

**Reprint
as at 18 June 2013**



**Commodity Levies (Vegetables and
Fruit) Order 2007**

(SR 2007/161)

Commodity Levies (Vegetables and Fruit) Order 2007: revoked, on 18 June 2013, by clause 39(1) of the Commodity Levies (Vegetables and Fruit) Order 2013 (SR 2013/143).

Anand Satyanand, Governor-General

Order in Council

At Wellington this 18th day of June 2007

Present:

His Excellency the Governor-General in Council

Pursuant to section 4 of the Commodity Levies Act 1990, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This order is administered by the Ministry for Primary Industries.

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Order

1 Title

This order is the Commodity Levies (Vegetables and Fruit) Order 2007.

2 Commencement

This order comes into force on 23 July 2007.

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

collection agent means a person whose business is or includes—

- (a) buying fresh vegetables, process vegetables, potatoes, fresh tomatoes, other vegetables, or fruit from a grower for resale or commercial processing in New Zealand or for export:
- (b) commercial processing, exporting, or selling fresh vegetables, process vegetables, potatoes, fresh tomatoes, other vegetables, or fruit on behalf of a grower

commercial processing, in relation to vegetables, means artificial drying, bottling, canning, evaporating, freezing, or preserving

FOB value means, in relation to any vegetables or fruit exported from New Zealand for which a customs entry is made, the free on board value of the vegetables or fruit specified in the declaration in, attached to, or forming part of, the customs entry

fresh tomatoes—

- (a) means tomatoes grown in New Zealand for commercial purposes; but
- (b) excludes tomatoes grown for commercial processing

fresh vegetables means the following vegetables grown in New Zealand for commercial purposes (including fresh-cut vegetables):

- (a) artichokes (Globe and Jerusalem), Asian vegetables, beans (excluding field dried beans), beetroot, boxthorn, broccoli, broccoflower, Brussels sprouts, burdock, cabbage, capsicums (including chilli peppers), carrots, cauliflower, celeriac, celery, chokos, courgettes (also known as zucchinis or scallopinis), cucumbers (including gherkins), eggplant (also known as aubergine), Florence fennel, garlic, garland chrysanthemum, herbs (including basil, bay, borage, caraway, chervil, chives, coriander, dill, fennel, horseradish, lemon balm, marigold, marjoram, mint, nasturtium, oregano, parsley, rosemary, sage, savory, sorrel, tarragon, and thyme), Indian vegetables, kohlrabi, kumara, leeks, lettuces, marrows, melons (including water, green netted, honey dew, bitter, rock, white musk, and prince), okra, onions (including shallots), parsnips, peas (excluding field dried peas), puha, pumpkin, purslane, radishes (including Chinese radish and daikon), rakkyo, rhubarb, salad leaves, salsify, scorzonera, silverbeet, spinach (including water spinach), spring onions, sprouted beans and seeds, squash (excluding squash exported from New Zealand), swedes, sweetcorn (including baby corn), taro, turnips, ulluca, watercress, witloof (also known as chicory or endive), yakon, and yams; but
- (b) excludes vegetables grown for commercial processing

fruit means the following fruit grown in New Zealand for commercial purposes:

- (a) apples, Asian pears, avocados, babacos, casanas, cherimoyas, citrus (including grapefruit, lemons, limes, mandarins, oranges, and tangelos), European pears, feijoas, guavas, kiwifruit, loquats, passionfruit, per-

simmons, quinces, sapotes, summerfruit (including apricots, cherries, nectarines, peaches, and plums), and tamarillos; and

- (b) the hybrids of the fruit listed in paragraph (a); but
- (c) excludes fruit graded out of a fresh export or fresh domestic line and sent for commercial processing

grower means a person whose business is or includes the commercial production of vegetables or fruit

