

Consultation Document: Changes to Animal Products Cost Recovery Regulations

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1. PURPOSE

MPI is required by most of the legislation it administers (the Biosecurity, Agricultural Compounds and Veterinary Medicines, Animal Products, Food Act and Wine Acts) to recover the costs of providing services that are not Crown-funded. The costs are recovered through fees, charges and levies established in regulations. When new charges are being introduced or amendments made to existing cost recovery arrangements, MPI is required to consult with affected stakeholders and the public to inform final decisions by Government.

MPI is proposing the following changes to the Animal Products (Dairy Industry Fees, Charges and Levies) Regulations 2015 and the Animal Products (Fees, Charges and Levies) Regulations 2007 in 2016/17:

- New cost recovery arrangements to complement new requirements for the sale of raw milk to consumers.
- An amendment to clarify the application of cost recovery to infant formula products.
- Two minor amendments that will limit export charges for certain types of birds, and provide flexibility for the Director-General to reduce the frequency of reporting for animal processors.

All fees, charges and levies referred to in this document are GST exclusive.

2. BACKGROUND

In the first half of 2015, the Ministry completed a wide ranging review of biosecurity and food safety fees. The review sought to respond to increasing demand for services driven by increasing trade volumes as well as a greater number of food businesses. A rising volume of services, improvements to services, and inflation pressure meant the real cost of delivering services had also increased.

This was the first cost recovery review of biosecurity fees since 2010 and the first substantive review of food safety fees since 2008. It was also the first review of both systems since MPI was formed in 2011. The review resulted in updates to more than 254 biosecurity and food safety fees, charges, and levies and has improved the consistency and equity of charges between and within industries. New and updated regulations under six statutes came into effect on 1 July 2015¹.

2.1 First Principles Review of MPI's cost recovery arrangements

Notwithstanding these improvements, variation in cost recovery arrangements still exists across MPI. Ministers have given approval for a First Principles Review of Cost Recovery arrangements (the FPR). Objectives of this review are to identify improvements and explore greater harmonisation across all of MPI's cost recovery arrangements.

The review will take place in two phases. Phase 1 is currently underway and will be complete by 1 July 2016. Phase 1 will involve the development of a charging framework that will guide the Ministry's approach to cost recovery. Phase 2 will occur over a longer timeframe and will focus on applying the charging framework to existing fees, charges and levies. Further information on the FPR can be found on the Ministry's website.

¹ One exception is the Food (Fees and Charges) Regulations which will come into force on 1 March 2016 alongside relevant amendments to the Food Act 2014.

3. STATUTORY FRAMEWORK FOR COST RECOVERY

MPI is a regulator with primary responsibility for food safety issues and biosecurity. The cost of delivering some of the functions that MPI undertakes in carrying out its duties can be recovered from users where service provision is not funded by the Crown.

The authority for recovering costs from third party users of services is established in a number of pieces of existing legislation. In most cases, fees for cost-recovered activities are set by Regulations. The legislative frameworks for cost recovery are designed to ensure that the Ministry does not over-recover or under-recover the cost of service delivery.

The authority to charge for the changes proposed in this document is established in Part 9 of the Animal Products Act 1999 (APA). The APA requires consideration of principles to guide its cost recovery arrangements:

- **Equity** – users or beneficiaries of a function, power or service will generally be required to fund the cost of providing the function, power or service at a level that reflects their use or benefit.
- **Efficiency** – costs should generally be allocated and recovered in a manner that ensures maximum benefits are delivered at minimum cost.
- **Justifiability** – the costs (including indirect costs) associated with providing a function, power or service should be reasonable and justifiable.
- **Transparency** – the cost of providing a service, function or power should be identified and allocated as closely as is practicable to the period when the service is provided.

In addition MPI follows the guidelines set out in the Treasury's *Guidelines for Setting Charges in the Public Sector* ('Treasury guidelines')² and the Office of the Auditor-General Good Practice Guide *Charging fees for public sector goods and services* ('Auditor-General guide')³.

² *Guidelines for Setting Charges in the Public Sector*, The Treasury, December 2002. <http://www.treasury.govt.nz/publications/guidance/finmgmt-reporting/charges>

³ *Charging Fees for Public Sector Goods and Services*. Good Practice Guide. Office of the Auditor-General, June 2008. <http://www.oag.govt.nz/2008/charging-fees/>

4. CONSULTATION

The APA requires MPI to ensure appropriate consultation with affected parties has taken place and the parties involved have been given sufficient time and information to make an informed contribution.

