



# New Zealand Gazette

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## LIVESTOCK IMPROVEMENT CORPORATION

PROCEDURES FOR COMPLYING WITH  
DECISIONS OF THE PANEL

PURSUANT TO THE DAIRY INDUSTRY (HERD TESTING  
AND NEW ZEALAND DAIRY CORE DATABASE)  
REGULATIONS 2002

## Regulation 26 Publication

### Livestock Improvement's Procedures for Complying With Decisions of the Panel

Publication pursuant to Regulation 26(1)(a) of the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001 – Procedures for complying with decisions of Panel

#### Procedure One – Where Regulation 25 Confidentiality is Not Waived by the Applicant

1. In the first instance the Applicant will contact the Secretary of the Core Database Access Panel

New Zealand Dairy Core Database Access Panel

**Dairy InSight New Zealand**

PO Box 417

Wellington

New Zealand

Ph: 04 471 8557

Fax: 04 460 8187

Email: Rebecca.Austin@dairyinsight.co.nz

2. The Panel will manage the application process through to the Panel Decision.
3. The Panel notifies Livestock Improvement's Database Application Administrator (DAA) of the Decision.
4. Livestock Improvement through the DAA completes the following:
  - (a) DAA liaises with the Applicant to ascertain whether or not confidentiality is to be waived.
  - (b) DAA advises the Applicant of the fee (to the extent it can be ascertained at that time) and/or pricing components in accordance with the relevant Livestock Improvement Pricing Methodology.
  - (c) DAA reviews the decision from the Panel:
    - (i) DAA ensures the decision solely relates to core data.
    - (ii) DAA ensures the specific data parameters (e.g. data tables and fields) to be provided to the Applicant is ascertainable from the decision.
    - (iii) DAA will seek clarification and/or direction (if applicable) from the Panel if any doubt or other issue exists in any aspect of decision, and Livestock Improvement's obligations under the decision.

- (d) The DAA liaises with the Applicant and, where applicable, the Panel to discuss and/or advise the Applicant and/or the Panel in respect of any logistical extraction and delivery issues or timeframes.
- (e) The DAA will provide a copy of Livestock Improvement's standard "Data Provision Agreement (where confidentiality not waived)" for execution by the Applicant.
- (f) The DAA will co-ordinate extraction of the core data from the core database, through the use of other technical people.
- (g) Once Livestock Improvement's standard "Data Provision Agreement (where confidentiality not waived)" has been executed by the Applicant, the DAA will request the originals from the Applicant, and when received arrange for execution in the manner prescribed by Livestock Improvement.

Livestock Improvement's standard "Data Provision Agreement (where confidentiality not waived)" is Livestock Improvement's standard agreement for the provision of data to third parties modified to contain the terms and conditions set by the Panel and other provisions specific to core data and the core database.

- (h) DAA will collect relevant funds from the Applicant, which will be paid by the Applicant by way of bank cheque made out to Livestock Improvement Corporation Limited.
5. The maximum time period for the provision of data to an Applicant will be:
- (a) as specified by the Panel; or
  - (b) if not specified by the Panel 28 days from the date of payment of Livestock Improvement's charges by the Applicant; or
  - (c) such other period or date agreed between Livestock Improvement and the Applicant.
6. Upon receipt of payment of charges by the Applicant (in the prescribed method) and execution of Livestock Improvement's standard "Data Provision Agreement (where confidentiality not waived)", the DAA will then provide data to the Applicant in accordance with the decision and the terms of Livestock Improvement's standard "Data Provision Agreement (where confidentiality not waived)".
7. The DAA will maintain ongoing monitoring of the Applicant to ensure compliance with the Agreement and/or the Decision at all times.

