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Dairy Produce Amendment Regulations 2003 (No. 2)¹

Statutory Rules 2003 No. ¹/₂

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Dairy Produce Act 1986*.

Dated 6 NOV 2003 2003

P.M. Jeffery
Governor-General

By His Excellency's Command

WARREN TRUSS
Minister for Agriculture, Fisheries and Forestry

1 Name of Regulations

These Regulations are the *Dairy Produce Amendment Regulations 2003 (No. /)*.

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2 Commencement

These Regulations commence on gazettal.

3 Amendment of *Dairy Produce Regulations 1986*

Schedule 1 amends the *Dairy Produce Regulations 1986*.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 2 (1)

substitute

(1) In these Regulations:

Act means the *Dairy Produce Act 1986*.

AQIS means the Australian Quarantine and Inspection Service.

casein includes all caseinates and co-precipitates.

Department means the Department of Agriculture, Fisheries and Forestry.

month means one of the 12 months of the year.

Secretary means the Secretary of the Department.

[2] Subregulation 2 (2)

omit

In these Regulations, unless the contrary intention appears:

insert

In these Regulations:

[3] Part II

substitute

Part 2 Export control

Division 2.1 General

2.01 Interpretation

(1) In this Part:

consignment means a single shipment of regulated dairy produce that is exported by sea or air to a single consignee.

shipped weight, in relation to regulated dairy produce, means the weight, in kilograms, of the produce after it is loaded for shipment.

(2) In this Part, a **significant change** takes place in relation to an exporter if:

(a) the exporter changes any of the following:

(i) its name, or the registered business name under which it carries on business;

(ii) its business address or other contact details;

(iii) the kind of business it undertakes; or

(b) for an exporter that is a corporation — the exporter becomes an externally administered body corporate (within the meaning of the *Corporations Act 2001*); or

(c) for an exporter that is a sole trader — the exporter becomes bankrupt.

2.02 Object of Part 2

The object of this Part is to establish a system of export control that:

(a) facilitates the orderly export of regulated dairy produce to regulated dairy markets in respect of that produce; and

(b) enables the Commonwealth to administer Australia's entitlements to export dairy produce at reduced, or special, tariff rates to particular dairy markets.

Note It is intended that the arrangements in place, immediately before the commencement of this regulation, for filling Australia's entitlements will continue largely unchanged.

2.03 Declaration of regulated dairy produce

For paragraph 52 (a) of the Act, each of the following dairy produce is declared to be regulated dairy produce on or after 1 January 2004:

- (a) dairy produce described in Part 2 of Schedule 1A to which a reduced tariff rate will apply on entry into the European Union;
- (b) dairy produce described in Part 3 of Schedule 1A.

2.04 Declaration of regulated dairy markets

For paragraph 52 (b) of the Act:

- (a) the European Union is declared to be, on or after 1 January 2004, a regulated dairy market in respect of regulated dairy produce mentioned paragraph 2.03 (a); and
- (b) the United States of America is declared to be, on or after 1 January 2004, a regulated dairy market in respect of regulated dairy produce mentioned in paragraph 2.03 (b).

Division 2.2 Export of regulated dairy produce to the European regulated dairy market

2.05 Application of Division 2.2

This Division applies to a consignment that is to be exported for the entitlement year 2004 or any entitlement year after that.

2.06 Definitions for Division 2.2

In this Division:

entitlement account, in relation to an exporter's entitlement, means the account in which the Department records:

- (a) the amount of entitlement to export regulated dairy produce that is held by the exporter, under regulation 2.12,

subregulation 2.16 (3) or regulation 2.17, for an entitlement year; and

- (b) the shipped weight of the produce that is exported by the exporter for the entitlement year.

entitlement year, in relation to entitlement to export regulated dairy produce, means the calendar year for which the entitlement is allocated.

European regulated dairy market means the regulated dairy market declared under paragraph 2.04 (a).

Guidelines for exports to the EU means the *Guidelines for the Control of Regulated Dairy Produce Exported to the European Union* published by the Department, as in force at the commencement of this Part.

Note The Guidelines for exports to the EU are available at www.affa.gov.au/quota.

holder of entitlement means an exporter that holds entitlement to export under regulation 2.12, subregulation 2.16 (3) or regulation 2.17.

IMA 1 certificate means the inward monitoring arrangements certificate required by the European Commission for dairy produce imported into the European regulated dairy market at a reduced tariff rate.