We will meet with key industry representative groups if required to seek views on the cost recovery proposals presented in this document.

Feedback from individuals, businesses and other organisations is also invited.

How to submit

Comments can be provided by e-mail to costrecovery@mpi.govt.nz, or by post to:

Ministry for Primary Industries
PO BOX 2526
Wellington 6140

Please include the term “Submission on the Annual Updates for cost recovery” clearly in the e-mail subject field or on the front of the envelope.

What to include in your submission

Please include the following information in your submission:

1. The title of this document
2. The date of your submission
3. Your name and title
4. Your organisations name (if applicable)
5. Your contact details—mailing and email addresses, and telephone numbers (cell & landline)

Typed submissions sent in Microsoft Word or email format are preferred.

Submissions provided to MPI on this proposal will be subject to the provisions of the *Official Information Act 1982*. This Act requires information to be made available on request unless there is good reason, pursuant to the Act, to withhold the information.

If you do not wish any material in your submission to be released, or if you are submitting as an individual and do not wish your identity to be disclosed, please specify the material that you wish to be withheld and the grounds (as set out in the Act) for withholding it.

The decision whether to release information under the terms of the Act rests with the Director-General of MPI. Any decision to withhold information is subject to appeal to the Office of the Ombudsmen.

All received submissions will be acknowledged. We may follow up with some submitters if further discussion or clarification is needed.

A summary of all submissions will be available on the MPI website.

When to submit

The deadline for submissions is 5pm on **Tuesday 23 February 2016**. We may not be able to accept or consider submissions received after this time.

Next steps

The next steps in the process will be to analyse submissions, produce a summary and make it available on our website, and draw on submissions to put forward final proposals to Government. The next stage would be to implement Government decisions that result from this process. The aim is for amendments to take effect from 1 July 2016.

5. PROPOSED CHANGES FOR 2016/17

Changes to Animal Products (Dairy Industry Fees, Charges and Levies) Regulations 2015

Two changes are proposed to the Animal Products (Dairy Industry Fees, Charges and Levies) Regulations 2015 to:

- Establish new cost recovery arrangements to complement new regulatory requirements for the sale of raw milk to consumers.
- Clarify the application of existing export declaration charges for infant formula products.

Establish new cost recovery for services associated with the sale of raw milk to consumers

Background

After consultation and review, the Government is introducing a new regime for the sale of raw milk to consumers that will enter into force on 1 March 2016.

The new Raw Milk for Sale to Consumers Regulations 2015, established under section 166 of the APA, will introduce new requirements from 1 March 2016 for all raw milk farm dairy operators (suppliers) who intend to sell raw milk to consumers as well as transport operators (transporters), and depot operators who are involved in the storage and delivery of raw milk.

The aim of the regulations is to balance the following:

- Managing risks to public health with recognising the strong demand for raw milk from rural and urban consumers.
- Mitigating the risk to New Zealand's international reputation as a producer of safe food, particularly dairy.
- Delivering regulatory certainty to producers, suppliers, and consumers of raw milk.

MPI services to be provided under the new regime

Under the new Raw Milk for Sale to Consumers Regulations 2015 MPI will be required to provide the following regulatory services to suppliers, transporters and depot operators of raw milk for sale to consumers:

Service area	Who this service applies to	Proposed fee (ex. GST)
Registration (and renewals) of businesses required to operate under a regulated control scheme (RCS)	Suppliers Depot operators	\$155 per hour (with registrations expected to take 2 hours)
Verification services (where not provided by a third party agency).	Suppliers Transporters ⁴ Depot operators	\$165 per hour
The development and maintenance of NZ standards, performance monitoring and the administration of the National Chemical Contaminant Programme (collectively referred to as Programme Charges)	Suppliers	\$581.25 per year

Problem definition

Part 9 of the APA requires MPI to recover costs associated with providing services to industry that are not covered by Crown funding. MPI does not currently have cost recovery arrangements in place for the services that will be provided to suppliers, transporters and depot operators of raw milk for sale to consumers.

Although the new raw milk requirements will commence from 1 March 2016, the earliest cost recovery regulations can take effect is 1 July 2016. This is because the APA states that cost recovery requirements must be in place before the start of a financial year.

Options to recover costs for the sale of raw milk to consumers

MPI considered three options on how charges for the sale of raw milk to consumers should be structured.

