

Version
as at 25 November 2021



Biosecurity (Border Processing Levy) Order 2015 (LI 2015/259)

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 9th day of November 2015

Present:

The Right Hon John Key presiding in Council

Pursuant to section 140AA of the Biosecurity Act 1993, His Excellency the Governor-General makes the following order, acting—

- (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 consultation in accordance with section 140AA(4) of the Biosecurity Act 1993.

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This order is administered by the Ministry for Primary Industries.

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Order

1 Title

This order is the Biosecurity (Border Processing Levy) Order 2015.

2 Commencement

- (1) Clause 4(3) comes into force on the day after the date on which this order is notified in the *Gazette*.
- (2) The rest of this order comes into force on 1 January 2016.

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Biosecurity Act 1993

collection agent has the meaning given by clause 10(1)

cruise line means a person who is carrying on an international cruise business

cruise ship means a ship, boat, or other vessel operated by a cruise line for an international cruise as part of its international cruise business

cruise ship traveller means a traveller who arrives in New Zealand on a cruise ship

Customs means the New Zealand Customs Service

exempt traveller means a traveller who is exempt from the levy under clause 9(1)

international air service licensee means a person who is licensed to carry on a scheduled international air service in New Zealand under Part 8A of the Civil Aviation Act 1990

international aircraft means an aircraft that—

- (a) is operated by an international air service licensee as part of a scheduled international air service; and
- (b) is not a non-passenger commercial craft

international cruise business means a business that involves operating ships, boats, or other vessels for international cruises, if places on the cruises are purchased by or for members of the public on the basis of schedules or itineraries that are publicly available or are made available to members of the public upon request

levy, except in clauses 4A to 8, includes any goods and services tax payable on the levy

levy period means—

- (a) the special levy period; or
- (b) a period (whether decided under clause 5 or clause 8A)—
 - (i) beginning—
 - (A) with the start of the day that immediately follows the close of the special levy period or the close of a levy period under this paragraph; or
 - (B) at a later date selected by the Director-General; and
 - (ii) ending with a day, selected by the Director-General, that is not more than 36 months after the period begins

non-levy funded exempt traveller means a traveller who is exempt from the levy under any of paragraphs (e) to (g) of clause 9(1) (whether or not the traveller is also exempt under any of paragraphs (a) to (d) of clause 9(1))

non-passenger commercial craft means a craft—

- (a) the purposes of which do not relate wholly or primarily to passengers; and
- (b) the business of which is wholly commercial; and
- (c) on which no passengers are being carried or on which passengers are being carried only as an incidental part of the business of the craft

passenger means a person carried on a craft during a flight or voyage, other than a person—

- (a) who is employed or engaged under a contract of service or a contract for services; and
- (b) who, under that contract, provides services on the craft during the flight or voyage wholly for the purposes of the business of the craft

scheduled international air service has the meaning given by section 87A of the Civil Aviation Act 1990

special levy period means the period beginning on 16 April 2021 and ending on 30 November 2021

traveller has the meaning given by section 140AA(1) of the Act.

Clause 3 **initial levy period**: revoked, on 16 April 2021, by clause 4(1) of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

Clause 3 **levy**: amended, on 16 April 2021, by clause 4(2) of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

Clause 3 **levy period** paragraph (a): replaced, on 16 April 2021, by clause 4(3) of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

Clause 3 **levy period** paragraph (b): replaced, on 25 November 2021, by clause 4(1) of the Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021 (LI 2021/338).

Clause 3 **non-levy funded exempt traveller**: amended, on 16 April 2021, by clause 4(4) of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

Clause 3 **special levy period**: inserted, on 16 April 2021, by clause 4(5) of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

Clause 3 **special levy period**: amended, on 25 November 2021, by clause 4(2) of the Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021 (LI 2021/338).

Initial levy period

[Revoked]

Heading: revoked, on 16 April 2021, by clause 6 of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

4 Levy rates for initial levy period

[Revoked]

Clause 4: revoked, on 16 April 2021, by clause 6 of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

Special levy period

Heading: inserted, on 16 April 2021, by clause 5 of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

4A Levy rates for special levy period

- (1) The rates of levy for the special levy period are as follows:
 - (a) \$8.50 for a traveller other than a cruise ship traveller:
 - (b) \$3.81 for a cruise ship traveller.
- (2) The rates of levy set by subclause (1) are exclusive of goods and services tax.
- (3) The Director-General must ensure that the rates of levy set by subclause (1) are notified by notice in the *Gazette* before 16 April 2021.

