



Statutory Rules 1981 No. <sup>1</sup>

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## Australian Wine and Brandy Corporation (Exports) Regulations

I, THE ADMINISTRATOR of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and in pursuance of section 4 of the *Acts Interpretation Act 1901*, hereby make the following Regulations under the *Australian Wine and Brandy Corporation Act 1980*.

Dated 17 June 1981.

STANLEY BURBURY  
Administrator

By His Excellency's Command,

(sgd) Peter Nixon

Minister of State for Primary Industry

### Citation

1. These Regulations may be cited as the Australian Wine and Brandy Corporation (Exports) Regulations.

### Repeal of the Wine Overseas Marketing (Licences) Regulations

2. Statutory Rules 1954 No. 88, 1959 No. 3 and 1973 No. 112 are repealed.

### Interpretation

3. In these Regulations, unless the contrary intention appears—

“approved” means approved by the Corporation;

“authorized person” means a person authorized in writing by the Minister to perform the functions of an authorized person under these Regulations;

“certificate” means a certificate issued by the Corporation under regulation 7;

“licence” means a licence granted under regulation 5;

“licensee” means the holder of a licence;

“the Act” means the *Australian Wine and Brandy Corporation Act 1980*,

### **Exemption**

4. Nothing in Regulation 6 applies to or in relation to the export of a grape product the quantity of a consignment of which is less than 200 litres.

### **Grant of licences**

5. (1) The Minister or an authorized person may, on the application of a person and after taking into consideration the prescribed matters in relation to the person, grant to the person a licence to export grape products from Australia.

(2) A licence granted under this regulation—

- (a) shall be in accordance with an approved form; and
- (b) remains in force for such period, not exceeding 3 years, as is specified in the licence, and may be renewed.

(3) For the purposes of sub-regulation (1), the prescribed matters are—

- (a) the financial standing of the applicant;
- (b) the experience of the applicant in exporting goods from Australia;
- (c) the applicant’s ability to obtain grape products from Australian suppliers;
- (d) matters applicable to the person that relate to the promotion of the export of grape products, including matters that may affect adversely the export trade in grape products;
- (e) any other matters relating to the promotion of the export of grape products, including the number of licences in force authorizing the export of the grape product in respect of which the applicant has applied for a licence; and
- (f) any recommendations made by the Corporation under paragraph 8 (2) (a) of the Act.

### **Regulation of export**

6. (1) The export of a grape product from Australia is prohibited unless—

- (a) the exporter is the holder of a licence; and
- (b) the prescribed conditions subject to and in accordance with which the grape product may be exported have been complied with.

(2) For the purposes of sub-regulation (1), the prescribed conditions are—

- (a) the purchaser of the grape product, or the person to whom the grape product is consigned as an agent or representative of the purchaser or licensee in the country to which the grape product is consigned, shall have been approved by the Corporation;
- (b) the grape product shall have been sold before export, or consigned, upon terms and conditions approved by the Corporation;

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- (c) the export of the grape product shall be in accordance with any directions given to the licensee by the Corporation in pursuance of regulation 8;
- (d) the grape product shall be sound and merchantable;
- (e) the grape product shall meet the standards and requirements of the country to which it is to be exported;
- (f) the licensee shall have furnished to the Corporation such samples of the grape product as are reasonably required by the Corporation for the purpose of determining the soundness and quality of the grape product;
- (g) the licensee shall have lodged with the Corporation, in accordance with sub-regulation 7 (1), 2 copies of a notification of the proposed export of the grape product and the Corporation has issued a certificate under regulation 7; and
- (h) in the case of the export of a grape product that is fortified with imported grape spirit—the Corporation shall have approved the export of the grape product.

#### **Certificate of compliance**

##### **7. (1) Where—**

- (a) a licensee has, not later than 14 days before the proposed export of a grape product, lodged with the Corporation 2 copies of a notification of the proposed export, in accordance with an approved form; and
- (b) the export of the grape product would comply with the conditions set out in these Regulations relating to the export of the grape product,

the Corporation shall issue a certificate, endorsed on a copy of the notification, that the export of the grape product complies with the conditions subject to which the grape product may be exported, and cause the copy of the notification to be returned to the licensee.

(2) Where the export of the grape product would not comply with those conditions, the Corporation shall refuse to issue a certificate and shall cause a statement that the export would not so comply, together with the grounds on which the export would not so comply, to be forwarded to the licensee.

