

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 288**

Issued by the Authority of the Parliamentary Secretary to the Minister for Agriculture,  
Fisheries and Forestry

*Primary Industries (Excise) Levies Act 1999*  
*Primary Industries (Customs) Charges Act 1999*  
*Primary Industries Levies and Charges Collection Act 1991*  
*National Residue Survey (Excise) Levy Act 1998*  
*National Residue Survey (Customs) Levy Act 1998*

*Primary Industries (Excise) Levies Amendment Regulations 2007 (No. 10)*  
*Primary Industries (Customs) Charges Amendment Regulations 2007 (No. 9)*  
*Primary Industries Levies and Charges Collection Amendment Regulations 2007 (No. 7)*  
*Primary Industries Levies and Charges (National Residue Survey Levies) Amendment  
Regulations 2007 (No. 4)*

Section 8 of the *Primary Industries (Excise) Levies Act 1999*, section 8 of the *Primary Industries (Customs) Charges Act 1999*, section 30 of the *Primary Industries Levies and Charges Collection Act 1991*, section 8 of the *National Residue Survey (Excise) Levy Act 1998* and section 8 of the *National Residue Survey (Customs) Levy Act 1998* provide that the Governor-General may make regulations prescribing matters required or permitted by each Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to each Act.

The macadamia levy is a levy imposed on macadamia nuts produced and sold in Australia or used in the production of other goods. The macadamia export charge is a charge imposed on macadamia nuts that are exported from Australia. The levy and export charge are not imposed on macadamia nuts where the total amount of levy or charge the person would be liable to pay in the levy year is less than \$120.

Horticulture Australia Limited (HAL) is responsible for the administration of the levy and charge schemes and for the co-ordination of promotion and research and development programs for the macadamia nut industry using the funds collected through the levy and export charge. The Australian Government provides matching funds for eligible research and development expenditure under the *Horticulture Marketing and Research and Development Services Act 2000*. The National Residue Survey (NRS) is responsible for monitoring, assessing and reporting on the levels of chemical residues in macadamia nuts.

The Regulations remove the 'nut-in-shell' domestic levy and export charge to eliminate inequities in how they are applied to the macadamia nuts and set the macadamia nuts levy rate and export charge as 25.21 cents per kilogram of dried kernels of macadamia nut. In the event that macadamia 'nuts-in-shell' are dealt with, for example by a small producer who sells by roadside stall, the *Primary Industries Levies and Charges Collection Regulations 1991* also provide a formula to calculate the deemed quantity of dried kernels.

Prior to this amendment, rate of domestic levy and export charge for macadamia nuts was calculated as either 25.21 cents per kilogram for 'dried kernel' macadamia nuts or 8 cents per kilogram for 'nut-in-shell' macadamia nuts. The 'dried kernel' measure represents the kernel recovery of the macadamia nut, kernel recovery varies between 25-45% and is dependent on the variety of macadamia nut. The 'nut-in-shell' measure was a generic measure which represented the macadamia nut after de-husking but before kernel extraction and had a 'dried kernel' equivalent assumption of 31%.

The Australian Macadamia Society Limited (AMS), the peak industry body for the macadamia nut industry, requested the levy/charge rate calculation be amended so that all levy/charge is calculated using the 'dried kernel' measure (25.21 cents per kilogram) as it is a fairer and more equitable form of levy collection than the 'nut-in-shell' measure due to a greater kernel recovery rate from improved varieties of macadamia nuts.

Macadamia nuts traded in the wholesale market are 'dried kernel' tested therefore the majority of businesses will not incur additional costs by the requirement to calculate levy using the 'dried kernel' measure instead of the 'nut-in-shell' measure. Further, the majority of transactions within the industry already employed the 'dried kernel' form of levy calculation; hence, the AMS requested the Regulations be amended to reflect current industry practices as well as to ensure equity.

As these amendments were administrative in nature only and do not affect the liability of persons who produce macadamias, it was not necessary to conduct a full consultation process, involving a ballot of each affected industry member.

Details of the Regulations are contained in Attachment A.

