



## **Biosecurity (Psa-V—Kiwifruit Levy) Order 2013**

Jerry Mateparae, Governor-General

### **Order in Council**

At Wellington this 13th day of May 2013

Present:

The Right Hon John Key presiding in Council

Pursuant to section 100L of the Biosecurity Act 1993, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister for Primary Industries given after being satisfied of the matters in section 100L(5) of that Act, makes the following order.

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## Order

- 1 Title**  
This order is the Biosecurity (Psa-V—Kiwifruit Levy) Order 2013.
- 2 Commencement**  
This order comes into force on 17 May 2013.
- 3 Interpretation**
- (1) In this order, unless the context otherwise requires,—
- Act** means the Biosecurity Act 1993
- exported** means exported to any place other than Australia, and **exports** has a corresponding meaning
- exporter** means any person who exports kiwifruit for sale
- grower** means a person whose business is, or includes, growing kiwifruit
- kiwifruit** means the fruit of any plant of the genus *Actinidia* other than the species *Actinidia arguta*
- levy** means the levy imposed by clause 4

**levy money** means the money paid under this order as a levy

**levy year** means,—

- (a) for the calendar year 2013, the period starting on the commencement of this order and ending on 31 December 2013; and
- (b) for every subsequent year, the period of 12 months starting on 1 January and ending on 31 December of the same year

**management agency**—

- (a) means Kiwifruit Vine Health Incorporated; and
- (b) includes any successors to that society

**National Psa-V Pest Management Plan** means the plan made under clause 4 of the Biosecurity (National Psa-V Pest Management Plan) Order 2013

**post-harvest operator** means a business that provides services to the kiwifruit industry in relation to the harvesting, sorting, packing, and cool storage of kiwifruit prior to its distribution to market

**Psa-V** means the virulent form of *Pseudomonas syringae* pv *actinidiae*

**tray equivalent** means 3.6 kilograms of kiwifruit.

- (2) Terms or expressions used and not defined in this order but defined in the Act have, in this order, the same meaning as in the Act.

#### **4 Levy imposed**

A levy is payable to the management agency on kiwifruit that is grown in New Zealand and that is exported.

#### **5 How levy may be spent**

- (1) The management agency must spend all levy money paid to it on the administration and operation of the National Psa-V Pest Management Plan, including (without limitation) on—
  - (a) Psa-V control;
  - (b) Psa-V monitoring;
  - (c) providing information to, and communicating with, the kiwifruit industry in relation to Psa-V;
  - (d) international representation:

- (e) research into Psa-V control and management:
  - (f) setting kiwifruit industry standards, and developing best practice, in relation to Psa-V control and management:
  - (g) compliance and enforcement:
  - (h) audits:
  - (i) the management agency's administration costs.
- (2) The management agency may invest levy money until it is spent.

#### *Determination of levy*

### **6 Basis for calculating levy**

- (1) The levy must be calculated—
- (a) on the basis of cents per kilogram of kiwifruit exported; and
  - (b) at the point of export (being the point at which kiwifruit is loaded on board a ship or an aircraft for export).
- (2) Despite subclause (1)(b), the weight of the fruit may be determined at the point at which the fruit is graded and sorted for export.

### **7 Different rates of levy apply**

- (1) Different rates of levy apply in relation to the different classes of kiwifruit being exported, as specified in subclause (2).
- (2) The rates are as follows:
- (a) levy rate 1, which applies in respect of varieties, or cultivars, of green kiwifruit (*Actinidia deliciosa*):
  - (b) levy rate 2, which applies in respect of varieties, or cultivars, of gold and red kiwifruit (*Actinidia chinensis*):
  - (c) levy rate 3, which applies in respect of any varieties, or cultivars, of kiwifruit not referred to in paragraph (a) or (b).