2.07 Application for approval to export

- (1) Before a consignment of regulated dairy produce is exported to the European regulated dairy market, the exporter of the produce must obtain an approval to export the consignment.
- (2) An application for approval must be in a form approved by the Secretary and include the following information:
 - (a) the name of the exporter making the application;
 - (b) the exporter's business address;
 - (c) in relation to the regulated dairy produce to be exported in the consignment:
 - (i) its type; and
 - (ii) what its shipped weight is or will be; and
 - (iii) the name and address of the manufacturer of the produce;

- (d) the name of the importer;
 - (e) the name of the ship or air freight carrier and the voyage or flight number;
 - (f) the port of loading and the date of loading;
 - (g) the name of the final destination country;
 - (h) the intended port of discharge.
- (3) An application for approval to export a consignment is taken to have been made by an exporter if the Department is notified by AQIS that the exporter has given notice of intention to export the consignment under Part 8 of the *Prescribed Goods (General) Orders 1985*.

2.08 Grant of approval to export

- (1) The Secretary must grant an approval to export a consignment of regulated dairy produce if:
- (a) an application is made, or is taken to have been made, by the exporter under regulation 2.07; and
 - (b) the exporter is a holder of entitlement to export the produce; and
 - (c) the exporter will not exceed its entitlement as a result of the export of the consignment; and
 - (d) the Secretary has no reason to believe that the total shipped weight of regulated dairy produce that, under the law of the European Union, may be imported into the European regulated dairy market from Australia will be exceeded as a result of the export.
- (2) If an approval to export is granted to an exporter, the Secretary must give the exporter a written notice of approval that sets out:
- (a) the shipped weight of regulated dairy produce that may be exported in the consignment; and
 - (b) the day the approval takes effect; and
 - (c) the conditions of the approval.

Note Under subsection 53 (1) of the Act a person is guilty of an offence if the person exports regulated dairy produce to a regulated dairy market and the person does not hold an approval in relation to the export.

2.09 Conditions of approval to export

An approval to export that is granted to an exporter for a consignment of regulated dairy produce is subject to the following conditions:

- (a) the exporter must continue to be the holder of the entitlement on the basis of which the approval is granted;
- (b) the exporter must not exceed its entitlement as a result of the export of the consignment;
- (c) the exporter must obtain an IMA 1 certificate for the consignment before the consignment is accepted for entry into the European regulated dairy market;
- (d) the exporter must notify the Department in writing if it becomes likely that the consignment will not be accepted for entry into the European regulated dairy market;
- (e) if the shipped weight of produce in the consignment (the *actual shipped weight*) is less than the shipped weight stated in the notice of approval under subregulation 2.08 (2) (the *approved shipped weight*), the exporter will be taken to have exported the approved shipped weight unless the exporter tells the Department in writing, within 28 days after the produce is loaded for shipment, the actual shipped weight;
- (f) any other condition that the Secretary considers appropriate.

Note 1 See the Guidelines for exports to the EU for how to obtain an IMA 1 certificate.

Note 2 Under subsection 53 (2) of the Act a person who holds an approval in relation to an export of regulated dairy produce to a regulated dairy market is guilty of an offence if the export is not in accordance with the conditions of the approval.

2.10 Period of approval to export

- (1) An approval to export a consignment takes effect on the date specified for that purpose in the notice of approval given under subregulation 2.08 (2).

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- (2) An approval to export a consignment ceases to have effect:
- (a) if an IMA 1 certificate is not obtained for the consignment within 28 days after the day the approval takes effect — at the end of the 28th day after the day the approval takes effect; or
 - (b) if paragraph (a) does not apply — on the earlier of:
 - (i) 3 months after the day the approval takes effect; and
 - (ii) the end of 31 December in the entitlement year for which the consignment is exported.

2.11 Application for entitlement to export

- (1) An application for entitlement to export regulated dairy produce to the European regulated dairy market for an entitlement year must be made to the Secretary, in writing:
- (a) for the entitlement year 2004 — before 14 November 2003; and
 - (b) for any entitlement year after 2004 — before 1 November in the year before the entitlement year.
- (2) An exporter is taken to have applied for entitlement to export regulated dairy produce for an entitlement year if the exporter:
- (a) has, at any time during the 2 years immediately preceding the entitlement year, exported to the European Union dairy produce described in Part 2 of Schedule 1A to which a reduced tariff rate applied on entry into the European Union; and
 - (b) for the entitlement year 2004 — has not given to the Department, before 14 November 2003, written notice that the exporter does not wish to be allocated entitlement for the entitlement year; and
 - (c) for any entitlement year after 2004 — has not given to the Department, before 1 November in the year before the entitlement year, written notice that the exporter does not wish to be allocated entitlement for the entitlement year.

