



**THE KIWIFRUIT MARKETING REGULATIONS 1977,
AMENDMENT NO. 8**

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.

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 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*.

*S.R. 1977/281

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

Amendment No. 2: *(Revoked)*

Amendment No. 3: *(Revoked)*

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

2. Interpretation—Regulation 2 of the principal regulations (as substituted by regulation 3 of the Kiwifruit Marketing Regulations 1977, Amendment No. 4) is hereby amended by inserting, after the definition of the term “Board”, the following definitions:

“‘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:”

3. Functions of Board—Regulation 12A of the principal regulations (as substituted by regulation 5 of the Kiwifruit Marketing Regulations 1977, Amendment No. 4) is hereby amended by inserting, after subclause (1A) (as inserted by regulation 3 (2) of the Kiwifruit Marketing Regulations 1977, Amendment No. 6), the following subclause:

“(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).”

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

“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 on 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.”

(2) Regulation 13D of the principal regulations (as substituted by regulation 7 (1) of the Kiwifruit Marketing Regulations 1977, Amendment No. 5) is hereby consequentially amended by omitting from subclause (2) the expression “regulation 13DA”, and substituting the expression “regulations 13DA to 13DG”.

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

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 28 days after notification in the *Gazette*, replace regulation 13DA of the Kiwifruit Marketing Regulations 1977, which relates to the deductions to be made from payments to the growers of kiwifruit that are found to be non-standard, inadequately packed, or unsound, with 7 new regulations; and make certain other amendments to those regulations.

The new regulations (regulations 13DA to 13DG) cover the same ground as the revoked regulation 13DA, but with a number of significant amendments.

At present, responsibility for fruit loss in any season moves from growers to the Board on 28 October in every season. In future the Board will be able to fix a day (“the cut-off day”) for every season; but if before 1 June in any season the Board fails to fix a cut-off day for the season, the cut-off day for the season will be 15 November. It follows that the cut-off day for the present season will be 15 November 1992.

At present, deductions in respect of fruit found to be unsound on or after the cut-off day are made on the basis of the lower of the proportion estimated to be unsound in a check of their condition carried out before the cut-off day and the proportion found to be unsound in fact. In future deductions will be made on the basis of the proportion estimated to be unsound, unless no assessment was carried out before the cut-off day. In that case there will be no deductions at all.

At present no deductions can be made in respect of fruit found to be unsound after being moved from one coolstore to another. In future, deductions may still be made if the fruit were moved with the grower’s consent. Some doubts have been expressed as to what

constitutes a coolstore (for example, it is not clear whether 2 adjacent buildings are 2 coolstores or 1) so the opportunity has been taken to define "coolstore".

At present no deductions can be made in respect of fruit found to be unsound after a critical non-compliance with coolstore standards, but their grower is not paid the so-called "incentive payment" for fruit that keeps well. In future, the Board will have to notify the grower of a critical non-compliance; and will have to give the grower the option of relying on the breach and foregoing incentive payments, or waiving the breach and remaining eligible for incentive payments. A grower who is not given that option will be able to receive payment without deduction and (if the fruit keeps well) to receive incentive payments as well.

At present, deductions for fruit found to be unsound before the cut-off day include all payments their grower receives for them. In future, deductions will be ascertained by reference to the average amounts paid for all the grower's fruit.

In addition, the Board is to be required to publish, notify growers of the establishment of, and keep available for perusal at its offices, the standards it endorses and establishes under the regulations.

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

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

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