



*Reprint under section 15 (3) of the Acts and Regulations Publication Act 1989 of the Kiwifruit Marketing Regulations 1977 (S.R. 1977/281), as amended by the following enactments:*

- Amendment No. 1: S.R. 1980/261** (Revoked by regulation 6 (b) of S.R. 1988/227).
- Amendment No. 2: S.R. 1983/25** (Revoked by regulation 10 (b) of S.R. 1988/227).
- Amendment No. 3: S.R. 1983/87** (Revoked by regulation 10 (c) of S.R. 1988/227).
- Amendment No. 4: S.R. 1988/227.**
- Amendment No. 5: S.R. 1989/50.**
- Amendment No. 6: S.R. 1991/63.**
- Amendment No. 7: S.R. 1991/147.**
- Amendment No. 8: S.R. 1992/224.**

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**THE KIWIFRUIT MARKETING REGULATIONS 1977 (REPRINT)**

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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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## REGULATIONS

**1. Title, commencement, and application**—(1) These regulations may be cited as the [Kiwifruit Marketing 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.

In subclause (1) the word "Licensing" was omitted from the Title of the Kiwifruit Marketing Regulations 1977 by reg. 2 of S.R. 1988/227.

These regulations were confirmed (as required by s. 4 of the Primary Products Marketing Act 1953) by s. 2 of the Primary Products Marketing Regulations Confirmation Act 1977.

**[2. Interpretation]**—In these regulations, unless the context otherwise requires,—

"The Act" means the Primary Products Marketing Act 1953:

“Board” means the New Zealand Kiwifruit Marketing Board established by regulation 3 (1) of these regulations:

[[“Coolstore”, in any season, means a cool-storage facility (or 2 or more cool-storage facilities under the control of a single operator) that—

(a) Is (or together are); or

(b) Is (or are) located in an area,—

described or referred to as a coolstore in a contract between its (or their) operator and the Board relating to the season:

“Cut-off day”, in relation to any season,—

(a) Subject to paragraph (b) of this definition, means the 15th day of November in that season:

(b) Where some other day has been specified for the season under regulation 13DD of these regulations, means that day:]]

“To Export” means to transport, or cause to be transported, out of New Zealand; and “export” has a corresponding meaning:

“Federation” means New Zealand Fruitgrowers Federation (a company limited by guarantee and without share capital, registered under the Companies Act 1955):

[[“Inadequately packed” means packed otherwise than in accordance with a method or standard of packing endorsed under regulation 12A (1) (d) of these regulations:]]

“Kiwifruit” means the fruit of a kiwifruit vine:

“Kiwifruit vine” means a plant of the genus *Actinidia*:

[[“Non-standard” means not conforming with a standard of acceptability for the purpose of export for the time being established under regulation 12A (1) (e) (ii) of these regulations:]]

“Orchard”, at any time, means any land in New Zealand—

(a) That is then planted with 250 or more kiwifruit vines from which it is intended to harvest kiwifruit for export; or

(b) From which there was harvested in the most recently completed season at least 3.7 tonnes of kiwifruit that were intended for export for sale:

“Producer” means the occupier (within the meaning of the Rating Powers Act 1988) of an orchard:

“Season” means a period of 12 months commencing on the 1st day of April:

[[“Unsound” means not conforming with a standard of soundness for the purpose of export for the time being established under regulation 12A (1) (e) (i) of these regulations.]]

Regs. 2, 2A, and the heading that follows them, were substituted by reg. 3 of the Kiwifruit Marketing Regulations 1977, Amendment No. 4, for the original reg. 2 (as variously amended) and the heading that followed it.

In reg. 2, the definitions have been reprinted in appropriate alphabetical order. They have been further amended as follows:

“Coolstore”: The definition of this term was inserted by reg. 2 of S.R. 1992/224.

“Cut-off day”: The definition of this term was inserted by reg. 2 of S.R. 1992/224.

“Inadequately packed”: The definition of this term was substituted for the former definition by reg. 2 (1) of S.R. 1991/63.

“Kiwifruit standards”: A definition of this term was revoked by reg. 2 (1) of S.R. 1991/63.

“Non-standard”: The definition of this term was substituted for the former definition (as amended by reg. 2 of S.R. 1989/50) by reg. 2 (1) of S.R. 1991/63.

“Unsound”: The definition of this term was added by reg. 2 (1) of S.R. 1991/63.

**[2A. Regulations bind the Crown—**These regulations bind the Crown.

**[PART 1**

**[NEW ZEALAND KIWIFRUIT MARKETING BOARD]**

See the first note to reg. 2.

**3. [New Zealand Kiwifruit Marketing Board]**—(1) There is hereby established a marketing authority to be called the **[New Zealand Kiwifruit Marketing Board]**.

(2), (3), (4) *Revoked by reg. 5 of S.R. 1988/227.*

In subclause (1) the reference to the New Zealand Kiwifruit Marketing Board was substituted for a reference to the New Zealand Kiwifruit Authority (as substituted by reg. 2 (1) (c) of S.R. 1980/261) by reg. 4 (1) of S.R. 1988/227. See Reg. 4 (2) of S.R. 1988/227.

**[3A. Membership of Board]**—(1) The Board comprises—

(a) *Revoked by reg. 2 (1) of S.R. 1991/147.*

**[(ab) Four members elected, pursuant to regulation 4 of these regulations, to represent growers; and]]**

(b) *Revoked by reg. 2 (1) of S.R. 1991/147.*

(c) One member appointed by the Minister to represent the Government and the interests of the consumers of kiwifruit; and

(d) Three members appointed for their commercial experience by the Board, with the prior written agreement of the Minister.

(2) The powers of the Board are not affected by any vacancy in its membership.

Para. (ab) was substituted for the former paras. (a) and (b) by reg. 2 (1) of S.R. 1991/147. See subclauses (2) to (4) of reg. 2 of S.R. 1991/147.

**[4. Election of members]**—(1) The election of members of the Board shall be in accordance with the Second Schedule to these regulations.

(2) Elections (other than elections to fill extraordinary vacancies) shall so be held that the poll closes on a day (appointed by the Board) not later than the 1st day of November in the year concerned.

(3) The Board shall appoint a suitable person as returning officer for any election; and shall pay the person—

(a) All expenses actually and reasonably incurred as returning officer; and

(b) A fee approved by the Minister.

**[5. Term of office]**—(1) Every member of the Board shall, unless the member sooner dies, resigns, or is dismissed, hold office for a term of 3 years, and may from time to time be re-elected or re-appointed.

(2) Notwithstanding subclause (1) of this regulation, unless a member sooner dies, resigns, or is dismissed, the member shall continue in office until a successor is elected or appointed.

(3) Notwithstanding subclause (1) of this regulation, the Board shall appoint one of the first 3 persons to be appointed members of the Board under regulation 3 (2) (d) of these regulations for a term of 2 years only and another for a term of one year only.

**[6. Extraordinary vacancies]**—(1) The Minister may dismiss a member of the Board for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

(2) A member of the Board may resign by written notice to the Minister.

(3) The office of a member of the Board becomes vacant, and the vacancy is extraordinary, if the member dies, resigns, or is dismissed.

(4) Subject to subclause (5) of this regulation, an extraordinary vacancy shall be filled by the election or appointment of some other member in the same manner as the election or appointment of the vacating member.

(5) If an extraordinary vacancy occurs in respect of an elected member,—

(a) Where the vacancy occurs within 3 months of the end of the term for which the member concerned was elected, it shall not be filled until the next ordinary election of members; and

(b) Where the vacancy occurs within 12 months but not within 3 months of the end of the term for which the member concerned was elected, the Board may—

(i) Appoint to the vacancy any person it thinks fit; or

(ii) Resolve that the vacancy should not be filled until the next ordinary election of members; and

(c) Notwithstanding regulation 4 (2) of these regulations, any election held shall so be held that the poll closes on a day appointed by the Board (being a day not later than 3 months after the vacancy occurred).