(3) A copy of the notification on which a certificate has been endorsed under sub-regulation (1), or a statement under sub-regulation (2), as the case requires, shall be forwarded to the licensee not later than 3 days before the proposed date of export.

#### **Powers of Corporation**

##### **8. The Corporation, or a person authorized by it, may, from time to time—**

- (a) determine, or determine the manner of calculation of, prices for the sale of grape products to be exported or for the sale outside Australia of exported grape products, either generally or in relation to a particular country;

- (b) give to a licensee directions, in writing, with respect to the quantities of the grape product in respect of which the licence was granted that may be exported by the licensee either generally, to the countries specified in the directions or to the persons, agents or representatives specified in the directions.

#### **Suspension and cancellation of licences**

**9. (1)** In this regulation, “authorized price”, in respect of a grape product, means the price determined by the Corporation, or calculated in the manner determined by the Corporation, under regulation 8 in respect of that grape product.

- (2)** Where a licensee, without the consent of the Corporation—
  - (a) sells a grape product outside Australia at a price that is less than the authorized price in respect of that grape product;
  - (b) enters into a contract or agreement whereby a person is enabled, authorized or permitted to sell a grape product outside Australia at a price that is less than the authorized price in respect of that grape product;
  - (c) gives an authority, licence, consent or approval to a person to sell a grape product outside Australia at a price that is less than the authorized price in respect of that product;
  - (d) facilitates, counsels, procures or encourages the sale outside Australia of a grape product at a price that is less than the authorized price in respect of that grape product;
  - (e) gives or allows, or promises or agrees to give or allow, in relation to the sale outside Australia of a grape product, any brokerage, rebate, discount, commission, allowance, option or benefit, whether in money or money’s worth, that is not provided for in the terms and conditions upon which the grape product was sold before export or is consigned;
  - (f) fails or omits to take reasonable steps to ensure that any agent, representative or consignee of the licensee does not sell a grape product outside Australia at a price that is less than the authorized price in respect of that grape product; or
  - (g) where a grape product is sold outside Australia and the casks or other containers in which the grape product is contained are not sold or disposed of—sells or disposes of a cask or container in such a way as to reduce the price of the grape product to a price that is less than the authorized price,

the Minister may suspend or cancel the licensee’s licence.

**(3)** Where a material change has occurred in respect of a licensee in a matter referred to in sub-regulation 5 (3), the Minister may suspend or cancel the licensee’s licence.

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**Application for review of decision**

**10.** An application may be made to the Administrative Appeals Tribunal for the review of—

- (a) a decision by the Minister or an authorized person under sub-regulation 5 (1) refusing to grant a licence;
- (b) a decision by the Minister under sub-regulation 9 (2) or (3) suspending or cancelling a licence; or
- (c) a decision by the Corporation under sub-regulation 7 (2) refusing to issue a certificate.

**Corporation may require information**

**11. (1)** A person shall, if required to do so by the Corporation by notice in writing, furnish to the Corporation, within such time as is specified in the notice, such returns and information as are specified in the notice relating to the sale, disposal or export, or the intended sale, disposal or export, by the person of grape products.

**(2)** A person shall not, without reasonable excuse, fail or neglect duly to furnish a return or information that he is required to furnish by virtue of a notice given, or sent by post, to him under sub-regulation (1).

**(3)** A person is not excused from furnishing a return or information that he is required to furnish by virtue of a notice given, or sent by post, to him under sub-section (1) on the ground that the return or information might tend to incriminate him or make him liable to a penalty, but any return or information so furnished is not admissible in evidence against him in proceedings other than proceedings for an offence against sub-regulation (4).

**(4)** A person shall not furnish to the Corporation a return or information that is false or misleading in a material particular.

Penalty: \$500.

**Saving**

**12. (1)** A licence granted under regulation 6 of the Wine Overseas Marketing (Licences) Regulations continues in effect for the purposes of these Regulations for the period that commenced on the date of commencement of these Regulations and ends on the day on which the licence would, but for the repeal of the Wine Overseas Marketing (Licences) Regulations, have ceased to be in force, as if it were a licence granted under regulation 5.

**(2)** A certificate given under paragraph 9 (2) (a) of the Wine Overseas Marketing (Licences) Regulations continues in effect for the purposes of these Regulations as if it were a certificate issued under regulation 7.

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**NOTE**

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

1981.

*23 June*

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