



Biosecurity (Readiness and Response—Summerfruit Levy) Order 2019

Patsy Reddy, Governor-General

Order in Council

At Wellington this 30th day of September 2019

Present:

The Right Hon Jacinda Ardern presiding in Council

This order is made under section 100ZB of the Biosecurity Act 1993—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Biosecurity, given after being satisfied of the matter described in section 100ZB(6) of that Act.

Contents

		Page
1	Title	2
2	Commencement	2
3	Interpretation	2
	<i>Levy</i>	
4	Levy imposed	4
5	How levy to be spent	4
	<i>Responsibility for payment of levy</i>	
6	Persons responsible for payment of levy	5
	<i>Determination of levy</i>	
7	Basis for calculating levy	5
8	Single rate of levy	5
9	Maximum rate of levy	5

10	Rate of levy payable	5
11	SNZI must set levy rate	5
12	Power to vary rate of levy	6
13	Notification	6
	<i>Responsibility for collecting levy</i>	
14	Persons responsible for collecting levy	6
15	When levy payable	7
16	Penalty for late payment	7
17	Collection fees	7
	<i>Records that must be kept</i>	
18	Records to be kept by growers and collection agents	7
19	Records to be kept by SNZI	8
20	Retention of records	8
	<i>Administrative matters</i>	
21	Confidentiality of information	8
22	Conscientious objectors	9
23	Remuneration payable to auditor	9
	<i>Disputes</i>	
24	Dispute resolution	9
25	Application of Arbitration Act 1996	9
26	Appeal to District Court	10

Order

1 Title

This order is the Biosecurity (Readiness and Response—Summerfruit Levy) Order 2019.

2 Commencement

This order comes into force on 1 November 2019.

3 Interpretation

(1) In this order, unless the context otherwise requires,—

Act means the Biosecurity Act 1993

agreement—

(a) means the deed; and

(b) includes any operational agreement of the kind referred to in section 100Z(3) of the Act that is made between—

(i) the Director-General; and

(ii) SNZI

collection agent and **agent** mean a person whose business is or includes—

- (a) buying summerfruit from a commercial grower (other than through another collection agent) for resale, processing, or export; or
- (b) selling, processing, or exporting summerfruit on behalf of a commercial grower

commercial grower and **grower** mean a person whose business is, or includes, producing summerfruit for commercial purposes

deed—

- (a) means the Government Industry Agreement for Biosecurity Readiness and Response deed signed by SNZI on 14 September 2017 (as may be revised or amended from time to time); and
- (b) includes a deed of the kind described in section 100Z(2) of the Act that replaces the deed referred to in paragraph (a)

direct sale means a sale made by a grower other than through an agent, and includes—

- (a) the grower supplying to retail outlets such as supermarkets; and
- (b) the grower making online sales; and
- (c) the grower's own roadside sales; and
- (d) sales by the grower at farmers' markets

export means the sale of summerfruit—

- (a) by a grower to a market other than one in New Zealand; or
- (b) by a grower to a collection agent for sale to a market other than one in New Zealand; or
- (c) by a collection agent to a market other than one in New Zealand

GST means goods and services tax

levy means the levy imposed by clause 4

levy money means the money paid or payable under this order as a levy

levy rates means the levy rates described in clause 8

levy year means,—

- (a) for the first levy year, the period that begins on 1 November 2019 and ends on 31 August 2020; and
- (b) for each subsequent year, the period of 12 months that begins on 1 September and ends on 31 August

notional process value means the amount of money (exclusive of GST and before the deduction of any costs or charges) that, in the opinion of SNZI, a commercial grower would reasonably have been expected to pay for summer-

fruit processed by the grower, if the grower had purchased the summerfruit for processing

processed includes bottled, canned, dehydrated, extracted, evaporated, dried, freeze-dried, frozen, juiced, pressed, or preserved,—

- (a) whether as summerfruit or as concentrate, pulp, puree, sauce, or some other product; and
- (b) whether alone or with other ingredients

readiness activity has the meaning given in section 100Y(2) of the Act

response activity has the meaning given in section 100Y(3) of the Act

selling price—

- (a) means the price at which the summerfruit is sold at the first point of sale (exclusive of GST and before the deduction of any costs or charges); and
- (b) includes—
 - (i) any other payment made to the grower by the purchaser in relation to the sale of the summerfruit;
 - (ii) the value, as determined by SNZI, of any goods or services provided free of charge or below market value to the grower by the purchaser in relation to the sale of the summerfruit

SNZI means New Zealand Summerfruit Incorporated

summerfruit means apricots, cherries, nectarines, peaches, and plums, and includes hybrids of those fruits.

- (2) Summerfruit processed over a period of more than a day must be treated, for the purposes of this order, as having been processed on the day the processing commenced.

