

1976/319

THE TOBACCO GROWING INDUSTRY REGULATIONS 1976

—

DENIS BLUNDELL, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 20th day of December 1976

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Tobacco Growing Industry Act 1974, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Tobacco Growing Industry Regulations 1976.

(2) These regulations shall come into force on the day of their notification in the *Gazette*.

2. Interpretation—In these regulations, unless the context otherwise requires,—

“The Act” means the Tobacco Growing Industry Act 1974:

“Board” means the Tobacco Board established under the Tobacco Growing Industry Act 1974:

“Committee” means the Tobacco Quota Committee established under the Tobacco Growing Industry Act 1974:

“Grower”, in respect of any claim or intended claim under these regulations, means a person who is the holder of an unrevoked licence authorising him to grow the tobacco which is the subject of such claim:

“Panel assessor” means a member of the panel of assessors for the time being appointed under these regulations:

“Season” means a period of 12 months commencing on the 1st day of September in any year and ending on the expiration of the 31st day of August in the following year.

Tobacco Crop Insurance

3. Panel of Assessors—(1) The Board shall from time to time appoint and cause to be notified in the *Gazette* as a panel of assessors not less than 16 persons.

(2) No person shall be appointed as a panel assessor who is a member of the Board, and if any person after appointment becomes a member of the Board he shall, so long as he continues to be a member, be incapable of acting as a panel assessor.

(3) Every person appointed to be a panel assessor shall be either a grower or a person who has had practical experience as a grower.

4. Claims—(1) Every grower who, by reason of any destruction caused directly by hail or frost, or by flood caused by the overflow of rivers, creeks or streams and occurring on or after the 24th day of December in any season and after the plants are planted out and before harvesting, suffers the loss of growing tobacco plants in respect of which an adjusted quota has been determined shall be entitled to claim compensation for such loss to the extent hereinafter provided.

(2) A grower who considers that he has suffered such loss as entitles him to claim under these regulations shall not more than 2 days after the loss occurs, give to the committee notice of such loss and of the cause thereof and the crop shall be inspected in accordance with regulation 5 hereof.

5. Inspection—(1) An inspection of the crop shall be made—

(a) In the case of loss by hail, not later than the seventh day after the loss and again not later than the twenty-eighth day after the loss:

(b) In the case of loss by frost, not later than the fourteenth day after loss:

(c) In the case of loss by flood, not later than the fourteenth day after the flood-waters have run off, notwithstanding the continued presence of waters capable of natural removal only by soakage or evaporation.

(2) The inspection shall be arranged by the committee or the manufacturer to whom the adjusted quota concerned has, for the time being, been allocated, and be made jointly by—

- (a) The grower or a person nominated by him to act on his behalf; and
- (b) Either a field extension officer nominated by the manufacturer or a person appointed by the Board for the purpose; and
- (c) A panel assessor acceptable to the grower.

(3) The persons inspecting the crop shall ascertain what leaf has been destroyed as claimed by the grower, and the cause of destruction, and estimate the amount that such leaf would have weighed if, without the occurrence of the loss complained of, it had been harvested, cured, and graded, and shall forthwith report in writing to the Board their findings on the matters aforesaid in the appropriate form prescribed by the Board:

Provided that if they do not all agree in their findings any 2 of them who agree and the other of them or, as the case may require, each of them shall separately report in writing to the Board as aforesaid.

(4) Forthwith after inspection the grower shall deliver in writing to the Board his claim for compensation in the appropriate form prescribed by the Board.

6. Assessment of claims—(1) Forthwith at the close of a season after receipt of all returns showing that manufacturers have acquired all tobacco to be purchased by them under allocations relating to that season, the Board shall review all claims received by it in respect of losses incurred in that season and the report of inspections thereon and assess the amounts of losses.

(2) The Board may in reviewing claims and reports of inspections accept such of differing findings or parts thereof as it thinks fit, and if it thinks that erroneous findings have been reached may disallow a claim or part of a claim.

(3) The Board may disallow any claim to the extent that the amount of the leaf lost exceeds the amount that the grower could, in the opinion of the Board, reasonably expect to harvest for curing between the date when the loss occurred and the following 10th day of April.

(4) The Board shall not allow the claim of any grower for loss through flood if in the opinion of the Board such loss was due to negligence on the part of the grower.

(5) Where loss occurs through flood the Board may disallow a claim or reduce the amount of compensation payable if, in the opinion of the Board and the assessor making the inspection of the crop, the land upon which the tobacco was growing is so situated as to be particularly subject to flooding of any kind.

(6) The Board shall not allow the claim of any grower if the weight of quota leaf sold by him and the weight of quota leaf held over by him for subsequent sales are together greater than or equal to his adjusted quota.

