

**Reprint
as at 30 March 2015**



**Commodity Levies
(Non-proprietary and Uncertified
Herbage Seeds) Order 2009**

(SR 2009/62)

Commodity Levies (Non-proprietary and Uncertified Herbage Seeds) Order 2009: revoked, on 30 March 2015, pursuant to section 13(1) of the Commodity Levies Act 1990 (1990 No 127).

Anand Satyanand, Governor-General

Order in Council

At Wellington this 30th day of March 2009

Present:

His Excellency the Governor-General in Council

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

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.

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Order

1 Title

This order is the Commodity Levies (Non-proprietary and Uncertified Herbage Seeds) Order 2009.

2 Commencement

This order comes into force on 19 May 2009.

Commodity Levies (Non-proprietary and Uncertified Herbage Seeds) Order 2009: confirmed, on 18 December 2009, by section 8(f) of the Subordinate Legislation (Confirmation and Validation) Act 2009 (2009 No 67).

3 Interpretation

In this order, unless the context requires another meaning,—

collection agent means the person who operates a commercial seed-testing station where seeds are tested for purity and germination

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

grower means a person who grows leviable seed for sale

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

Herbage Seed Subsection means the Herbage Seedgrowers Subsection of Federated Farmers

leviable seed means seed grown in New Zealand that is submitted to a collection agent for the first test of that line of seed and 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) Pawera:

- (ii) Huia:
 - (iii) Pitau:
 - (iv) Tama:
 - (v) Moata:
 - (vi) Manawa:
 - (vii) Nui:
 - (viii) 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 under this order as a levy

levy year means,—

- (a) for the first levy year, the period starting on the commencement of this order and ending on 31 December 2009; and
- (b) for every other levy year, a period of 12 months starting on 1 January and ending on 31 December

mediator means a person appointed under clause 22 and, in relation to a dispute, means a mediator appointed to resolve the dispute

uncertified seed—

- (a) means seed that, on being tested by a collection agent, is categorised by the agent as uncertified seed; but
- (b) does not include seed described on testing as a variety or cultivar protected by a grant of plant variety rights under the Plant Variety Rights Act 1987.

Levy imposed

4 Levy imposed

- (1) A levy is imposed on all leviable seed grown by growers.
- (2) To avoid doubt, the levy does not apply to any seed submitted for a second or subsequent test of a line of leviable seed.
- (3) The levy is payable to Federated Farmers.

Responsibility for payment of levy

5 Grower primarily responsible for paying levy

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

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

- (1) A collection agent that tests any leviable seed must pay the levy on the seed.
- (2) A collection agent may recover the levy (and any GST payable on the levy) as a debt due from the grower who submitted the seed, or who had an agent submit the seed, for testing.
- (3) A collection agent who pays the levy may deduct from the payment—
 - (a) a collection fee of no more than 5% of the amount of the levy (exclusive of GST); and
 - (b) any GST payable on the fee.

Rate of levy

7 Basis of calculation of levy

- (1) The levy on leviable seed is to be calculated as a percentage of the farm sale value of the seed.
- (2) The farm sale value of a kilogram of leviable seed in any levy year is the estimated amount fixed before the start of that levy year by the Herbage Seed Subsection, in consultation with the New Zealand Grain and Seed Trade Association Incorporated, as the average price (excluding GST) the grower is expected to receive for a kilogram of cleaned seed of that line in that levy year.
- (3) If the Herbage Seed Subsection does not fix the farm sale value of a line of leviable seed for a levy year in accordance with subclause (2), then the following farm sale value continues to apply to that line for that year:
 - (a) the value last fixed for that line under subclause (2); or
 - (b) the value that applied to that line immediately before the commencement of this order, if a value has never been fixed for that line under subclause (2).

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 under clause 7(2) or (3) (excluding GST).

10 Actual rate of levy

- (1) For the first levy year, the rate of levy for each line of leviable seed is the rate fixed for that line by the executive of the Herbage Seed Subsection, in accordance with its rules, before the commencement of this order.
- (2) For every other levy year, the Herbage Seed Subsection must fix the actual rate of levy for each line of leviable seed at a general meeting held in the previous levy year.

11 Rate if no rate fixed for levy year

If the Herbage Seed Subsection does not fix the rate of levy for a line of leviable seed for a levy year in accordance with clause 10, then the following rate of levy continues to apply to that line for that year:

- (a) the rate last fixed for that line under clause 10; or
- (b) the rate that applied to that line immediately before the commencement of this order, if a rate has never been fixed for that line under clause 10.

12 Notification of rate of levy

As soon as practicable after the rates of levy are fixed for a levy year, Federated Farmers must notify the rates—

- (a) in the Herbage Seed Subsection's newsletter; and
- (b) by writing to all collection agents known to Federated Farmers; and
- (c) in the *Gazette*; and
- (d) in a major rural publication.

