

**Reprint
as at 1 April 2014**



**Commodity Levies (Navel Oranges)
Order 2012**

(SR 2012/12)

Commodity Levies (Navel Oranges) Order 2012: revoked, on 1 April 2014, by clause 32(b) of the Commodity Levies (Citrus Fruit) Order 2014 (LI 2014/44).

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 20th day of February 2012

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 and on the recommendation of the Minister for Primary Industries given in accordance with sections 5 and 6 of that Act, makes the following order.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Ministry for Primary Industries.

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Order

1 Title

This order is the Commodity Levies (Navel Oranges) Order 2012.

2 Commencement

This order comes into force on 1 April 2012.

Order: confirmed, on 12 December 2012, by section 8(a) of the Subordinate Legislation (Confirmation and Validation) Act 2012 (2012 No 97).

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

collection agent means a person that—

- (a) has a business of, or including,—
 - (i) buying navel oranges from growers; or
 - (ii) selling navel oranges on behalf of growers in any capacity (including as agent, auctioneer, broker, exporter, procurer, produce distribution centre, retailer, or wholesaler); and
- (b) operates the business—
 - (i) by itself; or
 - (ii) together with 1 or more other businesses

grower means a person who grows navel oranges in New Zealand for commercial purposes

GST means goods and services tax under the Goods and Services Tax Act 1985

levy means the levy imposed by clause 4

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

levy rate means the rate fixed under clause 8

levy year means the period of 12 months starting on 1 April in any year and ending on 31 March of the following year

mediator means—

- (a) a person appointed under clause 21; and
- (b) for a particular dispute, the mediator appointed to resolve the dispute

navel orange means any of the following oranges and their hybrids:

- (a) Autumn Gold:
- (b) Bahianinha:
- (c) Barnfield:
- (d) Brown:
- (e) Cara Cara:
- (f) Carter:
- (g) Carter Sport:
- (h) Frost Washington:
- (i) Fukumoto:
- (j) Johnson:
- (k) Lane Late:
- (l) Late Navel:
- (m) Manutuke Late:
- (n) Navelate:
- (o) Navelina:
- (p) Newhall:
- (q) NSW Navel:
- (r) Parent:
- (s) Powell Late:
- (t) Robertson:
- (u) Stunt-free Navel:
- (v) Summer Gold:
- (w) Washington

NZCGI means New Zealand Citrus Growers Incorporated

OTPG means the NZCGI Orange and Tangelo Product Group.

4 Levy

A levy is payable to NZCGI on navel oranges grown in New Zealand for sale or export as fresh fruit.

Payment of levy

5 Responsibility of growers

The grower is the person primarily responsible for paying the levy.

6 Responsibility of collection agents

- (1) A collection agent must pay the levy, and any GST payable on it, on navel oranges that the agent—
 - (a) buys from a grower; or
 - (b) sells on a grower's behalf; or
 - (c) exports on a grower's behalf.
- (2) Subclause (1)(a) does not apply if the agent buys navel oranges from a grower through another collection agent.
- (3) A collection agent must not pay the levy, or any GST payable on it, if the grower—
 - (a) gives the agent notice by post or email that the grower will pay the levy directly to NZCGI; and
 - (b) has the written or emailed agreement of NZCGI that NZCGI will accept the grower's direct payment.
- (4) A collection agent to whom subclause (1) applies may—
 - (a) recover the amount of the levy, and any GST payable on it, from the grower by—
 - (i) deducting the amount from the agent's payment to the grower; or
 - (ii) recovering the amount as a debt due to the agent from the grower; and
 - (b) deduct a collection fee from the levy if the deduction is—
 - (i) made before the levy is paid to NZCGI; and
 - (ii) no more than 10% of the total of the levy and the GST payable on it.

7 Levy calculation

The levy must be calculated—

- (a) on the basis of cents per kilogram before the deduction of costs; and
- (b) at the first point of sale.

*Rate of levy***8 Fixing of levy rate**

- (1) The levy for the first levy year (1 April 2012 to 31 March 2013) is 1 cent per kilogram.
- (2) For each subsequent levy year, the OTPG must fix the rate of the levy at the OTPG's annual meeting in accordance with NZCGI's voting rules.
- (3) Growers at the OTPG's annual meeting who are not members of NZCGI must be allowed to vote on the levy rate.
- (4) If the OTPG does not fix the levy rate before the start of a levy year, the levy for the year is payable at the last rate fixed under this clause.