The Regulations are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

The Office of Best Practice Regulations (OBPR) was consulted in the preparation of the Regulations. The OBPR has advised that it is not necessary to prepare a Regulation Impact Statement on this matter (Reference number 2007/9306).

An OBPR Business Cost Calculator (BCC) was completed and is at Attachment B.

The Regulations commence on 1 November 2007.

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## ATTACHMENT A

### **DETAILS OF THE *PRIMARY INDUSTRIES (EXCISE) LEVIES AMENDMENT REGULATIONS 2007 (No. 10)***

Regulation 1 provides for the name of the Regulations to be the *Primary Industries (Excise) Amendment Regulations 2007 (No. 10)*.

Regulation 2 provides for the commencement date to be 1 November 2007.

Regulation 3 provides that Schedule 1 amends the *Primary Industries (Excise) Levies Regulations 1999*.

#### **Schedule 1**

#### **Amendment to Part 10 of Schedule 15**

**Item [1]** removed obsolete paragraph 10.2 (b) which detailed an exemption which applied only for the levy year 2000.

Item 1 removed paragraph 10.3 (a) which provided details of the rate of levy on macadamia ‘nuts-in-shell’.

Item 1 reformatted the levy rate clauses to distinctly separate the marketing rate of levy and the research and development rate of levy. This is consistent with other levy/charge legislation.

Item 1 removed references in clauses 10.2 and 10.3 to the definition of ‘consigned mass’. The term was used when calculating the moisture content of a consignment of ‘nuts-in-shell’ and as the Regulations no longer refer to ‘nut in shell’ rates, the definition is not required.

Item 1 removed reference to the formula which determined the ‘dried kernel’ rate in relation to the ‘nut-in-shell’ rate. The Regulations state only the ‘dried kernel’ rate; therefore, it was unnecessary to relate the ‘dried kernel’ rate to the ‘nut-in-shell’ rate.

**DETAILS OF THE *PRIMARY INDUSTRIES (CUSTOMS) CHARGES AMENDMENT REGULATIONS 2007 (No. 9)***

Regulation 1 provides for the name of the Regulations to be the *Primary Industries (Customs) Charges Amendment Regulations 2007 (No. 9)*.

Regulation 2 provides for the commencement date to be 1 November 2007.

Regulation 3 provides that Schedule 1 amends the *Primary Industries (Customs) Charges Regulations 2000*.

**Schedule 1**

**Amendment to Part 10 of Schedule 10**

**Item [1]** removed obsolete paragraph 10.2 (b) which detailed an exemption which applied only for the levy year 2000.

Item 1 removed paragraph 10.3 (a) which provided details of the rate of levy on macadamia ‘nuts-in-shell’.

Item 1 reformatted the levy rate clauses to distinctly separate the marketing rate of levy and the research and development rate of levy. This is consistent with other levy/charge legislation.

Item 1 removed references in clauses 10.2 and 10.3 to the definition of ‘consigned mass’. The term was used when calculating the moisture content of a consignment of ‘nuts-in-shell’ and as the Regulations no longer refer to ‘nut-in-shell’ rates, the definition is not required.

Item 1 removed reference to the formula which determined the ‘dried kernel’ rate in relation to the ‘nut-in-shell’ rate. The Regulations state only the ‘dried kernel’ rate; therefore, it was unnecessary to relate the ‘dried kernel’ rate to the ‘nut-in-shell’ rate.

**DETAILS OF THE PRIMARY INDUSTRIES LEVIES AND CHARGES COLLECTION  
AMENDMENT REGULATIONS 2007 (No. 7)**

Regulation 1 provides for the name of the Regulations to be the *Primary Industries Levies and Charges Collection Amendment Regulations 2007 (No. 7)*.

Regulation 2 provides for the commencement date to be 1 November 2007.

Regulation 3 provides that Schedule 1 amends the *Primary Industries Levies and Charges Collection Regulations 1991*.

