



**THE KIWIFRUIT MARKETING REGULATIONS 1977,  
AMENDMENT NO. 6**

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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*.

**2. Interpretation**—(1) Regulation 2 of 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Amendment No. 2: (*Repealed*)

Amendment No. 3: (*Repealed*)

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

Amendment No. 5: S.R. 1989/50

Amendment No. 4) is hereby amended by revoking the definitions of the terms “inadequately packed”, “kiwifruit standards”, and “non-standard” (as amended by regulation 2 of the Kiwifruit Marketing Regulations 1977, Amendment No. 5), and inserting, in their appropriate alphabetical order, the following definitions:

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

“‘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:

“‘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.”

(2) Regulation 13A (3) 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 “spoiled”, and substituting the word “unsound”.

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

**3. Functions of Board**—(1) Regulation 12A (1) of the principal regulations (as substituted by regulation 5 of the Kiwifruit Marketing Regulations 1977, Amendment No. 4) is hereby amended by revoking paragraph (d), and substituting the following paragraphs:

“(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).”

(2) The said regulation 12A is hereby further amended by inserting, after subclause (1), the following subclause:

“(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.”

(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. Deductions and recoveries**—(1) Regulation 13DA of the principal regulations (as substituted by regulation 7 of the Kiwifruit Marketing Regulations 1977, Amendment No. 5) is hereby amended by revoking subclause (4), and substituting the following subclauses:

“(4A) This subclause applies to all kiwifruit (other than non-standard kiwifruit) found to be unsound during a repacking (undertaken on behalf of the Board) of kiwifruit with which they were packed completed before the 28th day of October in the season in which they became the Board’s property, unless—

“(a) Before the repacking of the kiwifruit with which they were packed was completed, they were moved from the coolstore at which they were first received by or on behalf of the Board; or

“(b) The repacking of the kiwifruit with which they were packed is not their first since they became the Board’s property; or

“(c) A critical or major non-compliance (as defined in the standard concerned) with a standard relating to coolstores, or relating to actions or operations taken or carried on in coolstores, endorsed under regulation 12A(1)(d) of these regulations occurred or was occurring—

“(i) After they became the Board’s property; and

“(ii) Before the repacking was completed; and

“(iii) While they were stored in the coolstore in respect of which the non-compliance occurred.

“(4B) The Board shall make no payments (or, as the case requires, no further payments) to the producer of any kiwifruit to which subclause (4A) of this regulation applies in respect of those kiwifruit.

“(4C) The Board may deduct from any money otherwise payable by the Board to the producer of any kiwifruit to which subclause (4A) of this regulation applies (whether in respect of those kiwifruit or otherwise howsoever) all or any part of the sum of the following amounts:

“(a) Any payments it has already made to the producer for them:

“(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).

“(4D) Where any kiwifruit are found to be unsound during a repacking (undertaken on behalf of the Board) of kiwifruit with which they are packed completed after the 27th day of October in the season in which they became the Board’s property, this subclause applies to those kiwifruit, and all kiwifruit with which they are packed, (other than non-standard kiwifruit) unless—

“(a) Before the repacking was completed, they were moved from the coolstore at which they were first received by or on behalf of the Board; or

“(b) The repacking is not their first since they became the Board’s property; or

“(c) A critical or major non-compliance (as defined in the standard concerned) with a standard relating to coolstores, or relating to actions or operations taken or carried on in coolstores, endorsed under regulation 12A(1)(d) of these regulations occurred or was occurring—

“(i) After they became the Board’s property; and

“(ii) Before the repacking was completed; and

“(iii) While they were stored in the coolstore in respect of which the non-compliance occurred; or

“(d) No person had (on behalf of the Board) before the 28th day of October in the season in which they became the Board’s property—

“(i) Checked their condition; and

“(ii) Estimated the proportion likely to be unsound.

“(4E) The Board shall make payments to producers of kiwifruit to which subclause (4D) of this regulation applies on the same basis as if during a repacking (undertaken on behalf of the Board) of the kiwifruit completed before the 28th day of October in the season in which they became the Board’s property, there was found to be unsound the lower of the following proportions of the kiwifruit:

“(a) The proportion of the kiwifruit found to be unsound during the repacking completed after the 27th day of October in the season in which they became the Board’s property:

“(b) The proportion of the kiwifruit estimated to be unsound during the checking of their condition most recently completed on behalf of the Board before the 28th day of October in the season in which they became the Board’s property;—

and subclauses (4B) and (4C) of this regulation shall have effect accordingly.”

**5. Fixing payments**—(1) Regulation 13E of the principal regulations (as substituted by regulation 5 of the Kiwifruit Marketing Regulations 1977, Amendment No. 4) is hereby amended by revoking subclause (6) (as substituted by regulation 8 of the Kiwifruit Marketing Regulations 1977, Amendment No. 5), and substituting the following subclauses:

“(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.”

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

**6. When export kiwifruit become property of Board—**

(1) Regulation 13F (3) (a) (i) of the principal regulations (as substituted by regulation 9 of the Kiwifruit Marketing Regulations 1977, Amendment No. 5) is hereby amended by omitting the words “Delivered to”, and substituting the words “Accepted at”.

(2) The said regulation 13F is hereby further amended by adding the following subclause:

“(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.”

MARIE SHROFF,  
Clerk of the Executive Council.

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#### EXPLANATORY NOTE

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

These regulations, which come into force 28 days after notification in the *Gazette*, have 4 effects. First, they amend the provisions of the Kiwifruit Marketing Regulations 1977 relating to deductions for spoiled fruit, so that in most cases individual growers bear the costs arising from the spoilage of their fruit. The amendment makes clear that growers can make their own arrangements with coolstores for the disposal of spoiled fruit. Secondly, they empower the Kiwifruit Marketing Board to pay a premium for fruit that has a low incidence of spoilage. Thirdly, they require the Board, if it fixes different payments for fruit produced in different areas, to ensure that any difference attributable to differing transport and port costs does not exceed the Board’s best estimate of the difference in those costs, and to notify its estimates of those costs. Fourthly, they correct a minor drafting anomaly in regulation 13F of the principal regulations, which relates to when kiwifruit become the Board’s property.

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

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