9 Maximum levy rate

The maximum levy rate is 3 cents per kilogram (excluding GST).

10 Levy payable at single rate

A single rate of levy must be fixed.

11 Notification of levy rate

- (1) As soon as practicable after the levy rate for a levy year is fixed, NZCGI must notify the levy rate and the year to which it applies—
 - (a) in the *Gazette*; and
 - (b) in *The Orchardist*; and
 - (c) in *Citrus News* or another industry publication; and
 - (d) by post or email to all growers and collection agents known to NZCGI.
- (2) If *The Orchardist* or *Citrus News* ceases to be published, the levy rate must be notified in—
 - (a) any publication that replaces it; or
 - (b) if no publication replaces it, any publication specified for the purposes of this order by the Minister for Primary Industries by notice in the *Gazette*.

Time for payment of levy

12 When levy payable

- (1) The due date for payment of the levy to NZCGI is,—
 - (a) in the case of a grower who pays the levy directly to NZCGI, the end of each quarter of the levy year (being 30 June, 30 September, 31 December, and 31 March); and
 - (b) where the levy is paid through a collection agent, the date on which the collection agent recovers the amount of the levy under clause 6(4)(a).
- (2) The latest date for payment of the levy is the 20th day of the month after the due date for payment.

13 Additional levy payable if levy not paid in time

If any amount of the levy has not been paid by the close of the latest day for payment,—

- (a) 10% of the unpaid amount is payable to NZCGI in addition to the levy already payable; and
- (b) the unpaid amount does not include additional levies already owing under this clause.

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

14 Records

- (1) For the purpose of ascertaining whether this order has been complied with,—
 - (a) growers must comply with subclause (2); and
 - (b) collection agents must comply with subclause (3); and
 - (c) NZCGI must comply with subclause (4).
- (2) A grower must,—
 - (a) in each levy year, prepare records of—
 - (i) the name of the collection agent or exporter that the grower uses (if any); and
 - (ii) the quantity of navel oranges that the grower sells or exports; and
 - (iii) the amount of levy paid to NZCGI; and
 - (iv) the value of the navel oranges to which the amount of levy paid relates; and

- (b) provide NZCGI with information from the records as soon as is reasonably practicable after receiving a request from NZCGI by post or email for the information for the purpose of determining the amount of levy payable; and
 - (c) keep the records for at least 2 years after the date on which the levy to which the records relate is paid to NZCGI.
- (3) A collection agent must,—
 - (a) in each levy year, prepare records about each grower of navel oranges—
 - (i) from whom the collection agent buys navel oranges in the year for resale or export; or
 - (ii) on whose behalf the agent sells or exports navel oranges; and
 - (b) include in the records—
 - (i) the name and address of each grower and buyer; and
 - (ii) the quantity of navel oranges that the agent buys from the grower for sale or export; and
 - (iii) the quantity of navel oranges that the agent sells or exports on the grower's behalf; and
 - (iv) the amount of levy collected; and
 - (v) the amount of levy paid to NZCGI; and
 - (c) advise each grower of the amount of the levy and any GST payable on it that the agent deducts from the agent's payment to the grower; and
 - (d) provide NZCGI with information from the records as soon as is reasonably practicable after receiving a request by post or email from NZCGI for the information for the purpose of determining the amounts of levy payable; and
 - (e) keep the records for at least 2 years after the date on which the levies to which the records relate are paid to NZCGI.
- (4) NZCGI must,—
 - (a) in each levy year, prepare records of—
 - (i) each amount of levy money paid to it; and

- (ii) for each amount of levy money, the date on which the money was received; and
 - (iii) for each amount of levy money, the name of the person who paid the money; and
 - (iv) for all the levy money paid to it, how the money has been spent or invested; and
- (b) keep the records for at least 2 years after the levy year to which the records relate.

