



# **Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Amendment Regulations 2014**

Jerry Mateparae, Governor-General

## **Order in Council**

At Wellington this 1st day of September 2014

Present:

His Excellency the Governor-General in Council

Pursuant to section 65A of the Dairy Industry Restructuring Act 2001, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister for Primary Industries after being satisfied of the matters set out in section 65A of that Act, makes the following regulations.

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## **Regulations**

- 1 Title**

These regulations are the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Amendment Regulations 2014.
- 2 Commencement**

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.
- 3 Principal regulations**

These regulations amend the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001 (the **principal regulations**).
- 4 Regulation 3 amended (Interpretation)**
  - (1) In regulation 3(1), definition of **LIC**, delete “and, in regulation 9, includes any interconnected body corporate of that company”.
  - (2) In regulation 3(1), definition of **publish**, replace “LIC’s” with “the manager of the core database’s”.
  - (3) In regulation 3(1), insert in its appropriate alphabetical order: “**manager of the core database** means the dairy industry entity nominated by the Crown under section 65A(1) of the Act to manage the core database”.
  - (4) Revoke regulation 3(2)(e).

- 5 New regulation 3A inserted (Transitional, savings, and related provisions)**  
After regulation 3, insert:
- “3A Transitional, savings, and related provisions**  
The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.”
- 6 Regulation 4 amended (Overview)**  
Replace regulation 4(c) and (d) with:
- “(c) the information that must be supplied to the manager of the core database for entering into the core database.”
- 7 Regulation 6 amended (Terms and conditions of regulated herd testing)**  
In regulation 6(1)(a) and (b), replace “LIC” with “the manager of the core database”.
- 8 Cross-heading above regulation 7 amended**  
In the cross-heading above regulation 7, replace “*LIC*” with “*manager of core database*”.
- 9 Regulation 7 amended (Supply of data to LIC)**
- (1) In the heading to regulation 7, replace “LIC” with “**manager of core database**”.
  - (2) In regulation 7(1), (3), and (4), replace “LIC” with “the manager of the core database” in each place.
  - (3) In regulation 7(2), replace “LIC’s” with “the manager of the core database’s”.
- 10 Regulation 8 amended (LIC must enter information into database)**
- (1) In the heading to regulation 8, replace “LIC” with “**Manager of core database**”.
  - (2) In regulation 8, replace “LIC” with “The manager of the core database”.
- 11 Cross-heading above regulation 9 revoked**  
Revoke the cross-heading above regulation 9.

- 12 Regulation 9 revoked (LIC must offer nationwide herd testing service and uniform prices within regions)**  
Revoke regulation 9.
- 13 Regulation 11 amended (Overview)**
- (1) In regulation 11(a) and (e), after “LIC”, insert “and the manager of the core database”.
  - (2) In regulation 11(b)(ii), replace “LIC” with “the manager of the core database”.
- 14 Regulation 12 amended (No exclusive access arrangements)**  
In regulation 12, replace “LIC must not” with “Neither LIC nor the manager of the core database may”.
- 15 Regulation 14 amended (Functions of Panel)**  
In regulation 14(b), replace “LIC” with “the manager of the core database”.
- 16 Regulation 16 amended (Membership of Panel)**
- (1) In regulation 16, replace “of Agriculture” with “for Primary Industries”.
  - (2) In regulation 16(a), replace “Dairy InSight Incorporated” with “DairyNZ Incorporated”.
- 17 Regulation 19 amended (Panel may set terms and conditions of access)**
- (1) In regulation 19(1), replace “LIC’s” with “the manager of the core database’s”.
  - (2) Replace regulation 19(2) with:  
“(2) LIC or the manager of the core database may require an applicant for access to the data in the core database to execute an agreement with LIC or the manager (as the case may be) before access is granted.”
  - (3) In regulation 19(3), after “LIC”, insert “or the manager of the core database”.

**18 Regulation 20 amended (Determination by Panel concerning access)**

In regulation 20(1), replace “LIC” with “the manager of the core database”.

**19 Regulation 21 amended (Further provisions relating to Panel)**

Replace regulation 21(2) with:

- “(2) The Panel must provide—
- “(a) LIC with a written copy of the Panel’s decisions and determinations concerning access to the database, so far as they apply to LIC:
  - “(b) the manager of the core database with a written copy of the Panel’s decisions and determinations concerning access to the database, so far as they apply to the manager.”

**20 Regulations 22 to 24 and cross-heading replaced**

Replace regulations 22 to 24 and the cross-heading above regulation 22 with:

*“Restrictions on LIC and manager of core database in relation to core database*

**“22 Manager must retain data**

- “(1) The manager of the core database must retain the following information in electronic form:
- “(a) all data provided to LIC under the Herd Testing Regulations 1958 and held by LIC in electronic form at the commencement of these regulations; and
  - “(b) all data provided to LIC after the commencement of these regulations under the Herd Testing Regulations 1958; and
  - “(c) all data provided to LIC or to the manager under these regulations.
- “(2) The manager of the core database must retain the data so that it is readily retrievable.