2.12 Allocation of entitlement to export

- (1) Entitlement to export regulated dairy produce to the European regulated dairy market for an entitlement year may be allocated by the Secretary, before the entitlement year, to an exporter that:
 - (a) applies, or is taken to have applied, under regulation 2.11 for entitlement to export the produce for the entitlement year; and
 - (b) meets the criteria specified in the Guidelines for exports to the EU.
- (2) In deciding what amount of entitlement to allocate to an exporter under subregulation (1), the Secretary must take into consideration the Guidelines for exports to the EU.

Note The total amount of entitlement that the Secretary may allocate for an entitlement year is equal to the total shipped weight of regulated dairy produce that, under the law of the European Union, may be imported into the European regulated dairy market from Australia for the entitlement year.
- (3) The Secretary must not allocate, to an exporter, entitlement to export regulated dairy produce for an entitlement year if:
 - (a) the exporter was allocated entitlement to export the produce in the 2 years before the entitlement year; and
 - (b) the exporter:
 - (i) did not export any of the produce to the European regulated dairy market in those 2 years; or
 - (ii) transferred, whether or not to a holder of entitlement, all of the entitlement temporarily in those 2 years.
- (4) Subregulation (3) does not apply if the exporter (the *transferor*):
 - (a) transferred the entitlement temporarily to another exporter (the *transferee*) for the purpose of enabling the transferee to export regulated dairy produce on behalf of the transferor; and
 - (b) notified the Department, in accordance with paragraph 2.17 (1) (e), of the purpose of the transfer.

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- (5) If, in accordance with subregulation (3), an amount of entitlement for an entitlement year is not allocated to an exporter, the Secretary may:
- (a) if, in the 2 years before the entitlement year, the entitlement was transferred to the same exporter — allocate the amount of entitlement to that exporter; or
 - (b) if paragraph (a) does not apply — invite exporters to apply for the amount of entitlement.
- (6) This regulation does not require the Secretary to allocate entitlement to a particular exporter, or to any exporters, if the Secretary considers that it would not be in the best interests of the dairy industry to make the allocation.

2.13 Entitlement account and notice of entitlement

- (1) If entitlement to export is allocated to an exporter under regulation 2.12, the Secretary:
- (a) must create an entitlement account for the exporter's entitlement; and
 - (b) must give to the exporter written notice of the allocation.
- (2) Notice under paragraph (1) (b) must include:
- (a) details of the regulated dairy produce to which the entitlement relates; and
 - (b) details of the amount of entitlement allocated; and
 - (c) details of the application fee that the exporter must pay under regulation 2.14; and
 - (d) the conditions of the entitlement; and
 - (e) a statement to the effect that, if the exporter is dissatisfied with the amount of entitlement allocated, the exporter may apply to the Administrative Appeals Tribunal for review of that decision.
- (3) If entitlement to export is not allocated to an exporter that meets the requirements in paragraphs 2.12 (1) (a) and (b), the Secretary, within 7 days after making the decision:
- (a) must give to the exporter a written notice that sets out the reasons for the decision; and

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- (b) must include in the written notice a statement to the effect that, if the exporter is dissatisfied with the Secretary's decision, the exporter may apply to the Administrative Appeals Tribunal for review of the decision.

Note See regulation 2.32 concerning review of decisions.

2.14 Application fee — entitlement to export

- (1) If an exporter is allocated, under regulation 2.12, entitlement to export, the exporter must pay an application fee in respect of the exporter's application for the entitlement.
- (2) The application fee payable by an exporter is 0.3 of a cent for each kilogram of regulated dairy produce allocated, under regulation 2.12, to the exporter for the entitlement year to which the application relates.

2.15 Conditions of entitlement to export

Entitlement to export that is allocated, under regulation 2.12, to an exporter for an entitlement year is subject to the following conditions:

- (a) the amount of regulated dairy produce exported by the exporter for the entitlement year must not exceed the amount of entitlement allocated to the exporter for that produce;
- (b) the exporter must, within 14 days after a significant change occurs, tell the Department in writing of the change;
- (c) any other condition the Secretary considers appropriate.

2.16 Period of entitlement

- (1) Entitlement to export that is allocated, under regulation 2.12, to an exporter for an entitlement year:
- (a) commences on the later of:
- (i) 1 January in the entitlement year; and
 - (ii) the day the exporter pays the application fee under regulation 2.14; and

- (b) continues to have effect until the earlier of:
 - (i) the day the amount of regulated dairy produce exported by the exporter is equal to the amount of entitlement allocated to the exporter for that produce; and
 - (ii) if the entitlement is withdrawn from the exporter under subregulation (2) — the day the entitlement is withdrawn.

