



**THE KIWIFRUIT MARKETING REGULATIONS 1977,
AMENDMENT NO. 5**

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.

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*.

2. Interpretation—Regulation 2 of the principal regulations (as substituted by regulation 3 of the Kiwifruit Marketing Regulations 1977,

*S.R. 1977/281

Amendment No. 1: S.R. 1980/261

Amendment No. 2: (Revoked by S.R. 1988/227)

Amendment No. 3: (Revoked by S.R. 1988/227)

Amendment No. 4: S.R. 1988/227

Amendment No. 4) is hereby amended by adding to the definition of the term "non-standard" the words "not being standards relating to packing or grading".

3. Review of Board's operations—(1) Regulation 12b of the principal regulations (as substituted by regulation 5 of the Kiwifruit Marketing Regulations 1977, Amendment No. 4) is hereby amended by omitting the words "there shall at the expense in all respects of the Board, a person or agency appointed for the purpose by the Minister shall", and substituting the words "the Minister shall appoint a person or agency to".

(2) The said regulation 12b is hereby further amended by adding, as subclause (2), the following subclause:

"(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."

4. Board has powers of natural person—Regulation 12c (b) of the principal regulations (as substituted as aforesaid) is hereby amended by omitting the word "or" where it thirdly appears, and substituting the word "and".

5. Board to acquire export kiwifruit—The principal regulations are hereby amended by revoking regulation 13A (as substituted as aforesaid), and substituting the following regulation:

"13A. (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 spoiled, 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.”

6. Board may sell on local or Australian market—The principal regulations are hereby amended by inserting after regulation 13C (as inserted as aforesaid) the following regulation:

“13CA. 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.”

7. New regulations substituted—(1) The principal regulations are hereby amended by revoking regulation 13D (as substituted as aforesaid), and substituting the following regulations:

“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 regulation 13DA 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.

“13DA. **Deductions and recoveries**—(1) Where, after any kiwifruit become the Board’s property, 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 (whether in respect of those kiwifruit or otherwise howsoever).

“(3) Where, after any kiwifruit become the Board’s property, it is discovered that they are not non-standard but are inadequately packed,

the Board may deduct from any money otherwise payable by the Board to the producer concerned (whether in respect of those kiwifruit or otherwise howsoever) any costs reasonably incurred by the Board in unpacking and repacking them.

“(4) Where, after any kiwifruit (other than non-standard kiwifruit) become the Board’s property in any season, it is discovered that some or all of them are spoiled, the following provisions shall apply:

“(a) The Board shall in respect of those kiwifruit designate a month in respect of which the amount of spoilage is to be ascertained:

“(b) During the month the Board shall ascertain (as a percentage) how many of those kiwifruit are spoiled (otherwise than as a result of negligence occurring after they become the property of the Board):

“(c) The Board may deduct from any money otherwise payable by the Board to the producer concerned (whether in respect of those kiwifruit or otherwise howsoever) a proportion of the payment that would otherwise be made for those kiwifruit calculated in accordance with the formula—

$$\frac{p(s - o)}{100 - o}$$

where ‘p’ is the payment that would otherwise be made, ‘s’ is the percentage ascertained in respect of those kiwifruit, ‘o’ is the overall proportion (expressed as a percentage) of spoilage ascertained by the Board in the month concerned in respect of kiwifruit that became the property of the Board in the season concerned, and ‘s’ exceeds ‘o’.

“(5) The Board may in any Court of competent jurisdiction recover from any producer, as a debt due to the Board, any amount that the Board is authorised by this regulation to deduct from money otherwise payable by the Board to the producer.”

(2) The principal regulations are hereby consequentially amended—

(a) By omitting from regulations 12A (1) (b), 13E (1) (b), and 13G (as substituted as aforesaid) the words “it acquires under regulation 13A (1)”, and substituting, in each case, the words “that become its property under regulation 13F”; and

(b) By omitting from regulation 13E (5) (as substituted as aforesaid) the words “it has acquired or acquires under regulation 13A (1)”, and substituting the words “that have become or become its property under regulation 13F”; and

(c) By omitting from regulation 14A (1) (as substituted as aforesaid) the words “from whom it acquired kiwifruit under regulation 13A (1)”, and substituting the words “of kiwifruit that became the Board’s property under regulation 13F”.

8. Fixing payments—Regulation 13E of the principal regulations (as substituted as aforesaid) is hereby amended by revoking subclause (6), and substituting the following subclause:

“(6) The Board may fix different payments for kiwifruit by reference to all or any of the following criteria:

“(a) The kind, variety, grade, quality, and size of the kiwifruit:

“(b) The area in which the kiwifruit are grown:

“(c) Whether the kiwifruit become the property of the Board before the 1st day of July in the season in which they were harvested, or later.”

9. New regulations substituted—The principal regulations are hereby amended by revoking regulations 13F and 13G (as substituted as aforesaid), and substituting the following regulations:

“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) Delivered to 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.

“13G. **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.”

10. Offences—Regulation 28 of the principal regulations (as substituted by regulation 7 of the Kiwifruit Marketing Regulations 1977, Amendment No. 4) is hereby amended by inserting in paragraph (a) (ii), after the word “described”, the words “(other than a recommendation under regulation 13A (5) of these regulations)”.

11. Transitional—Regulation 9(6) of the Kiwifruit Marketing Regulations 1977, Amendment No. 4 is hereby amended by omitting the words “, immediately before the commencement of this regulation”, and substituting the words “they were harvested before the commencement of this regulation, and immediately before that commencement”.

12. Amendment to Second Schedule—Clause 3 of the Second Schedule to the principal regulations (as substituted by regulation 11 of the Kiwifruit Marketing Regulations 1977, Amendment No. 4) is hereby amended by omitting the words “trays of”.

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, regulations 1 and 9 of which come into force the day after their notification in the *Gazette* and the rest of which come into force 28 days after their notification in the *Gazette*, have several effects.

First, they amend the provisions of the principal regulations relating to the kiwifruit that the Board is obliged to accept, the circumstances in which they are required to be accepted, and the point at which kiwifruit become the Board's property.

Secondly, they provide expressly that the Board may market kiwifruit in New Zealand or Australia, even if the kiwifruit were acquired on the basis that they were intended for export otherwise than to Australia.

Thirdly, they empower the Board to make deductions from payments to producers, or recover amounts from producers, where kiwifruit becomes the Board's property and is later found to be spoiled, non-standard, or inadequately packed.

Fourthly, they add to the criteria on which the Board may rely in fixing the range of prices payable for the kiwifruit it acquires.

Fifthly, they make some drafting amendments.

Issued under the authority of the Regulations Act 1936.

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

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