



**THE KIWIFRUIT MARKETING REGULATIONS 1977,
AMENDMENT NO. 10**

CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 1st day of March 1993

Present:

THE HON. DOUG KIDD 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.

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Kiwifruit Marketing Regulations 1977, Amendment No. 10, 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 day after the date of their notification in the *Gazette*.

2. Board to make payments for kiwifruit it acquires—(1) Regulation 13D of the principal regulations (as substituted by regulation 7 (1) of the Kiwifruit Marketing Regulations 1977, Amendment No. 5) is hereby amended by revoking subclause (2) (as amended by regulation 4 (2) of the

*S.R. 1977/281 (Reprinted with Amendments Nos 1 to 8: 1992/813)
Amendment No. 9: S.R. 1992/844

Kiwifruit Marketing Regulations 1977, Amendment No. 8), and substituting the following subclause:

“(2) Subject to regulations 13DA to 13DH, and subclauses (5) and (6) of regulation 13E, of these regulations, the Board shall pay for kiwifruit that become its property under regulation 13F of these regulations the appropriate price for the time being (as the case may be)—

“(a) Fixed under subclause (1) (b) or subclause (3); or

“(b) Continuing in force under subclause (2),—
of regulation 13E of these regulations.”

(2) After the commencement of these regulations, the principal regulations shall have effect as if every payment fixed under subclause (1) (b) or subclause (3) of regulation 13E of these regulations before that commencement is a price so fixed.

3. Fixing prices—(1) The principal regulations are hereby amended by revoking regulation 13E, (as substituted by regulation 5 of the Kiwifruit Marketing Regulations 1977, Amendment No. 4 and amended by regulation 7 (2) of the Kiwifruit Marketing Regulations 1977, Amendment No. 5 and regulation 5 (1) of the Kiwifruit Marketing Regulations 1977, Amendment No. 6), and substituting the following regulation:

“13E. (1) Before the 1st day of May in each season, the Board shall—

“(a) Consult the Federation on; and

“(b) In the light of the consultation, fix,—
prices to be paid for the kiwifruit that during the season become its property under regulation 13F of these regulations.

“(2) If before the 1st day of May in any season the Board does not fix a price to be paid for kiwifruit of any kind or description that during the season become its property under regulation 13F of these regulations,—

“(a) The price in force at the end of the previous season for kiwifruit of that kind or description shall continue in force; but

“(b) The Board may cancel it, and fix a higher or lower price in its place, under subclause (3) of this regulation.

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

“(4) The Board shall not cancel a price and fix a lower price in its place with effect on and after a day before the day on which it is fixed unless the Federation has approved the retroactive effect of the lower price.

“(5) Where the Board has cancelled a price and fixed a higher or lower price in its place, it shall increase or decrease accordingly the number or size (or both) of the payments it makes to producers for kiwifruit of the kind or description to which the price relates that during the season concerned have already become its property, or later become its property, under regulation 13F of these regulations.

“(6) Where, after the 31st day of March 1993,—

“(a) The Board cancels a price and fixes a lower price in its place; and

“(b) The lower price is less than the total of the payments that the Board has (before or after fixing the lower price) paid to a producer in respect of kiwifruit of the kind or description to which the price relates that have become its property during the season concerned under regulation 13F of these regulations,—

the Board may at any time after fixing the lower price deduct from any money otherwise payable to the producer, or in any Court of competent jurisdiction recover from the producer, all or any part of the difference between the total and the price.

“(7) Subject to subclause (8) of this regulation, the Board may fix different prices 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 producer in the season concerned remain sound in storage.

“(8) Where the Board fixes different prices under subclause (7) (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 the differences in those costs; and

“(b) The Board shall announce publicly its best estimate of the differing average transport and port costs of those areas.

“(9) In fixing prices for a season, 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—

“(i) Different kinds, varieties, grades, qualities, and sizes of kiwifruit, and kiwifruit harvested at different times; and

“(ii) Different products manufactured from kiwifruit,—
are realising; and

“(d) Market prospects for kiwifruit for the season, 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, including (for the avoidance of doubt) the extent to which, in the Board’s opinion, it is necessary or desirable for the Board to repay, out of the payments it receives for kiwifruit that during the season become its property under regulation 15F of these regulations, any indebtedness incurred by the Board in any earlier season.”