The three options are:

- Option 1: Apply cost recovery regulations consistent with those for other similar dairy operators and businesses operating under the APA (preferred).
- Option 2: Not charge any fees for the services.
- Option 3: Develop specific fees for services provided to raw milk farm dairy operators, transporters and depot operators involved in the sale of raw milk to consumers.

Option 1: Apply cost recovery regulations consistent with those for other similar dairy operators and businesses operating under the APA (*preferred option*)

MPI's preferred option is to adopt the same types of cost recovery requirements that already exist for the services described above in the Animal Products (Dairy Industry Fees, Charges and Levies) Regulations 2015 and in the Animal Products (Fees, Charges and Levies) Regulations 2007, for those businesses involved in the sale of raw milk to consumers.

⁴ Transport operators will be required to be verified. Generally this will be done as part of the verification of the farm dairy operator. It will be up to the farm dairy operator whether they pass on the costs of this onto their transport operators or if they absorb them themselves.

For approvals and verification services, MPI currently recovers costs based on the time it takes to have a verifier review programmes or the time it takes to review an application for registration. The method MPI uses for these services for other animal product businesses is an hourly rate.

For standard setting, performance monitoring and the National Chemical Containment Programme activities MPI groups these functions into a 'programme charge' as they cannot easily be charged on a per unit basis, and the costs are proportionate to the demand for the services. The method MPI uses for other animal product businesses to recover costs is via the use of levies.

Key Assumptions

The services that MPI will be required to provide under the new regime are similar to those it already provides to other animal product business operating under the APA.

Because this is a newly regulated sector for delivery of those services, service demand and associated costs are difficult to predict at this stage. However MPI considers that the costs associated with the services for raw milk will be broadly similar to those provided to other animal product businesses operating under the APA. The charges for each of the three services are proposed on this basis.

MPI proposes to review these assumptions, and the charges once the regime has been in operation for 18-24 months and demand has stabilised.

Recovering costs for registration (including renewals) under a Regulated Control Scheme

MPI will incur costs when businesses (suppliers and depot operators) involved in the sale of raw milk to consumers apply for registration under the Regulated Control Scheme (RCS). The RCS aims to identify, monitor, evaluate and manage the risks associated with the production and processing of raw milk for sale to consumers. It applies to all activities involved in raw milk intended for sale to the consumer and the collection and analysis of samples of raw milk and associated activities for monitoring under the scheme.

The costs associated with this service include MPI's administrative systems and processes for approvals, evaluation and review; maintenance of public registers; and suspension and removal of approvals and registrations.

MPI proposes an hourly rate of \$155 per hour per application (chargeable in 15 minute blocks after the first hour). MPI is estimating that it will take two hours to process each application and businesses should expect to pay approximately \$310.00.

This is consistent with registration and renewal charges that exist for other businesses operating under an RCS.

Questions:

- 1. Do you agree with the proposal to apply the charges for registration and renewals in line with those that already exist in the Animal Products (Fees, Charges and Levies) Regulations 2007 for other businesses operating under an RCS?**
- 2. If not, what is your preferred method of cost recovery for registration (including renewals) under a RCS?**

Recovering costs for provision of Verification Services

MPI may be required to act as a verifier of last resort to suppliers, transporters and depot operators involved in the sale of raw milk to consumers, in the event that verification services are not able to be provided by a third party agency.

MPI proposes to apply the circuit charge⁵ that exists in Part 7 of the Animal Products (Dairy Industry, Fees Charges and Levies) Regulations 2015 to those businesses involved in the sale of raw milk to consumers.

The circuit charge covers the costs associated with the time spent by a verifier performing the verification function. The charge is based on an hourly rate and is made up two components:

1. Basic charge of \$44.90 per hour. This covers MPI's indirect costs including business support costs.
2. Hourly rate of \$120.10 per hour. This covers the direct costs of verifiers.

Questions:

- 1. Do you agree with the proposal that verification service circuit charges detailed in Part 7 of the Animal Products (Dairy Industry Fees Charges and Levies) Regulations 2015 be applied to suppliers, transporters and depot operators involved in the sale of raw milk to consumers.**
- 2. If not, what is your preferred method of cost recovery for verification services?**

Recovering costs for provision of NZ standards, performance monitoring and the National Chemical Contaminants Programme (Programme Charge)

Programme Charges will apply to suppliers only. MPI will undertake the following activities which provide benefits to or mitigates risks to businesses involved in the sale of raw milk to consumers:

1. Development and maintenance of NZ standards.
2. Performance monitoring⁶.
3. Administration of the National Chemical Contaminants Programme⁷.