Clause 4A: inserted, on 16 April 2021, by clause 5 of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

Periods other than special levy period

Heading: replaced, on 16 April 2021, by clause 7 of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

5 Levy rates for periods other than special levy period

- (1) The rates of levy for each levy period other than the special levy period must be set and notified as follows.
- (2) The Director-General must, before the levy period begins,—
 - (a) decide the duration of the levy period; and
 - (b) set the rates of levy referred to in subclause (3) for the levy period in accordance with clauses 6 and 7.
- (3) The rates of levy to be set are as follows:
 - (a) the rate for a traveller other than a cruise ship traveller:
 - (b) the rate for a cruise ship traveller.
- (4) The rates of levy set under subclause (2) are exclusive of goods and services tax.
- (5) The Director-General must, before the levy period begins, notify by notice in the *Gazette*—

- (a) the duration of the levy period; and
 - (b) each rate of levy set under subclause (2) that is higher or lower than the corresponding rate for the previous levy period.
- (6) *See also* clause 8, which provides that a rate of levy may be reset because of unanticipated circumstances, and clause 8A, which provides that new rates of levy may be set and a new levy period may be commenced before the current levy period has ended because of unanticipated circumstances.

Clause 5 heading: amended, on 16 April 2021, by clause 8(1) of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

Clause 5(1): amended, on 16 April 2021, by clause 8(2) of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

Clause 5(2): replaced, on 1 July 2018, by clause 5(1) of the Biosecurity (Border Processing Levy) Amendment Order 2018 (LI 2018/89).

Clause 5(5): replaced, on 1 July 2018, by clause 5(2) of the Biosecurity (Border Processing Levy) Amendment Order 2018 (LI 2018/89).

Clause 5(6): amended, on 25 November 2021, by clause 5 of the Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021 (LI 2021/338).

6 Levy rate for travellers other than cruise ship travellers

- (1) The rate of levy referred to in clause 5(3)(a) must be set on the basis of the following formula (subject to subclause (3)):

$$a \div b$$

where—

- a is an estimate of the border processing costs for the levy period, as adjusted under subclause (2)
 - b is an estimate of the number of travellers who will arrive in New Zealand in the levy period, excluding cruise ship travellers and exempt travellers.
- (2) The estimated border processing costs referred to in subclause (1) must be adjusted to take into account—
- (a) any estimated shortfall in recovery, or any estimated over-recovery, of the border processing costs for the previous levy period; and
 - (b) any actual shortfall in recovery, or any actual over-recovery, of the border processing costs for the levy period before the previous levy period so far as the shortfall remains to be recovered, or the over-recovery remains to be allowed for.
- (3) The rate of levy must not exceed \$17.77.
- (4) In this clause, **border processing costs** means costs incurred by the Ministry in, or for the purpose of, exercising its powers or performing its functions under the Act in relation to relevant travellers and the goods in their possession or under their control (including as part of their personal effects or baggage), but excluding costs referred to in section 140AA(5) of the Act.

- (5) In subclause (4), **relevant travellers** means travellers excluding cruise ship travellers and non-levy funded exempt travellers.
- (6) If the amount of levy referred to in paragraph (a) does not exceed the border processing costs referred to in paragraph (b), that amount of levy and those border processing costs must be disregarded for the purposes of subclause (2):
 - (a) the amount of levy paid to the Director-General in respect of travellers, excluding cruise ship travellers, who arrive in New Zealand in the period of 18 months beginning with 1 January 2016 and ending with 30 June 2017:
 - (b) the border processing costs for that period of 18 months.

Clause 6(3): amended, on 25 November 2021, by clause 6 of the Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021 (LI 2021/338).

