

Reprint  
as at 12 December 2020



**Commodity Levies (Strawberries) Order 2020**  
(LI 2020/25)

Patsy Reddy, Governor-General

**Order in Council**

At Wellington this 24th day of February 2020

Present:

Her Excellency the Governor-General in Council

This order is made under section 4 of the Commodity Levies Act 1990—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Agriculture made in accordance with sections 5 and 6 of that Act.

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**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 (Strawberries) Order 2020.

### 2 Commencement

This order comes into force on 1 April 2020.

Order: confirmed, on 12 December 2020, by section 9(d) of the Subordinate Legislation Confirmation Act 2020 (2020 No 66).

### 3 Interpretation

In this order, unless the context otherwise requires,—

**Act** means the Commodity Levies Act 1990

**grower** means a person whose business is, or includes, the commercial production of strawberries

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

**levy** means the levy imposed by clause 4

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

**levy rate** means the rate set under clause 14

**levy year** means,—

- (a) for the first levy year, the period starting on 1 April 2020 and ending on 31 August 2020;
- (b) for the last levy year, the period starting on 1 September 2025 and ending on 31 March 2026;
- (c) in every other case, a 12-month period starting on 1 September and ending on 31 August

**mediator** means—

- (a) a person appointed under clause 25; and
- (b) for a particular dispute, a mediator appointed to resolve the dispute

**producer** means a person whose business is, or includes, the commercial production of strawberry plants for sale to a grower or for their own use, and includes plant propagators and runner growers

**SGNZ** means the industry organisation that, on the commencement of this order, was known as Strawberry Growers New Zealand Incorporated

**strawberry** means any fruit of any species of the genus *Fragaria*

**strawberry plant** means a plant that bears strawberries grown for commercial purposes, and includes propagated strawberry plants and strawberry runners.

*Levy imposed***4 Levy on strawberries**

- (1) A levy is imposed on strawberries.
- (2) The levy must be paid to SGNZ.

*Paying levy***5 Growers primarily responsible for paying levy**

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

**6 Producers must pay levy**

- (1) Producers are responsible for paying the levy if they—
  - (a) sell strawberry plants to a grower; or
  - (b) grow strawberry plants for their own commercial use.
- (2) No producer is exempt from paying the levy.

**7 Producer may charge collection fee**

- (1) A producer may recover the levy from the grower by including it in the price payable.
- (2) A producer who pays the levy on plants to SGNZ on behalf of a grower may deduct from the levy—
  - (a) a collection fee of not more than 4% of the amount of the levy collected (exclusive of GST); and
  - (b) the GST payable on the fee.

**8 Conscientious objectors**

- (1) A grower or a producer who objects on conscientious or religious grounds to paying an amount of levy in the manner provided for in this order may pay the amount to the Director-General of the Ministry for Primary Industries.
- (2) The Director-General must pay the amount to SGNZ.

**9 When levy payable**

- (1) The levy must be paid annually for the preceding 12 months.
- (2) The due date for payment of an amount of levy,—
  - (a) for growers who propagate strawberry plants for their own use, is the date the grower plants those strawberry plants in commercial beds; and
  - (b) for producers, is the date when they sell the strawberry plants to a grower.
- (3) The latest date for payment of the levy in each calendar year is 31 October.

**10 Additional levy for late payment**

If a grower or a producer does not pay an amount of levy money by 31 October in a year, the grower or producer must pay SGNZ,—

- (a) for the first month, an additional levy of 5% of the unpaid amount; and
- (b) for each subsequent month that the amount (or part of the amount) remains unpaid after 31 October, an additional levy of 2% of the total amount of the unpaid levy (including additional levies owing under this clause).

*Setting levy rate*

**11 Basis for calculating levy**

SGNZ must calculate the levy payable in a levy year on the basis of the number of strawberry plants—

- (a) sold by a producer to a grower; and
- (b) grown by producers for their own commercial operation.

**12 Levy must be paid at single rate**

The levy must be paid at a single rate.

**13 Maximum levy rate**

- (1) The maximum rate of the levy is \$35 per 1,000 strawberry plants.
- (2) The maximum rate of the levy excludes GST.

**14 Setting levy rate**

- (1) For the first levy year, the levy rate on strawberries is set by the SGNZ board at \$26 per 1,000 strawberry plants sold.
- (2) For each subsequent levy year, SGNZ must set the levy rate before the start of the levy year by vote at the SGNZ annual general meeting.
- (3) If SGNZ does not set the levy rate before the start of a levy year, the levy rate for that year is payable at the rate last set under this clause.

**15 Levy calculation**

The levy payable in the levy year is pro-rated in proportion to the total number of strawberry plant sales of more than 1,000 plants within each levy year.

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**Example**

If the levy is set at \$26 per 1,000 strawberry plants sold, and a person sold—

- 1,200 strawberry plants in a levy year, the levy payable would be \$31.20:
  - 600 strawberry plants and then 800 strawberry plants in that levy year, the levy payable would be \$36.40.
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**16 Notifying levy rate**

- (1) If any levy rate set under clause 14 differs from the levy rate applying in the previous year, SGNZ must, as soon as practicable after setting the rate, notify the new levy rate—
  - (a) in the *NZGrower*; and
  - (b) in the SGNZ email newsletter; and
  - (c) in the Horticulture New Zealand Incorporated newsletter; and
  - (d) by direct mail to all growers and producers known to SGNZ.
- (2) If the *NZGrower* ceases to be published, the levy rate must be notified in—
  - (a) any publication that replaces it; or
  - (b) if no publication replaces it, a publication that the Minister of Agriculture specifies for the purposes of this order by notice in the *Gazette*.

