



New Zealand Horticulture Export Authority (Fees and Levies) Regulations 2017

Patsy Reddy, Governor-General

Order in Council

At Wellington this 14th day of August 2017

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 62, 62A, and 62D of the New Zealand Horticulture Export Authority Act 1987—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Primary Industries made after complying with sections 62 and 62A of that Act.

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Regulations

1 Title

These regulations are the New Zealand Horticulture Export Authority (Fees and Levies) Regulations 2017.

2 Commencement

These regulations come into force on 1 October 2017.

3 Interpretation

In these regulations, unless the context otherwise requires,—

annual monitoring of compliance means the annual monitoring of compliance with requirements and conditions imposed by or under sections 34, 37, and 38 of the New Zealand Horticulture Export Authority Act 1987

category A fee, for a certain matter, has the meaning given by regulation 6

category B to E fee, for a certain matter, has the meaning given by regulation 6

financial year means a 12-month period starting on 1 October

new licence, renewed licence, and additional licence have the meanings given by regulation 9.

4 **Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

5 **Dollar values exclude GST**

In these regulations, all dollar values exclude goods and services tax.

How Authority sets fees payable by exporters and determines categories of applicants for export licences

6 **Authority sets fees**

- (1) The Authority must—
- (a) set different categories of fee for each matter specified in column 1, except applications for exemptions; and
 - (b) set 1 category of fee for applications for exemptions.
- (2) For a category of fee specified in column 2 as A or as A to E (a **category A fee**), the fee must be set no higher than the maximum amount specified in column 3.
- (3) For a category of fee specified in column 2 as B, C, D, or E (a **category B to E fee**), the fee must be set as follows:

$$f_s = a \times p$$

where—

f_s is the fee to be set (in \$)

a is the category A fee set for the same matter (in \$)

p is the proportion specified in column 3.

- (4) However, the fee actually payable for an application for an export licence is determined under regulation 10.
- (5) In this regulation, a reference to a numbered column is to the relevant row of that column in the following table:

Column 1	Column 2	Column 3
Matter for which fee is payable	Category of fee	Maximum category A fee or proportion of actual category A fee
Application for new export licence	A	\$4,000
	B	0.75
	C	0.50
	D	0.25
	E	0.15
Application for renewed or additional export licence	A	\$800

Column 1 Matter for which fee is payable	Column 2 Category of fee	Column 3 Maximum category A fee or proportion of actual category A fee
	B	0.75
	C	0.50
	D	0.25
	E	0.15
Annual monitoring of compliance	A	\$2,400
	B	0.75
	C	0.50
	D	0.25
	E	0.15
Application for exemption from—	A to E	\$400
• requirement for export licence; or		
• requirement to comply with export marketing strategy		

7 Authority determines categories of fee for tiers of export licences

- (1) The Authority must determine which category of fee applies to each tier of export licence for a prescribed product as soon as practicable after the Authority approves—
 - (a) a new export marketing strategy for the product; or
 - (b) a proposal to replace or amend the export marketing strategy for the product.
- (2) The Authority must—
 - (a) assign the category A fee to the highest tier of licence for the product (or, if there is only 1 tier, to the single tier of licence); and
 - (b) determine which category B to E fee to assign to each other tier of licence for the product by considering—
 - (i) the complexity of the new, replaced, or amended export marketing strategy in relation to that tier of licence; and
 - (ii) the value of that tier of licence to an exporter relative to the highest tier of licence.
- (3) The Authority's determination of which category of fee applies to a tier of licence applies on and from the date that the new export marketing strategy or the proposal to replace or amend the strategy comes into force.

8 Authority notifies fees on Internet site

- (1) The Authority must notify—

- (a) the amount of each category of fee it sets for each matter specified in regulation 6; and
 - (b) the category of fee that applies under regulation 7 to each tier of export licence for a prescribed product.
- (2) The amounts and categories of fee must be notified on the Authority's Internet site so that they are publicly available at all reasonable times.