**“23 LIC and manager of core database must comply with Panel decisions**

LIC and the manager of the core database must comply with every decision of the Panel in relation to the supply of data in the core database (subject to payment of any charge for access).

**“24 Restrictions on LIC and manager of core database making data available**

“(1) Neither LIC nor the manager of the core database may make data in the core database available except—

“(a) in accordance with a decision or determination of the Panel; or

“(b) to the owner or person in charge of the dairy herd to which the data relates; or

“(c) to a person authorised to receive the data by the owner or person in charge of the dairy herd to which the data relates.

“(2) A person referred to in subclause (1)(b) or (c) may request the manager of the core database to provide data in the core database, and the entity concerned must provide the requested data subject to payment of any reasonable charge for access set by that entity.

“(3) Subclause (1) does not prevent LIC from using data in the core database for the purposes of its own business. However, if LIC proposes to use data in any partnership or joint venture or other arrangement with any other person, subclause (1) applies to access to the information for that purpose.”

**21 Regulation 25 amended (Confidentiality)**

(1) In regulation 25(1), after “LIC”, insert “and the manager of the core database”.

(2) Replace regulation 25(2) with:

“(2) In subclause (1), **any other person** includes—

“(a) any director, employee, or contractor of LIC or of the manager of the core database; and

“(b) any associated person of LIC or of the manager who is involved in any activity of LIC’s or the manager’s

other than the operation of the database of which the core database forms a part.”

- (3) In regulation 25(3), after “LIC”, insert “or the manager of the core database”.

**22 Regulation 26 replaced (Obligations to publish information relating to LIC procedures)**

Replace regulation 26 with:

**“26 Manager must publish information relating to procedures and pricing methodologies**

- “(1) The manager of the core database must publish the manager’s—

“(a) procedures for complying with decisions of the Panel, including maximum time periods for the provision of data; and

“(b) procedures for complying with regulation 25; and

“(c) pricing methodology or methodologies used to set charges for access to data in the core database (including charges that the manager makes to businesses it owns for access to that data), and the prices resulting from applying those methodologies.

- “(2) The manager of the core database must publish the information required by subclause (1) as soon as practicable after 1 June in each year.

- “(3) The manager of the core database must ensure that the manager makes available, in the following ways, information that the manager is required by these regulations to publish:

“(a) by making copies of the information available for inspection, during ordinary office hours, at the manager’s office; and

“(b) by providing the information to a person who requests it, in whichever of the following ways the person prefers:

“(i) by post; or

“(ii) for collection, during ordinary office hours, from the manager’s office.”

**23 Regulation 27 amended (Audit of LIC for compliance with Part 2 and this Part)**

- (1) In the heading to regulation 27, after “LIC”, insert “**and manager of core database**”.
- (2) In regulation 27(1) and (4), after “LIC’s”, insert “and the manager of the core database’s”.
- (3) In regulation 27(3), replace “LIC” with “The entity that is audited”.

**24 Regulation 28 amended (Powers of auditor)**

- (1) Replace regulation 28(1) and (2) with:
  - “(1) The directors of LIC or of the manager of the core database must ensure that the auditor has access at all times to the records and other documents of the entity and of any subsidiaries of the entity for the purpose of carrying out the audit.
  - “(2) The auditor is entitled to require from a director or an employee of LIC or of the manager of the core database any information and explanations relating to the entity and its subsidiaries that he or she thinks necessary for the effective carrying out of the audit.”
- (2) In regulation 28(3), after “LIC”, insert “or of the manager of the core database”.

**25 Regulation 29 amended (Statutory declaration under section 66(4) of Act)**

In regulation 29(2), after “LIC”, insert “or by a director or an officer of the manager of the core database, whichever is appropriate in the circumstances”.

**26 Regulation 30 amended (Continued application and amendment of Herd Testing Regulations 1958)**

Revoke regulation 30(3).

**27 Regulation 31 revoked (Transitional provisions)**

Revoke regulation 31.

**28 Regulation 32 amended (Offences)**

Replace regulation 32(2) with:

- “(2) LIC and the manager of the core database each commits an offence, and is liable on conviction to a fine not exceeding \$20,000, if the entity contravenes any of the following regulations (so far as they apply to the entity):
- “(a) regulation 12 (no exclusive access arrangements):
  - “(b) regulation 22 (manager must retain data):
  - “(c) regulation 23 (LIC and manager of core database must comply with Panel decisions):
  - “(d) regulation 24 (restrictions on LIC and manager of core database making data available):
  - “(e) regulation 25(1) (confidentiality).”

**29 New Schedule 1AA inserted**

Before Schedule 1, insert the Schedule 1AA set out in the Schedule of these regulations.

**30 Schedule 2 amended**

In the Schedule 2 heading, replace “LIC” with “**manager of core database**”.

**31 Schedule 3 revoked**

Revoke Schedule 3.

