of February 2012

Present:
The Right Hon John Key presiding in Council

Pursuant to section 4 of the Commodity Levies Act 1990, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister for Primary Industries given in accordance with sections 5 and 6 of that Act, makes the following order.

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This order is administered by the Ministry for Primary Industries.

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Order

1 Title

This order is the Commodity Levies (Kiwifruit) Order 2012.

2 Commencement

This order comes into force on 1 April 2012.

Order: confirmed, on 12 December 2012, by section 8(b) of the Subordinate Legislation (Confirmation and Validation) Act 2012 (2012 No 97).

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

chief executive means the chief executive of the Ministry of Agriculture and Forestry

exporter means a person who exports kiwifruit for sale

grower means a person whose business is or includes growing kiwifruit

GST means goods and services tax payable under the Goods and Services Tax Act 1985

kiwifruit means any fruit of a plant of the genus *Actinidia* other than the species *Actinidia arguta*

levy means the levy imposed by clause 4

levy money means the money paid under this order as a levy

levy rate means the rate fixed under clause 13

levy year means,—

(a) for the calendar year 2012, the period starting on 1 April 2012 and ending on 31 December 2012; and

(b) for every subsequent year, the period of 12 months starting on 1 January and ending on 31 December of the same year

mediator means—

(a) a person appointed under clause 23; and

(b) for a particular dispute, the mediator appointed to resolve the dispute

NZKGI means New Zealand Kiwifruit Growers Incorporated

tray equivalent means 3.6 kg of kiwifruit.

4 Levy

A levy is payable to NZKGI on kiwifruit grown in New Zealand that is exported to any place other than Australia.

*Payment of levy***5 Levy calculation**

- (1) The levy must be calculated—
 - (a) on the basis of cents per kilogram of kiwifruit exported; and
 - (b) at the point of export (being the point at which kiwifruit is loaded on board a ship or aircraft for export).
- (2) Despite subclause (1)(b), the weight of the fruit may be determined at the point at which the fruit is graded and sorted for export.

6 Responsibility for payment of levy

- (1) The grower is the person primarily responsible for paying the levy.
- (2) Despite subclause (1), the exporter must pay the levy to NZKGI.

7 Recovery of levy from grower by exporter

- (1) An exporter may recover the amount of any levy paid, and any GST payable on it, from the grower as a debt due to the exporter by the grower.
- (2) An exporter who buys kiwifruit directly from a grower or exports kiwifruit on a grower's behalf may recover the amount of the levy, and any GST payable on it, by deducting the amount from the exporter's payment to the grower.

8 Collection fee may not be charged

The exporter is not entitled to charge NZKGI a collection fee for paying or recovering any levy.

9 Conscientious objectors

A person who objects on conscientious or religious grounds to paying the levy in the manner provided for in this order may

pay the equivalent amount to the chief executive, and the chief executive must pay the amount to NZKGI.

10 When levy payable

- (1) The due date for payment of a levy to NZKGI is the day the kiwifruit is loaded on board a ship or aircraft for export.
- (2) The latest date for payment of the levy is the 90th day after the due date for payment.

11 Additional levy payable if levy not paid in time

If any amount of the levy has not been paid by the close of the latest date for payment, the following is payable to NZKGI in addition to that amount (the **original unpaid amount**):

- (a) 5% of the original unpaid amount; and
- (b) for each subsequent calendar month, an additional 2% on any part of the original unpaid amount that remains unpaid.

12 Returns

- (1) Every levy payment must be accompanied by a completed return in a form approved by NZKGI.
- (2) The return must include—
 - (a) the quantity of kiwifruit exported; and
 - (b) the date or dates on which the kiwifruit was exported; and
 - (c) the amount of levy paid per kilogram, or tray equivalent, of kiwifruit exported on behalf of each grower; and
 - (d) the name of the grower or growers of the kiwifruit.

Fixing of levy rate

13 Fixing of levy rate

- (1) The levy on kiwifruit for the first levy year is 0.25 cents per kilogram of kiwifruit exported.
- (2) For each subsequent levy year, NZKGI must fix the levy rate or rates at its annual general meeting.
- (3) Growers who are not members of NZKGI must—
 - (a) be allowed to attend the meeting; and
 - (b) be given speaking rights on the levy rate.