7 Levy rate for cruise ship travellers

- (1) The rate of levy referred to in clause 5(3)(b) must be set on the basis of the following formula (subject to subclause (3)):

$$c \div d$$

where—

- c is an estimate of the border processing costs for the levy period, as adjusted under subclause (2)
 - d is an estimate of the number of cruise ship travellers who will arrive in New Zealand in the levy period, excluding exempt travellers.
- (2) The estimated border processing costs referred to in subclause (1) must be adjusted to take into account—
 - (a) any estimated shortfall in recovery, or any estimated over-recovery, of the border processing costs for the previous levy period; and
 - (b) any actual shortfall in recovery, or any actual over-recovery, of the border processing costs for the levy period before the previous levy period so far as the shortfall remains to be recovered, or the over-recovery remains to be allowed for.
 - (3) The rate of levy must not exceed \$11.11.
 - (4) In this clause, **border processing costs** means costs incurred by the Ministry in, or for the purpose of, exercising its powers or performing its functions under the Act in relation to relevant travellers and the goods in their possession or under their control (including as part of their personal effects or baggage), but excluding costs referred to in section 140AA(5) of the Act.
 - (5) In subclause (4), **relevant travellers** means cruise ship travellers excluding non-levy funded exempt travellers.
 - (6) If the amount of levy referred to in paragraph (a) does not exceed the border processing costs referred to in paragraph (b), that amount of levy and those border processing costs must be disregarded for the purposes of subclause (2):

- (a) the amount of levy paid to the Director-General in respect of cruise ship travellers who arrive in New Zealand in the period of 18 months beginning with 1 January 2016 and ending with 30 June 2017;
- (b) the border processing costs for that period of 18 months.

Clause 7(3): amended, on 25 November 2021, by clause 7 of the Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021 (LI 2021/338).

8 Resetting of levy rates

- (1) This clause applies if the Director-General is satisfied that it is appropriate to reset a rate of levy for a levy period other than the special levy period because of circumstances that—
 - (a) occur before or during the levy period but after the rate of levy was set under clause 5(2) or was last reset under subclause (2) of this clause; and
 - (b) were not anticipated by the Director-General when setting the rate of levy under clause 5(2) or last resetting the rate of levy under subclause (2) of this clause.
- (2) The Director-General must, as soon as is reasonably practicable,—
 - (a) reset the rate of levy for the levy period in accordance with clause 6 or 7 (as the case may be); and
 - (b) notify the new rate of levy by notice in the *Gazette*.
- (3) The new rate of levy set under subclause (2) is exclusive of goods and services tax.
- (4) The new rate of levy set under subclause (2) applies on and after the later of the following:
 - (a) the first day of the levy period;
 - (b) the 28th day after the date on which the new rate is notified in the *Gazette*.
- (5) In deciding whether it is appropriate to reset a rate of levy for a levy period, the Director-General must have regard to—
 - (a) the size (or the increased size) of any shortfall in recovery, or any over-recovery, of costs that is likely to result from the occurrence of the circumstances if the rate of levy is not reset; and
 - (b) the amount of time remaining in the levy period; and
 - (c) any other matters that the Director-General considers relevant.

Clause 8(1): amended, on 16 April 2021, by clause 9 of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

8A Setting new levy rates and commencing new levy period before current levy period has ended

- (1) This clause applies if the Director-General is satisfied that it is appropriate to set a new rate of levy and commence a new levy period before the current levy

- period has ended because of circumstances that were not anticipated by the Director-General when—
- (a) setting the rate of levy and deciding the duration of the current levy period under clause 5(2); or
 - (b) last resetting the rate of levy for the current levy period under clause 8(2).
- (2) The Director-General may set a new rate for both of the rates of levy payable under this order whether or not the requirements in subclause (1) are met in both cases.
- (3) The Director-General must, as soon as is reasonably practicable,—
- (a) decide the date at the end of which the current levy period will end; and
 - (b) decide the duration of the new levy period; and
 - (c) set a new rate of levy for 1 or both rates of levy for the new levy period in accordance with clause 6 or 7 (as the case may be); and
 - (d) by notice in the *Gazette*, notify—
 - (i) the end date for the current levy period; and
 - (ii) the duration of the new levy period; and
 - (iii) the rates of levy that will apply in the new levy period (whether changed under this clause or not).
- (4) A rate of levy set under this clause is exclusive of goods and services tax.
- (5) A levy period decided and a rate of levy set under this clause are to be treated as if they were decided or set under clause 5.

Clause 8A: inserted, on 25 November 2021, by clause 8 of the Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021 (LI 2021/338).