15 Confidentiality of information

- (1) No officer or employee of NZCGI, or any other person who gathers information, may disclose any information obtained under this order unless—
- (a) the person to whom it is disclosed is an officer or employee of NZCGI; or
 - (b) the person who provided the information and every identifiable person to whom it relates consents to its disclosure; or
 - (c) its disclosure is required by law.
- (2) Subclause (1) does not affect or prevent the disclosure of information, records, or statements for the purposes of—
- (a) assisting with the collection of the levy; or
 - (b) complying with section 17(1) or 25 of the Act; or
 - (c) giving evidence in legal proceedings relating to this order or the Act.
- (3) Subclause (1) does not prevent NZCGI from disclosing or using any information for statistical or research purposes if the information is in a form that does not identify any individual.

Expenditure of levy money by NZCGI

16 Levy money must be spent by NZCGI

- NZCGI must—
- (a) invest all the levy money until it is spent; and
 - (b) spend all the levy money paid to it.

17 Purposes for which levy money may be spent

- (1) NZCGI must not spend levy money on commercial or trading activities.

- (2) NZCGI may spend levy money for any or all of the following purposes relating to navel oranges or growers:
 - (a) research, including market research:
 - (b) product development:
 - (c) export market development:
 - (d) quality assurance:
 - (e) education and information:
 - (f) generic promotions:
 - (g) grower representation:
 - (h) day-to-day administration of the OTPG.
- (3) Any funding of an OTPG project with levy money of more than \$40,000 in any levy year must be approved—
 - (a) at the OTPG's annual meeting, or a special meeting of the OTPG called for the purpose; and
 - (b) in a vote conducted under NZCGI's voting rules.

18 Consultation on spending levy money

- (1) NZCGI must consult growers who pay the levy on how it proposes to spend the levy money.
- (2) NZCGI must use the following avenues to consult growers:
 - (a) its annual meeting; and
 - (b) special meetings called for the purpose; and
 - (c) in the case of growers who are members of NZCGI, quarterly newsletters to all members.
- (3) For the purposes of subclause (2)(a) and (b), NZCGI must—
 - (a) give the growers notice of an annual meeting or a special meeting at which spending levy money is to be discussed; and
 - (b) give the notice by post or email at least 3 weeks before the meeting; and
 - (c) allow the growers at the meeting to speak on all matters relating to spending levy money.

Miscellaneous

19 Conscientious objectors

If a grower or collection agent objects on conscientious or religious grounds to paying the levy in the manner provided in this order,—

- (a) the grower or agent may pay the equivalent amount to the chief executive of the Ministry of Agriculture and Forestry; and
- (b) the chief executive must pay the amount to NZCGI.

20 Remuneration of persons conducting compliance audits

A person appointed as an auditor under section 15 of the Act in relation to this order must be remunerated by NZCGI at a rate determined by the Minister for Primary Industries after consultation with NZCGI.

Mediation of disputes

21 Appointment of mediators

- (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) 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.
- (3) If asked, the President or a person authorised by the President may appoint a person to resolve the dispute by mediation.
- (4) 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 28.

22 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).

23 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 post or email; and
- (c) preside at the conference.

24 Conferences to be held in private

Only the parties to a dispute may attend a conference with the mediator, except when clause 25 applies.

25 Representatives

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

26 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.

27 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.

28 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 post, or by email.
- (3) The parties must comply with the mediator's decision.

29 Costs of mediation

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

30 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the mediator's decision under clause 28 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 date, time, and place for the hearing of the appeal; and
 - (b) notify the appellant and the other parties to the dispute of the date, 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.

31 Revocation and savings

- (1) The Commodity Levies (Navel Oranges) Order 2006 (SR 2006/133) is revoked.
- (2) Subclause (1) does not affect any liability for levies that arose under that order, and the liabilities continue to be enforceable as if that order had not been revoked.

Michael Webster,
for Clerk of the Executive Council.

Explanatory note

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

The order, which comes into force on 1 April 2012, imposes a levy payable to New Zealand Citrus Growers Incorporated on navel oranges that are grown in New Zealand and sold or exported as fresh fruit.

This order replaces and revokes the Commodity Levies (Navel Oranges) Order 2006.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 23 February 2012.

Reprints notes

1 *General*

This is a reprint of the Commodity Levies (Navel Oranges) Order 2012 that incorporates all the amendments to that order as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Commodity Levies (Citrus Fruit) Order 2014 (LI 2014/44): clause 32(b)
Subordinate Legislation (Confirmation and Validation) Act 2012 (2012 No 97): section 8(a)