7. Report on inspection to be furnished—Where any persons inspect a crop for the purposes of making a report in respect of a claim for compensation under these regulations, they shall furnish to the Board a report containing an opinion on how much of the leaf assessed could have been harvested for curing by the 10th day of April of that season.

8. Board may reduce claim—If in the opinion of the Board a grower has not planted out and properly tended the full area stated in his licence or if in the opinion of the Board the quantity stated in a claim exceeds the quantity the grower could have reasonably expected to produce from the area planted out the Board may make a proportionate reduction for the purposes of the claim.

9. Rates of compensation—Where the quantity of leaf for which compensation is to be allowed has been determined as aforesaid, compensation shall be assessed at the rates set for each season by the Board in relation to the following periods in which the loss occurred, namely:

- (a) Between 24 December and 15 January (both dates inclusive):
- (b) Between 16 January and 31 January (both dates inclusive):
- (c) Between 1 February and 1 March (both dates inclusive):
- (d) Between 2 March and 31 March (both dates inclusive):
- (e) Between 1 April and 10 April (both dates inclusive).

10. Decisions of Board to be administrative and final—If any question arises of the sufficiency or date of any document or as to the regularity of any inspection or as to any matter of fact or other matter arising out of a claim or as to the application of these regulations to any claim, the Board, acting in an administrative and not judicial capacity, may decide the same, and its decision shall be final, and the Board may at its discretion waive in a particular case any of the requirements of these regulations.

11. Certain claims to be reviewed forthwith—(1) Notwithstanding the foregoing provisions of these regulations, where a claim is made thereunder for compensation in respect of the loss of growing tobacco amounting to 50 percent or more than 50 percent of the adjusted quota of the claimant, the Board may review the claim forthwith, and if the Board is of the opinion that the loss incurred was 50 percent or more than 50 percent of that quota it may assess compensation therefor as hereinbefore provided.

(2) The Board shall pay forthwith such portion of the compensation assessed by it under this regulation as it thinks fit. Any amount of compensation so assessed by the Board and not paid to the claimant forthwith shall, subject to and in accordance with the provisions of these regulations, be paid to him at the close of the season.

(3) If at the close of any season it is found that the total of the weight of quota leaf sold by a grower during the season, the weight of quota leaf held over by him for subsequent sale, and the weight of quota leaf in respect of which compensation has been assessed under the last preceding subclause or otherwise under these regulations is greater than the adjusted quota of the grower for that season, the weight by which the said total exceeds the weight of the said quota shall be assessed by the Board. A sum equal to the amount of compensation paid to the grower for the loss

of a weight of quota leaf corresponding to the weight of the quota leaf so assessed shall thereupon become owing by the grower to the Board and shall be recoverable accordingly in any Court of competent jurisdiction.

(4) For the purposes of regulation 6 (6) hereof leaf in respect of which compensation has been assessed under this regulation shall be deemed to be leaf sold by the grower.

12. Payment of claims may be subject to conditions—(1) Payment of claims shall be made forthwith upon assessment of compensation as hereinbefore provided, subject, however, to the next succeeding regulation, and before payment is made the Board may require any grower receiving payment to give to the Board such discharge and acquittance as it may think necessary.

(2) In any case where in the opinion of the Board loss by flood is due to negligence on the part of any person for which an action for damages would lie against such person at the suit of the grower, compensation for loss by flood may be paid on condition that the Board be subrogated to the grower in respect of such right of action, and the Board may for that purpose as a condition of payment require the grower to execute in favour of the Board, and in such form as the Board stipulates,—

(a) An assignment of such right of action;

(b) A power of attorney enabling the Board in the name of the grower or otherwise to institute, prosecute, abandon, and enforce any actions or other proceedings; and

(c) An agreement by the grower to give all reasonable assistance in the prosecution of the proceedings—

subject to being indemnified by the Board against the costs and expenses of the proceedings.

13. Recovery of payments made in consequence of fraud, etc.—If it is discovered that any sum paid to a grower under these regulations was paid to him in consequence of any fraud, misrepresentations, or non-disclosure of facts deemed by the Board to be material or by reason of any mistake of fact, the Board may by action in any Court of competent jurisdiction recover from the grower the sum so paid, together with interest and damages.

14. No right to payment conferred—Nothing in these regulations shall confer on any person a right to payment of a claim otherwise than out of the money which the Board from time to time sets apart or may receive by way of grant from the Crown to meet claims approved under these regulations or to payment of more than a pro rata sum in case the money so available in respect of any season is insufficient to meet payment in full of all claims allowed.