GST means goods and services tax

HortNZ means Horticulture New Zealand Incorporated

levy means the levy imposed by clause 5

levy year means a period of 12 months beginning on 1 October and ending on 30 September, except that the first levy year will begin on the commencement of this order and end on 30 September 2008

mediator means a person appointed under clause 28 to resolve a dispute

notional process value means the amount of money that, in the opinion of HortNZ, the grower would have received if, immediately before the vegetables or fruit were processed, the grower had sold the vegetables or fruit to a similar processor situated in the same locality as the grower

other vegetables means—

- (a) asparagus grown in New Zealand for commercial processing, domestic fresh market, and export; and
- (b) kabocha (the unprocessed fruit of plants of the species *Cucurbita maxima*, commonly known as buttercup squash) that is exported in a fresh state or sold for export; and
- (c) tomatoes grown in New Zealand for commercial processing

potatoes means potatoes grown in New Zealand for commercial processing, domestic fresh market, export, or seed

process vegetables means fresh vegetables grown in New Zealand for commercial processing

vegetables means fresh tomatoes, fresh vegetables, other vegetables, potatoes, and process vegetables.

4 Scope of order

This order applies to—

- (a) fruit:
- (b) fresh tomatoes:
- (c) fresh vegetables:
- (d) other vegetables:
- (e) potatoes:
- (f) process vegetables.

5 Levy imposed

- (1) A levy is imposed on vegetables and fruit.
- (2) The levy is payable to HortNZ.

Responsibility for payment of levy

6 Growers primarily responsible for payment of levy

- (1) Growers are primarily responsible for paying the levy.
- (2) No grower is exempt from paying the levy.

7 Responsibility of collection agents for payment of levy

- (1) A collection agent must pay the levy and any GST payable on it at the first point of sale if the collection agent—
 - (a) buys vegetables or fruit from a grower for resale, export, or processing; or
 - (b) sells, exports, or processes vegetables or fruit on behalf of a grower.
- (2) A collection agent may recover the levy (and any GST paid in respect of it) from a grower—
 - (a) by deducting the amount of the levy (and any GST payable on it) from the payment made to the grower; or
 - (b) by recovering the amount of the levy (and any GST paid in respect of it) as a debt due from the grower.
- (3) A collection agent must disclose to a grower the amount of levy money deducted under this order.

8 Collection fee

A collection agent who pays the levy may charge a collection fee of not more than 10% of the amount of levy collected (ex-

clusive of GST) plus the GST payable on the fee by deducting the amount before paying the levy to HortNZ.

Determination of levy

9 Rate of levy

- (1) Subject to subclause (2), the levy on each of the vegetables and fruit listed in clause 4 must be paid at a single rate.
- (2) The levy imposed on fresh vegetables must be paid at 2 rates, being a rate for fresh vegetables—
 - (a) sold for domestic consumption; or
 - (b) sold for export.

10 Basis for calculation of levy

- (1) The levy payable must be calculated on the basis of the gross sales value at the first point of sale, except where—
 - (a) the commodity is exported, when the levy will be calculated as a percentage of the FOB value; or
 - (b) the commodity is processed prior to the first point of sale, when the levy will be a percentage of the notional process value that, in the opinion of HortNZ, the grower would have received for it if, immediately before it was processed, the grower had sold it to a similar processor situated in the same locality.
- (2) The price or value referred to in subclause (1) is, in each case, the price or value before the deduction of any costs or charges and exclusive of GST.

11 Maximum rate of levy

- (1) The maximum rate of levy in respect of fresh vegetables is 0.45%, and for fresh tomatoes is 0.675%, as the case may be, of the—
 - (a) gross sales value at the first point of sale; or
 - (b) FOB value.
- (2) The maximum rate of levy for other vegetables is 0.15%, for process vegetables is 0.5625%, for potatoes is 0.75%, and for fruit is 0.15%, as the case may be, of the—
 - (a) gross sales value at the first point of sale; or
 - (b) FOB value; or

- (c) notional process value.
- (3) The maximum levy rate is exclusive of GST.