Time for payment of levy

13 When levy payable

- (1) The due date for payment of any levy on leviable seed is the same as the due date for payment by the grower, or the grower's agent, to the collection agent for the first test of that line of seed.
- (2) The latest date for payment of the levy is the 20th day of the month after the month in which payment is due.

Spending of levy money

14 Levy money must be spent

- (1) Federated Farmers must pay all levy money it receives to the Herbage Seed Subsection.
- (2) The Herbage Seed Subsection must—
 - (a) spend all levy money paid to it;
 - (b) invest the levy money until it is spent.

15 Levy money must be spent for specific purposes

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

Record-keeping and information requirements

16 Growers must keep records

- (1) A grower who submits, or has an agent submit, leviable seed to a collection agent must record for each month of a levy year—
 - (a) the quantity of each line of seed first tested for the grower 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.

17 Collection agents must keep records

- (1) A collection agent must, in respect of each grower for whom it has tested leviable seed, record for each month of a levy year—
 - (a) the quantity of each line of seed first tested for the grower in that month; and
 - (b) the farm sale value of, and the rate of levy for, each line of seed; and
 - (c) the amount of levy 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 levy payment made 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.

18 Federated Farmers must keep records

- (1) The Herbage Seed Subsection must record for each month of a levy year—
 - (a) the farm sale value of each line of leviable seed; and
 - (b) each amount of levy money received by Federated Farmers; and
 - (c) the person who paid each amount and the date the amount was received; and
 - (d) how levy money received by 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.

19 Confidentiality of information

- (1) An officer or employee of Federated Farmers, or a collection agent or an officer or employee of a collection agent, must not disclose 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 the disclosure of information—
 - (a) to an officer or employee of Federated Farmers; or
 - (b) with the consent of every identifiable person to whom it relates; or

- (c) for statistical or research purposes if the information is disclosed in a form that does not identify any person; or
 - (d) that is required by law.
- (3) Subclause (1) does not affect or prevent the disclosure of information for the purposes of—
 - (a) complying with section 17(1) or 25 of the Commodity Levies Act 1990; or
 - (b) giving evidence in any legal proceedings taken under or in relation to this order; or
 - (c) collecting the levy.

Miscellaneous

20 Conscientious objectors

- (1) A collection agent or grower 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 chief executive of the Ministry of Agriculture and Forestry.
- (2) The chief executive must pay the amount to Federated Farmers.

21 Remuneration of auditors

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 of disputes

22 Appointment of mediators

- (1) This clause applies to any dispute about—
 - (a) whether a person is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) Any party to a 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 under subclause (2), 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 it by agreement; or
 - (b) the mediator resolves the dispute under clause 29.

23 Remuneration of mediators

- (1) A mediator must be paid remuneration (by way of fees and allowances) agreed to 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 the remuneration to be paid to the mediator; and
 - (b) specify how much of that remuneration (if any) each party must pay.
- (3) A party must pay to the mediator any amount specified as payable by that party under subclause (2)(b).

24 Conference to resolve dispute

- (1) A mediator may organise, and preside at, 1 or more conferences between the parties to a dispute to try to resolve the dispute.
- (2) Every conference must be held on a day, and at a time and place, fixed by the mediator and notified in writing to the parties.

25 Conference to be held in private

Only the mediator and the parties to a dispute may attend a conference, unless clause 26 applies.

26 Representatives

A mediator may allow a representative of any party to a dispute to attend a conference if the mediator is satisfied that it is appropriate in the circumstances.

27 Right to be heard

The following persons may be heard at a conference:

- (a) every party to the dispute; and

- (b) every representative of a party allowed by the mediator to attend the conference.

28 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.
- (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 to verify the evidence by statutory declaration.

29 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve the dispute for the parties if—
 - (a) the dispute is not resolved at a conference; 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 of the parties written notice of the mediator's decision and the reasons for the decision.
- (3) The parties must comply with the mediator's decision.

30 Costs of mediation

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

31 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 29 may appeal to a District Court against the decision.
- (2) The appeal must be brought by filing a notice of appeal—
 - (a) within 28 days after the decision is made; or
 - (b) within any longer time that 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

- (b) notify the time and place to 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) Every 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 any process for the enforcement of the mediator's decision.

Michael Webster,
for Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 2 April 2009.

Reprints notes

1 *General*

This is a reprint of the Commodity Levies (Non-proprietary and Uncertified Herbage Seeds) Order 2009 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 and Validation) Act 2009 (2009 No 67): section 8(f)
Commodity Levies Act (1990 No 127): section 13(1)