Exemptions

9 Travellers exempt from levy

- (1) The following travellers are exempt from the levy:
- (a) a traveller under the age of 2 years;
 - (b) a traveller who arrives in New Zealand on an international aircraft otherwise than as a passenger;
 - (c) a traveller who arrives in New Zealand on a cruise ship otherwise than as a passenger;
 - (d) a traveller who—
 - (i) arrives in New Zealand on an aircraft; and
 - (ii) is not required to enter a biosecurity control area because the traveller is in transit to a place outside New Zealand;
 - (e) a traveller who arrives in New Zealand on any of the following:

- (i) a craft being operated by the New Zealand Defence Force or the defence forces of any Government other than that of New Zealand:
 - (ii) a craft being used wholly for diplomatic or ceremonial purposes of any Government:
 - (iii) a craft being used wholly for the purposes of a mission being carried out or organised by any Government that is a humanitarian mission or a mission in response to an emergency or a crisis:
 - (iv) a craft being used for the purposes of an official expedition of a Contracting Party:
 - (v) a non-passenger commercial craft:
 - (f) a traveller who arrives in New Zealand after having been rescued at sea:
 - (g) a traveller who arrives in New Zealand wholly for the purpose of seeking temporary relief from stress of weather.
 - (h) *[Revoked]*
 - (i) *[Revoked]*
- (2) In this clause,—

Contracting Party has the meaning given by section 7(1) of the Antarctica (Environmental Protection) Act 1994

official expedition, in relation to a Contracting Party, has the meaning given by section 7(1) of the Antarctica (Environmental Protection) Act 1994.

Clause 9(1)(h): revoked, on 16 April 2021, by clause 10 of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

Clause 9(1)(i): revoked, on 16 April 2021, by clause 10 of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

When and how levy is to be paid

10 Collection agents

- (1) In this order, **collection agent** means a person who is responsible for collecting the levy under any of subclauses (2) to (4).
- (2) An international air service licensee is responsible for collecting the levy from the travellers who arrive in New Zealand on international aircraft operated by the international air service licensee.
- (3) A cruise line is responsible for collecting the levy from the travellers who arrive in New Zealand on cruise ships operated by the cruise line.
- (4) The following person is responsible for collecting the levy from the travellers who arrive in New Zealand on a craft if neither subclause (2) nor subclause (3) applies:
 - (a) any agent in New Zealand of the owner or operator of the craft who, acting under section 12(4)(b) of the Customs and Excise Act 2018, pro-

vides to Customs any advance notice required under section 12(1) of that Act relating to the craft's arrival in New Zealand:

- (b) the person in charge of the craft, if paragraph (a) does not apply.
- (5) Subclause (4) does not apply if all of the travellers who arrive in New Zealand on the craft are exempt travellers.

Clause 10(4)(a): amended, on 1 October 2018, by section 443(4) of the Customs and Excise Act 2018 (2018 No 4).

11 Payment of levy

- (1) This clause applies in relation to a traveller who is not an exempt traveller.
- (2) The traveller must pay the levy to the collection agent no later than the day of the traveller's arrival.
- (3) The collection agent must pay the levy to the Director-General no later than the 20th day of the month following the month in which the collection agent receives a notice under clause 14 that requires the collection agent to pay the levy.

12 Extension of time for payment of levy by collection agent

The Director-General may extend the time for payment of the levy given by clause 11(3) if the Director-General considers that the collection agent was or will be unable to pay the levy before the close of the day referred to in clause 11(3) because of extraordinary circumstances that are beyond the collection agent's control.

13 Additional levy if levy paid late

- (1) This clause applies if the whole or a part of an amount of levy payable by a traveller is not paid to the Director-General by the collection agent before the close of the payment day (whether or not the collection agent has collected the whole or the part of that amount from the traveller).
- (2) The collection agent must pay to the Director-General an amount of additional levy (including any goods and services tax payable on that amount).
- (3) The amount of additional levy (exclusive of goods and services tax) is—
 - (a) 8% of the unpaid amount; plus
 - (b) for each relevant period that the unpaid amount remains wholly or partly unpaid, 2% of so much of the unpaid amount as remains unpaid at the close of the relevant period.
- (4) In subclause (3), **unpaid amount**—
 - (a) means the whole or the part of the amount of levy not paid as referred to in subclause (1); and
 - (b) in paragraph (b), includes the amount of additional levy (exclusive of goods and services tax).