9 Authority determines categories of applicants for export licences

- (1) The Authority must categorise each person who applies for an export licence in respect of each matter covered by this regulation.
- (2) The first matter is which category of fee applies to the tier of export licence applied for, as determined by the Authority under regulation 7.
- (3) The second matter is whether the applicant has applied for—
- (a) a **new licence**, meaning that the applicant has not had a licence for the product, or for any other prescribed product, at any time within 1 month before making the application; or
 - (b) a **renewed licence**, meaning that the applicant has applied for a licence of the same tier and for the same prescribed product as a licence that the applicant—
 - (i) has when making the application; or
 - (ii) had at any time within 1 month before making the application; or
 - (c) an **additional licence**, meaning that the applicant has, or at any time within 1 month before making the application had,—
 - (i) a licence of a different tier but for the same prescribed product; or
 - (ii) a licence for another prescribed product.
- (4) The third matter is only for an applicant who has applied for a new licence, and is whether—
- (a) the applicant had a licence to export the product at any time during the 3 years before making the application; or
 - (b) the applicant does not satisfy paragraph (a) but had a licence to export another prescribed product at any time during the 12 months before making the application; or
 - (c) the applicant does not satisfy paragraph (a) or (b) but exported any other primary product (for example, wine or another horticultural, dairy, or meat product) at any time during the 12 months before making the application.
- (5) For the purposes of subclauses (3) and (4), an applicant must be treated as having a licence even if the licence is suspended.

*Fees payable by exporters to Authority***10 Application fee for export licences**

A person who applies for an export licence for a prescribed product must pay the Authority a fee that is calculated as follows:

$$f = f_s \times p$$

where—

- f* is the fee payable (in \$)
- f_s* is the relevant fee set under regulation 6 as determined by the categorisation of the applicant under regulation 9(2) and (3) (in \$)
- p* is—
- (a) 1.00, if the application is for a renewed licence or an additional licence, or is for a new licence but the applicant does not belong to a category in any of regulation 9(4)(a) to (c) (which relate to the applicant's history of exporting products);
 - (b) 0.85, if the application is for a new licence and the applicant belongs to the category in regulation 9(4)(a);
 - (c) 0.90, if the application is for a new licence and the applicant belongs to the category in regulation 9(4)(b);
 - (d) 0.95, if the application is for a new licence and the applicant belongs to the category in regulation 9(4)(c).

11 Annual monitoring fee

- (1) A person must pay the Authority the relevant fee set under regulation 6 for the annual monitoring of compliance—
 - (a) when applying for an export licence for a prescribed product; and
 - (b) on each anniversary of the day on which the licence is granted, if the person still has the licence on that anniversary.
- (2) The relevant fee is determined by the categorisation of the person under regulation 9(2).
- (3) The Authority must refund a fee paid under subclause (1)(a) if the person's application for a licence is declined.
- (4) For the purposes of subclause (1)(b), a person must be treated as having a licence even if the licence is suspended.

12 Application fee for exemptions

A person must pay the Authority the relevant fee set under regulation 6 when applying for an exemption from—

- (a) the requirement for an export licence; or
- (b) the requirement to comply with an export marketing strategy.

13 Minister reviews fees after first 4 years

- (1) The Minister must review the fees payable under these regulations.
- (2) The Minister must start the review as soon as practicable after 1 October 2021.

*Levy payable by recognised product groups to Authority***14 Levy payable by recognised product groups**

- (1) A recognised product group must pay a levy to the Authority for each financial year.
- (2) The amount of the levy is—
 - (a) the amount calculated using the following formula:

$$a = (v_1 \times 0.0012) + (v_2 \times 0.0009) + (v_3 \times 0.0006)$$

where—

- a is the amount of the levy (in \$)
- v_1 is the amount of the average export earnings for the product that does not exceed \$20,000,000 (in \$)
- v_2 is the amount (if any) by which the average export earnings for the product exceed \$20,000,000 but do not exceed \$40,000,000 (in \$)
- v_3 is the amount (if any) by which the average export earnings for the product exceed \$40,000,000 (in \$); or
- (b) \$500, if the amount calculated is less than \$500; or
 - (c) \$65,000, if the amount calculated is more than \$65,000.
- (3) In this regulation, **average export earnings** for a product means the annual export earnings calculated or determined under regulation 15.

15 Authority calculates or determines average export earnings for products

- (1) The Authority must calculate the average export earnings for the product as follows:

$$v = t \div 2$$

where—

- v is the average export earnings for the product (in \$)
- t is the total of the free on board value of the product exported in the previous 2 full years ending on 30 June (in \$).
- (2) However, the Authority must determine (rather than calculate) the average export earnings for the product if the information needed to calculate the earnings is unavailable because the product has not yet been exported for 2 full years.