**Procedure Two – Where Regulation 25 Confidentiality is Waived by the Applicant**

1. Contact the manager of the Business Information Unit (BIU)  
  
The Manager – Craig Purcell  
Business Information Unit  
Livestock Improvement Corporation Limited  
Private Bag 3016  
HAMILTON  
Ph: 07 856 0822  
Email: cpurcell@lic.co.nz
2. BIU and Applicant to liaise to:
  - (a) Clarify purpose for which the core-data will be used;
  - (b) Determine the Applicant's exact data requirements;
  - (c) Determine and discuss indicative pricing and discuss any preliminary negotiation of any terms on which the data will be provided to the Applicant.
  - (d) Complete detailed application for the Panel to review, and provide any supporting documentation from Livestock Improvement if applicable.
3. In the event the Applicant wishes to negotiate certain terms and conditions, the BIU may report to the CEO of Livestock Improvement for any decision in relation to that negotiation.
4. The BIU receives the Panel's Decision and liaises with the Applicant or the Panel about any relevant aspect of the Decision.
5. Agreement completed between Livestock Improvement and the Applicant regarding the terms on which data is provided and used by the Applicant.  
  
The Agreement will be Livestock Improvement's standard "Data Provision Agreement (where confidentiality waived)" modified to contain the terms and conditions set by the Panel and other provisions specific to core data, the core database and the grant of access.
6. The maximum time period for the provision of data to an Applicant will be:
  - (a) as specified by the Panel; or
  - (b) if not specified by the Panel 28 days from the date of payment of Livestock Improvement's charges by the Applicant; or
  - (c) such other period or date agreed between Livestock Improvement and the Applicant.
7. Upon execution of the Agreement, the BIU implements data extraction and delivery to the Applicant in accordance with the Decision and completed Agreement.

## Livestock Improvement's Procedures for Complying With Regulation 25

Publication pursuant to Regulation 26(1)(b) of the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001 – Procedures for complying with Regulation 25, in the event an Applicant does not wish to waive confidentiality pursuant to Regulation 25(3)

Livestock Improvement will appoint an employee, who is solely involved in the operation of the Database, to be Livestock Improvement's Database Application Administrator (DAA). The DAA will be Livestock Improvement's representative in respect of receiving all applications made to the Panel and all decisions made by the Panel, where Livestock Improvement has an obligation under Regulation 25(1) (where confidentiality has not been waived).

At the time of publication, the DAA is Frank Hay, Livestock Improvement's Computer Services Group, Technical and Operations Manager.

The DAA will identify any information comprising:

- (a) information contained in an application to the Panel in relation to the supply of data;
- (b) information that an application has been made;
- (c) information that any data in the core database has been made available as a result of an application;

the "Restricted Information".

The DAA will maintain strict confidentiality in respect of the Restricted Information by not disclosing any Restricted Information to any person within Livestock Improvement who is involved in any activity of Livestock Improvement other than operation of the database of which the core database forms a part.

The DAA will ensure and maintain any Restricted Information by:

- Storing all electronically held information which may contain Restricted Information in a separate and secure network location.
- Keeping all hard copy held information which may contain Restricted Information in a locked cabinet.
- Ensuring that the location of any documents containing Restricted Information is known at all times.
- Marking any document containing Restricted Information as "confidential".
- Ensuring any funds from an Applicant are received by way of bank cheque (so as to not to disclose any Restricted Information to Livestock Improvement's accounts department). The DAA will provide the Applicant with a GST invoice from a GST invoice book to be held in a locked cabinet.
- Co-ordinating the extraction of the core data from the core database, through the use of other personnel who are solely involved in the operation of the Database.

## **Pricing Methodology for Access to Core Data**

Publication pursuant to Regulation 26(1)(c) of the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001 – Pricing Methodology or Methodologies used to set charges for access to data in the core database

### **Introduction**

The Regulations place an obligation on Livestock Improvement to provide access to core data, however Livestock Improvement determines the price of access to that data.

The Regulations also provide that Livestock Improvement must in each year publish its pricing methodology which is used to calculate prices for the provision of extracts of core data. That methodology is set out in this section.

This methodology is in respect of core data only and does not include any pricing in respect of value added data (data which is not core data). Value added data and the pricing of value added data is beyond the scope of this methodology and the Regulations.

### **General Principles**

Livestock Improvement sets prices for its services based on the costs of providing those services. The access prices for core data have been determined in the same manner (i.e. they are cost-based), based on anticipated usage of the data in the core database. The prices also include a partial recovery of the additional costs of providing access to the core database to third parties.

There are no charges for the input of core data; but the activities of collecting, verifying and correcting input data form part of the processes involved in the provision of core data and their costs form part of the costs attributed to the provision of core data.