### **8 Maximum rate of levy**

- (1) The maximum rate of levy is—
- (a) for levy rate 1, 0.28 cents per kilogram:
  - (b) for levy rate 2, 0.56 cents per kilogram:
  - (c) for levy rate 3,—

- (i) 0.28 cents per kilogram, if the management agency determines that the Psa-V risk associated with that variety or cultivar of kiwifruit is at a similar level to that associated with green kiwifruit (*Actinidia deliciosa*); or
  - (ii) 0.56 cents per kilogram in any case not referred to in subparagraph (i).
- (2) Nothing in subclause (1)(c) requires the management agency to impose a levy in respect of the products referred to in that subclause.

## **9 Rate of levy payable**

- (1) The levy is payable in respect of levy rate 1 and levy rate 2 at the maximum rate (*see* clause 8) for the 2013 levy year.
- (2) However, no levy is payable for the 2013 levy year in respect of products that are, or would be, categorised as payable at levy rate 3.
- (3) In respect of a levy payable in respect of a levy year after the 2013 levy year, the management agency must—
  - (a) include the setting of the levy rates as an agenda item for discussion at its annual general meeting; and
  - (b) permit all growers (whether or not those growers are members of the management agency) to—
    - (i) attend that meeting; and
    - (ii) have speaking rights in respect of the proposed levy rates; and
  - (c) set the levy rates before the beginning of the levy year to which it relates.
- (4) As soon as practicable after setting the levy rates, the management agency must notify both the levy rates and the levy year to which they apply—
  - (a) in the *Gazette*; and
  - (b) in the management agency's members' newsletter or other similar publication; and
  - (c) by post or email to all growers and exporters known to the management agency (whether or not those growers or exporters are members of the management agency).

- (5) If the management agency fails to set the levy rates in accordance with subclause (3), the levy rates payable for the previous levy year continue to apply.

*Payment of levy*

**10 Grower responsible for payment of levy**

The grower is the person responsible for paying the levy.

**11 No exemptions from responsibility for payment of levy**

There are no exemptions for growers from the responsibility for the payment of the levy under clause 10.

**12 When and how levy must be paid**

- (1) The due date for payment of a levy is the date of export (*see* clause 6(1)(b)).
- (2) The latest date for payment of the levy is the 90th day after the due date for payment.
- (3) The levy must be paid to the exporter (*see* clause 13).
- (4) An exporter may recover the amount of any levy payable, and any goods and services tax payable on it, from the grower as a debt due to the exporter by the grower.
- (5) An exporter who buys kiwifruit directly from a grower or exports kiwifruit on a grower's behalf may recover the amount of the levy, and any goods and services tax payable on it, by deducting the amount from the exporter's payment to the grower.

**13 Exporter responsible for collecting levy**

- (1) The exporter is responsible for collecting the levy.
- (2) The exporter must pay the levy to the management agency.

**14 Exporter must make returns to management agency**

- (1) An exporter must, when paying the levy to the management agency, provide a completed return in a form approved by the management agency.
- (2) The return must include, in relation to the levy being paid,—
- (a) the quantity of kiwifruit exported; and

- (b) the date or dates on which the kiwifruit was exported; and
- (c) the amount of levy paid per kilogram, or tray equivalent, of kiwifruit exported on behalf of each grower; and
- (d) the name or names of the grower or growers of the kiwifruit.

**15 Recovery fee may not be charged**

The exporter is not entitled to charge a fee for recovering the levy.

*Miscellaneous*

**16 Records**

- (1) A grower must keep records, for each levy year, of—
  - (a) the quantity of kiwifruit produced and sold; and
  - (b) the name of the post-harvest operator or exporter that the grower uses; and
  - (c) the amount of levy money paid to the exporter in accordance with clause 12 or the Director-General in accordance with clause 17, as the case may be; and
  - (d) the quantity of kiwifruit to which the levy paid relates.
- (2) An exporter must obtain and keep records, for each levy year, of—
  - (a) the quantity of kiwifruit exported; and
  - (b) the amount of levy money paid, in respect of each grower, to the management agency in accordance with clause 13; and
  - (c) the name of each grower of kiwifruit exported; and
  - (d) the quantity, values, and classes of kiwifruit exported; and
  - (e) a copy of every Customs declaration in respect of the kiwifruit exported.
- (3) The management agency must keep records, for each levy year, of the following:
  - (a) each amount of levy money paid to it; and
  - (b) for each amount of levy money,—
    - (i) the date on which the money is received; and
    - (ii) the name of the person who paid the money; and