- (3) The Authority must determine the average export earnings by reference to the Authority's best estimate of the average annual export earnings for the product for the current and next full years ending on 30 June.
- (4) If the Authority determines (rather than calculates) the average export earnings, and the recognised product group disputes the amount, the parties may use the process in regulation 19 to resolve the dispute.
- (5) If, after using that process, the Authority and the recognised product group agree on a different amount for the average export earnings for the product, that amount replaces the amount determined by the Authority.
- (6) In this regulation, **free on board value** means the free on board value specified in the declaration attached to, or forming part of, a customs entry for the product.

16 Authority notifies amount of levy

- (1) The Authority must calculate the amount of levy payable by each recognised product group for a financial year and give the product group written notice of the amount.
- (2) The Authority must do so as soon as practicable after the start of the financial year.

17 Levy paid quarterly

- (1) The Authority must provide a written invoice to each recognised product group as soon as practicable after the start of each quarter of a financial year.
- (2) The invoice must require payment of one-quarter of the levy payable for the financial year.
- (3) The invoice must state that—
 - (a) the due date for payment is the date of the invoice; and
 - (b) the latest date for payment is the 20th day after the date of the invoice.
- (4) The recognised product group must pay the amount as required by the invoice.
- (5) In this regulation and regulation 18, **quarter** means a 3-month period starting on 1 October, 1 January, 1 April, or 1 July.

18 Levy if product group recognised part-way through financial year

- (1) If a product group becomes a recognised product group part-way through a financial year, the amount of the levy payable by the product group for that financial year must be calculated as follows:

$$a_1 = (a_2 \div 12) \times m$$

where—

a_1 is the amount of the levy payable for that financial year (in \$)

a_2 is the amount of the levy determined in accordance with regulation 14 (in \$)

m is the number of months (to 2 decimal places) remaining in the financial year after the group becomes a recognised product group.

- (2) The first invoice provided to a recognised product group under regulation 17 must require payment of any part-quarter for which the levy is payable (in addition to the full quarter covered by the invoice).

19 Process for resolving dispute about determination of average export earnings

- (1) This regulation applies if a recognised product group—
- (a) disputes the average export earnings determined by the Authority for a prescribed product; and
 - (b) wishes to use the process set out in this regulation.
- (2) The parties must first try, in good faith, to agree on the average export earnings for the product.
- (3) If the parties cannot agree within a reasonable time, the product group may require mediation to resolve the dispute.
- (4) The product group must start the mediation process by giving written notice to the Authority that specifies the details of the disputed matters (the **mediation notice**).
- (5) One or more persons must be appointed as mediator.
- (6) The parties must try to agree on who to appoint as the mediator.
- (7) If the parties cannot agree on the mediator within 15 working days after the Authority received the mediation notice, the mediator may be appointed by the Arbitrators and Mediators Institute of New Zealand Incorporated at the request of either party.
- (8) The mediator may give advice at the request of the parties but cannot determine the disputed issues or bind the parties in any way.
- (9) Either party may end the mediation at any time.
- (10) Each party must pay—
- (a) an equal share of the costs of the mediator and related expenses; and
 - (b) any other costs and expenses it incurs in the mediation.

20 Minister reviews levy every 4 years

- (1) The Minister must review the levy payable under these regulations.
- (2) The Minister must start the first review as soon as practicable after 1 October 2021.
- (3) The Minister must then start subsequent reviews no later than 4 years after the start of the previous review.

21 Authority keeps records

- (1) The Authority must keep records of the following for each financial year:
 - (a) each person who paid the levy and the amounts paid;
 - (b) how the Authority used the levy money paid to it.
- (2) The Authority must keep the records for 7 years after the end of the financial year.

*Revocation of existing regulations***22 Revocation**

The New Zealand Horticulture Export Authority (Fees) Regulations 2002 (SR 2002/343) are revoked.