(6) Notwithstanding regulation 5 (1) of these regulations, a member of the Board elected or appointed to an extraordinary vacancy shall hold office for the residue of the term of the vacating member.

**[7. Chairperson and Deputy Chairperson]**—(1) At a meeting held in November every year, and whenever a vacancy occurs, the Board shall elect, from among its elected members, a Chairperson and Deputy Chairperson for the follow up season (or, in the case of a vacancy, the residue of the current season) and thereafter until a successor is elected.

(2) A Chairperson or Deputy Chairperson is eligible to be re-elected.

**[8. Meetings]**—(1) The Board shall meet at times and places it appoints; but shall meet at least twice each year.

(2) Notwithstanding subclause (1) of this regulation, the Chairperson of the Board or any 3 members may at any time, after giving at least 4 clear days notice to the other members, call a special meeting of the Board.

(3) If present at any meeting of the Board, the Chairperson shall preside.

(4) If the Chairperson is not present at a meeting of the Board and the Deputy Chairperson is present, the Deputy Chairperson shall preside.

(5) If neither the Chairperson nor the Deputy Chairperson is present at a meeting of the Board, the members present shall appoint an elected member to preside.

(6) The quorum for a meeting of the Board is 5 members.

(7) Subject to subclause (8) of this regulation, every question before the Board shall be decided by a majority of the valid votes recorded on it.

(8) The person presiding at a meeting of the Board has a deliberative vote and, in the event of an equality of votes, a casting vote.

(9) A written resolution, signed, or assented to by letter, telegramme, facsimile transmission, or telex, by all the members of the Board (other than members who have indicated by letter or by telegramme, facsimile transmission, or telex, an intention to abstain) is as valid and effectual as if duly passed at a meeting of the Board.

(10) Except as provided in the Act and these regulations, the Board shall regulate its own procedures.

(11) No proceedings, action, or resolution of the Board shall be invalid by reason only of the subsequent discovery of a defect in the election or appointment of any member, or of the fact that any person not validly a member acted or purported to act as a member.

**[9. Committees and delegations—**(1) The Board may from time to time appoint advisory or technical committees of one or more persons as it thinks fit to advise it on matters relating to its functions and powers it refers to the committees; and may delegate to any such committee any of its powers or functions.

(2) Every such committee may report to the Board on any matter concerning the kiwifruit industry the committee thinks fit.

(3) Any person (whether or not a member of the Board) may be appointed a member of a committee; but no person who is not a member of the Board may, without the approval of the Board, be appointed Chairperson, of a committee, or to any equivalent position.

10. *Revoked by reg. 5 of S.R. 1988/227.*

**[11. Personal liability—**No member of the Board or any of its committees shall be personally liable for any liability of the Board or committee, or for any act done or committed by the Board, any of its committees, any of its members, or any member of any of its committees, in good faith in the pursuance or intended pursuance of the object of the Board.

**[11A. Object of Board—**The object of the Board is to obtain, in the interests of New Zealand producers, the best possible long term returns for kiwifruit intended for export.

12. *Revoked by reg. 5 of S.R. 1988/227.*

**[12A. Functions of Board—**(1) The principal functions of the Board are—

- (a) To acquire and cause to be marketed kiwifruit produced in New Zealand and intended for export; and
- (b) To determine the payments it makes for the kiwifruit **[[that become its property under regulation 13F]]** of these regulations; and
- (c) To help the general development of the kiwifruit industry; and
- [[**(d) From time to time to endorse desirable methods of and standards for the cooling, growing, handling, packing, picking, spraying, storing, transporting, or doing any other thing, in respect of kiwifruit, or for any 2 or more of those things; and
- (e) Subject to subclause (1A) of this regulation, from time to time to do either or both of the following:
  - (i) Establish for kiwifruit standards of soundness for the purpose of export:
  - (ii) Establish for kiwifruit standards of acceptability for the purpose of export (other than standards of soundness for the purpose of export). **]]**

**[[**(1A) Where in any season the Board establishes, revokes, or amends a standard under subclause (1) (e) of this regulation, the establishment, revocation, or amendment does not take effect until the commencement of the next season. **]]**

**[[**(1B) The Board shall—

(a) Give every grower whose address it knows written notice of the endorsement of a standard under subclause (1)(d) of this regulation or the establishment, revocation, or amendment of a standard under subclause (1)(e) of this regulation—

(i) In the case of the endorsement or establishment of a standard, including a description of the standard and its effect; and

(ii) In the case of the amendment of a standard, including a description of the standard amended and the effect of the amendment; and

(b) Ensure that there are available for perusal at the offices of the Board copies of every such standard for the time being in force (including copies of every amendment the Board has made to it).]]

(2) It is also a function of the Board to report from time to time to the Minister on—

(a) Trends and prospects in overseas kiwifruit markets; and

(b) Movements in costs or prices, or any other factors, likely to affect the economic stability of the kiwifruit industry.

(3) It is also a function of the Board to be accountable to producers for the performance of its functions.

In subclause (1)(b) the words in double square brackets were substituted for the words “it acquires under regulation 13A (1)” by reg. 7 (2) (a) of S.R. 1989/50.

In subclause 1, paras. (d) and (e) were substituted for the former para. (d) by reg. 3 (1) of S.R. 1991/63.

Subclause (1A) was inserted by reg. 3 (2) of S.R. 1991/63.

Subclause (1B) was inserted by reg. 3 of S.R. 1992/224.

**[12B. Review of Board’s operation—**(1) As soon as is practicable after the 31st day of March 1991, [[the Minister shall appoint a person or agency to]] undertake an investigation, analysis, and review of, and prepare a report to the Minister on,—

(a) The costs, benefits, and efficiencies of the Board’s activities, operations, and management, during the period commencing on the commencement of the Kiwifruit Marketing Regulations 1977, Amendment No. 4 and ending with the 31st day of March 1991 (including any operations undertaken by other persons on the Board’s behalf); and

(b) Any other matters the Minister specifies when appointing the person or agency concerned;—

and the Board shall do all things necessary to enable the investigation, analysis, and review to be undertaken effectively and comprehensively, and the report to be completed promptly.

[[ (2) The investigation, analysis, review, and report referred to in subclause (1) of this regulation shall be undertaken and prepared at the expense in all respects of the Board. ]]

In subclause (1) the words in double square brackets were substituted for the former words by reg. 3 (1) of S.R. 1989/50.

Subclause (2) was added by reg. 3 (2) of S.R. 1989/50.

**[12C. Board has powers of natural person—**(1) Subject to the Act, the Board has—

(a) The rights, powers, and privileges of a natural person; and

- (b) The power to grant floating charges on its undertaking or property or any of it; **[[and]]**
  - (c) The power to do any other thing it is authorised to do by the Act, these regulations, any other enactment, or any rule of law.
- (2) Paragraphs (b) and (c) of subclause (1) of this regulation do not affect the generality of paragraph (a) of the subclause.
- (3) The Board shall not exercise any of its powers except for the purpose of—
- (a) Achieving its object; or
  - (b) Performing its functions; or
  - (c) Making payments to persons in respect of the cancellation of exporter's licences issued to them under the former Part III of these regulations.

In subclause (1)(b) the word "and" in double square brackets was substituted for the word "or" by reg. 4 of S.R. 1980/50.