- (c) for all levy money paid to it, how the money has been spent or invested.
- (4) Records must be kept for at least 2 years after the levy year to which the records relate.
- (5) Every grower and exporter who is required to keep records must provide the management agency with information from the records as soon as is reasonably practicable after receiving a request, by post or email, from the management agency for the information.

#### **17 Conscientious objectors**

- (1) A grower who objects on conscientious or religious grounds to paying the levy in the manner provided for by this order may pay the amount concerned to the Director-General.
- (2) The Director-General must pay the amount to the management agency.

#### **18 Remuneration payable to auditor**

- (1) An auditor appointed under section 100P of the Act is entitled to receive remuneration (as provided for under section 100P(8) of the Act) for the auditor's fees and allowances.
- (2) The fees and allowances referred to in subclause (1) are payable by the management agency at a rate agreed to by the Minister and the management agency.

#### *Arbitration in case of dispute*

#### **19 Appointment of arbitrator**

- (1) This clause applies to any dispute about—
  - (a) whether a person is required to pay the levy; or
  - (b) the amount of levy payable.
- (2) The parties to a dispute may agree to submit the dispute to arbitration.
- (3) If the parties to a dispute are unable to agree on the appointment of an arbitrator, the arbitrator must be appointed in accordance with Schedule 1 of the Arbitration Act 1996.
- (4) For the purposes of the Arbitration Act 1996,—



- (a) an agreement under subclause (2) is an arbitration agreement; and
- (b) the arbitrator (whether appointed by agreement or under subclause (3)), is an arbitral tribunal.

## **20 Application of Arbitration Act 1996 to dispute**

Except as provided in clause 19, the provisions of the Arbitration Act 1996 (including the provisions for procedures to be followed by an arbitral tribunal) apply to the resolution of a dispute submitted to arbitration under this order.

## **21 Payment of arbitration costs**

The costs of the arbitration (including the arbitrator's remuneration) must, unless the parties agree otherwise, be determined under Schedule 2 of the Arbitration Act 1996.

## **22 Appeal to District Court**

- (1) A party to a dispute who is dissatisfied with the decision made by an arbitrator may appeal to a District Court against the decision.
- (2) The appeal must be brought by the filing of a notice of appeal within 28 days after the making of the decision concerned, or 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 notify the appellant and the other parties to the dispute; and
  - (b) serve a copy of the notice of appeal on all parties to the dispute.
- (4) Any party to the dispute may appear and be heard at the hearing of the appeal.
- (5) On hearing the appeal, the District Court may confirm, vary, or reverse the decision appealed against.
- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the decision appealed against.

Rebecca Kitteridge,  
Clerk of the Executive Council.

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### Explanatory note

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

This order, which comes into force on 17 May 2013, imposes a levy on kiwifruit that is grown in New Zealand and that is exported. The levy must be paid by growers (which is defined in *clause 3* as meaning a person whose business is, or includes, growing kiwifruit.). The levy is payable to the management agency (which is defined in *clause 3* as meaning Kiwifruit Vine Health Incorporated and including any successors to that society). The levy money must be spent by the management agency on the administration and operation of the National Psa-V Pest Management Plan, which was made under clause 4 of the Biosecurity (National Psa-V Pest Management Plan) Order 2013.

Under section 100S(2) of the Biosecurity Act 1993, this order will be deemed to be revoked at the close of 30 June 2014 unless it is confirmed by an Act of Parliament passed on or before that date.

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

Date of notification in *Gazette*: 16 May 2013.

This order is administered by the Ministry for Primary Industries.

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