

Version  
as at 24 January 2023



# Commodity Levies (Non-proprietary and Uncertified Herbage Seeds) Order 2020

(LI 2020/142)

Patsy Reddy, Governor-General

## Order in Council

At Wellington this 29th day of June 2020

Present:

Her Excellency the Governor-General in Council

This order is made under section 4 of the Commodity Levies Act 1990—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Agriculture made in accordance with sections 5 and 6 of that Act.

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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 Commodity Levies (Non-proprietary and Uncertified Herbage Seeds) Order 2020.

**2 Commencement**

This order comes into force on 8 December 2020.

Order: confirmed, on 12 December 2020, by section 9(h) of the Subordinate Legislation Confirmation Act 2020 (2020 No 66).

**3 Interpretation**

In this order, unless the context otherwise requires,—

**Act** means the Commodity Levies Act 1990

**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 or first generation seed of any of the following AgResearch Grasslands non-proprietary cultivars:
  - (i) Pawera:
  - (ii) Huia:
  - (iii) Tama:
  - (iv) Moata:
  - (v) Manawa:
  - (vi) Nui:
  - (vii) 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 5

**levy money** means money paid under this order as a levy

**levy year** means—

- (a) a period of 12 months starting on 1 January and ending on 31 December; but
- (b) for the first levy year, the period starting on 8 December 2020 and ending on 31 December 2020; and
- (c) for the last levy year, the period starting on 1 January 2026 and ending on 7 December 2026

**mediator** means a person appointed under clause 23 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 collection 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 2022.

Clause 3 **uncertified seed** paragraph (b): amended, on 24 January 2023, by section 159 of the Plant Variety Rights Act 2022 (2022 No 61).

#### 4 **GST**

Except where otherwise specified, a reference in this order to the payment or recovery of a levy must be read as including the payment or recovery of any GST payable on the levy.

#### *Levy imposed*

#### 5 **Levy imposed**

- (1) A levy is imposed on all leviable seed grown by growers.
- (2) 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.

*Paying levy*

**6 Grower primarily responsible for paying levy**

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

**7 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 leviable seed.
- (2) A collection agent may recover 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.

**8 Conscientious objectors**

- (1) Any grower or collection agent 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 Director-General of the Ministry for Primary Industries.
- (2) The Director-General must pay the amount to Federated Farmers.

*Setting levy rate*

**9 Basis for calculating levy**

- (1) The levy on leviable seed must 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 amount set 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 set the farm sale value of a line of leviable seed for a levy year in accordance with subclause (2), the following farm sale value continues to apply to that line for that year:
  - (a) the value last set 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 set for that line under subclause (2).

**10 Different levy rates**

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

**11 Maximum levy rate**

The maximum levy rate for each line of leviable seed is 5% of the farm sale value of the seed under clause 9(2) or (3) (excluding GST).

**12 Actual levy rate**

- (1) For the first levy year, the levy rate for each line of leviable seed is the rate set for that line by 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 set the actual levy rate for each line of leviable seed, in accordance with clauses 9 to 11, at a general meeting held in the previous levy year.

**13 Levy rate if no rate set for levy year**

If the Herbage Seed Subsection does not set the levy rate for a line of leviable seed for a levy year in accordance with clause 12, the following levy rate continues to apply to that line for that year:

- (a) the rate last set for that line under clause 12; or
- (b) the rate that applied to that line immediately before the commencement of this order, if a rate has never been set for that line under clause 12.

*Notifying levy rates*

**14 Notifying levy rates**

As soon as practicable after the rates of levy are set 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.

*Payment dates*

**15 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 levy money*

**16 Levy money must be paid to Herbage Seed Subsection**

Federated Farmers must pay all levy money it receives to the Herbage Seed Subsection.

**17 Herbage Seed Subsection must spend levy money**

The Herbage Seed Subsection must—

- (a) spend all levy money paid to it; and
- (b) invest all levy money until it is spent.

**18 Purposes for which levy money may be spent**

- (1) The Herbage Seed Subsection must spend all levy money paid to it for either or both of the following purposes:
  - (a) maintaining leviable seed;
  - (b) the administrative costs associated with maintaining leviable seed.
- (2) The Herbage Seed Subsection must not spend the levy on commercial or trading activities.