Schedule 1

Transitional, savings, and related provisions

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Part 1

Provisions relating to these regulations as made

1 Authority determines categories of fee in relation to existing export marketing strategies

- (1) This clause applies in relation to a prescribed product that has a current export marketing strategy immediately before the commencement of these regulations.
- (2) The Authority must determine which category of fee applies to each tier of export licence for the product as soon as practicable after the commencement of these regulations.
- (3) The Authority must—
 - (a) assign the category A fee to the highest tier of licence for the product (or, if there is only 1 tier, to the single tier of licence); and
 - (b) determine which category B to E fee to assign to each other tier of licence for the product by considering—
 - (i) the complexity of the current export marketing strategy for the product in relation to that tier of licence; and
 - (ii) the value of that tier of licence to an exporter relative to the highest tier of licence.

2 Annual monitoring fee for existing licences

- (1) The annual monitoring fee payable under regulation 11(1)(b) also applies to each licence that a person has immediately before the commencement of these regulations.
- (2) For the purposes of subclause (1), regulation 11(2) applies as if the person had been categorised under regulation 9(2) in accordance with the category of fee assigned to the person's tier of licence under clause 1 of this schedule.

3 Limits to levy payments for first 2 financial years

- (1) This clause overrides regulation 14(2) for the recognised product group for each prescribed product specified in column 1, but only for—
- the first financial year starting on 1 October 2017; and
 - the second financial year starting on 1 October 2018.
- (2) For the first financial year, the recognised product group must pay the following amount of levy:
- the amount determined under regulation 14(2); or
 - 15% more than the base amount specified in column 2, if the amount determined is greater than 15% more than the base amount; or
 - 15% less than the base amount specified in column 2, if the amount determined is greater than 15% less than the base amount.
- (3) For the second financial year, the recognised product group must pay the following amount of levy:
- the amount determined by regulation 14(2); or
 - 15% more than the amount it paid for the first financial year, if the amount determined is greater than 15% more than the amount it paid for that year; or
 - 15% less than the amount it paid for the first financial year, if the amount determined is greater than 15% less than the amount it paid for that year.
- (4) In this clause, a reference to a numbered column is to the relevant row of that column in the following table:

Column 1	Column 2
Prescribed product	Base amount of levy (\$)
Avocados	47,301.10
Blackcurrants	24,234.24
Boysenberries	250.00
Buttercup squash	43,146.45
Chestnuts	250.00
Kiwifruit exported to Australia for consumption in Australia	41,418.30
Persimmons	16,338.72

Column 1	Column 2
Prescribed product	Base amount of levy (\$)
Summerfruit (apricots, peaches, nectarines, plums, and sweet cherries)	43,987.00
Tamarillos	305.68
Truffles	250.00

Michael Webster,
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 on 1 October 2017, provide for—

- fees payable to the New Zealand Horticulture Export Authority (the **Authority**) by exporters, or people who want to be exporters, of prescribed products under the New Zealand Horticulture Export Authority Act 1987 (the **Act**); and
- a levy payable to the Authority by the recognised products groups that represent the exporters and producers of those products.

Fees payable by exporters

The fees payable are—

- an application fee for export licences; and
- an annual fee for the activities carried out by the Authority to monitor compliance by exporters with the Act’s requirements; and
- an application fee for exemptions from requirements to hold an export licence or comply with an export marketing strategy.

These regulations provide for the Authority to set the fees (within limits) and to charge different fees to different people based, in part, on which of 5 categories of fee (categories A to E) applies to them. The Authority determines which category of fee applies by considering the tier of licence applied for or held by a person in terms of—

- the complexity of the relevant export marketing strategy in relation to the tier of licence; and
- the value of the tier of licence relative to the highest tier available for the product that the person is exporting or wants to export.

These regulations also provide for discounted fees for people applying for a new export licence if they have recent experience of exporting horticultural or other primary products.

Levy payable by recognised product groups

The levy payable by recognised product groups is based on the amount earned from the export of a prescribed product averaged over the last 2 years (ending on 30 June). If the information needed to calculate the levy is not available because the product has not yet been exported for 2 full years, these regulations enable the Authority to determine the levy based on the Authority's estimate of average export earnings.

These regulations smooth changes in the amount of levy payable by existing recognised product groups for the first 2 financial years after these regulations come into force.

Regulatory impact statement

The Ministry for Primary Industries produced a regulatory impact statement on 3 August 2017 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of the regulatory impact statement can be found at—

- <https://mpi.govt.nz/document-vault/19361>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 17 August 2017.

These regulations are administered by the Ministry for Primary Industries.