



**THE KIWIFRUIT MARKETING LICENSING REGULATIONS
1977**

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KEITH HOLYOAKE, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 31st day of October 1977

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Primary Products Marketing Act 1953, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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ANALYSIS

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REGULATIONS

1. Title, commencement, and application—(1) These regulations may be cited as the Kiwifruit Marketing Licensing Regulations 1977.

(2) These regulations shall come into force on the 1st day of November 1977.

(3) These regulations shall not apply in respect of kiwifruit harvested before these regulations come into force.

2. Interpretation—(1) In these regulations, unless the context otherwise requires,—

“The Act” means the Primary Products Marketing Act 1953:

“Agent” means any person (including a company) appointed by the Authority to carry out functions on behalf of the Authority in such a manner and on such terms as the Authority may decide:

“Authority” means the Kiwifruit Marketing Licensing Authority established by these regulations:

“Director-General” means the Director-General of Agriculture and Fisheries:

“Kiwifruit” means—

(a) Fruit of the plant *Actinidia chinensis* Planch, being fruit of the cultivars Abbott, Allison, Bruno, Elmwood, Gracies, Hayward, and Monty; and

(b) Fruit of other cultivars of *Actinidia chinensis* Planch or cultivars of other plants of which *Actinidia chinensis* Planch is one parent and which are declared by the Minister, by notice in the *Gazette*, to be kiwifruit for the purposes of these regulations:

“Licence” means a licence to export kiwifruit granted by the Authority pursuant to these regulations:

“Licensed exporter” means a person holding an exporter’s licence issued under these regulations:

“Orchard” means an area of land used for the production of kiwifruit for sale:

“Producer” means the owner or occupier of an orchard of at least one hectare planted in kiwifruit plants:

“Roll” means a list of producers established under the Second Schedule to these regulations:

“Sale” includes barter; and also includes exporting, offering, exposing, or attempting to sell, or having in possession for sale, or delivering by way of gift or sample, or causing or allowing to be sold; and “sell” has a corresponding meaning:

“Tray” means a package of kiwifruit packed for sale in accordance with subclause (2) of this regulation:

“Ward” means the electorate boundaries specified in the First Schedule to these regulations.

(2) For the purpose of these regulations, a tray of kiwifruit shall be a container tray packed with at least 3 kg of kiwifruit in one single layer or such other weight and manner of packing as the Authority, after obtaining the consent of the Minister, may specify by notice in the *Gazette* as being a tray for the purpose of these regulations.

PART I—KIWIFRUIT MARKETING LICENSING AUTHORITY

3. Kiwifruit Marketing Licensing Authority—(1) There is hereby established a marketing authority to be called the Kiwifruit Marketing Licensing Authority.

(2) The Authority shall consist of 8 members appointed by the Minister, as follows:

(a) Seven members shall be appointed after being elected pursuant to regulation 4 of these regulations, of whom—

(i) Two shall represent producers in the Northern Ward:

(ii) Three shall represent producers in the Southern Ward:

(iii) Two shall represent licensed exporters:

(b) One member shall be appointed as a representative of the Government.

(3) The representative of the Government shall, in addition to his other functions under these regulations, represent the interests of consumers of kiwifruit.

(4) The powers of the Authority shall not be affected by any vacancy in its membership.

4. Elections of producers' and exporters' representatives—(1) Elections of representatives for the purposes of appointment to the Authority pursuant to regulation 3 (2) of these regulations shall be conducted in accordance with these regulations, subject to the requirements that—

(a) A voter shall be eligible to vote for only one kind of representative; and

(b) No person shall represent both producers and exporters.

(2) The producer representatives shall be elected in the manner set out in the Second Schedule to these regulations, and the exporter representatives in the manner set out in the Third Schedule to these regulations.

(3) Elections shall be held on a date to be fixed by the Returning Officer not later than the 1st day of November in any year, but elections for the first members of the Authority shall be held on a date to be appointed by the Minister.

(4) For the first election after the coming into force of these regulations the Minister shall appoint a Returning Officer, but for all subsequent elections the Authority shall appoint a Returning Officer.

