

Version
as at 14 December 2021



Commodity Levies (Milksolids) Order 2020 (LI 2020/181)

Patsy Reddy, Governor-General

Order in Council

At Wellington this 3rd day of August 2020

Present:

The Right Hon Jacinda Ardern presiding 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 (Milksolids) Order 2020.

2 Commencement

This order comes into force on 1 December 2020.

Order: confirmed, on 14 December 2021, by section 8(a) of the Subordinate Legislation Confirmation Act 2021 (2021 No 56).

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

collection agent means—

- (a) a dairy processor whose business includes buying milksolids from a dairy farmer; and
- (b) a person whose business includes buying milksolids from a dairy farmer for supply directly or indirectly to a dairy processor

dairy farmer—

- (a) means a person whose business includes producing milksolids for supply to a dairy processor; and
- (b) includes a dairy farm owner, a dairy farm leaseholder, and a sharemilker

dairy processor means a person whose business includes operating a dairy factory

DairyNZ means the incorporated society registered as DairyNZ Incorporated at the commencement of this order

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

levy means the levy imposed by clause 5

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

levy year means,—

- (a) for the first levy year, the period starting on 1 December 2020 and ending on 31 May 2021; and
- (b) for each subsequent levy year (other than the last levy year), a period of 12 months starting on 1 June and ending on 31 May; and
- (c) for the last levy year, the period starting on 1 June 2026 and ending on 30 November 2026

milksolids means the milk-fat and protein components of raw bovine milk

sharemilker means a person who—

- (a) is contracted to perform work on a dairy farm (except as an employee); and
- (b) is entitled under a sharemilking agreement to receive a share of the returns or profits from the dairy farm operation.

4 GST

A reference in this order to the payment or recovery of a levy or collection fee must be read as including the payment or recovery of any GST payable on the levy or collection fee, unless otherwise stated.

Levy imposed

5 Levy on milksolids

- (1) A levy is imposed on milksolids produced in New Zealand by a dairy farmer for supply to a dairy processor.
- (2) The levy is payable to DairyNZ.
- (3) The dairy farmer who produces milksolids is primarily responsible for paying the levy on them.
- (4) A collection agent who buys milksolids from the dairy farmer—
 - (a) must pay the levy on them; and
 - (b) may recover the levy from the dairy farmer.

Setting levy rate

6 Levy rate

- (1) DairyNZ must set the actual rate of the levy,—
 - (a) for the levy year starting on 1 December 2020 and ending on 31 May 2021, in accordance with its rules; and
 - (b) for the levy years ending on or after 31 May 2022, in accordance with its rules and after consulting dairy farmers before the beginning of the levy year.
- (2) If DairyNZ does not set the actual rate of the levy before the beginning of a levy year, the levy for that year is payable at the rate last set.
- (3) The levy must be set at a single rate.
- (4) The maximum rate of the levy is 5 cents per kilogram of milksolids (exclusive of GST).

7 Basis for calculating levy

- (1) DairyNZ must calculate the levy on the basis of the quantity in kilograms of milksolids sold to a collection agent.
- (2) In determining the quantity of milksolids sold to a collection agent, DairyNZ may,—
 - (a) if it receives information on the quantity of milksolids sold by a dairy farmer to the collection agent, rely on that information without further inquiry; or

- (b) if it receives information on the quantity of liquid milk sold by a dairy farmer to the collection agent, calculate the equivalent quantity of milksolids using the conversion rate determined by DairyNZ.

Notifying levy rate

8 Notifying levy rate

As soon as practicable after it has set the actual rate of the levy for a levy year, DairyNZ must notify that rate—

- (a) by email or post to all dairy processors known to DairyNZ; and
- (b) in a major rural publication; and
- (c) in DairyNZ's official magazine; and
- (d) on DairyNZ's Internet site.