12 HortNZ must set levy rates

- (1) HortNZ must set the levy rates for the first levy year by any lawful means.
- (2) For each subsequent levy year,—
 - (a) the fruit levy rate must be set by a vote of fruit growers entitled to vote at the HortNZ annual general meeting:
 - (b) the fresh tomato levy rate must be set by a vote at the HortNZ Fresh Tomato Product Group annual general meeting:
 - (c) the fresh vegetables levy rate must be set by a vote at the HortNZ Fresh Vegetable Product Group annual general meeting:
 - (d) the other vegetables levy rate must be set by a vote of other vegetable growers entitled to vote at the HortNZ annual general meeting:
 - (e) the potatoes levy rate must be set by a vote at the HortNZ Potato Product Group annual general meeting:
 - (f) the process vegetables levy rate must be set by a vote at the HortNZ Process Vegetable Product Group annual general meeting.
- (3) If the levy rates are not set under subclause (2) before the beginning of a levy year, the levy for that year is payable at the rates last set under this clause.

13 Notification of rates of levy

- (1) If any new levy rate set under clause 12 differs from the levy rate applying in the previous year, HortNZ must notify the new levy rate, as soon as practicable after setting the rate,—
 - (a) for fruit—
 - (i) in *The Orchardist*; and
 - (ii) in the HortNZ email newsletter; and
 - (iii) by direct mail to all fruit growers and relevant collection agents known to HortNZ; and
 - (iv) in the *Gazette*; and
 - (b) for vegetables—
 - (i) in the *Grower*; and

- (ii) in the HortNZ email newsletter; and
 - (iii) by direct mail to all vegetable growers and relevant collection agents known to HortNZ; and
 - (iv) in the *Gazette*.
- (2) If *The Orchardist* or the *Grower* cease to be published, the Minister of Agriculture may, by notice in the *Gazette*, specify a publication for the time being for the purposes of this order.

Payment of levy

14 When levy payable by growers

- (1) If vegetables or fruit are sold directly to the public by growers, or processed by growers, or exported by growers, the due date for payment of the levy by growers is 30 June.
- (2) The levy payable by growers is to be paid annually for the preceding 12 months.
- (3) The latest date for payment of the levy by growers is 30 September in the same calendar year.

15 When levy payable by collection agents

- (1) The due date for payment of the levy by a collection agent is the date on which the collection agent recovers the levy from the grower.
- (2) The latest date for payment of the levy by the collection agent is the 20th day of the month after the month in which the levy is recovered from the grower.

16 Additional levy if levy not paid in time

- (1) If any amount of the levy (or GST payable on that amount) has not been paid by the close of the latest day for payment, 10% of the amount of the levy not paid at the end of the first month must be paid to HortNZ, in addition to the amount otherwise payable.
- (2) A further 2% of the amount owing (including any previous penalties) is payable at the end of each additional month that the amount has not been paid.

17 Conscientious objectors

- (1) Any grower who objects on conscientious or religious grounds to the manner of recovery by HortNZ of an amount of levy money may pay the amount concerned to the chief executive of the Ministry of Agriculture and Forestry.
- (2) The chief executive must pay that amount to HortNZ.

*Expenditure of levy money by HortNZ***18 HortNZ must spend levy money**

- (1) HortNZ—
 - (a) must spend all levy money; or
 - (b) pending its expenditure, may—
 - (i) in the case of vegetables, pay the levy money to any affiliated product group or affiliated grower association of HortNZ that is an incorporated branch of HortNZ, which must spend the money; or
 - (ii) invest it.
- (2) HortNZ must not spend levy money on commercial or trading activities.

19 Purposes for which levy money may be spent

Subject to clause 18, HortNZ may spend the levy money for any of the following general purposes, as relevant to each of the vegetables and fruit listed in clause 4:

- (a) research and development:
- (b) development of quality assurance:
- (c) market development and promotion:
- (d) education and information:
- (e) grower representation:
- (f) day-to-day administration of HortNZ.

20 Consultation on spending levy money

HortNZ must consult on how it is to spend its levy money by consulting—

- (a) affiliated product groups; and
- (b) affiliated grower associations; and
- (c) growers at the annual conference of HortNZ; and

- (d) in the case of fresh vegetables, growers at the—
 - (i) fresh vegetable crop committees; and
 - (ii) annual meeting of the fresh vegetable product group; and
- (e) in the case of process vegetables, growers—
 - (i) at the annual meeting of the process vegetable product group; and
 - (ii) through elected group representatives; and
- (f) in the case of potatoes, growers—
 - (i) at the annual meeting of the potato product group; and
 - (ii) through elected grower representatives; and
- (g) in the case of fresh tomatoes, growers—
 - (i) at the annual meeting of the fresh tomato product group; and
 - (ii) through elected grower representatives; and
- (h) in the case of other vegetables, growers through the annual meetings and committee meetings of the—
 - (i) New Zealand Asparagus Council Incorporated; and
 - (ii) New Zealand Kabocha Council Incorporated.