MPI proposes to amend the Animal Products (Dairy Industry Fees, Charges and Levies) Regulations 2015 to introduce a new annual levy of \$581.25 per supplier to cover the costs associated with delivering these services described above.

MPI has estimated the levy based on the approximate number of hours spent on these activities per business. In the case of businesses associated with the sale of raw milk to consumers, we estimate this to be 3 hours and 45 minutes at the standard MPI food sector hourly rate of \$155.00, which totals \$581.25. A similar approach is taken for other dairy operators in the regulations.

⁵ Circuit charges refer to charges payable in respect of any place or premises where the provision of the verification function is performed by Ministry staff who are not permanently or semi-permanently based at the place or premises.

⁶ Includes undertaking system performance audits to ensure the regulatory model is working as intended; and providing technical clarification, technical assessments and regulatory compliance dispute resolution, and managing critical non-compliance.

⁷ Independent service providers sample raw milk, colostrum and dairy products to confirm that residue or contaminant levels do not exceed acceptable limits for New Zealand or for export markets and report the results to MPI. The monitoring includes random monitoring and targeted surveillance of raw milk, dairy material and dairy products on farm, in bulk milk tanks, in milk tankers and at dairy premises as well as surveys. Also included is the Independent Verifier Programme.

Questions:

1. Do you agree with the proposal that the Animal Products (Dairy Industry Fees, Charges and Levies) Regulations 2015 be amended to introduce an annual levy of \$581.25 per supplier to cover costs associated with the three services that make up the Programme Charges.
2. If not, what is your preferred method of cost recovery for services provided as part of the Programme charges?

Other options considered

MPI also considered two other options for cost recovery requirements for business involved in the sale of raw milk to consumers.

Option 2: Not charge any fees for the services

Given that this is a new regulated sector and the size of the industry is not fully known, MPI did consider not applying charges. However, this is not considered equitable as it is inconsistent with the treatment of other sectors. In addition the Ministry is required by the APA 1999 to recover costs for services provided to third parties unless they are funded by the Crown.

It is appropriate to recover costs from businesses involved in the sale of raw milk to consumers to ensure consistency with other sectors. Businesses should bear the costs of the services MPI is required to undertake in order to deliver benefits to businesses or to manage risks associated with activities businesses wish to undertake.

Option 3: Develop specific fees for services provided to producers supplying raw milk to consumers

MPI considered developing bespoke charges/hourly rates for the services that will be provided to producers.

As this is a new sector, there is not yet sufficient information about demand or costs to develop accurate targeted fees. MPI considers adopting the approach consistent with the treatment of other similar businesses, receiving similar services is the fairest approach at this stage.

Registration and verification services charges will be the same as those for other sectors. These activities are performed by the same people, and so it is reasonable to assume that the costs will essentially be the same for producers supplying raw milk to consumers.

MPI proposes to review the charges once the regime has been in operation for 18-24 months and demand has stabilised and more information about actual costs is available.

Conclusion

MPI considers that Option 1 represents the best balance of the principles outlined in the APA 1999 as described below.

Suppliers, transporters and depot operators involved in the sale of raw milk to consumers will be the primary beneficiaries and users of the services performed by MPI. The benefit they will derive will be the ability to produce, transport and sell raw milk to consumers that is safe and suitable for human consumption. It is appropriate to recover costs associated with the

provisions of MPI's services. Charging in line with other similar businesses for similar services is also equitable and fair.

Costs should be allocated and recovered in a manner that ensures maximum benefits are delivered at minimum cost. As the client base and volume of activity for registrations and verifications services is variable it is most efficient and transparent to charge an hourly rate. For programme charges it is more practical to charge a levy as it is difficult to distinguish the precise costs that should be attributed to each member of the sector. However the method used to derive the amount of the levy attempts to approximate this.

This option is justifiable as these costs will be incurred as a consequence of MPI's need to manage the risk that the raw milk sector will generate. While some assumptions have to be made about costs, there is no reason to suggest that these services will be more expensive when compared to similar activities already undertaken.

Clarify the application of existing export declaration charges for infant formula products

Background

MPI has established an infant formula work programme to strengthen NZ's food assurance systems to match the rapid growth in exports of infant formula products and formulated supplementary food for young children.