13. Revoked by reg. 5 of S.R. 1988/227.

## [PART IA

### [ACQUISITION AND EXPORT OF KIWIFRUIT

**[[13A. Board to acquire export kiwifruit—**(1) Except as provided in these regulations, the Board shall accept all kiwifruit—

- (a) Harvested in New Zealand after the 31st day of March 1989; and
  - (b) Intended for export (otherwise than for consumption, or sale or consumption, in Australia); and
  - (c) Delivered to a coolstore designated by the Board for the acceptance of kiwifruit on behalf of the Board.
- (2) The Board may accept any kiwifruit—
- (a) Harvested in New Zealand after the 31st day of March 1989; and
  - (b) Intended for export (otherwise than for consumption, or sale or consumption, in Australia); and
  - (c) Delivered to a packing-house agreed by their producer and the Board for the acceptance of those kiwifruit on behalf of the Board.
- (3) The Board, or a person acting on its behalf, may refuse any **[unsound]**, non-standard, or inadequately packed kiwifruit.
- (4) The Board, or a person acting on its behalf, may refuse any kiwifruit if—
- (a) They are not before the 1st day of July in the season during which they were harvested delivered to a coolstore designated by the Board for the acceptance of kiwifruit by the Board; or
  - (b) Their producer has not before the 1st day of July in the season during which they were harvested informed the person in control of the coolstore to which they are delivered (being a coolstore designated by the Board for the acceptance of kiwifruit by the Board) that they are intended for export otherwise than for consumption, or sale or consumption, in Australia.
- (5) The Board may, by notice in the *Gazette*, recommend periods for harvesting kiwifruit in any season, and—
- (a) Different periods may be recommended for different areas; and
  - (b) The Board, or a person acting on its behalf, may refuse any kiwifruit harvested in any area in that season otherwise than within the period recommended for the area.]]

This regulation was substituted for the former reg. 13A (as inserted by reg. 5 of S.R. 1988/227) by reg. 5 of S.R. 1989/50.

In subclause (3) the word "unsound" was substituted for the word "spoiled" by reg. 2 (2) of S.R. 1991/63.

**[13b. Board may buy kiwifruit—**The Board may buy—

- (a) Any kiwifruit intended for export to Australia:
- (b) Any non-standard or inadequately packed kiwifruit:
- (c) Any kiwifruit harvested outside New Zealand.

**[13c. Export of kiwifruit prohibited—**No person other than the Board or a person acting on its behalf shall export any kiwifruit otherwise than for consumption, or sale and consumption, in Australia.

**[[13CA. Board may sell on local or Australian market—**Notwithstanding that some kiwifruit the Board acquires may be intended for export (otherwise than for consumption, or sale and consumption, in Australia), it may market in New Zealand or Australia any kiwifruit it acquires.]]

This regulation was inserted by reg. 6 of S.R. 1989/50.

#### [PART 1B

#### [PAYMENTS

**[[13D. Board to make payments for kiwifruit acquired—**(1) The Board may pay for any kiwifruit it buys under regulation 13B of these regulations any price it agrees with the seller.

(2) Subject to [regulations 13DA to 13DG] of these regulations, the Board shall make for kiwifruit that become its property under regulation 13F of these regulations the appropriate payment for the time being fixed under regulation 13E of these regulations.]]

This regulation was substituted for the former reg. 13D (as substituted by reg. 5 of S.R. 1988/227) by reg. 7 (1) of S.R. 1989/50.

In subclause (2) the expression in single square brackets was substituted for the expression "regulation 13DA" by reg. 4 (2) of S.R. 1992/224.

**[[13DA. Deductions in respect of non-standard kiwifruit—**(1) Where, after any kiwifruit become the Board's property under regulation 13F of these regulations, it is discovered that they are non-standard, the Board shall compare—

(a) The sum of—

(i) Any payments it has already made in respect of the kiwifruit; and

(ii) Any costs reasonably incurred by the Board in packing, storing, or transporting the kiwifruit, or in unpacking or repacking the kiwifruit or any other kiwifruit packed with them; and

(iii) Any costs reasonably incurred by the Board in disposing of the kiwifruit; and

(b) The net proceeds (if any) received by the Board for the kiwifruit.

(2) Where the Board makes a comparison required by subclause (1) of this regulation,—

(a) If the proceeds referred to in paragraph (b) of the subclause exceed the sum referred to in paragraph (a) of the subclause, the Board shall pay only the amount of the excess to the producer of the kiwifruit concerned:

- (b) If that sum and those proceeds are equal, the Board shall make no payments (or, as the case may be, no further payments) to that producer for those kiwifruit:
- (c) If that sum exceeds those proceeds, the Board—
  - (i) Shall make no payments (or, as the case may be, no further payments) to that producer for those kiwifruit; and
  - (ii) May deduct the amount of the excess from any money otherwise payable by the Board to that producer.

**[[13DB. Deductions in respect of inadequately packed kiwifruit—**Where, after any kiwifruit (other than non-standard kiwifruit) have become the Board's property under regulation 13F of these regulations, it is discovered that they are inadequately packed, the Board may deduct from any money otherwise payable by the Board to their producer any costs reasonably incurred by the Board in unpacking or repacking them.

**[[13DC. No deductions for unsoundness in respect of certain kiwifruit—**No deductions shall be made for unsoundness in respect of—

- (a) Non-standard kiwifruit; or
- (b) Kiwifruit found to be unsound during a repacking (undertaken on the Board's behalf) of the kiwifruit with which they were packed when they became the Board's property under regulation 13F of these regulations completed after the kiwifruit were moved (without their producer's written consent) from the coolstore at which they were first received by or on behalf of the Board; or
- (c) Kiwifruit found to be unsound during a repacking that is not the first repacking of the fruit with which they were packed when they became the Board's property under regulation 13F of these regulations.

**[[13DD. Board may specify cut-off day for purposes of deductions in respect of unsound kiwifruit—**For the purposes of regulations 13DE to 13DG of these regulations, the Board may, before the 1st day of June in any season, by notice in the *Gazette* specify for the season a day during the season other than the 15th day of November.

**[[13DE. Kiwifruit found to be unsound after critical non-compliance with coolstore standard occurring on or before cut-off day—**(1) In this regulation,—

“Critical non-compliance” means an action, failure to act, circumstance, or situation, occurring or arising in a season on or before the cut-off day for that season, that is defined in a standard relating to—

- (a) Coolstores; or
- (b) Actions or operations taken or carried on in coolstores,—(being a standard endorsed under regulation 12A (1) (d) of these regulations) as a critical non-compliance with that standard:

“Notice of election”, in relation to any kiwifruit in respect of which a critical non-compliance has occurred, means written notice—

- (a) That the non-compliance has occurred; and
- (b) Of the nature and probable effect of the non-compliance; and

- (c) That the producer of the kiwifruit has 7 days within which to elect to waive the non-compliance, and continue to be eligible for incentive payments.
- (2) This subclause applies to kiwifruit and a critical non-compliance in any season if—
- (a) The non-compliance occurs, in or in respect of a part of a coolstore where the kiwifruit are stored, after they become the Board's property under regulation 13F of these regulations; and
  - (b) The Board fails or refuses, within 21 days of the occurrence of the non-compliance, to give their producer a notice of election.
- (3) Where subclause (2) of this regulation applies to any kiwifruit and a critical non-compliance,—
- (a) No deductions shall be made for unsoundness in respect of any of the kiwifruit found to be unsound during a repacking completed after the non-compliance occurred; and
  - (b) Depending on the extent to which the kiwifruit remain sound, they will still be capable of attracting higher payments fixed under regulation 13E (6) (d) of these regulations.
- (4) This subclause applies to kiwifruit and a critical non-compliance in any season if—
- (a) The non-compliance occurs, in or in respect of a part of a coolstore where the kiwifruit are stored, after they become the Board's property under regulation 13F of these regulations; and
  - (b) Within 21 days of the occurrence of the non-compliance, the Board gives the producer of the kiwifruit a notice of election; but
  - (c) Within 7 days of receiving the notice, the producer—
    - (i) Fails or refuses to give the Board notice in writing to the effect that the producer wishes to waive the non-compliance, and continue to be eligible for incentive payments; or
    - (ii) Gives the Board notice in writing to the effect that the producer wishes to rely upon the non-compliance, and forego incentive payments.
- (5) Where subclause (4) of this regulation applies to any kiwifruit and critical non-compliance,—
- (a) No deductions shall be made for unsoundness in respect of any of the kiwifruit found to be unsound during a repacking completed after the non-compliance occurred; but
  - (b) Payment shall be made for the kiwifruit as if they do not attract any of the higher payments fixed under regulation 13E (6) (d) of these regulations.
- (6) This subclause applies to kiwifruit and a critical non-compliance in any season if—
- (a) The non-compliance occurs, in or in respect of a part of a coolstore where the kiwifruit are stored, after they become the Board's property under regulation 13F of these regulations; and
  - (b) Within 21 days of the occurrence of the non-compliance, the Board gives the producer of the kiwifruit a notice of election; and
  - (c) Within 7 days of receiving the notice, the producer gives the Board notice in writing to the effect that the producer wishes to waive the non-compliance, and continue to be eligible for incentive payments.
- (7) Where subclause (6) of this regulation applies to any kiwifruit and a critical non-compliance,—