- (2) Any unused amount of an exporter's entitlement may be withdrawn by the Secretary if, on or before 23 August in an entitlement year, the exporter:
 - (a) is not granted, under regulation 2.08, approval to export the unused amount of entitlement; or
 - (b) does not tell the Department, in writing, how the exporter intends to deal with the unused amount of entitlement.

Note Before 20 August in each entitlement year, the Department will send a notice about the requirement in paragraph 2.16 (2) (b) to each exporter that is a holder of entitlement under regulation 2.12 or 2.17 for the entitlement year.

- (3) If an unused amount of entitlement is withdrawn from an exporter under subregulation (2), the Secretary may allocate the amount to another exporter in accordance with the Guidelines for exports to the EU.

2.17 Transfer of entitlement to export

- (1) An exporter (the *transferor*) that is a holder of entitlement may transfer all or part of the entitlement to another exporter (the *transferee*) if the transferor gives the Department written notice of the following information:
 - (a) the name of the transferor and the transferee;
 - (b) the entitlement account from which the entitlement is being transferred;
 - (c) if the transferee is a holder of entitlement to export the produce — the entitlement account to which the entitlement is being transferred;
 - (d) the amount of entitlement being transferred;

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- (e) whether the purpose of the transfer is to enable the transferee to export regulated dairy produce on behalf of the transferor;
 - (f) whether the transfer will be temporary or permanent.
- (2) A transfer of entitlement does not take effect until the day the Department receives notice of the transfer under subregulation (1).
 - (3) If the Department receives notice under subregulation (1), the Secretary must:
 - (a) if the transferee is not a holder of entitlement to export the produce — create an entitlement account for the transferee's entitlement; and
 - (b) record the transfer in the entitlement account of the transferor and the transferee.
 - (4) Entitlement that is transferred under this regulation is subject to the same conditions that applied to the entitlement before it was transferred.
 - (5) Paragraph 2.16 (1) (b) applies to entitlement that is transferred under this regulation as if the entitlement transferred were entitlement allocated under regulation 2.12.

Division 2.3 Export of regulated dairy produce to the United States of America

2.18 Application of Division 2.3

This Division applies to a consignment that is to be exported for the year 2004 or any year after that.

2.19 Definitions for Division 2.3

In this Division:

eligible produce means regulated dairy produce:

- (a) exported to an importer that is, under the law of the United States of America, licensed to receive a special rate of duty for dairy produce imported within the aggregate quantity of dairy produce that may be imported into the

United States of America from Australia in a calendar year; and

- (b) to which the special rate of duty is applied.

Note The aggregate quantity of dairy produce that may be imported into the United States of America from Australia at a special rate of duty is contained in additional U.S. notes 16, 18, 19 and 25. For the definition of *additional U.S. note*, see Part 1 of Schedule 1A.

entitlement account, in relation to an exporter's entitlement, means the account in which the Department records:

- (a) the amount of entitlement to export regulated dairy produce as eligible produce that is held by the exporter, under regulation 2.25, subregulation 2.29 (3) or regulation 2.30, for an entitlement year; and
- (b) the shipped weight of the produce that is exported by the exporter as eligible produce for the entitlement year.

entitlement year, in relation to an entitlement to export regulated dairy produce as eligible produce, means the calendar year for which the entitlement is allocated.

Guidelines for exports to the USA means the *Guidelines for the Control of Regulated Dairy Produce Exported to the United States of America* published by the Department, as in force at the commencement of this Part.

Note The Guidelines for exports to the USA are available at www.affa.gov.au/quota.

holder of entitlement means an exporter that holds entitlement to export under regulation 2.25, subregulation 2.29 (3) or regulation 2.30.

2.20 Application for approval to export

- (1) Before a consignment of regulated dairy produce is exported to the United States of America, the exporter of the produce must obtain an approval to export the consignment.
- (2) An application for approval must be in a form approved by the Secretary and include the following information:
- (a) the name of the exporter making the application;
- (b) the exporter's business address;

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- (c) in relation to the regulated dairy produce to be exported in the consignment:
 - (i) its type; and
 - (ii) what its shipped weight is or will be; and
 - (iii) the name and address of the manufacturer of the produce;
 - (d) the name of the importer;
 - (e) the name of the ship or air freight carrier and the voyage or flight number;
 - (f) the port of loading and the date of loading;
 - (g) the intended port of discharge.
- (3) An application for approval to export a consignment is taken to have been made by an exporter if the Department is notified by AQIS that the exporter has given notice of intention to export the consignment under Part 8 of the *Prescribed Goods (General) Orders 1985*.