(5) The Authority shall pay the Returning Officer—

(a) Such fee as shall be approved by the Minister; and

(b) All expenses actually and reasonably incurred by him in the performance of his duties as Returning Officer.

5. Terms of office of members—(1) Every member of the Authority shall hold office for a term of 3 years, and may be re-elected and reappointed, except that in respect of the first appointments to the Authority—

(a) One producer member from the Southern Ward and one exporter member shall retire after one year:

(b) Two producer members, one from each of the Northern and Southern Wards, and one exporter member shall retire after 2 years:

(c) Two producer members, one from each of the Northern and Southern Wards, shall retire after 3 years,—
the order of retirement to be decided by agreement among the members concerned or, failing agreement, by lot.

(2) Unless he sooner vacates his office under regulation 6 of these regulations, every member of the Authority shall continue in office until his successor is appointed.

6. Extraordinary vacancies—(1) Any member of the Authority may at any time be removed from office by the Minister for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

(2) Any member may at any time resign his office by writing addressed to the Minister.

(3) If any member of the Authority dies, or resigns, or is removed from office, his office shall become vacant and the vacancy shall be an extraordinary vacancy.

(4) An extraordinary vacancy shall be filled by the appointment of some qualified person in the same manner as the appointment of the vacating member, but if the vacancy occurs within 6 months before the expiry of the term for which the vacating member was elected, the Authority may by resolution determine—

(a) That the vacancy be filled by the appointment of a person otherwise qualified to be elected; or

(b) That the vacancy not be filled until the next general election of ward members.

(5) Any member appointed to fill an extraordinary vacancy shall hold office for the residue of the term for which the vacating member was appointed.

(6) Every person appointed pursuant to this section shall be deemed for all purposes to be a member of the Authority.

7. Chairman and Deputy Chairman—(1) At the first meeting of the Authority and thereafter in the first week of November in every year, the Authority shall elect, from its producer members, a Chairman and a Deputy Chairman for the ensuing 12 months.

(2) Every person elected as Chairman or Deputy Chairman shall hold office until his successor comes into office, and shall be eligible for re-election.

(3) The Chairman shall preside at all meetings of the Authority at which he is present.

(4) In the absence of the Chairman from any meeting the Deputy Chairman shall preside, and, if both should be absent, one of the members present shall be appointed by the members attending to preside at that meeting.

(5) At any meeting of the Authority the Chairman or other person presiding shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

8. Meetings of Authority—(1) The first meeting of the Authority shall be held at a time and place to be appointed by the Minister, and thereafter meetings of the Authority shall be held at such times and places as the Authority shall from time to time appoint:

Provided that at least 2 meetings shall be held in each year.

(2) The Chairman of the Authority, or any 3 members, may at any time after having given at least 4 clear days' notice to the other members call a special meeting.

(3) At all meetings of the Authority, 5 members shall form a quorum.

(4) All questions arising at any meeting of the Authority shall be decided by a majority of the votes recorded thereon.

(5) A resolution in writing signed or assented to by letter or telegram or telex by all members of the Authority shall be as valid and effectual as if it had been passed at a meeting of the Authority duly called and constituted.

(6) Subject to the provisions of these regulations and the Act, the Authority may regulate its own procedure.

9. Committees and delegations—(1) The Authority may from time to time appoint advisory or technical committees of one or more persons as it thinks fit to advise the Authority on such matters relating to its functions and powers as are referred to them by the Authority, and may, with the consent of the Minister, delegate to any such committee any of its powers and functions.

(2) Each advisory or technical committee may, in addition, furnish to the Authority reports on any matter concerning the kiwifruit industry in respect of which the committee, or any member or members of it, may have special knowledge or experience.

(3) A person may be appointed to be a member of any committee appointed under this regulation whether or not he is a member of the Authority, but if he is not a member, the Authority shall approve the Chairman of that committee.

10. Secretary of Authority—(1) From time to time the Authority shall appoint a Secretary, and shall prescribe the duties of his office.

(2) The Secretary shall not be a member of the Authority for the time of his tenure of office, and shall have no vote in the deliberations of the Authority.

(3) Nothing in this regulation shall derogate from the provisions of section 7 of the Act.

