



Commodity Levies (Non-Proprietary and Uncertified Herbage Seeds) Order 2003

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 19th day of May 2003

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 4 of the Commodity Levies Act 1990, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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Order

1 Title

This order is the Commodity Levies (Non-Proprietary and Uncertified Herbage Seeds) Order 2003.

2 Commencement

This order comes into force on 9 June 2003.

3 Interpretation

In this order, unless the context otherwise requires,—

collection agent means a commercial seed testing station where seeds are tested for purity and germination

Federated Farmers means the body known on the commencement of this order as Federated Farmers of New Zealand Incorporated

grower means a person who grows leviabie seed for sale

GST means goods and services tax

Herbage Seed Subsection means the Herbage Seed Growers' Subsection of Federated Farmers

leviabie seed means seed that is received by any collection agent for the first test of that line of seed that—

(a) is certified by the collection agent as basic and first generation seed of any of the following AgResearch Grasslands non-proprietary cultivars:

(i) Turoa:

(ii) Pawera:

(iii) Huia:

(iv) Pitau:

(v) Tama:

(vi) Moata:

(vii) Manawa:

(viii) Nui:

(ix) Ruanui; or

(b) is uncertified seed of any of the following categories:

(i) ryegrasses:

- (ii) red clovers:
- (iii) white clovers

levy means the levy imposed by clause 4

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

levy year—

- (a) means a period of 12 months beginning on 1 January and ending on 31 December; and
- (b) includes the period beginning on 9 June 2003 and ending on 31 December 2003

mediator means a person appointed under clause 21; and, in relation to a dispute, means a mediator appointed to resolve that dispute

uncertified seed means seed that, on being tested by a collection agent, is categorised by that agent as uncertified seed; but excludes seed described on testing as a variety or cultivar protected by a grant of plant variety rights under the Plant Variety Rights Act 1987.

4 Levy imposed

- (1) A levy is imposed on all leviable seed grown by growers.
- (2) The levy is payable to Federated Farmers.

5 Grower primarily responsible for payment of levy

The grower of leviable seed is primarily responsible for paying the levy.

6 Collection agent must pay levy but may recover it from grower

- (1) A collection agent that tests any leviable seed—
 - (a) must pay the levy on the seed; and
 - (b) may recover the levy (and any GST paid in respect of it) as a debt due from the grower or the grower's agent who submitted the seed for testing.
- (2) Before paying the levy to Federated Farmers, a collection agent may deduct from the levy a collection fee of not more than 5% of the amount of the levy (exclusive of GST), plus the GST payable on the fee.

7 Basis of calculation of levy

- (1) The levy must be calculated as a percentage of the farm sale value of leviable seed for each kilogram of seed that is tested by a collection agent.
- (2) The levy does not apply to any second or subsequent test of the same line of leviable seed.
- (3) The farm sale value of leviable seed for any levy year is the amount fixed before the beginning of that year by the Herbage Seed Subsection, in consultation with the New Zealand Grain and Seed Trade Association Incorporated, as the estimated average price per kilogram (excluding GST) that the grower may receive for that year for cleaned seed of that line.

8 Different rates of levy

A different rate of levy may be fixed for each line of leviable seed.

9 Maximum rate of levy

The maximum rate of levy for each line of leviable seed is 5% of the farm sale value of the seed (excluding GST).

10 Federated Farmers must fix actual rate of levy

- (1) For each levy year, Federated Farmers must fix the actual rate of levy for each line of leviable seed at a meeting of the Herbage Seed Subsection, to be held in November of the previous levy year.
- (2) Federated Farmers must give not less than 10 days' notice of the time and venue of the meeting in—
 - (a) the Herbage Seed Subsection's newsletter; or
 - (b) 1 or more newspapers circulating in the main growing areas.
- (3) Despite subclause (1), the rates of levy for the levy year beginning on 9 June 2003 and ending on 31 December 2003 are—
 - (a) the rates fixed before the commencement of this order by the executive of the Herbage Seed Subsection for that period of time; or
 - (b) if no rates are fixed under paragraph (a), the rates that applied immediately before the commencement of this order.

11 Rate if no rate fixed before beginning of levy year

If Federated Farmers does not fix the actual rate of levy for any line of leviable seed before the beginning of a levy year, the levy for that year for that line must be paid at the rate last fixed under clause 10.

12 Notification of rate of levy

As soon as is practicable after fixing the rates of levy for a levy year, Federated Farmers must notify the rates in—

- (a) the Herbage Seed Subsection's newsletter; and
- (b) writing to collection agents; and
- (c) the *Gazette*.

13 When levy payable

- (1) The due date for payment of an amount of levy on any leviable seed tested is the same as the due date for the payment by the grower, or the grower's agent, to the collection agent for the testing of that seed line.
- (2) The latest date for payment of the levy is the 20th day of the month following the due date for payment.

14 Herbage Seed Subsection must spend levy money for specific purposes

- (1) The Herbage Seed Subsection must spend levy money for the following purposes:
 - (a) the maintenance of leviable seed; and
 - (b) the administrative costs associated with the maintenance of leviable seed.
- (2) The Herbage Seed Subsection must not spend any levy money on commercial or trading activities.

15 Records must be kept by grower

- (1) Every grower who submits leviable seed to a collection agent must record for each month of a levy year—
 - (a) the quantities of each line of seed tested by the collection agent in that month; and
 - (b) the name and contact details of the collection agent.
- (2) The records required by subclause (1) must be retained for at least 2 years after the end of the levy year to which they relate.

- (3) Subclause (1) does not require a grower to make or retain a nil record for any month.