**Schedule 1**

**Amendment to Part 10 of Schedule 22**

**Item [1]** removed the definition for ‘consigned mass’ from clause 10.2. The term was used when calculating the moisture content of a consignment of ‘nuts-in-shell’ and as the Regulations do not refer to ‘nut-in-shell’ rates, the definition was no longer required.

**Item [2]** amended clause 10.12 by:

- removing reference to what must be included in a return when dealing in macadamia ‘nuts-in-shell’,
- providing a formula to calculate the deemed quantity of dried kernels for a quantity of macadamia ‘nuts-in-shell’,
- stipulating that, for the formula (given in the point above) a quantity of macadamia ‘nuts-in-shell’ must weigh at least 500g and have a moisture content of 10%.

**Item [3]** amended a number of references to ‘consigned mass’ by substituting the term ‘quantity’ in clause 10.13.

**Item [4]** amended clause 10.14 to refer to ‘quantity’ instead of ‘consigned mass’.

**Item [5]** amended clause 10.15 by:

- removing reference to the consigned mass of macadamia ‘nuts-in-shell’,
- removing reference to the quantity of leviabile dried kernels macadamia nuts, and
- referring only to the quantity of leviabile and chargeable macadamia nuts.

**DETAILS OF THE PRIMARY INDUSTRIES LEVIES AND CHARGES (NATIONAL RESIDUE SURVEY LEVIES) AMENDMENT REGULATIONS 2007 (No. 4)**

Regulation 1 provides for the name of the Regulations to be the *Primary Industries Levies and Charges (National Residue Survey Levies) Amendment Regulations 2007 (No. 4)*.

Regulation 2 provides for the commencement date to be 1 November 2007.

Regulation 3 s provides that Schedule 1 amends the *Primary Industries Levies and Charges (National Residue Survey) Regulations 1998*.

**Schedule 1**

**Amendment to Part 11 of Division 8**

**Item [1]** removed references to the rate of levy/export charge on macadamia ‘nuts-in-shell’.

Item 1 removed references in regulations 154 and 155 to the definition of ‘consigned mass’. The term was used when calculating the moisture content of a consignment of ‘nuts-in-shell’ and as the Regulations do not refer to ‘nut-in-shell’ rates, the definition was no longer required.

Item 1 removed references in regulations 154 and 155 to the formula which determined the ‘dried kernel’ rate in relation to the ‘nut-in-shell’ rate. The Regulations state only the ‘dried kernel’ rate; therefore, it is unnecessary to relate the ‘dried kernel’ rate to the ‘nut-in-shell’ rate.

## BUSINESS COST CALCULATOR

**Policy Name:** Macadamia nut-in-shell Regulation amendment

### **What is the problem you wish to address?**

The current rate of domestic levy and export charge for macadamia nuts is calculated as either 25.21 cents per kilogram for 'dried kernel' macadamia nuts or 8 cents per kilogram for 'nut-in-shell' macadamia nuts. The 'dried kernel' measure represents the kernel recovery of the macadamia nut, kernel recovery varies between 25-45% and is dependent on the variety of macadamia nut. The 'nut-in-shell' measure is a generic measure which represents the macadamia nut after de-husking but before kernel extraction and has a 'dried kernel' equivalent assumption of 31%.

The Australian Macadamia Society Limited (AMS), the peak industry body for the macadamia nut industry, has requested the levy/charge rate calculation be amended so that all levy/charge is calculated using the 'dried kernel' measure (25.21 cents per kilogram) as it is a fairer and more equitable form of levy collection than the 'nut-in-shell' measure.

The 'nut-in-shell' measurement is less equitable than the 'dried kernel' measurement because an improved macadamia nut variety may produce a kernel recovery rate of 40% and, if levy is calculated using the 'nut-in-shell' measurement, only remit levy equivalent to 31% kernel recovery which means that their proportionate levy payment is less than it should be. Equally, a poorer variety may produce a kernel recovery rate of 20% and, if levy is calculated using the 'nut-in-shell' measurement, remit levy equivalent to 31% kernel recovery which means that their proportionate levy payment is greater than it should be. Whereas when levy is calculated using the 'dried kernel' measurement, the levy payment will be exactly based on the 'dried kernel' or quality of the nuts and no inequity will exist.

