



**COMMODITY LEVIES (NON-PROPRIETARY AND UNCERTIFIED
HERBAGE SEEDS) ORDER 1997**

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 9th day of June 1997

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

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

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ORDER

1. Title and commencement—(1) This order may be cited as the Commodity Levies (Non-Proprietary and Uncertified Herbage Seeds) Order 1997.

(2) Subject to clauses 5 (4) and 6 (4), this order comes into force on 1 October 1997.

2. Interpretation—In this order, unless the context otherwise requires,—

“Farm sale value” has the meaning given in clause 5 (3):

“Federation” means the body that was, on the commencement of this order, known as Federated Farmers of New Zealand Incorporated:

“Grower”, or “seedgrower”, means a person who grows leviable seed for sale:

“Leviable seed” means seed received at any seed testing laboratory for the first test of that line of seed which is—

(a) Certified as first generation seed of any non-proprietary cultivar specified in clause 3 (2):

(b) Any uncertified seed of the lines ryegrass, lucerne, red clover, or white clover:

“Seed testing laboratory” means a commercial facility in New Zealand where seeds are tested for purity and germination:

“Uncertified seed” means seed that, on being tested at a seed testing laboratory, is categorised by the laboratory as uncertified seed; but does not include any seed that, when submitted for testing, is described as a variety or cultivar protected by a grant of plant variety rights under the Plant Variety Rights Act 1987.

3. Levy imposed—(1) There is imposed on the commodity specified in subclause (2) a levy payable to the industry organisation specified in subclause (3).

(2) The commodity on which the levy is imposed is seed that—

(a) Is first generation seed of any Agresearch Grasslands non-proprietary cultivar (being the Grasslands cultivars Turoa, Pitau, Moata, Nui, Pawera, Kahu, Manawa, Ruanui, Huia, Tama, and Wairau); or

(b) Is uncertified seed of any ryegrass, lucerne, or red or white clover.

(3) The industry organisation to which the levy is payable is Federated Farmers of New Zealand Incorporated.

4. Seedgrowers primarily responsible for paying levy—The seedgrower of leviable seed is primarily responsible for paying the levy on that seed.

5. Basis of calculation of levy—(1) The levy is to be calculated as a percentage of the farm sale value of leviable seed for each kilogram of seed that is submitted to and tested by a seed testing laboratory.

(2) The levy does not apply to any second or subsequent test of the same line.

(3) The farm sale value of any seed for any calendar year is the amount fixed before the beginning of that year by the Herbage Seedgrowers Subsection of the Federation, in consultation with the NZ Grain & Seed Trade Association Inc, as the estimated average price per kilogram

(exclusive of GST) that the farmer may receive for that year for seed of that cultivar or line.

(4) For the balance of the 1997 calendar year, the farm sale value may be fixed at any time before the commencement of this order.

6. Different rates of levy—(1) The levy may be fixed and paid at up to 15 different rates, with a different rate for each of the following categories of seed:

- (a) Seed certified as first generation seed of any of the 11 cultivars specified in clause 3 (2) (a):
- (b) Uncertified seed of any of the following 4 lines:
 - (i) Ryegrasses:
 - (ii) Lucernes:
 - (iii) Red clovers:
 - (iv) White clovers.

(2) The maximum GST-exclusive rate of levy for any leviable seed is 1.5% of the farm sale value of the seed.

(3) The actual rates of levy for any calendar year are to be set by the Federation at a properly publicised meeting of the Herbage Seedgrowers Subsection of the Federation held in November in the preceding year.

(4) For the purpose of fixing the rates for the balance of the 1997 calendar year, the meeting may be held at any time before the commencement of this order.

(5) A meeting is properly publicised by the giving of not less than 10 days notice of its time and venue in either the Herbage Seedgrowers Subsection newsletter or in newspapers circulating in the main growing areas.

7. Notification of rate of levy—As soon as practicable after the levy rates are fixed, the Federation must notify the rates—

- (a) By notice in the Herbage Seedgrowers Subsection newsletter; and
- (b) By direct advice in writing to seed testing laboratories; and
- (c) By notification in the *Gazette*.

8. Seed testing laboratories to pay levy, but may recover it from seedgrowers and charge collection fee—(1) The seed testing laboratory that tests any leviable seed—

- (a) Must pay the levy on the seed to the Federation; but
- (b) May recover the levy (and any GST paid in respect of it) by charging it to the seedgrower who submitted the seed for testing.

(2) A seed testing laboratory may, by deduction from any amount of levy money otherwise payable to the Federation, charge the Federation—

- (a) A fee of 5% of the amount of that money, exclusive of GST; and
 - (b) The GST payable in respect of that fee,—
- for paying and recovering the money.

9. Levies to be paid monthly—The due date for payment of amounts of levy on any seed tested is the same as the due date for the payment by the grower to the seed testing laboratory for the testing of that seed line, and the latest date for payment is the 20th day of the following month.

10. Levy money to be spent on maintenance of seed of non-proprietary cultivars—All levy money paid to the Federation is to be spent by the Herbage Seedgrowers Subsection of the Federation on the maintenance of non-proprietary cultivar seed and associated administrative costs.

11. Conscientious objectors—Any grower who objects on conscientious or religious grounds to the manner of recovery by the Federation of an amount of levy money may pay the amount concerned to the chief executive of the Ministry of Agriculture; and in that case the chief executive will cause it to be paid to the Federation.

