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Statutory Rules 1991 No. / 1

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Primary Industries Levies and Charges Collection (Avocado) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 4 of the *Acts Interpretation Act 1901* and having taken into consideration relevant recommendations made to the Minister by the Horticultural Research and Development Corporation, make the following Regulations under the *Primary Industries Levies and Charges Collection Act 1991*, the *Horticultural Levy Act 1987* and the *Horticultural Export Charge Act 1987*.

Dated 27 June 1991.

BILL HAYDEN
Governor-General

By His Excellency's Command,

Simon Crean
Minister of State for Primary Industries
and Energy

Citation

1. These Regulations may be cited as the Primary Industries Levies and Charges Collection (Avocado) Regulations.

Commencement

2. These Regulations commence on 1 August 1991.

Incorporation

3. The Primary Industries Levies and Charges Collection Regulations are incorporated and must be read as one with these Regulations.

Interpretation

4. In these Regulations, unless the contrary intention appears:

“annual return” means a return lodged under regulation 13;

“avocado” means fruit of the species *persea americana*;

“avocados in bulk” means avocados sold in bulk by weight by the producer to a first purchaser or through a selling agent or buying agent;

“deal” means sell, buy or export;

“export avocados” means avocados that are exported;

“export charge” means charge imposed on avocados under the Export Charge Act;

“exporter”, in relation to export avocados, means the producer of the avocados within the meaning of paragraph (g) of the definition of “producer” in subsection 4(1) of the Collection Act;

“Export Charge Act” means the *Horticultural Export Charge Act 1987*;

“grower”, in relation to avocados, means the producer of the avocados within the meaning of paragraph (b) of the definition of producer in subsection 4(1) of the Collection Act;

“levy” means levy imposed on avocados under the Levy Act;

“Levy Act” means the *Horticultural Levy Act 1987*;

“levy year” means the period prescribed under regulation 5;

“minor first purchaser” means a person:

- (a) who, because of a business carried on by the person, is a first purchaser of avocados; and
- (b) whose business referred to in paragraph (a) is not wholly or substantially a business of selling or processing horticultural products;

“quarter” means:

- (a) the period beginning on 1 August 1991 and ending on 30 September 1991; or
- (b) the period of 3 months ending on the last day of March, June, September or December in any year;

“quarterly return” means a return lodged under regulation 15;

“retail sale”, in relation to a sale of avocados by a grower, means a sale by the grower of the product except a sale to a first purchaser or through a selling agent, buying agent or exporting agent;

“return” means an annual return or a quarterly return;

“standard tray”, in relation to avocados, means

- (a) a single layer tray of avocados, being a tray of the kind ordinarily used in the Australian horticultural industry for packing avocados; or
- (b) if the avocados are not packed in a tray of that kind—6 kilograms of avocados.

Levy year

5. For the purposes of the definition of “levy year” in subsection 4 (1) of the Collection Act, the following periods are prescribed in relation to avocados:

- (a) the period beginning when these Regulations commence and ending at the end of 31 December 1991;
- (b) each calendar year after 1991.

Grower—producer

6. Avocados are prescribed for the purposes of paragraph (b) of the definition of “producer” in subsection 4(1) of the Collection Act.

When is levy or export charge due for payment?

7. Levy or export charge payable for avocados is due for payment on the last day for lodging a return for the avocados.

[NOTE: For penalty see section 15 of the Collection Act]

Leviable horticultural products

8. Avocados are prescribed horticultural products for the purposes of the definition of “leviable horticultural products” in subsection 5A (1) of the Levy Act.

Chargeable horticultural products

9. Avocados are prescribed horticultural products for the purposes of the definition of "chargeable horticultural products" in subsection 5A (1) of the Export Charge Act.

What is the rate of levy?

10. For the purposes of section 9 of the Levy Act, the following rates of levy are prescribed:

- (a) for avocados in bulk—\$5.00 per tonne;
- (b) for other avocados—3 cents per standard tray.

What is the rate of export charge?

11. For the purposes of section 9 of the Export Charge Act, the following rates of export charge are prescribed:

- (a) for avocados in bulk—\$5.00 per tonne; and
- (b) for other avocados—3 cents per standard tray.

Eligible industry bodies

12. (1) For the purposes of subsection 14 (7) of the Levy Act, the eligible industry body is the Australian Avocado Growers' Federation Inc.

(2) For the purposes of subsection 14 (7) of the Export Charge Act, the eligible industry body is the Australian Avocado Growers' Federation Inc.

Who must lodge an annual return?

13. The following persons must lodge an annual return for a levy year:

- (a) a minor first purchaser who buys leviable avocados in the year;
- (b) a grower who sells leviable avocados by retail sale in the year;

- (c) a person who deals with leviable or chargeable avocados in the year and is exempt from lodging quarterly returns for the year.

[NOTE: For penalty see section 15 of the Collection Act.]

When must an annual return be lodged?

14. An annual return for a levy year must be lodged on or before 28 February in the following levy year.

Who must lodge quarterly returns?

15. (1) Each of the following persons must lodge a return for a quarter:

- (a) a first purchaser (except a minor first purchaser) who buys avocados in the quarter;
- (b) a buying agent who buys avocados in the quarter;
- (c) a selling agent who sells avocados in the quarter;
- (d) an exporter who exports avocados in the quarter;
- (e) an exporting agent who exports avocados in the quarter.