Paying levy

9 Due and latest dates for payment

- (1) The due date for payment of the levy is,—
 - (a) for milksolids that a collection agent pays for on a monthly basis, the 20th day of the month after the month in which the milksolids were supplied; or
 - (b) for milksolids that a collection agent pays for on any basis other than monthly,—
 - (i) 20 March 2021, for levies on milksolids supplied during the first levy year; and
 - (ii) the 20th day of the month after the last month of the quarter in which the milksolids were supplied, for levies on milksolids supplied during any levy year other than the first levy year.
- (2) The latest date for payment of the levy is the last day of the month in which the due date falls.
- (3) DairyNZ may extend the time for a collection agent to pay an amount of levy money if DairyNZ considers that the collection agent was or will be unable to pay the levy money by the latest date for payment because of extraordinary circumstances beyond the collection agent's control.
- (4) In subclause (1)(b)(ii), **quarter** means a 3-month period beginning on—
 - (a) 1 June; or
 - (b) 1 September; or
 - (c) 1 December; or
 - (d) 1 March.

10 Additional levy for late payment

- (1) If a collection agent does not pay an amount of levy money by the required date, the collection agent must pay DairyNZ—
 - (a) an additional levy of 5% of the amount of the unpaid levy money; and
 - (b) for each whole month that the amount (or part of the amount) remains unpaid after the required date, a further additional levy of 5% of the unpaid amount.
- (2) Any additional levy that remains unpaid is not itself subject to subclause (1).
- (3) DairyNZ must apply levy money paid by a collection agent to amounts owed by the collection agent in the order in which they fall due.
- (4) In subclause (1), **required date** means—
 - (a) the latest date for payment; or
 - (b) if clause 9(3) applies, the date allowed by DairyNZ.

11 Conscientious objection to paying DairyNZ

- (1) If a collection agent objects on conscientious or religious grounds to paying the levy to DairyNZ, the collection agent must pay the levy to the Director-General of the Ministry for Primary Industries.
- (2) The Director-General must pay any amounts received under subclause (1) to DairyNZ.

*Recovering levy***12 Recovery of levy from dairy farmer**

- (1) A collection agent who buys milk solids from a dairy farmer may recover the levy from the dairy farmer—
 - (a) by deducting the amount of the levy from the payment made to the dairy farmer for the milk solids; or
 - (b) by recovering the amount of the levy as a debt due from the dairy farmer.
- (2) If subclause (1)(a) applies, the collection agent must advise the dairy farmer by email or post of the amount of the levy deducted.

13 Collection fee

- (1) A collection agent may charge DairyNZ a collection fee of not more than 0.5% of the amount of the levy collected by the collection agent (exclusive of GST).
- (2) The collection agent may—
 - (a) deduct the collection fee from the collection agent's levy payment to DairyNZ; or
 - (b) recover the collection fee as a debt due from DairyNZ.

Spending levy money

14 Purposes for which DairyNZ must spend levy money

DairyNZ must spend levy money for the following purposes relating to milk-solids or dairy farmers:

- (a) research and development, including information transfer and farmer technology adoption practices:
- (b) biosecurity activities, including disease control and mitigation:
- (c) providing information to dairy farmers:
- (d) promoting, and advocating on behalf of, the dairy industry:
- (e) developing and supporting dairy industry evaluation systems, data networks, and databases, including publication of relevant indices, statistics, and economic information:
- (f) education and training:
- (g) administration of DairyNZ.

15 Consulting on how levy money spent

- (1) Each levy year, DairyNZ must consult dairy farmers on how it proposes to spend levy money.
- (2) Prior to its annual general meeting, DairyNZ must distribute to dairy farmers the audited financial accounts for the levy in the previous levy year and the expenditure plan for the next levy year.
- (3) DairyNZ must allow dairy farmers at the annual general meeting to speak on all matters relating to spending levy money.

16 Levy money may be spent by branches or subsidiaries

The levy money may be spent by DairyNZ or by its branches or subsidiaries.

Returns

17 Collection agents must make returns to DairyNZ

- (1) Collection agents must provide a completed return to DairyNZ when paying the levy.
- (2) The return must be in the form approved by DairyNZ.
- (3) The return must be made monthly.
- (4) The return must include, for each dairy farmer from whom the collection agent bought milksolids,—
 - (a) the amount received for that month; and
 - (b) the dairy farmer's name, contact details (including address, phone number, and email address), and unique supplier and party number; and

- (c) the month that the agent received the milksolids.
- (5) However, DairyNZ may request in writing from a collection agent any information that it may reasonably require to calculate and spend the levy.
- (6) As soon as is reasonably practicable after receiving a request under subclause (5), a collection agent must supply DairyNZ with a written return containing the information requested.