- (a) Subject to regulation 13DC of these regulations, deductions may be made in respect of any of those kiwifruit found to be unsound during a repacking completed after the non-compliance occurred (and on or before the cut-off day for the season concerned); but
- (b) Depending on the extent to which the kiwifruit remain sound, they will still be capable of attracting higher payments fixed under regulation 13E (6) (d) of these regulations.

**[[13DF. Deductions in respect of kiwifruit found to be unsound or before cut-off day—**(1) This regulation applies to all kiwifruit found to be unsound during a repacking (undertaken on the Board's behalf) of the kiwifruit with which they were packed when they became the Board's property under regulation 13F of these regulations completed on or before the cut-off day for the season in which they became the Board's property, other than—

- (a) Kiwifruit of a kind described in any of paragraphs (a) to (c) of regulation 13DC of these regulations; and
  - (b) Kiwifruit in respect of which no deductions are to be made for unsoundness by virtue of subclause (3) (a) or subclause (5) (a) of regulation 13DE of these regulations.
- (2) The Board may deduct from any money otherwise payable to the producer of any kiwifruit to which this regulation applies all or any part of the sum of the following amounts:

- (a) Any payments it has already made to the producer for them (calculated as if there has been paid for them the average price that, at the time the deduction is made, the Board has paid their producer for all the kiwifruit produced by their producer and accepted by the Board in the season in which they were accepted); and
- (b) Half of the Board's best estimate of the costs it has reasonably incurred in unpacking or repacking them or any other kiwifruit packed with them;
- (c) Any costs reasonably incurred by the Board in disposing of them (whether to their producer or otherwise).

**[[13DG. Deductions in respect of kiwifruit found to be unsound after cut-off day—**(1) This regulation applies to all kiwifruit found to be unsound during a repacking (undertaken on the Board's behalf) of the kiwifruit with which they were packed when they became the Board's property under regulation 13F of these regulations completed after the cut-off day for the season in which they became the Board's property, other than—

- (a) Kiwifruit of a kind described in any of paragraphs (a) to (c) of regulation 13DC of these regulations; and
- (b) Kiwifruit in respect of which no deductions are to be made for unsoundness by virtue of subclause (3) (a) or subclause (5) (a) of regulation 13DE of these regulations.

(2) Where the condition of kiwifruit to which this regulation applies was checked on behalf of the Board on or before the cut-off day for the season in which they became the Board's property under regulation 13F of these regulations, the Board shall make payments to their producer on the same basis as if during a repacking (undertaken on behalf of the Board) of the kiwifruit and the kiwifruit with which they were packed when they became the Board's property completed on or before that day there was found to

be unsound the proportion of those kiwifruit estimated to be unsound during the checking of their condition most recently completed on behalf of the Board before that day.

(3) Where the condition of kiwifruit to which this regulation applies was not checked on behalf of the Board on or before the cut-off day for the season in which they became the Board's property under regulation 13F of these regulations, the Board shall make payments to their producer as if none of those kiwifruit was found to be unsound.]]

Regs. 13DA to 13DG were substituted for the former reg. 13DA (as substituted by reg. 7 (1) of S.R. 1989/50 and amended by reg. 4 of S.R. 1991/63) by reg. 4 (1) of S.R. 1992/224.

**[13E. Fixing payments—**(1) Before the 1st day of May in each season, the Board shall—

- (a) Consult the Federation on payments and advances for the season; and
- (b) In the light of the consultation, fix payments to be made for the kiwifruit [[that become its property under regulation 13F]] of these regulations during the season.

(2) If before the 1st day of May the Board does not fix payments under subclause (1) of this regulation, the payments that applied during the previous season shall continue in force.

(3) Subject to subclause (4) of this regulation, if at any time during a season the Board believes that any payment in force during the season should be raised or lowered, it may with effect on and after any day during the season cancel the payment and fix a higher or lower payment in its place.

(4) The Board shall not cancel a payment and fix a lower payment in its place with effect on and after a day before the day it is fixed unless—

- (a) The Federation has approved the retroactive effect of the lower payment; and
- (b) The lower payment is not lower than the advances (if any) payable in respect of the kiwifruit to which the payment relates.

(5) Where the Board fixes a payment with effect on and after a day before the day it is fixed, it shall make appropriate consequential changes to the payments made or to be made for kiwifruit [[that have become or become its property under regulation 13F]] of these regulations during the season concerned.

[[6) Subject to subclause (6A) of this regulation, the Board may fix different payments for kiwifruit by reference to all or any of the following criteria:

- (a) The kind, variety, grade, quality, or size of the kiwifruit;
- (b) The area in which the kiwifruit are grown;
- (c) Whether the kiwifruit become the Board's property before the 1st day of July in the season in which they are harvested, or later;
- (d) The extent to which kiwifruit produced by their grower in the season concerned remain sound in storage.

(6A) Where the Board fixes different payments under subclause (6) (b) of this regulation,—

- (a) That part (if any) of the difference arising out of the differing average transport and port costs of the areas concerned shall not exceed the Board's best estimate of those differences; and
- (b) The Board shall announce publicly its best estimate of the differing average transport and port costs of the areas concerned.]]

(7) In fixing payments, the Board shall have regard to—

- (a) The desirability of maintaining the stability and efficiency of the kiwifruit industry; and
- (b) Movements in the costs of acquiring and marketing kiwifruit; and
- (c) The amounts that different kinds, varieties, grades, qualities, and sizes of kiwifruit, and kiwifruit harvested at different times, acquired or bought by the Board, and different products manufactured by the Board from kiwifruit, are realising; and
- (d) Market prospects for kiwifruit for the season concerned, including other marketing trends known to or expected by the Board; and
- (e) The present and prospective state of the Board's accounts and reserves; and
- (f) Any other matters the Board thinks relevant.

In subclause (1) (b) the expression in double square brackets was substituted for the expression "it acquires under regulation 13A (1)" by reg. 7 (2) (a) of S.R. 1989/50.

In subclause (5) the expression in double square brackets was substituted for the expression "it has acquired or acquires under regulation 13A (1)" by reg. 7 (2) (b) of S.R. 1989/50.

Subclauses (6) and (6A) were substituted for the former subclause (6) (as substituted by reg. 8 of S.R. 1989/50) by reg. 5 (1) of S.R. 1991/63.

**[[13F. When export kiwifruit become property of Board—**

(1) Where the later of the days referred to in subclause (3) of this regulation is a day before the 1st day of July in the season in which any kiwifruit were harvested, they shall (unless earlier refused under these regulations) become the Board's property on that later day.

(2) Where the later of the days referred to in subclause (3) of this regulation is a day after the 30th day of June in the season in which any kiwifruit were harvested, they shall become the Board's property (if at all) on a day agreed by their producer and the Board.