### **Pricing Methodology for Livestock Improvement Services**

Livestock Improvement's method for allocating costs to its services, so that its prices reflect those underlying costs, is well established.

The method uses a system in which all services provided by Livestock Improvement have links to the basic activities and processes that are necessary to provide them. These links, like the roots of a tree, divide down to the basic level where the activities are performed. They provide the links necessary to obtain and accumulate the full costs of all the processes involved in providing each service. Given the prices and volumes of each service, the revenue for each service is then compared with the full costs in order to give the net profit of each service.

### **Pricing For Extracts of Core Data**

Pricing for core data uses the same method as if the same core data were being provided to a Livestock Improvement business unit and were being costed for the purpose of setting prices for the services provided by that business unit. That method is as set out in this pricing methodology.

In many situations, however, applications for data are likely to require both core and value added data. In these situations, Livestock Improvement provides a price for the combination of core and value added data. The price of the core data contained in this combination would be set as if only the core data were being provided, and in accordance with this methodology. The Applicant can either accept Livestock Improvement's implied price for the value added data contained in this combination, or be provided with an extract of core data at a price determined in accordance with this pricing methodology and carry out any processes it chooses itself to generate its own value added data.

The method for setting the price of core data parallels that which Livestock Improvement would carry out for allocating costs to a service it sells itself. In setting prices for core data, processes that add value are omitted. Where processes handle both value added and core data, their costs allocated to core data are reduced so that they only reflect the share of the cost relating to the core data.

### **Capital Costs**

The costs include capital costs (e.g. computers, furniture etc; but **not** the inherent capital value of the core database). The capital costs are calculated on a capital cost recovery basis over the estimated lives of the assets employed in collecting, verifying, correcting, storing and extracting core data at Livestock Improvement's weighted average cost of capital. This calculation gives an annual cost covering both the depreciation of the asset over its life and a return on the capital employed, also over its life.

## **Pricing Method**

### **Processing Applications**

There are significant costs in processing each application. With regard to the Panel, costs include Panel members' time. From Livestock Improvement's perspective, an application entails significant amounts of management time in preparing the documentation required and carrying out the investigations needed to advise and service the Panel and/or the Applicant. Livestock Improvement must, among other things, specify the outputs required, prepare an agreement with the Applicant, and make the necessary arrangements to extract the data.

The costs of the Panel are (partially) met through the *application fee* prescribed under the Regulations, although at \$200 (including GST) the revenue from the application fees will be a small fraction of the costs of the process.

Similarly, Livestock Improvement will be charging an *administration fee* for its work in processing applications, but again this fee represents only a small fraction of the costs incurred by Livestock Improvement in carrying out this work.



### **Programming Costs**

In some circumstances, programming will be necessary for the core data to be extracted and provided to the Applicant. These programming costs are additional to Livestock Improvement's normal business. They are charged at Livestock Improvement's standard internal hourly charge rate for programming, or at actual cost if Livestock Improvement decides to have this work outsourced. Where the user requests subsequent changes to the program, that cost is also charged on this basis at the time of the request.

In some circumstances, Livestock Improvement will incorporate or use its own proprietary software to undertake the provision of data more efficiently. When this circumstance occurs, Livestock Improvement will allocate a share of the development costs for this proprietary software to the amount charged, but the total programming charge will not be greater than the cost that would have been incurred if Livestock Improvement had undertaken the programming without incorporating or otherwise using the proprietary software.

### **Program Maintenance**

An annual maintenance charge is made to keep the program in operation each year. This charge covers program updates to conform to changes in Livestock Improvement's systems. This charge is in proportion to the size of the program development.

### **Costs of Collecting, Verifying, Correcting, Storing and Extracting Core Data**

The costs of collecting, verifying, correcting, storing and extracting core data are accumulated from three of Livestock Improvement's divisions: Genetics, Computer Services and Information. The bulk of these costs are borne internally by Livestock Improvement, with the balance of the core database costs (around one-third of the costs) being charged to Livestock Improvement's MINDA division and third parties in the manner described below.