11. Personal liability—No member of the Authority or any of its committees shall be personally liable for any liability of the Authority or for any act done or omitted by the Authority or any of its committees or any member in good faith in pursuance or intended pursuance of the functions or powers of the Authority.

12. Functions and powers of Authority—(1) The principal functions of the Authority shall be—

- (a) To promote the export of kiwifruit, and to encourage the marketing of kiwifruit outside New Zealand;
- (b) To assist in the general development of the kiwifruit industry;
- (c) To require minimum standards of packaging and sizes of kiwifruit for export, which standards shall not be lower than any standards relating to kiwifruit set by regulation or notice made under the Plants Act 1970.

- (d) To issue permits for the export of kiwifruit cultivars, subject to such conditions as the Authority may specify in the permit:
- (e) To advise the Director-General on plant health aspects and grade standards for kiwifruit:
- (f) To issue kiwifruit exporters' licences under these regulations:
- (g) Subject to regulation 13 of these regulations, to acquire kiwifruit.
- (2) It shall also be a function of the Authority to report to the Minister from time to time concerning—
 - (a) Trends and prospects in overseas markets in respect of kiwifruit:
 - (b) Movements in costs and prices or other factors likely to prejudice the economic stability of the kiwifruit industry:
 - (c) Such other matters as the Authority considers appropriate, or as the Minister may request.
- (3) The Authority shall also have such other functions as may be conferred on it by or under these regulations or any other enactment.
- (4) The Authority shall have all such powers as may be reasonably necessary or expedient to enable it to carry out its functions; and in particular it may, from time to time,—
 - (a) Promote greater efficiency in the kiwifruit industry, and further the interests and welfare of persons engaged therein; and
 - (b) Establish co-ordinated export marketing of kiwifruit.

13. Acquisition of kiwifruit—The Authority shall not acquire any kiwifruit except for promotional, experimental, and developmental purposes, or with the prior consent of the Minister and after the support of at least 80 percent of producers producing not less than 75 percent by volume of kiwifruit for export has been obtained, as indicated through a referendum of producers conducted by the Authority.

PART II—FINANCIAL PROVISIONS

14. Kiwifruit Authority Account—(1) For the purpose of these regulations, the Authority shall establish with the Reserve Bank of New Zealand or with the Bank of New Zealand, an account to be known as the Kiwifruit Authority Account.

- (2) There shall be paid into the Kiwifruit Authority Account—
 - (a) All money derived from the operations of the Authority:
 - (b) All levies payable to the Authority:
 - (c) Any other money that may otherwise be lawfully paid to the Authority.
- (3) There shall be paid out of the Kiwifruit Authority Account all costs, charges, and expenditure incurred by the Authority in the performance of its duties and the exercise of its powers and functions under these regulations and in their administration.
- (4) No money shall be drawn out of the Kiwifruit Authority Account except by the authority of the Authority. All payments shall be made by cheque or other instrument (not being a promissory note or bill) signed by the treasurer to the Authority or other officer of the Authority appointed for that purpose, and counter-signed by an Authority member, or by an officer authorised by the Authority from time to time to countersign such cheques.

(5) The Authority may from time to time establish within the Kiwifruit Authority Account such special accounts and reserves as it considers necessary or expedient for any purpose authorised by these regulations.

15. Financial year—The financial year of the Authority shall end with the 31st day of March each year.

16. Annual report and accounts—(1) Any producer or licensed exporter may, not later than one month before the end of the Authority's financial year, request, in writing, the Authority to supply him with a copy of the annual report and accounts which the Authority is required to prepare for laying before Parliament pursuant to section 11 of the Act, and the Authority shall comply with such request as soon as practicable.

(2) The Authority shall show in its annual accounts money specifically spent on the promotion of kiwifruit.

17. Unauthorised expenditure—The Authority may in any financial year out of its income available for general purposes, expend for purposes not authorised by these regulations, any sum or sums not amounting in the aggregate to more than \$2,000.

18. Kiwifruit levy—(1) Every producer and licensed exporter shall pay to the Authority an annual levy, to be called the kiwifruit levy, at such rates as may be fixed pursuant to subclause (2) of this regulation.