- (5) For the purposes of subclause (3)(b), the first **relevant period** is the period of 1 month beginning with the day after the payment day, the second relevant period is the period of 1 month beginning with the day that immediately follows the close of the first relevant period, and so on.
- (6) In this clause, **payment day** means—
- (a) the day referred to in clause 11(3); or
 - (b) if clause 12 applies, the day allowed by the Director-General.

14 Director-General to issue notices to collection agents requiring payment of levy

- (1) This clause applies if a craft arrives in New Zealand.
- (2) The Director-General must issue a notice under this clause to the person who is the collection agent for the travellers who arrive in New Zealand on the craft.
- (3) The notice must be issued no later than the close of the third month following the month in which the craft arrives.
- (4) The notice must—
- (a) require the collection agent to pay to the Director-General the amounts of levy payable by any travellers who arrive in New Zealand on the craft; and
 - (b) include an estimate of the total amount payable.
- (5) A notice issued under this clause to a person may cover more than 1 craft in relation to which the person is the collection agent.
- (6) The Director-General may make arrangements for the Customs to perform the Director-General's duties under this clause on behalf of the Director-General.

Returns, records, and auditors

15 International air service licensees to make returns relating to travellers exempt under clause 9(1)(h)

[Revoked]

Clause 15: revoked, on 16 April 2021, by clause 11 of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

16 Cruise lines to make returns relating to travellers exempt under clause 9(1)(i)

[Revoked]

Clause 16: revoked, on 16 April 2021, by clause 12 of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

17 Records to be kept by collection agents

- (1) A person who is a collection agent in a levy period must keep the following records in respect of the levy period:

- (a) records that reasonably verify the following:
 - (i) the number of travellers for whom the person is the collection agent:
 - (ii) the number of those travellers who are exempt travellers:
 - (iii) the amounts of levy (including amounts of additional levy) that the collection agent is required to pay to the Director-General:
 - (iv) the payments of levy (including additional levy) made by the collection agent to the Director-General, including the days on which the payments are made:
 - (b) records that reasonably explain any differences between—
 - (i) the amounts of levy that the collection agent is required to pay to the Director-General:
 - (ii) any estimates of amounts of levy payable included in notices issued to the collection agent under clause 14.
 - (c) *[Revoked]*
- (2) The records must be retained for 2 years after the close of the levy period.
- Clause 17(1)(c): revoked, on 16 April 2021, by clause 13 of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

18 Records to be kept by Director-General

- (1) The Director-General must keep the following records in respect of each levy period:
- (a) records of the rates of levy set:
 - (b) records that reasonably verify the following:
 - (i) the amounts of levy (including amounts of additional levy) paid to the Director-General, the days on which the payments are made, and the persons by whom the payments are made:
 - (ii) the ways in which the levy (including additional levy) is spent:
 - (c) copies of any notices issued under clause 14.
 - (d) *[Revoked]*
- (2) The Director-General must, in respect of each levy period other than the special levy period, also keep records of the following:
- (a) any estimates used by the Director-General as referred to in clauses 6 and 7:
 - (b) any shortfalls in recovery, or any over-recoveries, of costs taken into account by the Director-General under clause 6(2)(b) or 7(2)(b):
 - (c) the ways in which the things referred to in paragraphs (a) and (b) were calculated.

- (3) The records referred to in subclauses (1) and (2) must be retained for 2 years after the close of the levy period.

Clause 18(1)(d): revoked, on 16 April 2021, by clause 14(1) of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

Clause 18(2): amended, on 16 April 2021, by clause 14(2) of the Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45).

19 Remuneration of auditors

A person appointed as an auditor under section 141B of the Act must be remunerated by the Director-General at a rate determined by the responsible Minister.

Michael Webster,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 12 November 2015.

Notes

1 *General*

This is a consolidation of the Biosecurity (Border Processing Levy) Order 2015 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Biosecurity (Border Processing Levy) Amendment Order (No 2) 2021 (LI 2021/338)

Biosecurity (Border Processing Levy) Amendment Order 2021 (LI 2021/45)

Biosecurity (Border Processing Levy) Amendment Order 2018 (LI 2018/89)

Customs and Excise Act 2018 (2018 No 4): section 443(4)