(3) The days are—

(a) The day on which the kiwifruit concerned were—

(i) [Accepted at] a coolstore designated by the Board for the acceptance of kiwifruit by the Board; or

(ii) Accepted at a packing-house agreed by their producer and the Board for the acceptance of those kiwifruit; and

(b) The day on which their producer informed the person in control of that coolstore or packing-house that they are intended for export otherwise than for consumption, or sale and consumption, in Australia.

[(4) The Board may authorise the management of any coolstore, by agreement between the management and the producer of any kiwifruit stored or to be stored there (being kiwifruit that, after becoming the Board's property under this regulation, have been found to be unsound) to—

(a) Dispose of those kiwifruit (otherwise than to the producer); or

(b) Give them to the producer.]

In subclause (3) (a) (i) the words "accepted at" were substituted for the words "delivered to" by reg. 6 (1) of S.R. 1991/63.

Subclause (4) was added by reg. 6 (2) of S.R. 1991/63.

**[[13c. When payment to be made—**Subject to regulation 13DA of these regulations, the Board shall before the end of the season during

which any kiwifruit that have become its property under regulation 13F of these regulations were harvested make full payment for the kiwifruit.]]

Regs. 13F and 13G were by reg. 9 of S.R. 1989/50 substituted for the previous regs. 13F (as substituted for the former reg. 13F by reg. 5 of S.R. 1988/227) and 13G (as substituted by the said reg. 5 and amended by reg. 7 (2) (a) of S.R. 1989/50).

## [PART II

### [FINANCIAL PROVISIONS

14. *Revoked by reg. 5 of S.R. 1988/227.*

**[14A. Board may distribute seasonal profit—**(1) After consultation with the Federation, the Board may distribute to producers [[of kiwifruit that became the Board's property under regulation 13F]] of these regulations during a season, on any basis the Board thinks fair and reasonable, all or any part of any trading profit it has made in the season.

(2) In determining whether or not to make a distribution under subclause (1) of this regulation, the Board shall take into account—

- (a) The desirability of reducing any debit balances in any of its accounts;  
or
- (b) The desirability of establishing and maintaining adequate reserve accounts; and
- (c) The current and prospective profitability and economic position of the kiwifruit growing industry.

The words in double square brackets were substituted for the former words by reg. 7 (2) (c) of S.R. 1989/50.

**[15. Financial year—**The Board's financial year is a season.

**[16. Annual report and accounts—**(1) The Board shall, as soon as is practicable after a producer asks it in writing during any season to do so, give the producer copies of its annual report and audited accounts for the previous season.

(2) The Board shall show in its annual accounts for the season ending with the 31st day of March 1989 the amount specifically spent on the promotion of kiwifruit.

**[17. Expenditure not otherwise authorised—**In any season the Board may, for any lawful purpose not otherwise authorised by the Act or these regulations, expend any sum or sums not exceeding \$2,000 in the aggregate.]

Regs. 3A to 17 were substituted for subclauses (2) to (4) of reg. 3, the former heading of Part II, and the former regs. 4 to 17 by reg. 5 of S.R. 1988/227.

18, 19. *Revoked by reg. 6 (a) of S.R. 1988/227.*

## PART III

### LICENSING OF KIWIFRUIT EXPORTERS

20–25E. *Substituted by reg. 7 of S.R. 1983/87, and revoked by reg. 7 of S.R. 1988/227.*

## [PART IV

## [GENERAL

**[26. Notices]**—Any notice the Board is required to give for the purposes of these regulations is sufficient if it—

- (a) Purports to be given by or on behalf of the Board; and
- (b) Is authenticated by an officer of the Board authorised by the Board to do so.

**[27. Board may require information]**—The Board may from time to time, by written notice to a producer, require the producer to supply information of any kind or description specified in the notice relating to—

- (a) Any aspect of the producer's actual production of kiwifruit; or
- (b) Any aspect of the producer's care or cultivation of the kiwifruit vines on the producer's orchard or orchards; or
- (c) Any aspect of the producer's expected production of kiwifruit;—and in that case the producer shall do so.

**[28. Offences]**—Every person commits an offence who—

- (a) Knowingly and without lawful excuse,—
  - (i) Acts in contravention of or fails to comply with any provision of these regulations;
  - (ii) Acts in contravention of or fails to comply with any request, requirement, demand, or notice, however described **[[ (other than a recommendation under regulation 13A (5) of these regulations) ]]**, made or given under these regulations; or
- (b) Enters into any agreement or arrangement for—
  - (i) The export to Australia (otherwise than by or on behalf of the Board) of kiwifruit intended to be transported out of Australia for sale; or
  - (ii) The transport out of Australia for sale of kiwifruit exported to Australia otherwise than by or on behalf of the Board; or
- (c) Exports any kiwifruit to Australia, or otherwise takes any action, pursuant to or in connection with any such agreement or arrangement (whether entered into in New Zealand or overseas).

In para. (a) (ii) the words in double square brackets were inserted by reg. 10 of S.R. 1989/50.

**29.** *Revoked by reg. 7 of S.R. 1988/227.*

**[30. Assets of Board]**—It is hereby acknowledged and declared that the assets of the Board belong ultimately to the producers from whom it has at any time acquired kiwifruit under regulation 13A (1) of these regulations, but are held and administered for the benefit of persons who are for the time being producers from whom it so acquires kiwifruit.]

Part IV (comprising regs. 26 to 30) was substituted for the former Part III (comprising regs. 20 to 25E) and Part IV (comprising regs. 26 to 29) by reg. 7 of S.R. 1988/227.

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## 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 Papamoia 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.

It would appear that this Schedule is now spent. The original regs. 2 and 3, which referred to wards, have been revoked and have been replaced but without any reference to wards.

Reg. 4 (1)

## [SECOND SCHEDULE

## [ELECTIONS OF PRODUCER MEMBERS

This Schedule and Appendix were substituted for the original Second and Third Schedules and Appendix to the Second Schedule, as variously amended, by reg. 11 of S.R. 1988/227.

[1. Not later than 12 weeks before the day on which the poll is to close in respect of any election (in this Schedule referred to as the closing day), the returning officer shall prepare a roll of producers.

[1A. Every producer that is a body corporate may from time to time, by written notice to the Board, nominate a person to vote on behalf of the producer in any election of producer members.

[2. So far as they are known to the returning officer, the roll shall contain the names (in alphabetical order and numbered consecutively) and addresses of all producers (other than bodies corporate) and nominees of bodies corporate.

[3. Where one of 2 or more persons is entitled to vote in respect of the production, whether joint or in common, of any ... kiwifruit, the returning officer shall enter on the roll—

- (a) The name of such one of them as is named in a notice in writing delivered to the returning officer, and signed by a majority of the persons appearing to own the kiwifruit; or
- (b) Where, at any time before the closing of the roll, an application is made in that behalf, 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 kiwifruit, the name of another of them.

The words "trays of" were omitted, as shown by points of omission, by reg. 12 of S.R. 1989/50.

[ [4. Against the name of each producer and nominee qualified to vote entered on the roll, there shall appear the number of votes (one, or in the case of a producer or nominee of a producer to whom or which clause 10A or clause 10B of this Schedule applies, 2 or 3) that each vote in fact cast by the producer or nominee will be counted as. ] ]

This clause was substituted for the former clause 4 by reg. 3 (1) of S.R. 1991/147.

[5. Where the name of any person entitled to vote by virtue of clause 1A of this Schedule is entered on the roll, the entry shall be followed by the words "appointed by [*Name of body corporate*]".

[6. Not later than 12 weeks before the closing day, the returning officer shall—

- (a) Make the roll available for public inspection during normal office hours by lodging copies at the office of the Secretary of the New Zealand Citrus and Subtropical Council Incorporated and at any 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.