(2) On or before the 1st day of December in each year, the Minister shall, after receiving the recommendations of the Authority, fix by notice in the *Gazette*—

(a) The rate at which the kiwifruit levy is to be paid in the succeeding financial year; and

(b) The manner of payment and collection of such levy.

(3) The maximum rate of levy fixed shall not exceed 40 cents per tray or tray equivalent of kiwifruit in the aggregate.

(4) If in any year the Authority makes no recommendation under subclause (2) of this regulation, the rate of levy for the next succeeding financial year shall be the same as that last fixed under that subclause.

19. Levy to be recoverable as a debt—Any levy payable to the Authority under regulation 18 of these regulations shall be recoverable in any Court of competent jurisdiction as a debt due to the Authority.

PART III—LICENSING OF KIWIFRUIT EXPORTERS

20. Exporters to hold exporter's licence—(1) No person shall, after the commencement of this Part of these regulations, export kiwifruit unless he is the holder of a current exporter's licence issued under these regulations.

(2) The holder of a current exporter's licence shall export only those kiwifruit cultivars for which he has been issued a permit by the Authority under these regulations.

21. Applications for exporter's licence—Every application for an exporter's licence shall—

- (a) Be made in writing addressed to the Secretary of the Authority on a form to be provided for that purpose by the Authority and signed by or on behalf of the applicant;
- (b) Contain particulars of the facilities, including suitable premises, available for satisfactorily carrying on the business of kiwifruit exporting;
- (c) Be accompanied by a fee of \$10.

22. Factors to be considered by Authority—In considering every application for an exporter's licence made under regulation 21 of these regulations, the Authority shall have regard to—

- (a) The need for the issuing of a licence;
- (b) The likelihood of the applicant being able to maintain an efficient export distribution service in the interests of the kiwifruit industry;
- (c) The financial position of the applicant and his standing and repute in the business world;
- (d) Any information which it may have obtained in respect of the application after consultation with the Department of Trade and Industry or the Trade Commissioner Service of that Department.

23. Grant, refusal, or revocation of exporter's licence—(1) The Authority may—

- (a) Grant an exporter's licence to the applicant, subject to such conditions as it thinks fit; or
 - (b) Refuse to grant an exporter's licence to the applicant.
- (2) The Authority may, by notice in writing given to the licensee and with the prior consent of the Minister, revoke any exporter's licence; but where such a notice is given, the revocation shall not take effect until 2 months after the date of the notice or the date of expiry of the licence, whichever is the sooner.
- (3) It shall be a condition of every exporter's licence that only kiwifruit supplied from orchards approved by the Director-General to export kiwifruit shall be exported.
- (4) No exporter's licence shall be transferable.

24. Renewal of exporter's licence—Every exporter's licence shall expire 12 months after the date of issue, but may be renewed on application to the Authority upon payment of a renewal fee of \$10 and subject to such conditions as the Authority thinks fit.

25. Appeals—(1) If the Authority does not grant the renewal of a licence or revokes any licence, the licensee may within 28 days after receiving notice of the decision of the Authority, give written notice of appeal setting out the grounds for appeal, to the Authority.

(2) On receipt of any notice of appeal, the Authority shall refer its decision together with that notice, to the arbitrator appointed pursuant to subclause (3) of this regulation.

(3) For the purposes of hearing any appeal against any decision of the Authority mentioned in subclause (1) of this regulation, there shall be appointed an independent arbitrator who shall be such barrister or solicitor of the Supreme Court of at least 7 years standing as shall be nominated by the President of the New Zealand Law Society.

(4) The arbitrator shall appoint a time and place for hearing the appeal and shall give reasonable notice of the appointed time and place to the appellant and to the Authority.

(5) The appeal shall be heard by the arbitrator, who may affirm, or reverse, or vary the decision given by the Authority, and may award such costs as he thinks fit.

(6) The decision of the arbitrator shall be notified in writing to the appellant and the Authority.

(7) The decision of the arbitrator shall be final, and shall bind both the appellant and the Authority.