(2) Regulation 12A (1) (b) of the principal regulations (as substituted by regulation 5 of the *Kiwifruit Marketing Regulations 1977, Amendment No. 4*) is hereby consequentially amended by omitting the word “payments”, and substituting the word “prices”.

(3) Regulation 13DE of the principal regulations (as substituted by regulation 4 (1) of the *Kiwifruit Marketing Regulations 1977, Amendment No. 8*) is hereby consequentially amended—

(a) By omitting from the definition in subclause (1) of the term “notice of election” the words “incentive payments”, and substituting the words “prices higher than they would otherwise be by virtue of the extent to which the kiwifruit remain sound in storage (hereafter in this regulation referred to as incentive prices)”; and

- (b) By omitting from subclauses (3) (b) and (7) (b) the words “higher payments fixed under regulation 13E (6) (d) of these regulations”, and substituting in each case the words “incentive prices”; and
 - (c) By omitting from subclause (5) (b) the words “any of the higher payments fixed under regulation 13E (6) (d) of these regulations, and substituting the words “incentive prices”; and
 - (d) By omitting from subclauses (4) (c) (i), (4) (c) (ii), and (6) (c) the word “payments”, and substituting in each case the word “prices”.
- (4) Regulation 7 (2) of the Kiwifruit Marketing Regulations 1977, Amendment No. 5 is hereby consequentially amended by omitting the expression “, 13E (1) (b),”.

(5) The following provisions are hereby consequentially revoked:

- (a) Regulation 7 (2) (b) of the Kiwifruit Marketing Regulations 1977, Amendment No. 5;
- (b) Regulation 5 of the Kiwifruit Marketing Regulations 1977, Amendment No. 6.

(6) Notwithstanding subclause (4) of regulation 13E of the principal regulations (as substituted by subclause (1) of this regulation), the Board shall not before the 1st day of April 1993 cancel a price and fix a lower price in its place unless the lower price is not lower than the advances (if any) payable in respect of the kiwifruit to which the payment relates.

4. Price to be paid before end of season—The principal regulations are hereby consequentially amended by revoking regulation 13G (as substituted by regulation 9 of the Kiwifruit Marketing Regulations 1977, Amendment No. 5), and substituting the following regulation:

“13G. Before the end of the season during which any kiwifruit become its property under regulation 13F of these regulations, the Board shall pay, in full, the price required by regulation 13D (2) of these regulations to be paid for them.”

MARIE SHROFF,
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, which come into force the day after notification in the *Gazette*, amend in 2 respects the Kiwifruit Marketing Regulations 1977.

First, the word "price" is substituted for the word "payment" in some provisions. At present, "payment" is used in the regulations in 2 ways: sometimes it means the amount that the Kiwifruit Marketing Board has finally decided should be paid to growers for kiwifruit; and sometimes it means an amount (not necessarily a final amount) actually paid by the Board. This has proved confusing; and the amendments substitute "price" for "payment" whenever a final amount is meant. These amendments are not intended to have any substantive effect.

Secondly, regulation 13E, which relates to the Board's powers to fix prices (as they are now to be called) for the kiwifruit it acquires, is replaced with an amended regulation. As well as using the word "price" in place of the word "payment" in some provisions, the amended regulation has the effect that—

- (a) In future, all payments to producers will be payments; and (except in so far as advances may already have been made) there will be no reference to "advances";
- (b) As from 1 April 1993 (the commencement of the 1993/1994 season), the Board's power to fix decreased prices retroactively is modified by the omission of the requirement that prices must not be decreased to a level below the sum of advances already made;
- (c) As from 1 April 1993 the Board will have the power to recover from producers (by deduction from other money payable to producers, or by Court proceedings) any amount by which total payments made to producers exceed decreased prices;
- (d) In fixing prices, the Board is required to take into account the need to repay existing indebtedness.

The Board will still be required to obtain the approval of the Fruitgrowers Federation to the retroactive fixing of decreased prices.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 4 March 1993.

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