



**THE BOARD OF TRADE (WHEAT AND FLOUR)
REGULATIONS 1938, AMENDMENT NO. 5**

C. L. N. NEWALL, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington, this 12th day of
May, 1943

Present :

THE HON. D. G. SULLIVAN PRESIDING IN COUNCIL

PURSUANT to the provisions of section 26 of the Board of Trade Act, 1919, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and on the recommendation of the Minister of Industries and Commerce, and deeming the provisions hereinafter contained to be necessary in the public interest for divers of the purposes set out in the said section, doth hereby make the following regulations for the purposes of the said Act.

REGULATIONS

1. These regulations may be cited as the Board of Trade (Wheat and Flour) Regulations 1938, Amendment No. 5.

2. These regulations shall be read together with and form part of the Board of Trade (Wheat and Flour) Regulations 1938* (hereinafter called the principal regulations), and the amendments thereof.

3. Regulation 1 of the principal regulations is further amended by adding to paragraph (a) of clause (3) thereof the following additional definition :—

“ ‘ The 1942–43 scheme ’ means the wheat-marketing scheme and the flour-marketing scheme established in respect of operations for the season 1942–43 by these regulations as amended, and, as the context may require, includes the said wheat-marketing scheme and the said flour-marketing scheme respectively and both of them collectively ”.

4. Regulation 1 of the principal regulations is further amended by deleting the definition of “ wheat ” therein given, and substituting the following words :—

“ ‘ Wheat ’ means wheat of any kind or quality grown in New Zealand or elsewhere during the season 1942–43 or in any season previous to the season 1942–43 ”.

* Statutory Regulations 1938, Serial number 1938/26, page 131.

Amendment No. 1 : Statutory Regulations 1938, Serial number 1938/181, page 764.

Amendment No. 2 : Statutory Regulations 1939, Serial number 1939/277, page 1065.

Amendment No. 3 : Statutory Regulations 1941, Serial number 1941/1, page 1.

Amendment No. 4 : Statutory Regulations 1942, Serial number 1942/26, page 75.

5. The principal regulations are amended by inserting, after Regulation 4D thereof, the following additional regulation :—

“ REGULATION 4E.—COMPLETION OF 1941-42 OPERATIONS

“ (1) The Committee shall complete the winding-up of the 1941-42 scheme as expeditiously as circumstances permit, and shall apportion equitably between the 1941-42 scheme and the 1942-43 scheme all expenses of and incidental to each.

“ (2) The Committee may in its discretion use the funds of the 1941-42 scheme temporarily for the carrying-on of the 1942-43 scheme, including the purposes set out in clause (4) of this regulation, but subject to proper adjustment and repayment as circumstances permit.

“ (3) The Committee's decision on any matter of and incidental to adjustment between the 1941-42 scheme and the 1942-43 scheme, whether as to expenses and use of funds as aforesaid, or otherwise, shall be final.

“ (4) In order to complete the administration and winding-up of the 1941-42 scheme the Committee shall have power, in its discretion, to take over on behalf of the 1942-43 scheme any surplus of the 1941-42 scheme remaining in the hands of the Committee. Such taking-over shall be at a valuation to be fixed by the Committee after taking into account all relevant circumstances, including cost of storage. Any money in the Committee's hands under the 1942-43 scheme shall be available for the payment of the price of the wheat taken over, and the wheat so taken over shall become part of the stocks of the 1942-43 scheme ”.

6. Regulation 6 of the principal regulations is further amended by revoking the paragraph marked (c) in clause (9) thereof, and substituting the following paragraph :—

“ (c) Wheat grown in any season prior to the season 1942-43 ”.

7. The principal regulations are amended by inserting, after Regulation 12D thereof, the following additional regulation :—

“ REGULATION 12E.—RETURNS FOR 1942-43 SEASON

“ (1) The Committee may at any time give public notice requiring every grower of wheat to make to the Committee a return showing at a date to be stated in such notice,—

“ (a) The number of bushels of each variety of wheat grown by him during the season 1942-43 :

“ (b) The number of bushels of each variety of wheat so grown by him but not yet sold and delivered.

“ (2) Every grower of wheat shall duly comply with the requirements of any such notice.

“ (3) Forthwith upon the coming into force of this clause every manufacturer of wheat products for human consumption carrying on business in New Zealand shall make to the Committee a return showing—

“ (a) His probable requirements of wheat for milling for the period between the 1st day of March, 1943, and the 29th day of February, 1944 :

“ (b) His carry-over of stocks of wheat, flour, bran, and pollard as at the 31st day of January, 1943.