**32 Schedule 6 amended**

- (1) In Schedule 6, replace “LIC” with “the manager of the core database” in each place.
  - (2) In Schedule 6, replace “of Agriculture and Forestry” with “for Primary Industries”.
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**Schedule**

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**New Schedule 1AA inserted****Schedule 1AA**

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**Transitional, savings, and related  
provisions**

Provisions relating to transfer of core database  
from LIC to manager of core database

**1 Application of clauses 2 and 3**

Despite regulation 2 of the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Amendment Regulations 2014, clauses 2 and 3 apply if LIC does not transfer a copy of the core database to the manager of the core database before the commencement of those regulations.

**2 Transitional provision to apply until core database  
transferred from LIC to manager of core database**

If this clause applies, these regulations continue to apply in relation to the core database until the transfer occurs as if regulations 4(1) and (2), 6 to 28, and 30 to 32 of the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Amendment Regulations 2014 had not come into force.

**3 Requirements relating to transfer of core database**

- (1) If this clause applies, the provisions in subclauses (2) to (4) apply.
- (2) When the core database is ready to be transferred, the manager of the core database must notify the Minister of that fact.
- (3) When the Minister is satisfied that the manager is ready to take on the responsibility of managing the core database and that the transfer can proceed, the Minister must notify the transfer of the core database in the *Gazette*.
- (4) The transfer is treated as having occurred on the date of the notification in the *Gazette*.

Schedule 1AA—*continued*

Transitional provisions formerly in regulation 31

**4 Transitional provisions relating to applications and decisions**

- (1) Every application to the Dairy Herd Improvement Tribunal for access to data in the core database made before the commencement of these regulations that has not been determined may be determined by the Panel.
- (2) Every decision by the Tribunal granting access to data in the core database made before the commencement of these regulations that was in force at that date remains in effect as if these regulations had not been made.
- (3) Every application to the New Zealand Dairy Board for a licence under regulation 3 of the Herd Testing Regulations 1958 that remains unresolved is cancelled.

Transitional provision relating to *Gazette* notice

**5 *Gazette* notice**

In the notice published in the *Gazette* on 17 August 2000, at page 2272 (as amended by regulation 30),—

- (a) references to the Database Manager must be read as references to the manager of the core database; and
- (b) references to the Ministry must be read as references to the Ministry for Primary Industries.

Michael Webster,  
Clerk of the Executive Council.

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**Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on the 28th day after the date of their notification in the *Gazette*, amend the Dairy Industry

(Herd Testing and New Zealand Dairy Core Database) Regulations 2001 (the **principal regulations**). The amendments—

- facilitate the transfer of the core database from Livestock Improvement Corporation (**LIC**) to the Crown's nominee (the **manager of the core database**):
- remove the requirements on LIC under regulation 9 of the principal regulations to provide herd testing services nationwide at uniform prices within regions:
- retain the New Zealand Dairy Core Database Access Panel's (the **Access Panel**) oversight of LIC under regulations 23 and 24 of the principal regulations in respect of core dairy herd testing data held by LIC.

*Regulation 4* inserts into regulation 3 of the principal regulations a definition of manager of the core database.

*Regulation 5* inserts *new regulation 3A* into the principal regulations, which gives effect to the transitional, savings, and related provisions set out in *new Schedule 1AA*. *Clauses 1 to 3* of *new Schedule 1AA* preserve the effect of the principal regulations in their pre-amendment state (that is, as they read immediately before the commencement of these regulations) until LIC transfers a copy of the core database to the manager of the core database. *Clause 4* of *new Schedule 1AA* relocates in that schedule the content of former regulation 31, which relates to transitional provisions about applications and decisions.

*Regulation 12* revokes regulation 9 of the principal regulations, which removes the requirement that LIC offer nationwide herd testing services and uniform prices within regions.

*Regulation 20* replaces regulation 22 of the principal regulations with a new regulation that shifts from LIC to the manager of the core database the obligation of retaining core herd testing data in electronic form and replaces regulation 23 of those regulations with a new regulation that requires the 2 entities to comply with the decisions of the Access Panel (subject to payment of access charges).

Since LIC retains a copy of the core database, various provisions of the principal regulations will continue to apply to LIC in relation to the information it holds until its role is removed by an amendment to the Dairy Industry Restructuring Act 2001 (the **Act**).

Section 5(1) of the Act defines the core database as the part of the database operated by LIC that comprises the following information:

- information provided to LIC under the Herd Testing Regulations 1958 or under the terms and conditions of any licence issued under those regulations;
- information provided to LIC under any regulations made under the Act.

Section 65A of the Act enables the Crown to nominate a dairy industry entity to manage the core database in place of LIC if LIC's constitution is amended in accordance with section 51 of the Act to remove the requirement in section 47 of the Act to retain the core database. The Crown's proposed nominee is DairyNZ Incorporated, a company that is fully funded by farmers through a levy paid under the Commodity Levies (Milksolids) Order 2009.

### **Regulatory impact statement**

The Ministry for Primary Industries produced a regulatory impact statement to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <http://www.mpi.govt.nz/about-mpi/our-organisation/corporate-publications/regulatory-impact-statements>
- <http://www.treasury.govt.nz/publications/information-releases/ris>

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Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 4 September 2014.

These regulations are administered by the Ministry for Primary Industries.

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