The objectives of the programme are to improve MPI's ability to monitor exports of this sensitive product, provide for more efficient processes for product identification and withdrawal (traceability), and improve exporter compliance with duties and obligations. Cost recovery via the Animal Products (Dairy Industry Fees, Charges and Levies) Regulations 2015 is an important part of that programme.

Problem definition

The Animal Products (Dairy Industry Fees, Charges and Levies) Regulations 2015 currently provides a fee for export declarations. In the 2015 cost recovery consultation document, the term that was used to cover infant formula, follow-on formula and formulated supplementary food for young children was 'infant formula products'. The intention was to ensure that cost recovery applied to the full range of related formula products. However a description of infant formula products was omitted from the regulations and now needs to be clarified.

This will ensure that costs associated with export declaration requirements⁸ for all of these products are able to be recovered. This clarification will ensure that exporters of all types of infant formula product, including follow on-formula and formulated supplementary food for young children, are subject to the appropriate charges for export declarations alongside exporters of infant formula.

Proposal

MPI is proposing that the Animal Products (Dairy Industry Fees, Charges and Levies) Regulations 2015 be amended to ensure that costs associated with issuing export declarations in relation to all infant formula products and formulated supplementary foods for young children are able to be recovered. *Infant formula products and supplementary foods for young children* are:

- **Infant formula product** – a product based on milk or other edible food constituents of milk origin which is nutritionally adequate to serve as the principal liquid source of nourishment for infants, and includes infant formula and follow-on formula.
- **Supplementary foods for young children** – a formulated supplementary food for children aged 12 months to 36 months.

All exporters of these products subject to export declaration requirements will be required to pay a fee for each declaration. The actual fees are determined by a formula prescribed in the regulations which relates to the total costs and volumes of declarations in a given year. The value to be attributed to components of the formula is specified in a notice prior to the commencement of the financial year. The notice will be issued closer to this time but as a guide, MPI anticipates the fee for 2016/17 will be in the region of \$19.00 per export declaration.

⁸ These requirements are promulgated via notices.

Other options considered – maintaining the status quo

MPI also considered not clarifying the application of existing export declaration changes for infant formula products.

However MPI considers that an absence of charges may lead to higher administrative costs for both MPI and industry. Charging a declaration fee should incentivise exporters to consolidate products into fewer consignments. In addition, not applying charges would not be fair or equitable as some exporters would pay while others with broadly similar products would not.

Questions:

- 1. Are these descriptions for infant formula products sufficiently clear to ensure all appropriate products will be captured?**
- 2. What impact are the proposals likely to have on your business?**

Changes to Animal Products (Fees, Charges and Levies) Regulations 2007

MPI is proposing two minor amendments to the Animal Products (Fees, Charges and Levies) Regulations 2007 that will benefit affected businesses:

- A correction to the description of birds that are subject to export declaration charges.
- Amendment to allow the Director-General flexibility to reduce the frequency of reporting requirements for animal processors where appropriate.

Correcting the description of birds that are subject to export declarations charges

Under the Animal Products (Fees, Charges and Levies) Regulations 2007 MPI has authority to charge for providing export clearances for different types of live animals.

Exporters of live birds generally must pay two fees: one for an Official Assurance (certifying that the birds are fit and healthy and meet the requirements of the importing countries) and a per-bird levy (to cover the costs of running and maintaining the live animal export system). For this latter fee there are two rates depending on the type of bird; a higher rate of \$38 per bird for larger, less common birds and a much lower rate of 27c per bird for more common birds.

Budgies, lovebirds and cockatiels, finches and rosellas are specifically caught by the higher rate. This was an error. These birds should have been excluded from the higher rate.

It is proposed to correct this so that the lower rate of \$0.27 applies to these types of birds.

Reporting requirements for animal processors

Under the Animal Products (Fees, Charges and Levies) Regulations 2007, the Ministry collects information on the numbers of animals processed from all operators on a monthly basis. This information is used to calculate levies.

MPI is proposing to amend the regulations to allow the Director-General flexibility to determine, whether animal processors can submit monthly or annual reports of processing volumes.

Currently, most animal processors reports are required to report to MPI monthly. We consider that in the case of low volume processors, annual reports may be more appropriate and will reduce an administrative burden for the smaller operators. This proposal would enable the Director-General to determine this on a case by case basis.

Questions:

- 1. Do you support these amendments, why or why not?**
- 2. Will there be tangible benefits in these charges for your business?**