Some of the costs (core database infrastructure costs) are fixed because they are incurred regardless of the number of animals recorded on the database. Other costs will vary with the number of animals whose records are held in the database. The charges for providing extracts of core data accordingly have fixed and variable components. Some applications for core data require only the records which are to be extracted to be held (i.e. they are not dependent on other data held in the database). Other applications require a larger part of the database to be available and the records in it evaluated in order to select those records to be extracted. In the former case, Applicants will be charged a variable charge per record extracted. In the latter case, the Applicants will be charged both the variable charge per record extracted and a fixed charge that relates to the fixed costs of establishing and maintaining the database.

Accordingly, three charges are made for this aspect of the provision of the core data:

- (a) A fixed annual charge will apply to all parties which request core data, except those where the "primary key" (i.e. activating field) in selecting the data to be extracted is a "key field" as defined in the Regulations and its range is specified in the application (i.e. the records relate to specific herds or farms).



- (b) A charge for producing the first output in each season, which covers the costs of collecting, validating, processing, storing and extracting the core data each season. The basis for charging is the number of output records resulting from the request. The charge is made for each season that the data is supplied for. For the purposes of this document, a season is defined as the twelve months from 1 June to 31 May.
- (c) A charge for additional data extracts during the season to cover their additional costs of production. The basis for charging is the number of output records resulting from the request.

The charge components specified in (a) to (c) above include the following cost components:

(a) ***Core Database Infrastructure***

- (i) Programming costs attributable to the core database.
- (ii) Core database administrator and associated administration costs.
- (iii) Core database system maintenance, depreciation and cost of capital.
- (iv) Client and herd data collection by the sales force.
- (v) Sales costs attributable to the core database.

(b) ***Core Database Content, Storage & Extraction***

- (i) AB Technician time recording matings.
- (ii) MINDA Operations Data Bureau time attributable to animal event processing.
- (iii) MINDA Operations personnel and phone costs attributable to animal record maintenance, reporting, data validation and correction.
- (iv) Livestock Improvement's National Animal Database operating costs apportioned to the provision of core data for herd recording.
- (v) The costs of postage and printing attributable to the first output.

(c) ***Repeat Data Extracts***

- (i) Livestock Improvement's National Animal Database operating costs apportioned to the provision of core data for repeat herd reports.
- (ii) The costs of postage and printing attributable to the provision of repeat herd reports.

The actual charges for the 2003/04 season are shown in the attached schedule.

The calculation of these charges requires assumptions about volumes of work carried out in each activity. In particular, it depends on the number of times the database is accessed for data for all purposes and on the volumes of records in all output. These assumptions are made in advance of each season and are used for pricing in the forthcoming season.

### **Core Data for Research & Development and Other Commercial Purposes**

Livestock Improvement provides data for Research & Development (R&D) and other commercial purposes. The core data represents an accumulation of data by the methods and systems developed by Livestock Improvement over many years. It has a high intellectual property value.

As one component of the overall charge for core data set out in this methodology, Livestock Improvement charges a royalty which is a percentage of the gross income derived from products and services developed using the intellectual property embodied in the core data. That royalty is charged in accordance with Livestock Improvement's licence terms and conditions (set out below) and the core data provided to any Applicant obtaining data for any research and development or other commercial purpose is provided on that basis.

In accepting the core data, the Applicant acknowledges Livestock Improvement's charging methodology and agrees to the following terms:

#### **Licence Terms**

1. These licence terms apply to any person or entity (the "Applicant") receiving core data (the "Core Data") pursuant to a decision of the New Zealand Dairy Core Database Access Panel (the "Panel") (as defined in the Dairy Industry (Herd Testing and New Zealand Dairy Core Database) Regulations 2001 or any amendment Regulations (the "Regulations")) who uses (or seeks access to with intention to use) any Core Data for:
  - (a) the research into, development of and/or the creation of any tangible or intangible, choate or inchoate:
    - (i) good, product, service, thing, matter, substance, article, work, device, invention or right;
    - (ii) subject matter whether within clause (a)(i) or otherwise that is capable of being protected by any intellectual property right, including (without limitation) copyright, trademark, and/or patent; and/or
    - (iii) subject matter whether within clause (a)(i) or otherwise which the Applicant has or will have or is reasonably capable of obtaining proprietary rights in respect of;
  - (b) any other activity or actual or intended use;
 