2.21 Grant of approval to export

- (1) The Secretary must grant an approval to export a consignment of regulated dairy produce if an application is made, or is taken to have been made, by an exporter under regulation 2.20 and:
 - (a) for an approval to export a consignment of regulated dairy produce as eligible produce:
 - (i) the exporter will not exceed its entitlement to export the produce as a result of the export; and
 - (ii) the Secretary has no reason to believe that the total shipped weight of eligible produce that, under the law of the United States of America, may be imported into the United States of America from Australia will be exceeded as a result of the export; or
 - (b) if paragraph (a) does not apply — the exporter gives the Department a declaration, in a form approved by the Secretary, that the produce will not enter the United States of America as eligible produce.

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- (2) If an approval to export is granted to an exporter, the Secretary must give the exporter a written notice of approval that sets out:
- (a) the shipped weight of regulated dairy produce that may be exported in the consignment; and
 - (b) the day the approval takes effect; and
 - (c) the conditions of the approval.

Note Under subsection 53 (1) of the Act a person is guilty of an offence if the person exports regulated dairy produce to a regulated dairy market and the person does not hold an approval in relation to the export.

2.22 Conditions of approval to export

- (1) An approval to export a consignment of regulated dairy produce, that is granted to an exporter under paragraph 2.21 (1) (a), is subject to the following conditions:
- (a) the exporter must continue to be the holder of the entitlement on the basis of which the approval is granted;
 - (b) the exporter must not exceed its entitlement as a result of the export of the consignment;
 - (c) the exporter must notify the Department in writing if it becomes likely that the consignment will not be accepted for entry into the United States of America;
 - (d) if the shipped weight of produce in the consignment (the **actual shipped weight**) is less than the shipped weight stated in the notice of approval under subregulation 2.21 (2) (the **approved shipped weight**), the exporter will be taken to have exported the approved shipped weight unless the exporter tells the Department in writing, within 28 days after the produce is loaded for shipment, the actual shipped weight;
 - (e) any other condition that the Secretary considers appropriate.
- (2) An approval to export a consignment of regulated dairy produce, that is granted to an exporter under paragraph 2.21 (1) (b), is subject to the following conditions:
- (a) if the shipped weight of produce in the consignment (the **actual shipped weight**) is not equal to the shipped weight stated in the notice of approval under subregulation

2.21 (2) (the *approved shipped weight*), the exporter must tell the Department in writing, within 28 days after the produce is loaded for shipment, of the actual shipped weight;

- (b) any other condition that the Secretary considers appropriate.

Note Under subsection 53 (2) of the Act a person who holds an approval in relation to an export of regulated dairy produce to a regulated dairy market is guilty of an offence if the export is not in accordance with the conditions of the approval.

2.23 Period of approval to export

An approval to export a consignment:

- (a) takes effect on the date specified for that purpose in the notice of approval given under subregulation 2.21 (2); and
- (b) ceases to have effect on the earlier of:
 - (i) 3 months after the day the approval takes effect; and
 - (ii) the end of 31 December in the year for which the consignment is exported.

2.24 Application for entitlement to export eligible produce

- (1) An application for entitlement to export regulated dairy produce as eligible produce to the United States of America for an entitlement year must be made to the Secretary, in writing:
 - (a) for the entitlement year 2004 — before 14 November 2003; and
 - (b) for any entitlement year after 2004 — before 1 November in the year before the entitlement year.
- (2) An exporter is taken to have applied for entitlement to export regulated dairy produce as eligible produce for an entitlement year if the exporter:
 - (a) has, at any time during the 2 years immediately preceding the entitlement year, exported to the United States of America as eligible produce dairy produce described in Part 3 of Schedule 1A; and
 - (b) for the entitlement year 2004 — has not given to the Department, before 14 November 2003, written notice that

the exporter does not wish to be allocated entitlement for the entitlement year; and

- (c) for any entitlement year after 2004 — has not given to the Department, before 1 November in the year before the entitlement year, written notice that the exporter does not wish to be allocated entitlement for the entitlement year.

2.25 Allocation of entitlement to export eligible produce

- (1) Entitlement to export regulated dairy produce as eligible produce to the United States of America for an entitlement year may be allocated by the Secretary, before the entitlement year, to an exporter that:
- (a) applies, or is taken to have applied, under regulation 2.24 for entitlement to export the produce as eligible produce for the entitlement year; and
- (b) meets the criteria specified in the Guidelines for exports to the USA.
- (2) In deciding what amount of entitlement to allocate to an exporter under subregulation (1), the Secretary must take into consideration the Guidelines for exports to the USA.