PART IV—GENERAL

26. Notices—Any notice required to be given by the Authority for the purposes of these regulations shall be sufficient if it purports to be given by or on behalf of the Authority and is authenticated by an officer authorised in that behalf by the Authority.

27. Authority may require information—(1) Every holder of an exporter's licence shall furnish to the Authority—

(a) From time to time or at the time specified in his licence, the information indicated by the conditions contained in his licence:

(b) On written request by the Authority, within the time specified, such information or returns relating to the sale or supply of kiwifruit by or to the licensee as the Authority specifies.

(2) The Authority may from time to time, in writing, request any producer to supply information on his actual or expected production of kiwifruit.

(3) All information received by the Authority under this regulation shall be confidential to the Authority, and may be published only where this can be done in such a manner as will prevent the identification of any person who has supplied information.

28. Offences—Every person commits an offence against these regulations who knowingly—

(a) With intent to deceive, makes any false or misleading statement or any material omission in any declaration or other communication made to the Authority or to any other person for the purposes of these regulations; or

(b) Without lawful excuse, fails to comply with any request, requirement, obligation, or provision imposed or required to be observed by these regulations.

29. Penalties—Every person who commits an offence against these regulations shall be liable on summary conviction—

(a) In the case of an individual, to a fine not exceeding \$400:

(b) In the case of a body corporate, to a fine not exceeding \$2,000.

SCHEDULES

FIRST SCHEDULE

Regs. 2, 3

WARD NAMES AND BOUNDARIES

Name of Ward	Definition of Boundaries
Northern Ward	All that area in the North Auckland and South Auckland Districts bounded by a line commencing at the intersection in Block I, Kawhia North Survey District, of the generally southern boundaries of Raglan County (as described in the <i>Gazette</i> of 1965 at page 174) with the sea coast and proceeding generally north-westerly and generally south-westerly along the said sea coast to the northern corner of Section 15, Block I, Te Tumu Survey District; thence south-westerly along a right line to the intersection of the middle of State Highway 2 with the middle of Kairua Road; thence generally westerly, generally southerly, and generally south-westerly along the middle of Kairua Road, aforesaid, Welcome Bay Road, Rocky Cutting Road, Upper Papamoa Road, and Waitao Road to the intersection of the middle of the last-mentioned road with the middle of Garrett Road; thence south-westerly along a right line to Trig 27, Puwhenua in Block VII, Tapapa East Survey District, being a point on the generally eastern boundary of Matamata County, as described in the <i>Gazette</i> of 1969 at page 753; thence generally southerly, generally north-westerly, and generally westerly along the generally eastern, generally southern, and generally western boundaries of the said Matamata County and the generally southern boundaries of Waipa County (as described in the <i>Gazette</i> of 1965 at page 175) and Raglan County aforesaid to the point of commencement; including all islands adjoining the area herein described.
Southern Ward	All that area of New Zealand not included in Northern Ward.

SECOND SCHEDULE

Reg. 4 (2)

ELECTIONS OF PRODUCERS' REPRESENTATIVES

Roll

1. Before the 1st day of September in each year in which an election is to be held the Returning Officer shall prepare a roll of producers.

2. Every such roll shall contain in alphabetical order the names of the producers entered therein, exclusive of corporate bodies but inclusive of the nominees of corporate bodies, together with the addresses of all such producers and nominees so far as they are known to the Returning Officer, and the names so entered shall be numbered consecutively.

3. Where one of 2 or more persons is entitled to vote in respect of the production, whether joint or in common, of any trays of kiwifruit, the Returning Officer shall enter on the roll the name of such one of the said persons as may be named in a notice in writing delivered to the Returning Officer, and signed by a majority of the persons appearing to own the kiwifruit:

Provided that, at any time before the closing of the roll, on an application made in that behalf and addressed to the Returning Officer, and signed either by the person whose name is so entered or by a majority of the persons appearing to own the said kiwifruit, the name of some other one of such persons may be entered on the roll in substitution for the name first entered thereon.

4. Against the name of each producer and nominee qualified to vote entered on the roll there shall appear the number of votes, computed in accordance with the provisions of clause 11 of this Schedule, to which the said producer is entitled.