[NOTE: For penalty, see section 24 of the Collection Act]

(2) A person does not have to lodge quarterly returns for a levy year if:

- (a) the Secretary has granted the person an exemption for the year under regulation 19 or has continued the person's exemption under regulation 20; or
- (b) the person has applied for exemption under regulation 17 for the year and has not received notice that the Secretary has refused to grant the exemption; or
- (c) the Secretary is required under regulation 20 to consider whether to continue the person's exemption and the person has not received notice that the Secretary has refused to continue the exemption.

When must quarterly returns be lodged?

16. A quarterly return must be lodged on or before the 28th day of the month following the end of the quarter.

Application for exemption from lodging quarterly returns

17. (1) A person may apply for exemption from the obligation to lodge quarterly returns for a levy year if the person has reason to believe that the total quantity of avocados with which the person is likely to deal in the year is less than 6,000 standard trays.

(2) A reference in subregulation (1) to the quantity of avocados with which a person will or is likely to deal in a levy year is a reference to:

- (a) the quantity of avocados for which the person is or may become liable to pay levy or export charge for the year; or
- (b) the quantity of avocados for which the person is or may become liable to pay an amount under subsection 7 (1) or (3) of the Collection Act;

as the case requires.

Form of application for exemption

18. An application for exemption from the obligation to lodge quarterly returns for a levy year must:

- (a) give the full name and business address or residential address of the applicant, not being the address of a post office box or post office bag;
- (b) if the applicant has a post office box address or a post office bag address—that address;
- (c) include (as the case requires):
 - (i) a statement that the applicant is or may become liable to pay levy or export charge for the year;or
 - (ii) a statement that the applicant is or may become liable to pay an amount under subsection 7 (1) or (3) of the Collection Act for the year;and
- (d) include a statement that the applicant believes that the quantity of avocados for which the applicant will or may be liable to pay levy or export charge, or an amount under one of those subsections, for the year will be less than 6,000 standard trays; and
- (e) be lodged with the Secretary at the office of the Department in Canberra.

Grant or refusal of exemption

19. (1) When considering whether to grant or refuse an application for exemption, the Secretary must have regard to :

- (a) the amount of levy or export charge payable, or the amount payable by the applicant under subsection 7 (1) or (3) of the Collection Act, for the previous levy year; and
- (b) any information that is available to the Secretary about the amount of the liability that the applicant is likely to incur in the levy year to which the application relates.

(2) Within 14 days after a person lodges an application, the Secretary must:

- (a) decide whether to grant or refuse the application; and
- (b) give the applicant written notice of the decision addressed to the applicant at the address of the applicant last-known to the Secretary.

Continuation of exemption

20. (1) When a person who is exempt from lodging quarterly returns for a levy year lodges an annual return for that year, the Secretary must consider whether to continue the exemption for the following levy year.

(2) When considering whether to continue a person's exemption, the Secretary must have regard to:

- (a) the amount of levy or export charge payable by the person, or the amount of the person's liability under subsection 7 (1) or (3) (as the case may be) of the Collection Act, in the previous levy year; and
- (b) any information that is available to the Secretary about the amount of the liability that the person is likely to incur in the following levy year.

(3) Within 14 days after a person granted an exemption for a levy year lodges an annual return for that year, the Secretary must:

- (a) decide whether or not to continue the exemption for the following levy year; and
- (b) give the person written notice of the decision addressed to the person at the person's last notified address.

When must quarterly returns be lodged if exemption not granted or continued?

21. A person who receives notice of a refusal to grant, or of a refusal to continue, an exemption for a levy year must lodge a quarterly return for each quarter of the levy year:

- (a) in the case of each quarter that ended before the person received the notice—within 28 days of receiving the notice; and
- (b) in the case of each other quarter—on or before the 28th day of the month following the end of the quarter.

What must be put in a return?

22. A return must:

- (a) give the full name and business address or residential address of the person lodging the return, not being the address of a post office box or post office bag; and
- (b) if the person has a post office box address or a post office bag address—give that address; and
- (c) specify the quarter, or the levy year, to which the return relates;
- (d) state the quantity of avocados sold, bought or exported in the quarter or year (except avocados for which levy or export charge is not payable);
- (e) state the amount of levy or export charge payable for the avocados;
- (f) include a declaration, signed by the person, that the particulars set out in the return are correct in every material particular; and
- (g) be lodged with the Secretary at the office of the Department in Canberra.

Records to be kept

23. (1) A grower must keep records for each quarter showing the quantity of avocados sold in the quarter by retail sale or to a minor first purchaser.

Penalty: \$1,000.

(2) A first purchaser must keep records showing the quantity of avocados bought in each quarter.

Penalty: \$1,000.

(3) A buying agent must keep records showing the quantity of avocados bought in each quarter.

Penalty: \$1,000.

(4) An exporter or exporting agent must keep records showing the quantity of avocados exported in each quarter.

Penalty: \$1,000.

(5) A selling agent must keep records showing the quantity of avocados sold in each quarter.

Penalty: \$1,000.

Records—5 year retention period

24. A person who is required to keep records about avocados under regulation 26 must retain the records for 5 years after the last day for lodging a return for the avocados.

Penalty: \$1000.

Review of decisions

25. (1) Applications may be made to the Administrative Appeals Tribunal for the review of a decision of the Secretary:

- (a) refusing to grant an exemption under paragraph 19 (2) (a); or
- (b) refusing to continue an exemption under paragraph 23 (3) (a).

(2) When the Secretary gives notice of a decision mentioned in subregulation (1), the notice must include a statement to the effect:

- (a) that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
- (b) that a person whose interests are affected by the decision may request a statement under section 28 of that Act.

(3) A failure to comply with subregulation (2) in relation to a decision does not affect the validity of the decision.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on

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1991.

28 June /