[SECOND SCHEDULE—*continued*

[ELECTIONS OF PRODUCER MEMBERS—*continued*

[7. Any person may, at any time not later than 11 weeks before closing day, lodge with the returning officer a signed objection 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 nominee is on the roll, is not a producer qualified to vote:
- (b) That there is a producer (or group of 2 or more persons who are jointly producers) entitled to vote, in respect of whom or which no name is entered on the roll:
- (c) That the number of votes entered on the roll against the name of any producer is incorrect.

[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 amendment of the roll that, in the opinion of the returning officer, the circumstances require.

[9. The roll shall not be amended later than 11 weeks before the closing day.

10. *Revoked by reg. 11 of S.R. 1988/227.*

[[10A. Every vote cast by, or by a nominee of, a producer who or that, in the previous season, produced more than 37 tonnes but not more than 111 tonnes of kiwifruit intended for export that were supplied to the Board shall be counted as if it is 2 votes.

10B. Every vote cast by, or by a nominee of, a producer who or that, in the previous season, produced more than 111 tonnes of kiwifruit intended for export that were supplied to the Board shall be counted as if it is 3 votes.

10c. Except as provided in clauses 10A and 10B of this Schedule, every vote cast shall be counted as one vote.]]

Clauses 10A to 10c were substituted for the former clauses 10A to 10c by reg. 3 (2) of S.R. 1991/147.

[11. If an orchard is occupied by 2 or more persons jointly or in common, only one of them is entitled to vote.

[12. A producer whose name is entered on the roll as a producer and also as a nominee of a body corporate may vote in each capacity; but the weight of kiwifruit produced in one capacity shall not be taken into account in assessing voting capacity in another.

[13. No person is eligible for election unless the person's name is on the roll, and the person has—

- (a) Been nominated in writing by 2 or more producers whose names appear on the roll as producers of at least 18.5 tonnes of kiwifruit; and

[SECOND SCHEDULE—*continued*

[ELECTIONS OF PRODUCER MEMBERS—*continued*

- (b) By writing in the prescribed form or by letter, telegram, telex, or facsimile transmission to the returning officer, accepted nomination; and
- (c) Within 7 days of accepting nomination, paid the returning officer a deposit of \$100.

[14. The form of nomination shall be in or to the effect of form 1 in the Appendix to this Schedule, or made out in such form as in the opinion of the returning officer is sufficient to identify the candidate and at least 2 nominators.

[14A. No later than 10 weeks before the closing day, the returning officer shall give public notice that nominations open on that day.

[15. No nomination received after noon on the day 8 weeks before the closing day shall be accepted.

[16. 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.

[17. 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.

[18. Not later than 4 weeks before the closing day the returning officer shall forward by post, addressed to the persons whose names are on the roll at the address as appearing on the roll or to any other address nominated by the persons, voting papers bearing on the face consecutive numbers . . . . With the voting paper sent to the voter shall be sent an envelope addressed to the returning officer and bearing on its face the appropriate consecutive number.

The words "and the number of votes to which each person is entitled" were omitted, as shown by points of omission, by reg. 3 (3) of S.R. 1991/147.

[19. If satisfied that a voting paper has been lost or not delivered, the returning officer may issue another in its place; and shall, in that case, institute whatever checks the returning officer considers appropriate to ensure that whichever paper is returned, only one is included in the count of votes.

[[20. A voter shall vote by—

- (a) Determining how many candidates the voter wishes to vote for; and
- (b) Assigning votes to that number of candidates by writing the digits "1", "2", "3", etc., in the boxes (next to the candidates' names on the voting paper) in the order the voter prefers.]]

This clause was substituted for the former clause 20 by reg. 3 (4) of S.R. 1991/147.

21. *Revoked by reg. 11 of S.R. 1988/227.*

[SECOND SCHEDULE—*continued*][ELECTIONS OF PRODUCER MEMBERS—*continued*]

[22. No voting paper is valid unless received by the returning officer in the envelope sent to the voter with it.

[23. No voting paper is valid—

- (a) If not received by the returning officer by noon on the closing day; or
- (b) If anything not authorised by this Schedule is so written or marked on it that the voter may be identified; or
- (c) If the number of candidates for whom the voter has voted exceeds the number of persons to be elected; or
- (d) If it does not, in the opinion of the returning officer, indicate the candidate or candidates for whom the voter desires to vote.

[24. Any candidate for election may, by signed notice addressed to the returning officer and delivered not less than 2 clear days before the closing day, appoint a scrutineer for the purposes of the poll.

[25. 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.

[26. Every scrutineer who, in breach of the declaration, directly or indirectly discloses any fact learned at any election commits an offence against these regulations.

[27. Forthwith after noon on the closing day 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 reject any envelope not appearing to be issued in connection with the election or not appearing to contain the genuine voting paper of a person entitled to vote.

[28. The returning officer shall then open the remaining envelopes, reject every voting paper the returning officer thinks invalid, and take the following steps in relation to the remaining papers:

- (a) Ascertain the number of first-preference votes each candidate has received and the total number of first-preference votes cast;
- (b) Divide that total number by a number that is greater by 1 than the number of vacancies to be filled;
- (c) Subtract any fractional remainder from, and add 1 to, the quotient, to obtain a vote quota;
- (d) Declare to be elected every candidate who has received a number of first-preference votes that is not less than the vote quota.

[29. Where, after one or more candidates are declared elected under clause 28 (d) or clause 30 (h) of this Schedule or paragraph (e) of this clause, there are still vacancies to be filled, the returning officer shall take the following steps:

- (a) In respect of each of those one or more candidates whose total votes received (that is to say first-preference votes under clause 28 (a) of this Schedule or resulting sum under clause 30 (g) of this Schedule or paragraph (d) of this clause) is more than the vote quota (in this clause referred to as an above-quota candidate), divide—

[SECOND SCHEDULE—*continued*

[ELECTIONS OF PRODUCER MEMBERS—*continued*

- (i) The difference between that total and the vote quota; by
  - (ii) That total,—
- and treat the resulting quotient (correct to 2 decimal places) as the transfer value of that difference:
- (b) Of the voting papers of all voters who cast a first-preference vote for any above quota candidate, put aside those papers that do not show any preference for an unelected candidate over any other unelected candidate:
  - (c) From the remaining papers, in respect of each above quota candidate, multiply—
    - (i) The number of votes cast for each unelected candidate as the next-preferred candidate after the candidates already elected and any candidates eliminated from consideration under clause 30 (d) of this Schedule; and
    - (ii) The transfer value of those votes:
  - (d) Add each resulting product to the number of first-preference votes the next-preferred candidate received (as from time to time added to in accordance with this Schedule):
  - (e) If the resulting sum for any unelected candidate is not less than the quota, declare the candidate to be elected.

[[30. Where—

- (a) This clause, or clause 28 or clause 29 of this Schedule, has been complied with without the election of a candidate or further candidate; and
  - (b) The number of vacancies still to be filled is less by 2 or more than the number of unelected candidates (other than candidates eliminated from consideration under paragraph (d) of this clause) remaining—
- the returning officer shall—
- (c) Take the voting papers of the voters who cast their first-preference votes for—
    - (i) The unelected candidate who has the lowest resulting sum under clause 29 (d) of this Schedule; or
    - (ii) Where the lowest such sum is shared by 2 or more unelected candidates, that one of them who received the lowest number of first-preference votes; or
    - (iii) Where the lowest such sum is shared by 2 or more candidates who also share the lowest number of first-preference votes, one of them chosen by the returning officer by lot:
  - (d) Eliminate that unelected candidate from further consideration:
  - (e) Put aside any of those papers that do not show a preference for any unelected candidate still in consideration over any other such unelected candidate:
  - (f) From the remaining papers, count, in respect of each such unelected candidate, the number of votes cast for that candidate as the next preferred candidate (disregarding first-preference votes and votes cast for elected candidates):

[SECOND SCHEDULE—*continued*[ELECTIONS OF PRODUCER MEMBERS—*continued*

- (g) In respect of each such candidate, add that number to the number of first-preference votes the candidate received (as from time to time added to in accordance with this Schedule);
- (h) If the resulting sum is not less than the quota, declare the candidate to be elected.