5. Where the name of any person entitled to vote by virtue of the provisions of clause 13 of this Schedule is entered on the roll, the entry shall be followed by the words "appointed by (name of corporate body)".

6. Before the first Wednesday in September of each year in which an election is to be held the Returning Officer shall—

- (a) Make the roll available for public inspection for at least 14 days during normal office hours by lodging copies of the roll at the office of the Secretary of the New Zealand Citrus and Sub-tropical Council Incorporated and at such other places as the Returning Officer thinks fit; and
- (b) Give at least one week's notice in the *Gazette* and main newspapers stating where the copies of the roll will be available for inspection.

7. Any person may, at any time during the 14 days when the roll is open to public inspection, lodge with the Returning Officer an objection in writing under his hand to any entry on the roll on any of the following grounds:

- (a) That any person whose name is on the roll or, as the case may be the corporate body on behalf of whom the name of any person is on the roll, is not a producer qualified to vote:

SECOND SCHEDULE—*continued*

(b) That any person whose name is not on the roll is a producer qualified to vote or, as the case may be, is appointed by a corporate body being a producer qualified to vote:

(c) That the number of votes entered on the roll against the name of any producer is greater or less than that to which he is entitled.

8. The Returning Officer shall, without the necessity of calling upon or hearing any objector or person affected by the objection, decide the matter of the objection and make any such amendment of the roll as he may, in his absolute discretion, think fit.

9. At the expiration of the 14 days during which the roll was open for public inspection the roll shall be closed and no further amendment shall be made.

Qualifications to be on the Roll

10. The qualifications for any person to be on the roll shall be that—

(a) He is a producer; and

(b) He has paid any kiwifruit levy due under regulation 18 of these regulations.

11. Subject to clause 10 of this Schedule, voting shall be upon the following basis:

(a) Every producer shall be entitled to one vote whether or not his orchard produced kiwifruit for export:

(b) Every producer who produced more than 5,000 but not more than 20,000 trays of kiwifruit for export shall be entitled to 2 votes:

(c) Every producer who produced more than 20,000 trays of kiwifruit for export shall be entitled to 3 votes.

12. If any orchard is occupied by 2 or more persons jointly or in common, one only of those persons shall be entitled to vote.

13. Any producer, being a corporate body, may by writing under its corporate seal, and delivered to the Returning Officer, appoint some person whose name shall be entered on the roll as voter on behalf of that corporate body.

14. At every election, any producer whose name is entered on the roll as a producer and also as a voter on behalf of a corporate body may vote in each capacity:

Provided that when assessing his voting entitlement in each capacity the number of trays produced in one capacity shall not be taken into account in the other capacity.

Nominations

15. No person shall be eligible for election as a producers' representative unless—

(a) His name is entered on the roll:

(b) He has been nominated in writing by 2 or more producers whose names appear on the roll as producers of at least 5,000 trays of kiwifruit for export in the season prior to the election:

(c) He has, by writing in the prescribed form or by letter or telegram to the Returning Officer, accepted nomination:

(d) He has, within 7 days of accepting nomination, paid to the Returning Officer a deposit of \$10.

SECOND SCHEDULE—*continued*

16. The form of nomination shall be in or to the effect of form 1 in the Appendix to this Schedule:

Provided that nothing in this clause shall prevent the Returning Officer from accepting any nomination paper made out in such form as in his opinion is sufficient to identify the candidate and at least 2 nominators.

17. The last hour and day for receiving nominations shall be noon on the fourth Wednesday in September in the year in which the election is to be held.

18. Where the number of persons nominated does not exceed the number of persons to be elected, the persons nominated shall be declared to be duly elected.

Polls

19. Where the number of persons nominated exceeds the number of persons to be elected, a poll shall be taken and the Returning Officer shall cause voting papers to be printed in form 2 in the Appendix to this Schedule.

20. Not later than 7 days after the date prescribed for receiving nominations, the Returning Officer shall forward by post, addressed to each person whose name is on the roll at the address appearing on the roll, a voting paper which shall bear on its face the consecutive number appearing on the roll against the name of the voter to whom the voting paper is forwarded together with the number of votes which that voter is entitled to exercise. With the voting paper sent to the voter shall be sent an envelope addressed to the Returning Officer and bearing on its face the same consecutive number.