being for a purpose that is not in direct competition (at the time the Core Data is made available to the Applicant) with Livestock Improvement's Herd Recording, Herd Testing or Artificial Breeding Services.
2. These licence terms are in addition to any:
  - (a) other applicable terms and conditions relating to the supply of Core Data irrespective of whether those conditions of supply are specified by the Panel or Livestock Improvement; and/or
  - (b) agreement in respect of the supply of Core Data to the Applicant entered into between Livestock Improvement and the Applicant.
3. Livestock Improvement as licensor grants to the Applicant a non-exclusive and non-transferable licence to use the Core Data. Such use for the purpose of these licence terms will be limited to the right to develop, market, sell and licence any activity, product, good, service and/or other subject matter derived from the Applicant's use of the Core Data as contemplated by clause 1 (the "Products and Services").

4. The Applicant will pay a royalty to Livestock Improvement of 5% of the Gross Income received by the Applicant from the Products and Services ("Royalty" or "Royalties"). The Royalty payable is irrespective of however Products and Services are marketed, sold, licensed or otherwise dealt with or used to create income (directly or indirectly) by the Applicant or an Associate of the Applicant.
5. The term "Gross Income" for the purposes of these licence terms means:
  - (a) the Applicant's income (at invoice values); and/or (as the context permits)
  - (b) a fair market value (as determined by Livestock Improvement in its reasonable opinion) for any non-monetary consideration or use;received for, or in respect of, Products and Services net of any goods and services tax, value added tax, freight and insurance, applicable to the particular Products and Services (if payable by the Applicant).
6. The term "Associate" for the purposes of this licence means any person or entity that, directly or indirectly, through one or more intermediaries controls, is controlled by, or is under common control with, the Applicant. A person or entity controls an entity if a person or entity directly or indirectly possesses the power to:
  - (a) appoint the majority of the directors or trustees of the entity; or
  - (b) otherwise direct or cause the direction of the management, policies, or powers of the entity.
7. The Applicant will ensure that any (and each) Associate is bound by the terms of this licence as if the Associate were the Applicant.
8. Any reference to the Applicant in this licence includes a reference to an Associate.
9. The Applicant will keep true and particular records and accounts of all Products and Services developed, sold, licensed or otherwise dealt with, or used to create income (directly or indirectly) by the Applicant. Within thirty (30) days of the last day of January, April, July and October of each year, the Applicant will deliver a written report containing:
  - (a) full particulars of the number of Products and Services developed, sold, licensed or otherwise dealt with or used to create income (directly or indirectly) during the preceding three (3) month period up to the last day of January, April, July or October as the case may be; and
  - (b) the calculation of the Royalty due for the relevant period;to either:
  - (c) Livestock Improvement; or
  - (d) Livestock Improvement's Database Applications Administrator (the "DAA") where the Applicant has not waived confidentiality pursuant to Regulation 25.The correctness and completeness of each such report will be certified to in writing by the Applicant if a natural person, or by a director or officer of the Applicant if the Applicant is an entity other than a natural person.
10. With each report contemplated by clause 9, the Applicant will remit to Livestock Improvement Royalties due and payable to Livestock Improvement without deduction or set-off.