*Spending levy money***17 SGNZ must spend levy money**

SGNZ must—

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

**18 Purposes for which levy money may be spent**

- (1) SGNZ may spend levy money for any or all of the following purposes:
  - (a) biosecurity:
  - (b) research and development:
  - (c) food safety:
  - (d) export market access and intelligence:
  - (e) strawberry plant evaluation:
  - (f) industry representation:
  - (g) management and administration of SGNZ.
- (2) SGNZ must not spend levy money on commercial or trading activities.

**19 Consulting on spending levy money**

Each levy year, SGNZ must consult on how to spend levy money by consulting—

- (a) growers at SGNZ's annual general meeting; and
- (b) grower representatives.

*Returns, records, and confidentiality*

**20 Producers must complete returns**

- (1) A payment of levy money to SGNZ by a producer must be accompanied by a written return that states the producer's sales for the year.
- (2) Immediately after 31 August in each levy year, a producer who acts as a collection agent for SGNZ must provide SGNZ with a written return that states the contact details of each grower that they have paid a levy on behalf of.
- (3) The contact details provided under subclause (2) must include the following details for each grower:
  - (a) full name:
  - (b) trading name:
  - (c) address:
  - (d) email address:
  - (e) telephone number.

**21 Growers must keep records**

- (1) For each levy year, a grower must keep records of the following:
  - (a) the amount of levy paid; and
  - (b) the strawberry plant sales that the levy was deducted from; and
  - (c) the name and address of the producer who collected the levy.
- (2) Growers must keep the records for 2 years after the levy year to which the records relate.

**22 Producers must keep records**

- (1) For each levy year, a producer who propagates their own strawberry plants must keep records of the following:
  - (a) the amount of levy paid; and
  - (b) the number of strawberry plants used in their own growing operation in relation to which the levy was deducted (if any).
- (2) For each levy year, a producer who propagates strawberry plants must keep records of the following for each grower that the producer collected the levies from:
  - (a) the amount of levy paid; and
  - (b) the sale that each payment relates to; and
  - (c) the grower's name; and
  - (d) the grower's trading name; and
  - (e) the grower's postal address.

- (3) Producers must keep the records for 2 years after the levy year to which the records relate.

### **23 SGNZ must keep records**

- (1) SGNZ must, in each levy year, keep records of—
- (a) the amount of levy paid to it; and
  - (b) the date on which the levy was received; and
  - (c) the producer who collected the levy; and
  - (d) the grower who was liable for that levy; and
  - (e) how the levy money was spent or invested.
- (2) SGNZ must keep the records for 2 years after the levy year to which the records relate.

### **24 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 SGNZ unless the disclosure is—
- (a) the giving of evidence in any legal proceedings taken in relation to this order; or
  - (b) required by law; or
  - (c) the production of records or accounts under section 17(1) of the Act; or
  - (d) the production of any statement under section 25 of the Act.
- (3) SGNZ may disclose information—
- (a) for the following purposes:
    - (i) statistical or research purposes that do not involve the disclosure of personal information;
    - (ii) invoicing or collecting the levy;
    - (iii) communicating with and supporting levy-paying growers; and
  - (b) if every identifiable person to whom the information relates consents.

### *Dispute resolution*

### **25 Appointing mediators**

- (1) This clause applies to a dispute about—
- (a) whether a person is required to pay the levy; or
  - (b) the amount of levy payable.

- (2) A 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 the dispute by agreement; or
  - (b) the mediator resolves the dispute under clause 32.

## **26 Remunerating 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 a 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 to 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).

## **27 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.

## **28 Conferences must be held in private**

Unless clause 29 applies, only the parties to a dispute may attend a conference with the mediator.

## **29 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 to do so in all the circumstances.

## **30 Right to be heard**

Each person who attends a conference may be heard at the conference.

**31 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 their own initiative,—
  - (a) seek and receive any evidence that they think desirable to resolve the dispute; and
  - (b) make any investigations and inquiries that they think desirable to resolve the dispute.
- (3) A mediator may require a person giving evidence at a conference to verify the evidence by statutory declaration.

**32 Mediator may resolve dispute in certain cases**

- (1) A mediator may resolve a dispute for the parties if—
  - (a) the mediator has organised and presided at a conference of the parties, but the dispute has not been resolved; or
  - (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.
- (2) A mediator who resolves a dispute under subclause (1) must give each party written notice of the mediator's decision and the reasons for that decision.
- (3) The parties must comply with the mediator's decision.

**33 Mediation costs**

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

**34 Appeal to District Court**

- (1) A party to a dispute who is dissatisfied with the mediator's decision may appeal to the District Court against the decision.
- (2) The appeal must be brought by—
  - (a) filing a notice of appeal within 28 days after the decision is made; or
  - (b) within any longer time that the 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; 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.

### *Compliance audits*

#### **35 Remunerating auditors**

SGNZ must remunerate a person appointed as an auditor under section 15 of the Act at a rate determined by the Minister of Agriculture after consultation with SGNZ.

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 April 2020, imposes a levy on strawberry plants grown in New Zealand for commercial purposes. Growers and producers are responsible for paying the levy. The levy is payable to Strawberry Growers New Zealand Incorporated.

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 30 June 2021, unless confirmed earlier by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(a) of that Act. If this order is confirmed, it will be revoked on 31 March 2026 (the day before the sixth anniversary of the date on which it came into force), unless it is extended under section 13(2) of the Commodity Levies Act 1990.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 27 February 2020.

## Reprints notes

### **1** *General*

This is a reprint of the Commodity Levies (Strawberries) Order 2020 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*

Subordinate Legislation Confirmation Act 2020 (2020 No 66): section 9(d)