“(4) In making all such returns as aforesaid the person by whom the return is to be made shall use such forms as the Committee may from time to time by public notice or by the express notice to such person require to be used.

“(5) If any person who has been a grower of wheat during the season 1942-43 dies before the date at which particulars of wheat grown by him are required by the Committee to be stated, or before he has made any return required of him under these regulations, or if any person who is on the 31st day of January, 1943, a manufacturer of wheat products for human consumption dies before the time when he is required to make any return under these regulations, or before he has made any such return, then and in every such case the legal personal representative of such person shall make on behalf of such person the respective return aforesaid”.

8. Regulation 15 of the principal regulations is amended by adding thereto the following additional clauses:—

“(14) The balance of the funds of the Committee shall, as soon as may be after the close of the 1942-43 season, be divided amongst the sellers of wheat to the Committee to the nearest workable fraction in proportion to the quantities of wheat sold by them to the Committee.

“(15) The Committee may at any time make an interim division of any part of its funds on account of the division directed to be made by the last preceding clause hereof”.

9. The principal regulations are amended by inserting next after Regulation 15 thereof the following additional regulation:—

“REGULATION 15A.—WHEATGROWERS COMPENSATION SCHEME

“(1) In this regulation, unless inconsistent with the context,—

“‘Claimant’ includes any person seeking or receiving or intending to seek compensation under this regulation:

“‘Flood damage’ means damage resulting from the overflow of water from a natural watercourse or from abnormal flow of drainage water from higher ground; and ‘flood’ has a corresponding meaning:

“‘Frost damage’ means damage caused by late spring frosts resulting in the killing of flowers or grains but does not include damage to the vigour of a plant or damage to the growth of a grain that is not killed:

“‘Fund’ means the Wheatgrowers’ Compensation Fund hereinafter referred to:

“‘Normal yield’ means the yield in bushels to the acre which in the opinion of the Adjuster and Assessors or as the case may be in the opinion of the Committee a paddock would have averaged in the particular season taking into consideration weather (except the weather giving rise to the claim for compensation) and all other circumstances had the damage for which compensation is claimed not occurred:

“‘Paddock’ means an area sown in wheat which in the opinion of the Committee is treated as a single unit of cultivation, notwithstanding that it may be intersected by watercourses, roads, or other physical features, and notwithstanding that it may not be physically separated from any other unit of cultivation.

“(2) The provisions of this regulation shall take effect notwithstanding anything contained in the last preceding regulation.

“(3) When the Committee fixes or has fixed prices for wheat under the powers conferred upon it by clause (2) of Regulation 8 hereof it shall set apart from such prices a sum of $\frac{1}{2}$ d. a bushel which instead of being paid to the vendor shall be retained in the hands of the Committee as a Wheatgrowers' Compensation Fund to be used as hereinafter specified.

“(4) The Committee may from time to time invest the Fund or any part thereof in any investment approved by the Minister of Finance, but having regard to the need for keeping the Fund liquid to meet demands thereon it shall not be obligatory upon the Committee to invest the same or any part thereof.

“(5) Every grower of wheat for sale whose yield for the season from any separate paddock is less than one-half of the normal yield (as herein defined) shall, subject to compliance with the requirements of this regulation, if the deficiency arises from frost-damage, hail-damage, or flood-damage (as herein defined) and if the crop is harvested or the land is occupied by the crop until the normal time of harvest be entitled in respect of that paddock to claim compensation for part of such deficiency to the extent set out in clause (13) hereof subject in the case of flood-damage to clause (19) hereof.

“(6) The amount of every claim shall be assessed by an Adjuster appointed by the Committee and two assessors appointed by the Committee one to represent the claimant and to be appointed upon nomination by a local electoral committee member of the organization known as United Wheatgrowers (N.Z.), Ltd., or in such other way as the Committee thinks sufficient, and the other to represent the Committee.

“(7) No claim shall be entertained unless after the occurrence of damage to the growing crop due to frost, hail, or flood, the claimant gives written notice thereof to the Committee setting out the date and nature of the occurrence and such notice must be given not later than seven days after such damage could reasonably be expected to be manifest or in the case of damage by flood not later than seven days after the subsidence of the flood waters.

“(8) No further notice of claim shall be required than the notice referred to in the last preceding clause hereof, but if after giving such notice the claimant decides not to seek compensation he shall forthwith notify the Committee to that effect.

“(9) The claimant shall at all times permit any person appointed in that behalf by the Committee to enter and view the paddock and take samples of crop and shall afford all assistance and supply all information reasonably required by any such person.