Levy

4 Levy imposed

- (1) A levy is imposed on all summerfruit grown in New Zealand by commercial growers—
 - (a) for sale to the New Zealand domestic market; and
 - (b) for processing (except summerfruit sold for processing to Heinz Wattie's Limited); and
 - (c) for export.
- (2) The levy is payable to SNZI.

5 How levy to be spent

- (1) SNZI must spend all levy money paid to it on meeting its commitments relating to readiness and response activities under the agreement.

- (2) SNZI may invest levy money until it is spent.

Responsibility for payment of levy

6 Persons responsible for payment of levy

- (1) The persons responsible for paying the levy are commercial growers who grow summerfruit—
- (a) for the domestic market;
 - (b) for processing (except summerfruit sold for processing to Heinz Wattie's Limited);
 - (c) for export.
- (2) There are no exemptions for commercial growers from the responsibility to pay the levy under subclause (1) other than the exemption provided for in subclause (1)(b).

Determination of levy

7 Basis for calculating levy

The levy must be calculated as a percentage of the selling price of the summerfruit.

8 Single rate of levy

A single levy rate is to apply to the sale of all summerfruit.

9 Maximum rate of levy

The maximum rate of levy is 0.25% of the selling price of any summerfruit (plus GST, if any).

10 Rate of levy payable

- (1) The levy rate payable for summerfruit is 0.00%.
- (2) This clause is subject to clauses 11 and 12.

11 SNZI must set levy rate

- (1) SNZI must—
- (a) set the levy rate to fund readiness activities and for any reserve fund in order to fund future readiness or response activities; but
 - (b) before it sets the levy rate, it must consult its members at an annual general or special general meeting.
- (2) SNZI must set the rate of a levy at a level that enables it to meet its commitments under the agreement.
- (3) SNZI may set the levy rate at zero.

12 Power to vary rate of levy

- (1) SNZI may vary the levy rate for a current response activity without consulting its members, provided the variation is approved by the Board of the SNZI.
- (2) If the Board approves a variation of the levy rate, it may approve that variation—
 - (a) for an indefinite period of time; but
 - (b) only to a level that is sufficient for SNZI to meet its response commitments under the agreement.
- (3) If SNZI meets its response activity commitments and no further levy money is needed for those commitments under the agreement, it may vary the levy rate to zero for a response activity.
- (4) When varying a levy rate under this clause, SNZI must set—
 - (a) the varied rate at a level that is sufficient, but does not exceed what is necessary, to enable SNZI to meet its response activity commitments under the agreement; and
 - (b) a starting date for the varied rate that is not earlier than the day after the date on which SNZI gives notice under clause 13.

13 Notification

- (1) SNZI must notify a rate and its starting date set under clause 11 or a variation and its starting date set under clause 12.
- (2) SNZI has given notice as required when the information is published in each of the following:
 - (a) in SNZI's newsletter; and
 - (b) in SNZI's official magazine; and
 - (c) on SNZI's Internet site.

*Responsibility for collecting levy***14 Persons responsible for collecting levy**

- (1) A collection agent is responsible for collecting the levy and paying it to SNZI, unless the grower pays the levy directly to SNZI as provided for in subclause (3).
- (2) A collection agent may recover the levy from a grower—
 - (a) by deducting the amount of the levy from the payment made to the grower; or
 - (b) by recovering the amount of the levy as a debt due from the grower.
- (3) However, if a grower makes a direct sale of summerfruit, that grower must pay the levy directly to SNZI.

15 When levy payable

- (1) Payment of the levy is due on the day on which the summerfruit—
 - (a) is sold, processed, or exported by, or on behalf of, the grower; or
 - (b) is sold by direct sale.
- (2) The levy money must be paid to SNZI not later than the 20th day of the month following the day when the summerfruit is sold, processed, or exported, or sold by direct sale.

16 Penalty for late payment

If the amount of the levy is not paid to SNZI by the close of the date required under clause 15(2), the following amounts must be paid to SNZI in addition to the amount otherwise payable:

- (a) 5% of the amount of the unpaid levy; and
- (b) 2% of the amount of the unpaid levy (excluding the additional amounts owed under this clause) for each month that there is an amount outstanding.

17 Collection fees

- (1) A collection agent may charge SNZI—
 - (a) a fee of not more than 4% of the levy payable (exclusive of GST); and
 - (b) the GST payable on that fee before the levy is paid to SNZI.
- (2) A grower who pays the levy directly to SNZI is not entitled to charge a collection fee.