## [[31. Where—

- (a) Clause 28 or clause 29 or clause 30 of this Schedule has been complied with without the election of a candidate or further candidate; and
- (b) The total number of vacancies still to be filled is less by only one than the number of unelected candidates (other than candidates eliminated from consideration under clause 30 (d) of this Schedule) remaining—

the returning officer shall eliminate from consideration—

- (c) The unelected candidate who has the lowest resulting sum under clause 29 (e) of this Schedule; or
- (d) Where the lowest such sum is shared by 2 or more unelected candidates, that one of them who received the lowest number of first-preference votes; or
- (e) Where the lowest such sum is shared by 2 or more candidates who also share the lowest number of first-preference votes, one of them chosen by the returning officer by lot,—

and declare the other unelected candidate or candidates to be elected.]] ]

32. *Revoked by reg. 3 (5) of S.R. 1991/147.*

Clauses 28 to 31 were substituted for the former clauses 28 to 32 (as substituted by reg. 11 of S.R. 1988/227) by reg. 3 (5) of S.R. 1991/147.

[SECOND SCHEDULE—continued

[APPENDIX

[Form 1

Clause 16

[NOMINATION OF CANDIDATE FOR ELECTION TO NEW ZEALAND KIWIFRUIT  
MARKETING BOARD

To the Returning Officer,  
New Zealand Kiwifruit Marketing Board

We, the undersigned voters, hereby nominate [*Full name*], of [*Residence and  
occupation*], as a candidate at the election of members of the New Zealand  
Kiwifruit Marketing Board.

Dated at ..... this ..... day of ..... 19.... .

Signatures of voters: .....

Full name of voters: .....

Residence of voters: .....

I, [*Full name*], hereby consent to be nominated.

Signature of Candidate:.....

—

[SECOND SCHEDULE—continued

[APPENDIX—continued

[ [Form 2

[ [VOTING PAPER

Clause 19

[ [NEW ZEALAND KIWIFRUIT MARKETING BOARD

Election of ..... members of the Board:

- Craig, John
- Stanton, Albert
- Hay, Frank
- Wood, John
- Maxwell, John

DIRECTIONS TO VOTERS:

You may vote for any number of candidates not exceeding .....

Vote by placing the numbers “1”, “2”, etc. in the boxes next to the names of the candidates you wish to vote for, in the order in which you prefer them.

If anything not authorised by the Kiwifruit Marketing Regulations 1977 is written or marked on this paper by which you can be identified, it is invalid.

After completing this paper, send it to the Returning Officer, in the enclosed addressed official envelope, so as to be received by noon on the .....day of ..... 19.... .

**A voting paper not sent in the official envelope is invalid.]]**

This form was substituted for the former Form 2 (as substituted by reg. 11 of S.R. 1988/227) by reg. 4 of S.R. 1991/147.



**[SECOND SCHEDULE—continued**

**[APPENDIX—continued**

Clause 28

**[Form 3**

**[DECLARATION OF SCRUTINEER**

I, *[Full name]*, scrutineer for *[Full name of candidate]*, a candidate for the present election of members of the New Zealand Kiwifruit Marketing Board hereby solemnly declare that I will not, directly or indirectly, disclose any fact coming to my knowledge at the election whose disclosure would in any way defeat the secrecy of the poll.

Signature: .....

Declared and signed before me this ..... day of ..... 19..

...

.....  
**Returning Officer.]**

Forms 1 to 3 were substituted by reg. 11 of S.R. 1988/227 for the original forms, as variously amended. A new Form 2 has been substituted by reg. 4 of S.R. 1991/147.



Reg. 4 (2)

**THIRD SCHEDULE**

*Revoked by reg. 11 of S.R. 1988/227.*

**P. G. MILLEN,**  
Clerk of the Executive Council.



**THE KIWIFRUIT MARKETING REGULATIONS 1977,  
AMENDMENT NO. 4 (REPRINT)**

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RONALD DAVISON  
Administrator of the Government

ORDER IN COUNCIL

At Wellington this 28th day of September 1988

Present:

HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL  
PURSUANT to section 3 of the Primary Products Marketing Act 1953, His  
Excellency the Administrator of the Government, acting by and with the  
advice and consent of the Executive Council, hereby makes the following  
regulations.

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REGULATIONS

**1. Title and commencement**—(1) These regulations may be cited as the Kiwifruit Marketing Regulations 1977, Amendment No. 4, and shall be read together with and deemed part of the regulations known immediately before the commencement of this regulation as the Kiwifruit Marketing Licensing Regulations 1977 (hereinafter referred to as the principal regulations).

(2) Regulations 6 and 8 of these regulations shall come into force on the 1st day of April 1989.

(3) The rest of these regulations shall come into force on the day after the date of their notification in the *Gazette*.

Date of notification in *Gazette*: 29 September 1988.

These regulations were confirmed (as required by s. 4 of the Primary Products Marketing Act 1953) by s. 2(a) of the Primary Products Marketing (Regulations Confirmation) Act 1988.

*2. This regulation amended reg. 1 (1) of the principal regulations.*

*3. This regulation substituted new regs. 2 and 2A and heading that follows reg. 2A for the original regulation 2 and the heading that followed it.*

*4. (1) This subclause amended reg. 3 (1) of the principal regulations.*

(2) Notwithstanding the change of name effected by subclause (1) of this regulation, it is hereby declared that the Board is the same body as that originally constituted as the Kiwifruit Marketing Licensing Authority, and known immediately before the commencement of this regulation as the New Zealand Kiwifruit Authority.

5. This regulation substituted new regs. 3A to 17 and headings for the original subclauses (2) to (4) of reg. 3, the heading of Part II, and regulations 4 to 17.

**6. Levy abolished**—The following regulations are hereby revoked:

- (a) Regulations 18 and 19 of the principal regulations:
- (b) The Kiwifruit Marketing Licensing Regulations 1977, Amendment No. 1.

7. This regulation substituted a new Part IV for the original Parts III and IV.

**8. Cancellation of licences**—Every exporter's licence under the former Part III of the principal regulations that did not expire on or before the commencement of this regulation is hereby cancelled on that commencement.

**9. Transitional**—(1) The members of the Board holding office under regulation 3 (2) (a) (iii) of the principal regulations immediately before the commencement of this regulation shall go out of office on that commencement.

(2) The other elected members of the Board then holding office shall go out of office on the 31st day of October 1988.

(3) The going out of office under this regulation of elected members of the Board does not create extraordinary vacancies; but an election shall be held to elect members of the Board to hold office under paragraphs (a) and (b) of regulation 3A (1) of the principal regulations; and the following provisions shall apply to the election:

- (a) The roll shall be available for inspection, and notice shall be given in the *Gazette* and newspapers, as soon as is practicable after the commencement of this regulation:
- (b) Both the roll and nominations shall close on the 10th day of October 1988:
- (c) Voting papers shall be sent out no later than the 17th day of that month:
- (d) Closing day for the poll shall be the 31st day of that month:
- (e) The election shall otherwise be held in accordance with the Second Schedule to the principal regulations.

(4) The Board may, with the prior written agreement of the Minister, appoint (for their commercial expertise) up to 3 persons to be members of the Board after the commencement of this regulation; and any persons appointed shall—

- (a) Go out of office on the 31st day of October 1988; but
- (b) Be eligible for re-appointment under regulation 3A (1) (d) of the principal regulations.

(5) The revocation of regulations 18 and 19 of the principal regulations shall neither—

- (a) Require the Board to repay any amount of kiwifruit levy paid to it; nor
- (b) Affect the right of the Board to recover any amount of kiwifruit levy that is unpaid.