16 Records must be kept by collection agent

- (1) Every collection agent must, in respect of each grower for whom it has performed a seed test on leviable seed, record for each month of a levy year—
- (a) the quantities of each line of seed tested for the grower or the grower's agent in that month and the farm sale value of it; and
 - (b) the rate at which the levy was calculated for each line of seed; and
 - (c) the amount of levy money paid by the collection agent to Federated Farmers for each line of seed; and
 - (d) the collection fee deducted by the collection agent from each payment of levy money to Federated Farmers.
- (2) The records required by subclause (1) must be retained for at least 2 years after the end of the levy year to which they relate.

17 Records must be kept by Federated Farmers

- (1) The Herbage Seed Subsection must record for each month of a levy year—
- (a) the farm sale value for each line of leviable seed; and
 - (b) each amount of levy money paid to Federated Farmers; and
 - (c) in relation to each amount,—
 - (i) the day on which it was received; and
 - (ii) the person who paid it; and
 - (d) how levy money paid to Federated Farmers was spent.
- (2) The records required by subclause (1) must be retained for at least 2 years after the end of the levy year to which they relate.

18 Confidentiality of information

- (1) No collection agent or officer or employee of Federated Farmers may disclose (except to an officer or employee of Federated Farmers) any information obtained—
- (a) under, or because of, this order; or
 - (b) under the Commodity Levies Act 1990 in relation to this order.
- (2) Subclause (1) does not affect or prevent—

- (a) the production of records or accounts under section 17(1) of the Commodity Levies Act 1990; or
 - (b) the production of any statement under section 25 of the Commodity Levies Act 1990; or
 - (c) the giving of evidence in any legal proceedings taken—
 - (i) under, or in relation to, this order; or
 - (ii) in relation to this order, under, or in relation to, the Commodity Levies Act 1990.
- (3) Subclause (1) does not prevent Federated Farmers from—
- (a) disclosing or using any information (not being information relating to an identifiable person) for statistical or research purposes; or
 - (b) disclosing or using any information with the consent of every identifiable person to whom it relates.

19 Conscientious objectors

- (1) Any grower, or grower's agent, who objects on conscientious or religious grounds to the manner of recovery by Federated Farmers of an amount of levy money may pay the amount concerned to the chief executive of the Ministry of Agriculture and Forestry.
- (2) The chief executive must pay the amount to Federated Farmers.

20 Remuneration of persons conducting compliance audits

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 must be remunerated by Federated Farmers at a rate determined by the Minister of Agriculture after consultation with Federated Farmers.

Mediation in case of dispute

21 Appointment of mediators

- (1) This clause applies to any dispute about—
- (a) whether or not any 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 Institute of Chartered Accountants of New Zealand to appoint a person to resolve the dispute by mediation and, in that case, the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.

- (3) 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 to by the parties to the dispute.
- (2) If the parties to the dispute cannot agree on a mediator's remuneration, the President of the Institute of Chartered Accountants of New Zealand (or a person authorised by the President to do so) must—
- (a) set 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 set by the President (or authorised person) and specified as an amount to be paid by that party.

23 Time and place of conference

Every conference organised by a mediator of the parties to the dispute must be held on a day and at a time and place set by the mediator and notified in writing to the parties.

24 Conference to be held in private

Only the parties to the dispute and the mediator may attend a conference organised by the mediator.

25 Representatives

If satisfied that in all the circumstances it is appropriate to do so, a mediator may allow a representative of any party to the dispute to attend a conference of the parties organised by the mediator.

26 Right to be heard

Every party to the dispute, and every representative of a party allowed by the mediator to attend a conference of the parties organised by a mediator, may be heard at 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, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a dispute.
- (3) A mediator may require any person giving evidence at a conference of the parties to the dispute to verify the evidence by statutory declaration.

28 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve the 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) If subclause (1) applies, the mediator must give each of the parties written notice of the mediator's decision and the reasons for the decision.
- (3) The parties must comply with the decision of the mediator.

29 Appeal to District Court

- (1) A party to the dispute who is dissatisfied with the decision made by a mediator under clause 28 may appeal to a District Court against the decision.
- (2) The appeal must be brought by the filing of a notice of appeal within 28 days after the making of the decision concerned, or within any longer time 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 the other parties to the dispute; and
 - (b) serve a copy of the notice of appeal on every other party to the dispute.
- (4) Every party 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 a notice of appeal does not operate as a stay of any process for the enforcement of the decision appealed against.

30 Revocation

- (1) The Commodity Levies (Non-Proprietary and Uncertified Herbage Seeds) Order 1997 (SR 1997/108) is revoked.
- (2) Despite subclause (1), amounts of levy that became payable to Federated Farmers under the Commodity Levies (Non-Proprietary and Uncertified Herbage Seeds) Order 1997 before the commencement of this order continue to be due and payable as if that order had not been revoked.

Marie Shroff,
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 9 June 2003, imposes a levy on certain first generation AgResearch Grasslands non-proprietary cultivar and uncertified seed lines that are tested by a collection agent.

The levy is payable to Federated Farmers of New Zealand Incorporated (**Federated Farmers**). Growers of the seed lines are primarily responsible for paying the levy. However, a collection agent must pay the levy to Federated Farmers and recover the amount from the growers.

The order revokes and replaces the Commodity Levies (Non-Proprietary and Uncertified Herbage Seeds) Order 1997.

Section 13 of the Commodity Levies Act 1990 provides that a commodity levy order, unless earlier revoked, expires 6 years after it is made.

2003/105

**Commodity Levies (Non-Proprietary and
Uncertified Herbage Seeds) Order 2003**

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 22 May 2003.

This order is administered in the Ministry of Agriculture and Forestry.