- (4) If NZKGI does not fix the levy rate before the start of a levy year, the levy rate for the year is the last rate fixed under this clause.

14 Levy payable at single rate or different rates

A single rate or different rates of levy may be fixed for different classes, descriptions, or kinds of kiwifruit.

15 Maximum levy rate

The maximum levy rate is 0.28 cents per kilogram of kiwifruit exported.

16 Notification of levy rate

As soon as practicable after the levy rate for a levy year is fixed, NZKGI must notify the levy rate and the year to which it applies—

- (a) in the *Gazette*; and
- (b) in the NZKGI newsletter; and
- (c) by post or email to all growers and exporters known to NZKGI.

*Record keeping and confidentiality of
information*

17 Records

- (1) A grower must keep records, for each levy year, of—
- (a) the quantity of kiwifruit produced and sold; and
 - (b) the name of the packhouse or exporter that the grower uses; and
 - (c) the amount of levy money paid to NZKGI or the chief executive by the grower, or by an exporter on the grower's behalf; and
 - (d) the quantity of kiwifruit to which the levy paid relates.
- (2) An exporter must obtain and keep records, for each levy year, of—
- (a) the quantity of kiwifruit exported to any place other than Australia; and
 - (b) the amount of levy money paid to NZKGI or the chief executive on behalf of each grower; and

- (c) the name of each grower of kiwifruit exported; and
 - (d) the quantity, values and classes of kiwifruit exported; and
 - (e) a copy of every Customs declaration in respect of the kiwifruit exported.
- (3) NZKGI must keep records, for each levy year, of the following:
 - (a) each amount of levy money paid to it; and
 - (b) for each amount of levy money,—
 - (i) the date on which the money was received; and
 - (ii) the name of the person who paid the money; and
 - (c) for all levy money paid to it, how the money has been spent or invested.
- (4) Records must be kept for at least 2 years after the levy year to which the records relate.
- (5) Every grower and exporter who is required to keep records must provide NZKGI with information from the records as soon as is reasonably practicable after receiving a request, by post or email, from NZKGI for the information.

18 Confidentiality of information

- (1) No officer or employee of NZKGI, or any other person may disclose any information obtained under this order unless—
 - (a) the person to whom it is disclosed is an officer or employee of NZKGI; or
 - (b) the person who provided the information and every identifiable person to whom it relates consents to its disclosure; or
 - (c) the disclosure is required by law; or
 - (d) the disclosure is for the purposes of—
 - (i) assisting with the collection of the levy; or
 - (ii) complying with section 17(1) or 25 of the Act; or
 - (iii) determining the voting entitlements or counting the votes in relation to levy matters; or
 - (iv) giving evidence in legal proceedings relating to this order or the Act.
- (2) Subclause (1) does not prevent NZKGI from disclosing or using any information for statistical or research purposes if the information is in a form that does not identify any individual.

*Spending of levy money by NZKGI***19 Levy money must be spent by NZKGI**

NZKGI must—

- (a) spend all the levy money paid to it; and
- (b) invest all levy money until it is spent.

20 Purposes for which levy money may be spent

- (1) NZKGI must not spend levy money on commercial or trading activities.
- (2) NZKGI may spend levy money for any or all of the following purposes relating to kiwifruit or growers:
 - (a) research, including market research:
 - (b) product development:
 - (c) export market development:
 - (d) quality assurance:
 - (e) crop health and protection:
 - (f) education and information:
 - (g) generic promotions:
 - (h) grower representation:
 - (i) day-to-day administration of NZKGI.

21 Consultation on spending levy money

- (1) NZKGI must consult growers who pay the levy on how it proposes to spend levy money at—
 - (a) its annual meeting; or
 - (b) any special meeting called for the purpose.
- (2) NZKGI must—
 - (a) give the growers notice of an annual meeting or a special meeting at which the spending of levy money is to be discussed; and
 - (b) give the notice by post or email at least 3 weeks before the meeting; and
 - (c) allow growers at the meeting to speak on all matters relating to the spending of levy money.