Records

18 Records that DairyNZ must keep

DairyNZ must keep records of the following for each levy year:

- (a) for each amount of levy money received,—
 - (i) the amount received; and
 - (ii) the date on which it was received; and
 - (iii) the name and contact details (including address, phone number, and email address) of the collection agent who made the payment:
- (b) how the levy money was spent or invested.

19 Records that collection agents must keep

A collection agent must keep records of the following for each levy year:

- (a) for each dairy farmer from whom the collection agent bought milksolids,—
 - (i) the dairy farmer's name, contact details (including address, phone number, and email address), and unique supplier and party number; and
 - (ii) the quantity of milksolids bought from the dairy farmer and the period during which the milksolids were bought:
- (b) each amount of levy money paid to DairyNZ and the date of each payment:
- (c) the amount of collection fee deducted from each payment of levy money made to DairyNZ.

20 Records must be kept for 3 years

The records required by clauses 18 and 19 must be kept for at least 3 years after the end of the levy year to which they relate.

Confidentiality

21 Confidentiality of information

- (1) This clause applies to information obtained—
 - (a) under or because of this order; or

- (b) under the Act in relation to this order.
- (2) A person must not disclose information to anyone other than an officer or employee of DairyNZ unless the disclosure is—
 - (a) the giving of evidence in any legal proceedings taken in relation to this order or under or in relation to the Act; or
 - (b) required by law; or
 - (c) the production of records or accounts under section 17(1) of the Act; or
 - (d) the production of any statement under section 25 of the Act; or
 - (e) the disclosure is allowed by subclause (3).
- (3) DairyNZ, a DairyNZ subsidiary, or a collection agent may disclose information—
 - (a) for the following purposes:
 - (i) statistical or research purposes that do not involve the disclosure of personal information; or
 - (ii) invoicing or collecting the levy; or
 - (iii) communicating with dairy farmers; or
 - (iv) supporting research development and extension activities; or
 - (b) if every identifiable person to whom the information relates consents.

Dispute resolution

22 Mediation of disputes

- (1) This clause applies to a dispute about—
 - (a) whether a person is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) If a dispute arises that the parties to the dispute are unable to resolve by themselves, the parties must follow the mediation process set out in the Schedule.

Compliance audits

23 Remunerating auditors

DairyNZ 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 DairyNZ.

Revocation

24 Commodity Levies (Milksolids) Order 2014 revoked

The Commodity Levies (Milksolids) Order 2014 (LI 2014/363) is revoked.

Schedule

Mediation of disputes

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1 Appointing mediators

- (1) A party to the 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.
- (2) If asked, the President (or a person authorised by the President) 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 8.

2 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).

3 Conferences under control of mediators

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 email or post; and
- (c) preside at the conference.

4 Representatives

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

5 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.

6 Right to be heard

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

7 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 the mediator thinks desirable to resolve a dispute; and
 - (b) 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.

8 Mediators may resolve disputes 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 the decision.
- (3) The parties must comply with the mediator's decision.

9 Mediation costs

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

10 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 filing a notice of appeal—
 - (a) 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 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 any process for the enforcement of the mediator's decision.

Michael Webster,
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 1 December 2020, imposes a levy on bovine milksolids produced in New Zealand by dairy farmers and supplied to dairy processors. Dairy farmers are primarily responsible for paying the levy, but collection agents who buy milksolids from dairy farmers must pay the levy. Collection agents may recover the levy from dairy farmers. The levy is payable to DairyNZ Incorporated.

Before this order, a levy was imposed on milksolids by the Commodity Levies (Milksolids) Order 2014. That order expires at the close of 30 November 2020 and is replaced by this order.

This order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 31 December 2021, unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(b) of that Act. If this order is confirmed, it will be revoked on 30 November 2026 (the day before the sixth anniversary of the date on which it came into force), unless it is extended under section 13(2) of the Commodity Levies Act 1990.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 6 August 2020.

Notes

1 *General*

This is a consolidation of the Commodity Levies (Milksolids) 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*

Subordinate Legislation Confirmation Act 2021 (2021 No 56): section 8(a)