*Record-keeping requirements and confidentiality
of information provided to HortNZ*

21 Returns must be supplied to HortNZ

- (1) A payment of levy money to HortNZ by a grower or collection agent must state—
 - (a) the value of and the kinds of vegetables or fruit listed in clause 4 to which the payment relates; and
 - (b) in the case of a return by a collection agent, the name of the grower.
- (2) Growers and collection agents must, as soon as is reasonably practicable after receiving a written request from HortNZ for information required for determining the amount of levy payable, supply the information kept in accordance with clauses 22 and 23, as applicable, in writing to HortNZ.

22 Records to be kept by growers

- (1) A grower who pays a levy directly to HortNZ must keep the following records:
 - (a) the amount of levy paid; and
 - (b) the sales that the levies were deducted from.
- (2) A grower whose levies are paid by collection agents must keep the following records:
 - (a) the amount of levy paid; and
 - (b) the sales that those levies were deducted from; and
 - (c) the name and address of the collection agent.

23 Records to be kept by collection agents

Levy collection agents must keep the following records:

- (a) the amount of levy paid; and
- (b) the sales that those levies were deducted from; and
- (c) the details of the growers they have collected levies from (including the grower's name, trading name, and postal address).

24 Records to be kept by HortNZ

HortNZ must, in each levy year, for each kind of vegetable and fruit listed in clause 4, keep records of,—

- (a) for each amount of levy paid to it in the levy year, and in relation to each amount,—
 - (i) the date on which each levy is received; and
 - (ii) the person who pays the levy in each case; and
- (b) how the levy money—
 - (i) is spent; or
 - (ii) is invested (if at all); and
- (c) each amount of levy money paid by HortNZ to an affiliated product group or affiliated grower association and, in relation to each amount,—
 - (i) the date on which it was paid to the affiliated product group or affiliated grower association; and
 - (ii) the name of the affiliated product group or affiliated grower association.

25 Records must be retained for 2 years

The records made under clauses 22, 23, and 24 must be retained for not less than 2 years from the date of the payment of the levy to which they relate.

26 Confidentiality of information

- (1) No officer or employee of HortNZ or any other person or organisation that gathers information may disclose (except to an officer or employee of HortNZ) any information obtained—
 - (a) under or because of this order; or
 - (b) under the Act in relation to this order.
- (2) Subclause (1) does not prevent HortNZ from disclosing or using information—
 - (a) with the consent of the levy payer and every other identifiable person to whom it relates; or
 - (b) for the purposes of collecting levy money from each levy payer or levy collector; or
 - (c) for statistical or research purposes, if the information is in a form that does not identify any individual.
- (3) Subclause (1) does not affect or prevent—
 - (a) the disclosure of information for the purposes of—
 - (i) an audit conducted under section 17 of the Act; or
 - (ii) a statement required under section 25 of the Act; or
 - (b) the giving of evidence in any legal proceedings taken under, or in relation to, this order or, in relation to this order, under the Act; or
 - (c) the disclosure of information required by law.

Payment for compliance auditing

27 Remuneration of persons conducting compliance audits

A person appointed as auditor under section 15 of the Act must be remunerated by HortNZ at a rate determined by the Minister of Agriculture after consultation with HortNZ.

*Mediation of disputes***28 Appointment of mediators**

- (1) This clause applies to any dispute about—
 - (a) whether or not a person is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) Any party to the dispute may ask the President of the Arbitrators' and Mediators' Institute of New Zealand Incorporated to appoint a person to resolve the dispute by mediation. If asked, the President or a person authorised by the President may appoint a person to resolve the dispute by mediation.
- (3) The mediator's appointment ends if—
 - (a) the parties to the dispute resolve it by agreement; or
 - (b) the mediator resolves the dispute under clause 35.