Macadamia nuts traded commercially are 'dried kernel' tested therefore businesses would not incur additional costs if they were required to change their levy calculation method from 'nut-in-shell' to 'dried kernel'. Further, the majority of transactions within the industry already employ the 'dried kernel' form of levy calculation; hence, the AMS has requested the Regulations be amended to reflect current industry practices as well as to ensure equity.

### **What is the objective of this policy?**

The objective of this amendment is to ensure levy calculation is accurate and equitable and that the mechanism employed reflects current industry practices.

**Option name:** Amend Regulations to state only the dried kernel levy/charge rate

### **Option description:**

The Regulations would state the macadamia levy rate and export charge as 25.21 cents per kilogram of dried kernels of macadamia nut. In the event that macadamia nuts-in-shell are dealt with, the Regulations would also provide a formula to calculate the deemed quantity of dried kernels.

**Number of businesses affected:** 5

**Supporting evidence:**

There are currently 56 macadamia nuts levy agents and, of these, 19 agents submit returns using the 'nut-in-shell' measurement. Based on data of the past three financial years, macadamia nut production is on average 14 thousand tonnes per year; of this, levy is calculated using the 'nut-in-shell' measurement for approximately 2 thousand tonnes. Hence the proportion of overall production that employs the 'nut-in-shell' measurement is approximately 15% of the industry.

Macadamia nuts traded in the wholesale market are 'dried kernel' tested in the sale process therefore the majority of businesses would not incur additional costs if they were required to change their levy calculation method from 'nut-in-shell' to 'dried kernel'. Hence the proposed 'dried kernel' requirement will not impose additional costs for businesses. Where small producers who use the 'nut-in-shell' measurement sell by retail sale i.e. direct to the consumer such as at roadside stalls, shed sales, farm gate etc, the Regulations would also provide a formula to calculate the deemed quantity of dried kernels.

It is estimated that of the 19 levy agents who remit levy using the 'nut-in-shell' measure, 5 levy agents deal in commercially traded macadamia nuts where the nuts are 'dried kernel' tested as part of the sale process, 9 levy agents deal in quantities that are exempt and therefore do not have a liability to remit the levy. Therefore, of those who have a levy liability, there are possibly 5 levy agents who may fall into the category of a producer who sells macadamia nuts by retail sale and calculates levy using the 'nut-in-shell' measure and, hence, would be required to use the formula to calculate the deemed quantity of dried kernels.

These 5 levy agents would be considered small entities in regards to their dealings with macadamia nuts as each entity deals with between 1-6 tonnes of macadamia nuts annually and have a levy liability within the range \$130-\$480 for a levy year.

**Task name:** Cost of changing levy measurement method

**Task description:** The cost of testing a sample of macadamia 'nuts-in-shell' to determine the deemed quantity of dried kernel macadamia nuts.

**ESTIMATE COSTS**

**Cost category:** Procedural

**Related activity:** Processing – internal, ongoing cost

**Number of businesses affected (task):** 5

**Times (task) performed:** maximum of 12 times annually

**Time to complete:** 1 hour

**Cost of labour (\$):** 15.20

**Total cost (\$):** 912.00 annually (\$182.40 per business)

**Supporting evidence:**

The cost of labour is based on the average adult male weekly wage of \$1,064.00 and a standard 35 hour working week, from the Australian Bureau of Statistics. The time taken to calculate the deemed quantity of dried kernels for a quantity of macadamia 'nuts-in-shell' is estimated to be 1 hour, which includes time taken to a) establish the weight of the kernels in the sample after being removed and dried to 1.5% moisture content and b) establish the weight of a sample of the quantity of macadamia 'nuts-in-shell'.

Macadamia nuts levy returns are due on a monthly basis, however not all levy agents remit levy returns monthly. The cost (per transaction) of determining the deemed quantity of macadamia 'nuts-in-shell' is estimated to be \$15.20.

**Level of certainty:** Medium