Note The total amount of entitlement that the Secretary may allocate for an entitlement year is equal to the total shipped weight of regulated dairy produce that, under the law of the United States of America, may be imported into the United States of America from Australia at a special rate of duty for the entitlement year.

- (3) The Secretary must not allocate, to an exporter, entitlement to export regulated dairy produce as eligible produce for an entitlement year if:
- (a) the exporter was allocated entitlement to export the produce as eligible produce in the 2 years before the entitlement year; and
- (b) the exporter:
- (i) did not export any of the produce to the United States of America as eligible produce in those 2 years; or
- (ii) transferred, whether or not to a holder of entitlement, all of the entitlement temporarily in those 2 years.

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- (4) Subregulation (3) does not apply if the exporter (the *transferor*):
- (a) transferred the entitlement temporarily to another exporter (the *transferee*) for the purpose of enabling the transferee to export regulated dairy produce as eligible produce on behalf of the transferor; and
 - (b) notified the Department, in accordance with paragraph 2.30 (1) (e), of the purpose of the transfer.
- (5) If, in accordance with subregulation (3), an amount of entitlement for an entitlement year is not allocated to an exporter, the Secretary may:
- (a) if, in the 2 years before the entitlement year, the entitlement was transferred to the same exporter — allocate the amount of entitlement to that exporter; or
 - (b) if paragraph (a) does not apply — invite exporters to apply for the amount of entitlement.
- (6) This regulation does not require the Secretary to allocate entitlement to a particular exporter, or to any exporters, if the Secretary considers that it would not be in the best interests of the dairy industry to make the allocation.

2.26 Entitlement account and notice of entitlement

- (1) If entitlement to export is allocated to an exporter under regulation 2.25, the Secretary:
- (a) must create an entitlement account for the exporter's entitlement; and
 - (b) must give to the exporter written notice of the allocation.
- (2) Notice under paragraph (1) (b) must include:
- (a) details of the regulated dairy produce to which the entitlement relates; and
 - (b) details of the amount of entitlement allocated; and
 - (c) details of the application fee that the exporter must pay under regulation 2.27; and
 - (d) the conditions of the entitlement; and

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- (e) a statement to the effect that, if the exporter is dissatisfied with the amount of entitlement allocated, the exporter may apply to the Administrative Appeals Tribunal for review of that decision.
- (3) If entitlement to export is not allocated to an exporter that meets the requirements in paragraphs 2.25 (1) (a) and (b), the Secretary, within 7 days after making the decision:
 - (a) must give to the exporter a written notice that sets out the reasons for the decision; and
 - (b) must include in the written notice a statement to the effect that, if the exporter is dissatisfied with the Secretary's decision, the exporter may apply to the Administrative Appeals Tribunal for review of the decision.

Note See regulation 2.32 concerning review of decisions.

2.27 Application fee — entitlement to export

- (1) If an exporter is allocated, under regulation 2.25, entitlement to export, the exporter must pay an application fee in respect of the exporter's application for the entitlement.
- (2) The application fee payable by an exporter is 0.3 of a cent for each kilogram of regulated dairy produce allocated, under regulation 2.25, to the exporter for the entitlement year to which the application relates.

2.28 Conditions of entitlement to export

Entitlement to export that is allocated, under regulation 2.25, to an exporter for an entitlement year is subject to the following conditions:

- (a) the amount of regulated dairy produce exported by the exporter as eligible produce for the entitlement year must not exceed the amount of entitlement allocated to the exporter for that produce;
- (b) the exporter must, within 14 days after a significant change occurs, tell the Department in writing of the change;
- (c) any other condition the Secretary considers appropriate.

2.29 Period of entitlement

- (1) Entitlement to export that is allocated, under regulation 2.25, to an exporter for an entitlement year:
 - (a) commences on the later of:
 - (i) 1 January in the entitlement year; and
 - (ii) the day the exporter pays the application fee under regulation 2.27; and
 - (b) continues to have effect until the earlier of:
 - (i) the day the amount of regulated dairy produce exported by the exporter as eligible produce is equal to the amount of entitlement allocated to the exporter for that produce; and
 - (ii) if the entitlement is withdrawn from the exporter under subregulation (2) — the day the entitlement is withdrawn.
- (2) Any unused amount of an exporter's entitlement may be withdrawn by the Secretary if, on or before 23 August in an entitlement year, the exporter:
 - (a) is not granted, under regulation 2.21, approval to export the unused amount of entitlement; or
 - (b) does not tell the Department, in writing, how the exporter intends to deal with the unused amount of entitlement.