29 Remuneration of mediators

- (1) A mediator must be paid remuneration by way of fees and allowances as agreed by the parties to the dispute.
- (2) If the parties to a dispute cannot agree on the mediator's remuneration, the President of the Arbitrators' and Mediators' Institute of New Zealand Incorporated or a person authorised by the President must—
 - (a) fix an amount or several amounts that must be paid to the mediator as remuneration; and
 - (b) specify the amount (if any) that each party must pay.
- (3) Each party must pay to the mediator the amount or amounts fixed and specified under subclause (2).

30 Conferences under control of mediator

A mediator must—

- (a) organise the date, time, and place for each conference to be held by the mediator; and
- (b) notify the parties by mail or email; and
- (c) preside at the conference.

31 Conferences to be held in private

Only the parties to a dispute may attend a conference with the mediator, except when clause 32 applies.

32 Representatives

A mediator may allow a representative of a party to a dispute to attend a conference with the mediator, if the mediator is satisfied that it is appropriate to do so in all the circumstances.

33 Right to be heard

The following persons may be heard at a conference with a mediator:

- (a) each party to the dispute; and
- (b) each representative of a party allowed by the mediator to attend the conference.

34 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would be admissible in a court of law.
- (2) A mediator may, on the mediator's own initiative,—
 - (a) seek and receive any evidence that the mediator thinks desirable to resolve the dispute; and
 - (b) make any investigations and inquiries that the mediator thinks desirable to resolve the dispute.
- (3) A mediator may require a person giving evidence at a conference of the parties to a dispute to verify the evidence by statutory declaration.

35 Mediator may resolve dispute in certain cases

- (1) The mediator may resolve a dispute for the parties if—
 - (a) the dispute has not been resolved at a conference of the parties with the mediator; or
 - (b) the dispute appears to the mediator to be unlikely to be resolved by the parties, whether or not they confer directly.
- (2) A mediator who resolves a dispute under subclause (1) must give each of the parties notice of the mediator's decision, and the reasons for the decision, in person, by mail, or by email.
- (3) The parties must comply with the mediator's decision.

36 Costs of mediation

Each party must pay the party's own costs in relation to the mediation.

37 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the mediator's decision under clause 35 may appeal to a District Court against the decision.
- (2) The appeal must be brought by filing a notice of appeal—
 - (a) within 28 days after the date on which the mediator makes the decision; or
 - (b) within any longer time that a District Court Judge allows.
- (3) The Registrar of the court must—
 - (a) fix the time and place for the hearing of the appeal; and
 - (b) notify the appellant and the other parties to the dispute of the time and place; and
 - (c) serve a copy of the notice of appeal on every other party to the dispute.
- (4) Each party to the dispute may appear and be heard at the hearing of the appeal.
- (5) The District Court may confirm, vary, or reverse the mediator's decision.
- (6) The filing of a notice of appeal does not operate as a stay of process for the enforcement of the mediator's decision.

38 Revocation

- (1) The Commodity Levies (Vegetables) Order 2001 (SR 2001/332) is revoked.
- (2) The Commodity Levies (Orchard Fruit) Order 2001 (SR 2001/186) is revoked.
- (3) Amounts of levy that became payable under the Commodity Levies (Vegetables) Order 2001 and the Commodity Levies (Orchard Fruit) Order 2001 before 23 July 2007 continue to be due and payable as if that order had not been revoked.

Rebecca Kitteridge,
for Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order comes into force on 23 July 2007. It replaces the Commodity Levies (Orchard Fruit) Order 2001 and the Commodity Levies (Vegetables) Order 2001.

This order imposes a levy on the vegetables and fruit described in *clause 4*.

The levy is payable by growers or collection agents to Horticulture New Zealand Incorporated.

The order expires 6 years after it is made, by virtue of section 13(1) of the Commodity Levies Act 1990, unless it is revoked or extended before that date.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 21 June 2007.

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Notes**1 General**

This is a reprint of the Commodity Levies (Vegetables and Fruit) Order 2007. The reprint incorporates all the amendments to the order as at 18 June 2013, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Commodity Levies (Vegetables and Fruit) Order 2013 (SR 2013/143): clause 39(1)