11. (a) The Applicant will permit Livestock Improvement or its agents at reasonable notice to inspect and take copies of any books, accounts or other records in the possession of the Applicant relating to the development, sale, licensing and/or dealing with the Products and Services.
- (b) The Applicant will keep such books, accounts or other records open at all reasonable times for three (3) years following the end of the calendar year to which they pertain (and access will not be denied thereafter, if reasonably available), for inspection and/or audit of Livestock Improvement or such other suitably qualified person nominated by Livestock Improvement for the purpose of verifying the Applicant's Royalty statements or the Applicant's compliance in all other respects with these licence terms.
- (c) If in dispute, the relevant records will be kept until the dispute is settled. Livestock Improvement's costs of the inspection and audit of records as contemplated by this clause will be at Livestock Improvement's sole cost unless such inspection and/or audit reveals (in Livestock Improvement's reasonable opinion) that Royalties reported by the Applicant for the period subject to the audit are understated by five percent (5%) or more from those Royalties actually paid, in which case the costs and expenses of such inspection and/or audit will be payable by the Applicant.
12. If the Applicant neglects or fails to pay any amount payable pursuant to this licence after the due date thereof, the amount owed will bear interest at a sum equal to the Bank of New Zealand's standard business overdraft interest rate per annum plus a margin of 5% calculated on a daily basis from the due date paid and compounding monthly, provided that if this interest is held to be unenforceable for any reason, the interest rate will be the maximum rate allowed by law at the time the payment is due.
13. All amounts payable pursuant to this licence accruing in countries other than New Zealand will be payable in either:
- (a) New Zealand Dollars; or
- (b) United States Dollars
- in amounts based on the rate of exchange for the relevant currency offered by any major International Trading Bank or the Bank of New Zealand on the day the relevant amount is paid or payable to Livestock Improvement. In the event that either the Applicant can not or it is impractical for the Applicant to comply with the operation of this clause, a comparable measure of the appropriate rate of exchange and/or method to exchange currency will be nominated by Livestock Improvement.
14. The Applicant will not circumvent or attempt to circumvent the wording and intent of these licence terms.
15. Without limiting any other right or remedy of Livestock Improvement whether expressed or implied:
- (a) Breach of these licence terms by the Applicant will entitle Livestock Improvement to:
- (i) sue for damages for losses both direct and indirect;
- (ii) seek injunctive relief under clause 15(b); and/or
- (iii) cease (in Livestock Improvement's sole discretion either temporarily or indefinitely) the provision of any Core Data to the Applicant.
- (b) The Applicant acknowledges that an actual or threatened breach of these licence terms may cause damage to Livestock Improvement that is unable to be adequately compensated for by monetary damages. In such circumstances, Livestock Improvement may seek in addition urgent injunctive relief from any Court of competent jurisdiction.

- (c) The Applicant acknowledges and agrees that (without prejudice to Livestock Improvement's rights pursuant to clause 15(a)) in the event the Applicant is at any time in breach of these licence terms and that breach has not been remedied by the Applicant within 30 days of such breach occurring, then the Applicant waives for the purposes of Regulation 25(3) any right of confidentiality afforded by Regulation 25 and these terms together with evidence of any such unremedied breach shall be sufficient evidence for all purposes of such waiver of confidentiality pursuant to Regulation 25(3).
16. The Applicant acknowledges that Livestock Improvement will appoint the DAA as its attorney and agent to act on its behalf for the duration of this licence (or any period during which the Applicant has not waived confidentiality pursuant to Regulation 25(3) (whether by operation of clause 15(c) or otherwise)).
17. For any period of this licence during which the Applicant has not waived confidentiality pursuant to Regulation 25(3) (whether by operation of clause 15(c) or otherwise), Livestock Improvement will ensure the required standard of confidentiality pursuant to Regulations 25(1) & 25(2) is maintained by only acting as a party to this licence through the instrumentality of the DAA.
18. Livestock Improvement will determine (in its sole discretion) whether any activity or use of Core Data undertaken by the Applicant is in competition with Livestock Improvement's Herd Recording, Herd Testing, or Artificial Breeding Services.

### SCHEDULE OF CHARGES

All charges, except the application fee, are exclusive of GST

#### All Applications

Application fee – payable to Core Database Panel	\$200 including GST
Administration fee – payable to Livestock Improvement	\$500 per application
Programming charge	\$98 per hour, or actual charge if outsourced. Where Livestock Improvement's proprietary software is incorporated or used in development, an allocation of the development costs will be added, to give a maximum price no greater than the price that would have been incurred without the incorporation and/or use of Livestock Improvement's proprietary software.
Program maintenance charge	18% of total program development cost per annum
A fixed charge for all parties accessing the core database, <i>except where</i> the requesting party only makes requests where the "primary key" (i.e. activating field) in selecting the data to be extracted is a "key field" as defined in the Regulations and its range is specified in the application (i.e. the records relate to specific herds or farms).	\$86,000 per season
Charge for producing and extracting the first output report in each season	\$0.45 per animal record per season of data
Charge for additional extracts during the season	\$0.03 per animal record per extract

#### Applications for Purposes Other than Competition with Livestock Improvement

Royalty for R&D and other commercial purposes	5% of gross income from products or services developed using the core data in accordance with the licence terms contained in this methodology
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