*Records and confidentiality*

**19 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 grower must keep the records for at least 2 years after the end of the levy year to which they relate.

**20 Collection agents must keep records**

- (1) A collection agent must record, for each grower for whom the collection agent has tested leviable seed, 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 levy rate 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 collection agent must keep the records for at least 2 years after the end of the levy year to which they relate.

## **21 Herbage Seed Subsection 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) who paid each amount and the date the amount was received; and
  - (d) how levy money received by Federated Farmers was spent.
- (2) The Herbage Seed Subsection must keep the records for at least 2 years after the end of the levy year to which they relate.

## **22 Confidentiality of information**

- (1) This clause applies to information obtained—
  - (a) under the Act in relation to this order; or
  - (b) under or because of this order.
- (2) An officer or employee of Federated Farmers, or a collection agent or an officer or employee of a collection agent, must not disclose the information to anyone other than to an officer or employee of Federated Farmers.
- (3) Federated Farmers may disclose the information—
  - (a) only for the following purposes:
    - (i) producing records or accounts under section 17(1) of the Act;
    - (ii) producing a statement under section 25 of the Act;
    - (iii) giving evidence in legal proceedings taken in relation to this order;
    - (iv) statistical and research purposes that do not involve the disclosure of personal information;
    - (v) collecting the levy;
  - (b) if every identifiable person to whom the information relates consents;
  - (c) if the disclosure is required by law.

### *Dispute resolution*

## **23 Appointing mediators**

- (1) This clause applies to any dispute about—
  - (a) whether any person is required to pay the levy; or
  - (b) the amount of levy payable.



- (2) A party to a dispute may ask the President of the Arbitrators and Mediators Institute of New Zealand Incorporated (the **President**) to appoint a person to resolve the dispute by mediation.
- (3) If asked, 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 30.

#### **24 Remunerating mediators**

- (1) A mediator must be paid remuneration (by way of fees and allowances) as agreed by the parties to the dispute.
- (2) If the parties to a dispute cannot agree on a mediator's remuneration, the President, or a person authorised by the President, 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 must pay.
- (3) Each party must pay to the mediator the amount or amounts fixed and specified under subclause (2).

#### **25 Conferences under control of mediator**

A mediator must—

- (a) organise the date, time, and place for each conference to be held by the mediator; and
- (b) notify the parties by post or email; and
- (c) preside at the conference.

#### **26 Representatives**

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

#### **27 Conferences must be held in private**

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

#### **28 Right to be heard**

Each person who attends a conference may be heard at the conference.

**29 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 their own initiative,—
  - (a) seek and receive any evidence that they think desirable to resolve a dispute; and
  - (b) make any investigations and inquiries that they think desirable to resolve a dispute.
- (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.

**30 Mediator may resolve dispute in certain cases**

- (1) A mediator may resolve a 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) A mediator who resolves a dispute under subclause (1) must give each party written notice of the mediator's decision and the reasons for that decision.
- (3) The parties must comply with the mediator's decision.

**31 Mediation costs**

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

**32 Appeal to District Court**

- (1) A party to a dispute who is dissatisfied with the mediator's decision may appeal to the District Court against the decision.
- (2) The appeal must be brought by—
  - (a) filing a notice of appeal within 28 days after the decision is made; or
  - (b) within any longer time that the District Court Judge allows.
- (3) The Registrar of the court must—
  - (a) fix the date, time, and place for the hearing of the appeal; and
  - (b) notify 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) Each 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 process for the enforcement of the mediator's decision.

*Compliance audits*

**33 Remunerating auditors**

Federated Farmers must remunerate a person appointed as an auditor under section 15 of the Act at a rate determined by the Minister of Agriculture after consultation with Federated Farmers.

*Revocation*

**34 Commodity Levies (Non-proprietary and Uncertified Herbage Seeds)  
Order 2014 revoked**

The Commodity Levies (Non-proprietary and Uncertified Herbage Seeds) Order 2014 (LI 2014/389) is revoked.

Michael Webster,  
Clerk of the Executive Council.

## Notes

### **1** *General*

This is a consolidation of the Commodity Levies (Non-proprietary and Uncertified Herbage Seeds) Order 2020 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*

Plant Variety Rights Act 2022 (2022 No 61): section 159

Subordinate Legislation Confirmation Act 2020 (2020 No 66): section 9(h)