Note Before 20 August in each entitlement year, the Department will send a notice about the requirement in paragraph 2.29 (2) (b) to each exporter that is a holder of entitlement under regulation 2.25 or 2.30 for the entitlement year.

- (3) If an unused amount of entitlement is withdrawn from an exporter under subregulation (2), the Secretary may allocate the amount to another exporter in accordance with the Guidelines for exports to the USA.

2.30 Transfer of entitlement to export eligible produce

- (1) An exporter (the *transferor*) that is a holder of entitlement may transfer all or part of the entitlement to another exporter (the *transferee*) if the transferor gives the Department written notice of the following information:
 - (a) the name of the transferor and the transferee;

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- (b) the entitlement account from which the entitlement is being transferred;
 - (c) if the transferee is a holder of entitlement to export the produce — the entitlement account to which the entitlement is being transferred;
 - (d) the amount of entitlement being transferred;
 - (e) whether the purpose of the transfer is to enable the transferee to export regulated dairy produce as eligible produce on behalf of the transferor;
 - (f) whether the transfer will be temporary or permanent.
- (2) A transfer of entitlement does not take effect until the day the Department receives notice of the transfer under subregulation (1).
 - (3) If the Department receives notice under subregulation (1), the Secretary must:
 - (a) if the transferee is not a holder of entitlement to export the produce — create an entitlement account for the transferee's entitlement; and
 - (b) record the transfer in the entitlement account of the transferor and the transferee.
 - (4) Entitlement that is transferred under this regulation is subject to the same conditions that applied to the entitlement before it was transferred.
 - (5) Paragraph 2.29 (1) (b) applies to entitlement that is transferred under this regulation as if the entitlement transferred were entitlement allocated under regulation 2.25.

Division 2.4 Miscellaneous

2.31 Variation and revocation of approval or entitlement

- (1) The Secretary may at any time vary or revoke an approval granted, or an entitlement allocated or transferred, under this Part if:
 - (a) the Secretary is satisfied that the approval or entitlement is no longer consistent with the object of this Part; or

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- (b) the Secretary considers that it is in the best interests of the dairy industry to make the variation or revocation.
 - (2) The holder of an approval or entitlement may ask the Secretary, in writing, for a variation to be made to the approval or entitlement.
 - (3) The holder of an approval or entitlement may surrender the approval or entitlement at any time by giving notice in writing to the Department.
 - (4) The Secretary may vary an approval or entitlement:
 - (a) by adding, varying or revoking a condition of the approval or entitlement; or
 - (b) by varying the period of the approval or entitlement.
 - (5) If the Secretary makes a variation or revocation under this regulation, the Secretary must give the holder of the approval or entitlement written notice of the decision that states:
 - (a) the reasons for the decision; and
 - (b) the day on which the variation or revocation takes effect; and
 - (c) that the exporter may apply to the Administrative Appeals Tribunal for a review of the decision.

2.32 Review of decisions

An application may be made to the Administrative Appeals Tribunal for review of a decision under this Part:

- (a) to impose a condition, under paragraph 2.09 (f), 2.22 (1) (c) or 2.22 (2) (b), on an approval to export a consignment; or
- (b) not to allocate entitlement to export; or
- (c) to allocate a particular amount of entitlement to export; or
- (d) to impose a condition, under paragraph 2.15 (c) or 2.28 (c), on entitlement to export; or
- (e) to vary or revoke an approval or entitlement.

2.33 Address for applications and information in writing

An application that may be made, or information or notice that must be given in writing, to the Department under this Part must be addressed to the Quota Administration and Statistics Unit and:

- (a) sent to:
Department of Agriculture, Fisheries and Forestry
GPO Box 858
CANBERRA ACT 2601; or
- (b) sent by e-mail to:
quota.admin@affa.gov.au; or
- (c) sent by fax to:
02 6272 4585.

2.34 Delegation by Secretary

- (1) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, of the Department all or any of the Secretary's powers and functions under this Part (except this power of delegation).
- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Secretary.

[4] Regulation 10

omit

[5] Part IV

omit

[6] Before Schedule 1*insert***Schedule 1A Regulated dairy produce**
(regulation 2.03)**Part 1 Definitions**

In this Schedule:

additional U.S. note means an additional U.S. note to chapter 4 of the Harmonized Tariff Schedule.