21. On proof to his satisfaction, by statutory declaration or otherwise, that any voter has not received his voting paper in due course of post or that any voting paper received by any voter or its addressed envelope was accidentally destroyed before being used, the Returning Officer may issue to the voter a further voting paper, bearing on its face the same consecutive number, together with an additional distinguishing mark to indicate that the voting paper is issued under this clause and, if the case so requires, an envelope addressed to the Returning Officer and bearing the same number and distinguishing mark.

22. On proof to his satisfaction, by statutory declaration or otherwise, that any person is a producer and that the name of that person is not included in the roll of producers entitled to vote, the Returning Officer may issue to that person a voting paper, bearing a distinguishing mark to indicate that it is issued under this clause, together with an envelope addressed as aforesaid and bearing on the face the same distinguishing mark.

23. A voter may exercise his vote in favour of the appropriate number of candidates required to fill the vacancies in respect of which the election is being held, or of a lesser number of candidates.

24. The poll shall close at noon on the third Wednesday in the month of October.

25. No voting paper shall be valid unless it is received by the Returning Officer in the envelope sent to the voter with the voting paper.

SECOND SCHEDULE—*continued*

26. No voting paper shall be valid—

- (a) If it is not received by the Returning Officer by the time fixed by clause 24 of this Schedule for the closing of the poll; or
- (b) If anything not authorised by this Schedule is so written or marked on the voting paper that the voter may thereby be identified; or
- (c) If the number of candidates for whom the elector has voted exceeds the number of persons to be elected; or
- (d) If the voting paper does not, in the opinion of the Returning Officer, indicate the candidate or candidates for whom the elector desires to vote.

Scrutineers

27. Any candidate for election as a producers' representative may, by writing under his hand addressed to the Returning Officer and delivered to him not less than 2 clear days before the closing of the poll, appoint a scrutineer for the purposes of the poll.

28. Every scrutineer shall, before being allowed to act, make and subscribe before the Returning Officer a declaration in form 3 in the Appendix to this Schedule.

29. Every scrutineer who, in breach of his declaration, directly or indirectly discloses any fact coming to his knowledge at any election commits an offence against these regulations.

Result of the Election

30. Forthwith upon the closing of the poll the Returning Officer shall, in the presence of such scrutineers as are present, compare the numbers on the envelopes with the numbers on the roll, and shall reject any envelope not appearing to him to be issued in connection with the election and not appearing to contain the genuine voting paper of a person enrolled as a voter.

31. The Returning Officer shall then open the remaining envelopes and reject any voting paper which in his opinion is invalid, and shall then ascertain the number of votes received by each candidate.

32. In respect of every valid voting paper, votes shall be given to the candidate or to each of the candidates for whom the voter has indicated he desires to vote, according to the number of votes appearing beside the voter's name on the roll.

33. Where there is an equality of votes between 2 or more candidates and the addition of a vote would entitle one of such candidates to be declared elected, the Returning Officer shall decide by lot which candidate shall be declared elected.

34. Subject to the provisions of the last 3 preceding clauses, the candidate or candidates required to be elected who have received the greatest number of votes shall be declared elected by the Returning Officer who shall forthwith notify the Minister of the poll results.

35. After the result of the poll has been announced the Returning Officer shall repay deposits to the candidates:

Provided that any unsuccessful candidate shall forfeit his deposit who fails to get one-tenth of the votes cast for the successful candidate receiving the least number of votes.

SECOND SCHEDULE—*continued*

36. Subject to the provisions of clause 37 hereof, the Returning Officer shall be the sole and absolute judge of the regularity and propriety of all matters connected with any election, and no election shall be called in question on the ground that any voting paper or any addressed envelope was not forwarded to any voter, or that any voting paper from any voter was irregularly cast, or that any voting paper was wrongly accepted or wrongly rejected, or that any other irregularity occurred in connection with any election, unless in the opinion of the Returning Officer any such irregularity materially affected the result of the election and occurred otherwise than in good faith.