*Records that must be kept***18 Records to be kept by growers and collection agents**

- (1) Growers who make direct sales of summerfruit must keep the following records for each levy year:
 - (a) the quantity of summerfruit sold, processed, or exported, by fruit type; and
 - (b) the price or the notional process value of summerfruit sold, by fruit type; and
 - (c) the rate at which the levy was paid and the date of payment.
- (2) Those records must be provided to SNZI when a levy payment is made.
- (3) A collection agent must keep the following records for each levy year and provide them to SNZI when a levy payment is made:
 - (a) the name and contact details of each grower from whom summerfruit is purchased or for whom summerfruit is sold, processed, or exported; and

- (b) the quantity of summerfruit purchased and sold, processed, or exported, by type of fruit; and
- (c) the rate at which the levy was collected; and
- (d) in relation to each fruit type,—
 - (i) the price received, paid, or the notional process value:
 - (ii) the amount of levy money collected and paid to SNZI or the Director-General:
 - (iii) the date on which the levy was collected or received:
 - (iv) the amount of the collection fee received.
- (4) SNZI may request in writing that growers and collection agents provide information held in their records to SNZI.
- (5) At the time when a levy payment is made, the grower and collection agent must provide the information requested—
 - (a) in the levy form approved by SNZI; and
 - (b) within a reasonable time after receiving the request.

19 Records to be kept by SNZI

SNZI must keep the following records for each levy year:

- (a) each amount of levy money received; and
- (b) the date on which each amount of levy money is received; and
- (c) the name of the grower and the collection agent who paid the money; and
- (d) the selling price or notional process value of all summerfruit in relation to which a levy was paid; and
- (e) a copy of every levy form submitted by a grower; and
- (f) a copy of every levy form submitted by a collection agent; and
- (g) how the levy money was spent or invested.

20 Retention of records

All persons required to keep records under this order must retain them for a period of 10 years.

Administrative matters

21 Confidentiality of information

- (1) This clause applies to information obtained—
 - (a) under or because of this order; or
 - (b) under the Act in relation to this order.

- (2) A person must not disclose information to anyone other than an officer or employee of SNZI unless the disclosure is—
 - (a) the giving evidence in any legal proceedings taken in relation to this order; or
 - (b) required by law; or
 - (c) the production of records, statements, or accounts required under section 105E of the Act.

22 Conscientious objectors

- (1) A grower or collection agent 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 SNZI.

23 Remuneration payable to auditor

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

Disputes

24 Dispute resolution

- (1) This clause and clauses 25 and 26 apply to a dispute about—
 - (a) whether a person is required to pay the levy;
 - (b) the amount of levy payable.
- (2) The parties to a dispute may agree to submit the dispute to arbitration and agree on the appointment of an arbitrator.
- (3) If the parties are unable to agree on the appointment of an arbitrator, an 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 Schedule 1 of the Arbitration Act 1996) is an arbitral tribunal.

25 Application of Arbitration Act 1996

- (1) 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.

- (2) The provisions of the Arbitration Act 1996 (including the procedures to be followed by an arbitral tribunal), apply to the resolution of a dispute submitted to arbitration under this order.
- (3) However, the provisions of this order prevail if there is any inconsistency between those provisions and the provisions of the Arbitration Act 1996.

26 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the decision of an arbitrator may appeal to the District Court against the decision.
- (2) The appeal must be brought by filing a notice of appeal within 28 days after the arbitrator has made a decision, or 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 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 an appeal does not operate as a stay of any process for the enforcement of the decision appealed against.

Michael Webster,
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, which comes into force on 1 November 2019, imposes a levy on summerfruit that are grown in New Zealand and sold in New Zealand or exported by a summerfruit grower (**grower**) or a collection agent. The grower is primarily responsible for the levy payment. The levy must be collected by a collection agent unless the grower sells their summerfruit by direct sales and pays the levy to New Zealand Summerfruit Incorporated (**SNZI**) or the Director-General.

SNZI is the summerfruit industry sector organisation under Part 5A of the Biosecurity Act 1993 (the **Act**). Part 5A of the Act concerns agreements between Government and industry organisations to deal with unwanted organisms, including agreements for jointly funding the costs of readiness and response activities.

SNZI must spend the levy money paid to it on meeting its commitments for contributing to the costs of readiness and response activities under the Government Industry Agreement for Biosecurity Readiness and Response deed signed by SNZI on 14 September 2017 and any operational agreement of the kind referred to in Part 5A of the Act that is made between the Director-General and SNZI.

Clause 9 sets the maximum levy rate at 0.25% of the selling price of summerfruit. *Clause 10* sets the levy rate at zero cents, but this rate is subject to *clause 11* and may be varied under *clause 12* if necessary for SNZI to meet its response commitments.

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 31 December 2020, unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(b) of that Act.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 3 October 2019.

This order is administered by the Ministry for Primary Industries.