(6) For the purposes of this regulation, kiwifruit are 1988 kiwifruit if [they were harvested before the commencement of this regulation, and immediately before that commencement],—

- (a) They were owned by, in the possession of, or under the control of, a person who then held an exporter's licence under the former

Part III of the principal regulations (hereafter in this regulation referred to as an existing exporter); or

(b) They were in the possession or under the control of the producer who grew them; and there was then in existence a contract between the producer and an existing exporter (being a contract entered into before the 26th day of September 1988) for the exporter to export them.

(7) Notwithstanding anything in the principal regulations, but without limiting or affecting any other enactment or rule of law,—

(a) Any person may within New Zealand sell any 1988 kiwifruit for any purpose or with any intention:

(b) Any existing exporter may export any 1988 kiwifruit.

In subclause (6) the words in square brackets were substituted for the original words by reg. 11 of S.R. 1989/50.

**10. Revocations**—The following regulations are hereby revoked:

(a) Regulations 2 to 6, and 11, of the Kiwifruit Marketing Licensing Regulations 1977, Amendment No. 1:

(b) The Kiwifruit Marketing Licensing Regulations 1977, Amendment No. 2:

(c) The Kiwifruit Marketing Licensing Regulations 1977, Amendment No. 3.

**11. New Schedule substituted**—The principal regulations are hereby amended by revoking the Second and Third Schedules and the Appendix to the Second Schedule, and substituting the schedule and appendix set out in the Schedule to these regulations.

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SCHEDULE

Reg. 11

NEW SECOND SCHEDULE AND APPENDIX

*Reprinted as the Second Schedule and Appendix to the principal regulations, where they appear in this reprint.*

C. J. HILL,  
Acting for Clerk of the Executive Council.

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**THE KIWIFRUIT MARKETING REGULATIONS 1977,  
AMENDMENT NO. 5 (REPRINT)**

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PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 6th day of March 1989

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 3 of 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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REGULATIONS

**1. Title and commencement**—(1) These regulations may be cited as the Kiwifruit Marketing Regulations 1977, Amendment No. 5, and shall be read together with and deemed part of the Kiwifruit Marketing Regulations 1977 (hereinafter referred to as the principal regulations).

(2) This regulation and regulation 9 of these regulations shall come into force on the day after the date of their notification in the *Gazette*.

(3) Subject to subclause (2) of this regulation, these regulations shall come into force on the 28th day after the date of their notification in the *Gazette*.

Date of notification in the *Gazette*: 7 March 1989.

These regulations were confirmed (as required by s. 4 of the Primary Products Marketing Act 1953) by s. 4 (1) (a) of the Subordinate Legislation (Confirmation and Validation) Act 1989.

**2.** *Revoked by reg. 2 (3) of S.R. 1991/63.*

**3.** (1) *This subclause amended reg. 12B of the principal regulations.*

(2) *This subclause added subclause (2) to reg. 12B of the principal regulations.*

**4.** *This regulation amended reg. 12c (b) of the principal regulations.*

**5.** *This regulation substituted a new regulation for reg. 13A of the principal regulations.*

**6.** *This regulation inserted reg. 13CA in the principal regulations.*

**7.** (1) *This subclause substituted new regs. 13D and 13DA for reg. 13D of the principal regulations.*

(2) (a) *This paragraph amended regs. 12A (1) (b), 13E (1) (b) and 13G of the principal regulations.*

(b) *This paragraph amended reg. 13E (5) of the principal regulations.*

(c) *This paragraph amended reg. 14A (1) of the principal regulations.*

**8.** *Revoked by regulation 5 (2) of S.R. 1991/63.*

**9.** *This regulation substituted new regulations for the former regs. 13F and 13G of the principal regulations.*

**10.** *This regulation amended reg. 28 (a) (ii) of the principal regulations.*

**11.** *This regulation amended reg. 9 (6) of S.R. 1988/227.*

**12.** *This regulation amended clause 3 of the Second Schedule to the principal regulations.*

MARIE SHROFF,  
Clerk of the Executive Council.

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**THE KIWIFRUIT MARKETING REGULATIONS 1977,  
AMENDMENT NO. 6 (REPRINT)**

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CATHERINE A. TIZARD, Governor-General

**ORDER IN COUNCIL**

At Wellington this 15th day of April 1991

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 3 of the Primary Products Marketing Act 1953, Her 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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**REGULATIONS**

**1. Title and commencement**—(1) These regulations may be cited as the Kiwifruit Marketing Regulations 1977, Amendment No. 6, and shall be read together with and deemed part of the Kiwifruit Marketing Regulations 1977 (hereinafter referred to as the principal regulations).

(2) These regulations shall come into force on the 28th day after the date of their notification in the *Gazette*.

Date of notification in the *Gazette*: 18 April 1991.

2. (1) This subclause substituted in regulation 2 of the principal regulations, new definitions of the terms "inadequately packed", "non-standard", and "unsound", in their appropriate alphabetical order, for the former definitions of the terms "inadequately packed", "kiwifruit standards", and "non-standard".

(2) This subclause amended reg. 13A (3) of the principal regulations.

(3) Regulation 2 of the Kiwifruit Marketing Regulations 1977, Amendment No. 5, is hereby consequentially revoked.

3. (1) This subclause substituted new paras. (d) and (e) for the former para. (d) (as substituted by reg. 5 of S.R. 1988/227) of reg. 12A (1) of the principal regulations.

(2) This subclause inserted subclause (1A) in reg. 12A of the principal regulations.

(3) Notwithstanding regulation 12A (1A) of the principal regulations (as inserted by subclause (2) of this regulation), the establishment of a standard under regulation 12A (1) (e) of the principal regulations within 28 days of the commencement of these regulations shall have immediate effect.

4. Revoked by reg. 4 (3) of S.R. 1992/224.

5. (1) This subclause substituted new subclauses (6) and (6A) for subclause (6) of reg. 13E of the principal regulations.

(2) Regulation 8 of the Kiwifruit Marketing Regulations 1977, Amendment No. 5, is hereby consequentially revoked.

6. (1) This subclause amended reg. 13F (3) (a) (i) of the principal regulations.

(2) This subclause added subclause (4) to reg. 13F of the principal regulations.

MARIE SHROFF,  
Clerk of the Executive Council.

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**THE KIWIFRUIT MARKETING REGULATIONS 1977,  
AMENDMENT NO. 7 (REPRINT)**

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CATHERINE A. TIZARD, Governor-General

**ORDER IN COUNCIL**

At Wellington this 6th day of August 1991

Present:

THE HON. D. C. MCKINNON PRESIDING IN COUNCIL

PURSUANT to section 3 of the Primary Products Marketing Act 1953, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.



**THE KIWIFRUIT MARKETING REGULATIONS 1977,  
AMENDMENT NO. 8 (REPRINT)**

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CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 10th day of August 1992

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 3 of the Primary Products Marketing Act 1953, Her 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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REGULATIONS

**1. Title and commencement**—(1) These regulations may be cited as the Kiwifruit Marketing Regulations 1977, Amendment No. 8, and shall be read together with and deemed part of the the Kiwifruit Marketing Regulations 1977 (hereinafter referred to as the principal regulations).

(2) These regulations shall come into force on the 28th day after the date of their notification in the *Gazette*.

Date of notification in the *Gazette*: 13 August 1992.

**2.** *This regulation inserted the definitions of the terms “coolstore” and “cut-off day” in reg. 2 of the principal regulations.*

**3.** *This regulation inserted subclause (1B) in reg. 12A of the principal regulations.*

**4.** (1) *This subclause substituted new regs. 13DA to 13DG for the former reg. 13DA in the principal regulations.*

(2) *This subclause amended reg. 13D (2) of the principal regulations.*

(3) Regulation 4 of the Kiwifruit Marketing Regulations 1977, Amendment No. 6, is hereby consequentially revoked.

MARIE SHROFF,  
Clerk of the Executive Council.

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