Audits

22 Remuneration of persons conducting compliance audits

A person appointed as an auditor under section 15 of the Act in relation to this order must be remunerated by NZKGI at a rate determined by the Minister for Primary Industries after consultation with NZKGI.

Mediation of disputes

23 Appointment of mediators

- (1) This clause applies to any dispute about—
 - (a) whether a person is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) Any party to the dispute may ask the President of the Arbitrators and Mediators Institute of New Zealand Incorporated to appoint a person to resolve the dispute by mediation.
- (3) If asked, the President or a person authorised by the President may appoint a person to resolve the dispute by mediation.
- (4) The mediator's appointment ends if—
 - (a) the parties to the dispute resolve the dispute by agreement; or
 - (b) the mediator resolves the dispute under clause 30.

24 Remuneration of mediators

- (1) A mediator must be paid remuneration (by way of fees and allowances) as agreed to by the parties to the dispute.
- (2) If the parties to a dispute cannot agree on the mediator's remuneration, the President of the Arbitrators and Mediators Institute of New Zealand Incorporated, or a person authorised by the President, must—
 - (a) fix an amount or several amounts that must be paid to the mediator as remuneration; and
 - (b) specify the amount (if any) that each party must pay.
- (3) Each party must pay to the mediator the amount or amounts fixed and specified under subclause (2).

25 Conferences under control of mediator

A mediator must—

- (a) organise the date, time, and place for each conference to be held by the mediator; and
- (b) notify the parties by post or email; and
- (c) preside at the conference.

26 Conferences to be held in private

Subject to clause 27, only the parties to a dispute may attend a conference with the mediator.

27 Representatives

A mediator may allow a representative of a party to a dispute to attend a conference with the mediator if the mediator is satisfied that it is appropriate to do so in all the circumstances.

28 Right to be heard

The following persons may be heard at a conference with a mediator:

- (a) each party to the dispute; and
- (b) each representative of a party allowed by the mediator to attend the conference.

29 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would be admissible in a court of law.
- (2) A mediator may, on the mediator's own initiative,—
 - (a) seek and receive any evidence that the mediator thinks desirable to resolve the dispute; and
 - (b) make any investigations and inquiries that the mediator thinks desirable to resolve the dispute.
- (3) A mediator may require a person giving evidence at a conference of the parties to a dispute to verify the evidence by statutory declaration.

30 Mediator may resolve dispute in certain cases

- (1) The mediator may resolve a dispute for the parties if—
 - (a) the dispute has not been resolved at a conference of the parties with the mediator; or

- (b) the dispute appears to the mediator to be unlikely to be resolved by the parties, whether or not they confer directly.
- (2) A mediator who resolves a dispute under subclause (1) must give each of the parties notice of the mediator's decision, and the reasons for the decision, in person, by post, or by email.
- (3) The parties must comply with the mediator's decision.

31 Costs of mediation

Each party must pay its own costs in relation to the mediation.

32 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the mediator's decision under clause 30 may appeal to a District Court against the decision.
- (2) The appeal must be brought by filing a notice of appeal—
 - (a) within 28 days after the date on which the mediator makes the decision; or
 - (b) within any longer period that a District Court Judge allows.
- (3) The Registrar of the court must—
 - (a) fix the date, time, and place for the hearing of the appeal; and
 - (b) notify the appellant and the other parties to the dispute of the date, time, and place; and
 - (c) serve a copy of the notice of appeal on every other party to the dispute.
- (4) Each party to the dispute may appear and be heard at the hearing of the appeal.
- (5) The District Court may confirm, vary, or reverse the mediator's decision.
- (6) The filing of a notice of appeal does not operate as a stay of process for the enforcement of the mediator's decision.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

The order, which comes into force on 1 April 2012, imposes a levy, payable to New Zealand Kiwifruit Growers Incorporated, on kiwifruit exported to any place outside New Zealand other than Australia.

The levy is payable by exporters, who can recover the amount of the levy as a debt due from growers.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 1 March 2012.

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Notes

1 General

This is a reprint of the Commodity Levies (Kiwifruit) Order 2012. The reprint incorporates all the amendments to the order as at 12 December 2012, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Subordinate Legislation (Confirmation and Validation) Act 2012 (2012 No 97):
section 8(b)