12. Records to be kept by seedgrowers—(1) Every grower who submits leviable seed to a seed testing laboratory for a first test must—

(a) For each month record the quantities of each line of seed tested by the seed testing laboratory in that month; and

(b) Ensure that the records are retained for at least 2 years after the end of the year in which the seed was tested.

(2) Nothing in this clause requires a grower to make or retain a nil record for any month.

13. Records to be kept by seed testing laboratories—(1) Every seed testing laboratory must for each month record the following matters in respect of each grower for whom it has performed a seed test on leviable seed:

(a) The quantity of each line of seed tested for the grower in that month:

(b) The farm sale value of each such line of seed:

(c) The amount of levy money paid by the seed testing laboratory to the Federation in respect of each such line of seed:

(d) The collection fee deducted by the seed testing laboratory from each payment of levy money to the Federation.

(2) The seed testing laboratory must ensure that the records are retained for at least 2 years after the end of the year in which the seed was tested.

14. Records to be kept by Federation—(1) The Federation must record the following matters:

(a) Each amount of levy money paid to it and, in relation to each amount—

(i) The day on which it was received; and

(ii) The person who paid it:

(b) The manner in which levy money paid to it was expended.

(2) The Federation must ensure that the records are retained for at least 2 years after the year in which they were made.

15. Confidentiality of information—(1) This clause applies to every person who is—

(a) An officer or employee of the Federation; or

(b) A returning officer appointed by the Federation.

(2) Subject to this clause, no person to whom this clause applies may disclose (otherwise than to some other such person) any commercially sensitive information obtained, or obtained as a result of actions taken,—

- (a) Under this order; or
- (b) In relation to this order, under the Commodity Levies Act 1990.
- (3) Nothing in subclause (2) affects or prevents—
 - (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.

(4) Nothing in subclause (2) prevents the Federation from disclosing or using any information (not being information relating to an identifiable person) for statistical or research purposes.

(5) Nothing in subclause (2) prevents the disclosure to, and use of, any information by the Federation's returning officer to determine the voting entitlements and to count the votes of members of the Federation.

(6) Nothing in subclause (2) prevents the Federation from disclosing or using any information with the consent of every identifiable person to whom it relates.

16. Appointment of mediator in case of dispute—(1) If a dispute arises as to—

- (a) Whether or not any person is required to pay the levy; or
 - (b) The amount of levy money any person is required to pay,—
- any party to the dispute may ask the President of the New Zealand Society of Chartered Accountants to appoint a person to organise and preside at a conference of the parties to the dispute, and 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.

- (2) The mediator's appointment will be determined if—
 - (a) The parties to the dispute have resolved the dispute by agreement; or
 - (b) The parties have not resolved the dispute by agreement, and the mediator has resolved it by coming to one or more findings in relation to it.

17. Remuneration of mediators—(1) Subject to subclause 2, a mediator is to be paid remuneration by way of fees and allowances agreed by the parties to the dispute concerned.

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

18. Time and place of conference—Every conference of the parties to a dispute organised by a mediator is to be held on a day and at a time and place fixed, and notified in writing to the parties, by the mediator.

19. Conference to be held in private—Except as provided in clause 20, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

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

21. Right to be heard—Every party to a dispute, and every representative of such a party allowed by the mediator to attend a conference organised by a mediator, may be heard at the conference.

22. Evidence—(1) A mediator may hear and take into account any relevant evidence or information, whether or not it would normally 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 enable a dispute to be settled or resolved.

(3) A mediator may require any person giving evidence at a conference of the parties to a dispute to verify the evidence by statutory declaration.

23. Mediator may resolve dispute in certain cases—(1) If—

(a) The mediator has organised and presided at a conference of the parties but the dispute has not been settled; or

(b) The mediator believes that the parties are unlikely to settle the dispute, whether or not they confer directly,—

the mediator may resolve the dispute for them, and give each of them a written notice of the mediator's decision and the reasons for that decision.

(2) Subject to clause 24, the parties must comply with any decision of a mediator under subclause (1) of this clause.

24. Appeal to District Court—(1) Any party to a dispute who is dissatisfied with the decision made by a mediator under clause 23 may appeal to a District Court against the decision.

(2) An appeal is brought by the filing of a notice of appeal within 28 days of the making of the decision concerned, or within any longer time a District Court Judge allows.

(3) The Registrar of the Court will—

(a) Fix the time and place for the hearing of the appeal, and notify the appellant and 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.

25. Remuneration of persons conducting compliance audits—A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 is to be remunerated by the Federation at a rate determined by the Minister after consultation with the Federation.

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 imposes a levy on certain herbage seeds tested at seed testing laboratories. The seeds levied are first generation Grasslands non-proprietary cultivar seed and uncertified ryegrass, lucerne, and red and white clover seed.

The levy is payable to Federated Farmers.

The order comes into force on 1 October 1997, the day after the date of expiry of the Commodity Levies (Herbage and Amenity Seed) Order 1991. That order imposed a levy on herbage and amenity seeds generally.

Unless earlier revoked the order will expire 6 years after the date of its making by virtue of section 13 of the Commodity Levies Act 1990.

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

Date of notification in *Gazette*: 12 June 1997.

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