“(10) The claimant shall on a day not more than twenty-eight nor less than fourteen days prior to the date on which he then estimates that the crop will be ready for harvest give notice to the Committee by telegram confirmed by notice in writing of the day on which he estimates that the crop will be ready for harvest.

“(11) As soon as may be after the crop is harvested or the time for harvesting is passed and the yield (if any) is ascertained the Adjuster and Assessors shall jointly inquire and report to the Committee their opinion as to—

“(i) The normal yield of the paddock ;

“(ii) The actual yield of the paddock ;

“(iii) The amount of loss suffered by the claimant through the damage claimed for ;

“(iv) The amount of compensation that would place the claimant in the same position as if the actual yield had been one-half of the normal yield ; or

“(v) Whether the claim is within the provisions of clause (5) and is not excluded by clause (19) of this regulation.

“(12) The Committee shall consider the said reports and may approve the claims so reported or may in any case if it thinks an erroneous finding has been reached disapprove a claim or any part thereof.

“(13) When the reports of Adjusters and Assessors on all claims have been received and considered the Committee shall deduct and retain from the Fund all expenses incurred in the administration of the Fund and of the compensation scheme comprised in this regulation including expenses of inspection and Adjusters' and Assessors' fees and expenses as estimated by or authorized or paid by the Committee in its discretion and shall apply the residue of the Fund as far as it extends in payment *pro rata* in respect of all approved claims of sums that will according to the reports received place the claimants in the same position as if the actual yield had been one-half of the normal yield.

“(14) Any surplus remaining in the Fund shall be retained by the Committee to be applied as may by any future regulations made under the Board of Trade Act, 1919, be directed and so that pending such direction no person shall be entitled to require the application thereof for any purpose or set up any resulting trust or other trust in relation thereto.

“(15) In reaching their finding the Adjuster and Assessors may hear parties and take evidence as arbitrators are used to do and may receive evidence that would not be admissible in Courts of law or may decide any matter from their own knowledge and inquiry without hearing parties or taking evidence as appraisers are used to do or they may in the same inquiry adopt both methods of procedure and no objection shall be raised to any finding on the ground of any want of notice or other defect of procedure.

“(16) Except in special cases where the Adjuster and Assessors are satisfied with other evidence, the claimant shall produce a certificate signed by the contractor or other person by whom the crop was threshed stating that he threshed the whole of the crop grown in the paddock in question, and setting out the number of bushels of wheat threshed from the crop, or, if the claimant has himself threshed the crop, a statutory declaration made by him to the same effect; but this provision shall not prevent the Adjuster and Assessors from requiring such further evidence as they may in any case think necessary.

“(17) If any Adjuster or Assessor be unable to act or to continue to act the Committee may at any time appoint to act in his place any person it considers suitable.

“(18) In case the Adjuster and Assessors are unable to agree on their finding, the finding of a majority of them shall be reported to the Committee and may be acted on by the Committee, and in case no two of them agree, another Adjuster and Assessors shall be appointed by the Committee for the case.

“(19) No compensation shall be payable for flood-damage which in the opinion of the Committee is due to negligent farming, neglect of watercourses, or other negligence on the part of the claimant.

“(20) In any case where in the opinion of the Committee flood-damage is due to negligence on the part of any person for which an action for damages would lie against such person at the suit of the claimant, compensation for flood-damage may be paid on condition that the Fund be subrogated to the claimant in respect of such right of action, and the Committee may for that purpose as a condition of payment require the claimant to execute in favour of a nominee of the Committee, and in such form as the Committee stipulates—

“(a) An assignment of such right of action ;

“(b) A power of attorney enabling the nominee in the name of the claimant or otherwise to institute, prosecute, and abandon or enforce any actions or other proceedings ; and

“(c) An agreement by the claimant to give all reasonable assistance in the prosecution of the proceedings, subject to being indemnified by the Committee against the costs and expenses of the proceedings.

“(21) If any question arises as to the sufficiency or date of receipt of any notice or claim, or, as to the regularity of any inquiry, or as to any other matter arising out of this regulation, or in the administration of the Fund and the Compensation Scheme, the decision of the Committee shall be final, and such decision shall be deemed to be given in an administrative and not a judicial capacity, and the Committee may at its discretion waive in a particular case any of the requirements of this regulation ”.

C. A. JEFFERY,
Clerk of the Executive Council.

Issued under the authority of the Regulations Act, 1936.

Date of notification in *Gazette* : 14th day of May, 1943.

These regulations are administered in the Department of Industries and Commerce, Tourist and Publicity.