15. Allowances—(1) Subject to the provisions of this regulation it shall be lawful for the Board to expend any money received by it for all or any of the following purposes:

(a) In payment of subsistence and travel allowances to persons conducting inspections of crops pursuant to these regulations:

(b) In payment to each assessor engaged in the inspection of crops of a fee, in addition to the allowances authorised by the last

preceding paragraph, calculated at a rate to be determined by the Board:

(c) In payment to growers of claims authorised in accordance with these regulations:

(d) In payment of expenses incurred in the administration of these regulations.

(2) No payment under subclause (1) (a) hereof shall be made to a grower inspecting his own crop.

(3) Any amount authorised to be expended under this regulation shall be in addition to any other amount authorised to be expended under these regulations.

(4) The amounts authorised to be expended by this regulation may be paid in respect of the 1975-76 tobacco harvest and subsequent tobacco harvests.

16. Special compensation—(1) Subject to the provisions of this regulation, the Board may out of its funds, from time to time pay compensation to growers who have suffered loss as a result of having to destroy their crop because of, or to provide control of, pests or plant diseases which have affected tobacco crops, which constitute a danger to the tobacco-growing industry, and which could not reasonably have been prevented by good husbandry.

(2) Any money which, pursuant to regulation 12 of these regulations, is available for the payment of claims shall not be used for the payment of compensation under this regulation.

(3) No compensation under this regulation shall be paid unless the Board has obtained a report from the Department of Scientific and Industrial Research and has made such inquiries as it thinks fit for the purpose of determining whether or not compensation is properly payable under this regulation.

(4) Any compensation under this regulation shall be of such amount and paid at such times as the Board thinks fit and shall be payable at the absolute discretion of the Board.

Licences

17. Form of licence, etc.—(1) A licence authorising the growing of tobacco shall be in the form specified in the First Schedule hereto and shall be sufficient if signed by any member of the Committee or by the Secretary of the Committee, acting by direction of the Committee.

(2) Without limiting regulation 19 (3) hereof, the licence shall contain either on the licence or annexed thereto the conditions which, by the Act or these regulations, the licence is subject.

(3) Where a licence is amended by reason of—

(a) The granting by the Committee under section 32 of the Act of an application for the inclusion of a further area of land or the inclusion of a lesser area of land in the licence; or

(b) The granting by the Committee under section 33 of the Act of a transfer of licence in respect of part only of the land specified in the licence; or

(c) The granting by the Committee under section 34 of the Act of an increase in the basic quota of the licensee; or

- (d) The reduction of the basic quota of the licensee in accordance with section 35 of the Act; or
- (e) Any decision of the Tobacco Quota Appeals Tribunal or the Administrative Division of the Supreme Court under section 36 or, as the case may be, section 38 of the Act—

the particulars of that amendment shall be specified in writing on an instrument separate from but annexed to the licence.

(4) Where a transfer of licence in respect of the whole of the land specified therein is granted under section 33 of the Act, the particulars of the transfer shall also be specified in writing on an instrument separate from but annexed to the licence.

(5) Every instrument affixed to a licence for the purposes prescribed in subclause (3) and subclause (4) of this regulation shall be signed on behalf of the Committee by any member thereof or by the Secretary of the Committee, acting by direction of the Committee.

(6) For the purposes of the Act, any regulations thereunder, and in any proceedings, every licence shall be read together with and be deemed to comprise all instruments duly annexed to it in accordance with sub-clauses (2) to (5) of this regulation.

18. Tobacco Quota Committee to keep register of licences and annexed instruments—(1) The Committee shall keep a register of every licence and each such licence shall constitute a separate folium of the register.

(2) On the granting of a licence or the making of any amendment to a licence or the granting of a transfer of a licence, the Committee shall cause the licence or, as the case may be, the requisite instrument to be filed in the Register.

(3) As soon as filed, the licence (including instruments annexed thereto) filed in the Register shall be deemed for the purposes of any proceedings notwithstanding anything to the contrary in any other document or copy of any document to be final and conclusive evidence of the matters stated therein.

(4) The licensee shall be entitled to a copy of the licence and of every instrument annexed thereto and the Secretary of the Committee shall, at the request of the licensee, supply to him a copy of the licence or any instrument annexed thereto upon payment of any fee for the time being prescribed by the Board.

(5) The Secretary of the Committee may also provide a statement of the present terms of, and present conditions attaching to, any licence for the time being to any other person upon payment of any fee prescribed by the Board.

(6) Evidence of the contents of every such licence may be given in any proceedings by a certificate under the hand of the Secretary of the Committee, and every such certificate shall be prima facie evidence of the matters stated therein.

(7) A certificate, under the hand of the Secretary of the Committee, that on a date specified in the certificate the name of any person did not appear in any register as the holder of a licence under this Act shall, until the contrary is proved, be sufficient evidence that that person was not the holder of any such licence on that date.