37. Within 14 days of the closing of the poll any candidate for election may, on the ground that any irregularity occurred in the conduct of the poll, appeal to the Minister to have the result of the election set aside. The decision of the Minister on the appeal shall be final and he may, as he thinks fit, order that the result of the election declared by the Returning Officer shall stand, or that there shall be a recount of the votes, or that there shall be a fresh election.

APPENDIX

Clause 16

Form 1

NOMINATION OF PRODUCERS' REPRESENTATIVE ON THE KIWIFRUIT
MARKETING LICENSING AUTHORITY

To the Returning Officer,
Kiwifruit Marketing Licensing Authority Election.

We, the undersigned voters, do hereby nominate [*Full name*], of [*Residence and occupation*], with his consent, as a candidate at the election of persons to the Kiwifruit Marketing Licensing Authority established by the Kiwifruit Marketing Licensing Authority Regulations 1977.

Dated at this day of 19 .

Signatures of voters:

Full names of voters:

Residences of voters:

I, [*Full name*], do hereby consent to the above nomination.

Signature of Candidate:

APPENDIX—*continued*

Clause 19

Form 2

VOTING PAPER

Kiwifruit Marketing Licensing Authority

ELECTION of 3 producers' representatives on the Authority:

Craig, John
Hay, Frank
Maxwell, John

Stanton, Albert
Wood, John

Directions: The voter shall leave uncanceled the names of the candidate or candidates for whom he desires to vote, and must strike out the names of all candidates not voted for.

If anything not authorised by the *Kiwifruit Marketing Licensing Regulations 1977* is written or marked hereon by which the voter can be identified, the voting paper is invalid.

After indicating in the manner aforesaid, this voting paper is to be transmitted to the Returning Officer, *Kiwifruit Marketing Licensing Authority* Election, so as to be received by him by noon on the day of 19

An addressed official envelope is enclosed for use in transmitting the voting paper. A voting paper not transmitted in the official envelope is invalid.

Clause 28

Form 3

DECLARATION OF SCRUTINEER

I, [*Full name*], scrutineer for [*Full name of candidate*], a candidate for the present election of persons (a person) as (a) producers' representative(s) on the *Kiwifruit Marketing Licensing Authority* established by the *Kiwifruit Marketing Licensing Authority Regulations 1977* do hereby solemnly declare that I will not, directly or indirectly, disclose any fact coming to my knowledge at such election where such disclosure would in any way defeat the secrecy of the ballot.

Signature

Declared and signed before me this day of 19

.....
Returning Officer.

THIRD SCHEDULE

Reg. 4 (2)

ELECTIONS OF EXPORTERS' REPRESENTATIVES

1. Elections of exporters' representatives on the Authority shall be conducted in accordance with procedures agreed on between the New Zealand Kiwifruit Exporters Association Incorporated and representatives of producers appointed by the Minister or, failing agreement, in accordance with procedures specified by the Minister.

2. Voting of exporters shall be on the following basis:

- (a) Every exporter who exported 1 percent of the total number of trays of kiwifruit exported during the 12 months ended on the 31st day of March immediately preceding the date of an election shall be entitled to one vote;
- (b) For each subsequent 10 percent he exported of the total number of trays of kiwifruit exported during the 12 months ended on the 31st day of March immediately preceding the date of an election, an exporter shall qualify for 1 further vote;
- (c) No exporter shall be entitled to exercise more than 3 votes in total.

P. G. MILLEN,

Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations establish, pursuant to the Primary Products Marketing Act 1953, a marketing authority to be called the Kiwifruit Marketing Licensing Authority. The principal functions of the Authority are to issue permits to allow the export of kiwifruit cultivars, and to prohibit the export of kiwifruit except pursuant to the terms and conditions of a kiwifruit exporters' licence. The terms and conditions relate mainly to standards to be observed in packaging and the quality and size of the fruit exported.

The Authority is also given power to raise a levy on kiwifruit exported.

Many of the powers of the marketing authority are derived directly from the Primary Products Marketing Act 1953.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 3 November 1977.

These regulations are administered in the Ministry of Agriculture and Fisheries.