CN code means the European Commission Combined Nomenclature code used in Commission Regulation (EC) No 2535/2001.

Commission Regulation (EC) No 2535/2001 means the regulation of that name in the *Official Journal of the European Communities L 341/29*, dated 22 December 2001.

Harmonized Tariff Code means the code used in the Harmonized Tariff Schedule.

Harmonized Tariff Schedule means revision 2 of the *Harmonized Tariff Schedule of the United States of America*, as in force at the commencement of this Schedule.

Part 2 Dairy produce for the European Union**Item Dairy produce**

- | Item | Dairy produce |
|------|---|
| 1 | Dairy produce to which quota number 09.4522 in Annex III.A to Commission Regulation (EC) No 2535/2001 applies, being cheese for processing that: <ol style="list-style-type: none"> (a) will enter the European Union under CN code number 0406 90 01; and (b) is used for processing cheese products to which subheading 0406 30 of the CN code applies. |

Item Dairy produce

- 2 Dairy produce to which quota number 09.4521 in Annex III.A to Commission Regulation (EC) No 2535/2001 applies, being whole cheddar cheese that:
- (a) will enter the European Union under CN code number 0406 90 21; and
 - (b) has a fat content of 50% or more by weight in the dry matter; and
 - (c) has matured for at least 3 months; and
 - (d) is either:
 - (i) a conventional flat cylindrical shape with a net weight of no less than 33 kilograms and no more than 44 kilograms; or
 - (ii) a cubic block or parallelepiped shape with a net weight of 10 kilograms or more.
-

Note Quota numbers 09.4521 and 09.4522 set out the tariff quotas that apply to dairy produce that is imported into the European Union from Australia at a reduced tariff rate.

Part 3 Dairy produce for the United States of America

Item Dairy produce

- 1 Dairy produce mentioned in additional U.S. note 16, being cheese, and substitutes for cheese, that:
- (a) will enter the United States of America under subheading 0406.10.04, 0406.10.84, 0406.20.89, 0406.30.89 or 0406.90.95 of the Harmonized Tariff Code; and
 - (b) is not any of the following:
 - (i) cheese not containing cow's milk;
 - (ii) soft ripened cow's milk cheese;
 - (iii) cheese (other than cottage cheese) that contains 0.5% or less by weight of butterfat;
 - (iv) an article to which the United States of America applies a quantitative limitation under any of additional U.S. notes 17 to 25.

Item Dairy produce

- 2 Dairy produce mentioned in additional U.S. note 18, being each of the following produce that will enter the United States of America under subheading 0406.10.24, 0406.20.31, 0406.20.65, 0406.30.24, 0406.30.65, 0406.90.08 or 0406.90.76 of the Harmonized Tariff Code:
- (a) cheddar cheese;
 - (b) cheese;
 - (c) substitutes for cheese that contain, or are processed from, cheddar cheese.
- 3 Dairy produce mentioned in additional U.S. note 19, being each of the following produce that will enter the United States of America under subheading 0406.10.34, 0406.20.36, 0406.20.69, 0406.30.34, 0406.30.69, 0406.90.52 or 0406.90.82 of the Harmonized Tariff Code:
- (a) American-type cheese, including Colby, washed curd and granular cheese but not cheddar cheese;
 - (b) cheese;
 - (c) substitutes for cheese that contain, or are processed from, American-type cheese mentioned in paragraph (a).
- 4 Dairy produce mentioned in additional U.S. note 25, being Swiss and Emmentaler cheese that:
- (a) have eye formation; and
 - (b) will enter the United States of America under subheading 0406.90.46 of the Harmonized Tariff Code.
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Note Additional U.S. notes 16, 18, 19 and 25 set out the aggregate quantity of dairy produce that may be imported into the United States of America from Australia at a special rate of duty.

[7] Schedule 1

omit

DAIRY PRODUCE REGULATIONS

insert

DAIRY PRODUCE REGULATIONS 1986

[8] Schedule 1

omit

Department of Primary Industry,

insert

Department of Agriculture, Fisheries and Forestry,

[9] Schedule 1

omit

Dairy Produce Regulations.

insert

Dairy Produce Regulations 1986.

[10] Schedule 1

omit

19

Notes

1. These Regulations amend Statutory Rules 1986 No. 166, as amended by 1986 No. 237; 1987 Nos. 42 and 263; 1990 Nos. 384, 424 and 433; 1995 Nos. 209 and 310; 2003 No. 135.

2. Notified in the *Commonwealth of Australia Gazette* on / 2003.

7 November