19. Conditions to be attached to licences granted under the Act—

(1) Every licence authorising the growing of tobacco shall be subject to the following conditions—

- (a) The licensee shall not later than the 31st day of May in every season during which the licence is in force dispose of all tobacco plants (including stalks and roots) which have been growing before that date on any land cultivated by him for the production of tobacco plants. Disposal of the plants shall be in accordance with good husbandry and be by methods approved from time to time by the Board; and
- (b) The licensee shall use only commercial tobacco seed supplied by the Seed Committee of the Board; and
- (c) If the Board is of the opinion that certain diseases or insect pests are reasonably likely to be inimical to the growing of tobacco, and that certain measures are reasonably necessary to be taken with the crop of the licensee for the control of these diseases, and if the Board by notice in writing to the licensees, requires him to take those measures, then the licensees shall forthwith take the said measures accordingly; and
- (d) The licensee shall allow access at any reasonable time to his property by the Committee or its duly authorised agent for such proper purposes as may be required in the exercise of its powers and functions under the Act or these regulations.

(2) Nothing in this regulation shall limit any condition attached to any licence pursuant to the Act.

(3) Every condition to which by these regulations a licence or the issue thereof is declared to be subject shall be so subject, notwithstanding that the condition be not written in the actual licence issued.

Application of Tobacco Board Money

20. Additional purposes for which money may be applied—In addition to the purposes to which the money received by the Board is to be applied in accordance with the Act, the Board may apply such money—

- (a) In the establishment and maintenance of research stations, or the making of grants for research into the growing, curing, preparation, packing, grading, and manufacture of tobacco;
- (b) In the establishment and maintenance of packing, grading, and storage sheds for tobacco;
- (c) In the making of grants, whether by way of loan or otherwise, to growers, packers, and manufacturers of tobacco, and to any person or association of persons, to encourage, foster, and develop the growing, preparation, manufacture, and marketing of tobacco;
- (d) In the making of contributions towards the cost of flood protection or other works intended to benefit land situated in tobacco-growing districts.

General Provisions

21. Revocations—The regulations specified in the Schedule hereto are hereby revoked.

SCHEDULES

FIRST SCHEDULE

Reg. 17 (1)

TOBACCO QUOTA COMMITTEE OF THE TOBACCO BOARD

Licence No.
Motueka, 19.....

Licence to Grow Tobacco

This licence, issued under the Tobacco Growing Industry Act 1974, authorises of to grow tobacco in accordance with the provisions of that Act.

This licence shall take effect as from 19..... and shall continue in force unless previously revoked or surrendered by the licensee.

The tobacco shall be grown only on that land described as being the whole or part of

and
and
and
and
and

The basic quota of tobacco applicable to the above-mentioned land shall be kg, and the area of that land which may be planted to tobacco in any one season shall not exceed ha.

This licence is not transferable except with the approval of the Tobacco Quota Committee in accordance with section 33 of the Tobacco Growing Industry Act 1974.

This licence is issued subject to the conditions prescribed annexed hereto.

.....
(Chairman), (Member), (Secretary),
Tobacco Quota Committee.

SECOND SCHEDULE

Reg. 21

REGULATIONS REVOKED

Regulations	Serial Number
The Tobacco Growing Industry Regulations 1945: Part VII (Reprinted with Amendments Nos. 1 to 18: S.R. 1969/242)	1945/70
The Tobacco Growing Industry Regulations 1945, Amendment No. 1	1946/197
The Tobacco Growing Industry Regulations 1945, Amendment No. 2	1947/209
The Tobacco Growing Industry Regulations 1945, Amendment No. 3	1949/32
The Tobacco Growing Industry Regulations 1945, Amendment No. 4	1949/175
The Tobacco Growing Industry Regulations 1945, Amendment No. 6	1950/199
The Tobacco Growing Industry Regulations 1945, Amendment No. 7	1952/107
The Tobacco Growing Industry Regulations 1945, Amendment No. 9	1956/9
The Tobacco Growing Industry Regulations 1945, Amendment No. 13	1961/104
The Tobacco Growing Industry Regulations 1945, Amendment No. 15	1963/121
The Tobacco Growing Industry Regulations 1945, Amendment No. 16	1964/191
The Tobacco Growing Industry Regulations 1945, Amendment No. 17	1966/10
The Tobacco Growing Industry Regulations 1945, Amendment No. 18	1968/202
The Tobacco Growing Industry Regulations 1945, Amendment No. 19	1971/11
The Tobacco Growing Industry Regulations 1945, Amendment No. 20	1974/137

P. G. MILLEN,
Clerk of the Executive Council.

EXPLANATORY NOTE

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

The regulations consolidate and replace the Tobacco Growing Industry Regulations 1945 and the amendments thereto.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 22 December 1976.

These regulations are administered in the Department of Trade and Industry.