

Dairy Produce Amendment Regulations 2004 (No. 1) 2004 No. 253

EXPLANATORY STATEMENT

STATUTORY RULES 2004 No. 253

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

Dairy Produce Amendment Regulations 2004 (No. 1)

Section 52 of the *Dairy Produce Act 1986* (the Act) provides that specified dairy produce may be declared regulated dairy produce and the specified dairy markets may be declared regulated dairy markets in respect of that produce. Section 53 of the Act provides for the prohibition on certain exports of regulated dairy produce to regulated dairy markets and Section 54 of the Act allows for conditions to be set for approval to export regulated dairy produce to regulated dairy markets.

Section 126 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of these regulations is to prescribe that certain dairy products are regulated dairy produce, in respect of that regulated dairy produce that is exported under the terms of the agreement mentioned in the *US Free Trade Agreement Implementation Act 2004* and to make provisions in relation to the granting of approvals to export that regulated dairy produce to the United States of America.

The United States of America has imposed quotas under the US Free Trade Agreement to control the access of certain dairy produce imported from Australia free of tariffs. The Quota Administration and Statistics Unit manages the allocation, monitoring and reporting of Australia's country-specific meat and dairy export quotas through the application of regulations and orders. This regulation will ensure, as far as possible, that a common, transparent and equitable process is in place for each of the applicable dairy quotas introduced under the US Free Trade Agreement.

The Regulations provide the authority for the Secretary to impose limitations on the export of dairy produce, to grant, vary or cancel entitlement and/or approval to export regulated dairy produce to regulated dairy markets and identify the rate of the fee to be applied to the approval of entitlement to eligible exporters. The Regulations also define the conditions that apply to approvals for entitlement and to the export of consignments of regulated dairy produce to regulated dairy markets. A detailed explanation of the Regulations is provided in the Attachment.

These regulations commenced on the date of their notification in the gazette.

ATTACHMENT

DAIRY PRODUCE AMENDMENT REGULATIONS 2004 (No. 1)

Details of the proposed Regulations are as follows:

Regulation 1 provides for the name of the proposed Regulations to be the *Dairy Produce Amendment Regulations 2004 (No. 1)*.

Regulation 2 provides that the regulations will commence on the date of notification in the *Gazette*.

Regulation 3 provides that Schedule 1 amends the *Dairy Produce Regulations 1986* (the Principal Regulations).

Schedule 1 identifies the amendments to be made.

Item [1] provides that the note to Regulation 2.02 be omitted as the note specifies that arrangements in place immediately before the commencement of the Regulation continue largely unchanged.

Item [2] provides that wording in Paragraph 2.03(b) be replaced with wording that includes reference to a new Part 4 of Schedule 1A (see Item 9 below).

Item [3] provides that wording in regulation 2.05 be changed to identify that the regulation deals with the European Union.

Item [4] provides that the heading for Division 2.3 be replaced by a new heading to identify that Division 2.3 deals with exports of regulated dairy produce to the USA other than under the Australia-United States of America Free Trade Agreement (FTA).

Item [5] provides that for subregulation 2.14 (2) the rate of the fee for the grant of quota for entitlement years after 2004 is changed from 0.3 of a cent to 0.7 of a cent. The higher rate provides for the recovery of the increased costs of administration effected by the introduction of the additional quotas applied under the FTA.

Item [6] substitutes a new regulation 2.18, which provides that Division 2.3 applies to exports of dairy produce to the USA for 2004 or any year after that, mentioned in Part 3 of Schedule 1A, that is, dairy produce other than produce exported under the FTA.

Item [7] provides that for subregulation 2.27 (2) the rate of the fee for the grant of quota for entitlement years after 2004 is changed from 0.3 of a cent to 0.7 of a cent. The higher rate provides for the recovery of the increased costs of administration effected by the introduction of the additional quotas applied under the FTA.

Item [8] provides that after Division 2.3, a new Division 2.3A is inserted that deals with exports of dairy produce to the USA under the FTA.

New Subdivision 2.3A.1 provides general conditions relating to the export of regulated dairy produce to the USA under the FTA.

Regulation 2.30A provides that Division 2.3A applies to consignments of dairy produce detailed in Part 4 of Schedule 1 A that are to be imported, without tariff, into the USA.

Regulation 2.30B provides definitions for terminology used in Division 2.3A, including *access amount*, *dairy manufacturer* and *minimum allocation*.

Regulation 2.30C provides for the access amounts of dairy produce that may be exported to the USA in 2005 for each of the FTA dairy categories shown in Table 2.30C. The access amounts represent the maximum amounts of dairy produce for each FTA category for 2005.

Subdivision 2.3A.2 provides conditions relating to the allocation of quota for regulated dairy produce, other than ice cream and Other Dairy Products (ODP), to the USA under the FTA for 2005.

Regulation 2.30D provides that Subdivision 2.3A.2 applies to the allocation process for 2005 for FTA dairy categories other than ice cream and Other Dairy Products.

Regulation 2.30E provides definitions for terminology used in Subdivision 2.3A.2, including *disadvantaged applicant*, *primary applicant* and *secondary applicant*.

Regulation 2.30F provides that the term 02/03 export amount means, for each dairy manufacturer, the amounts of dairy produce in the dairy category exported during 2002 and 2003 after subtracting the amounts of produce in the equivalent category exported under Australia's dairy produce quotas to the European Union and the USA identified in Divisions 2.2 and 2.3 in 2002 and 2003. The Regulation also provides a table that provides a relationship between categories in Divisions 2.2 and 2.3 and the categories in the FTA.

Regulation 2.30G provides that a dairy manufacturer may apply in an approved form to the Secretary of the Australian Government Department of Agriculture, Fisheries and Forestry for an allocation of quota in a FTA dairy quota category for 2005. Applicants will be required to acknowledge the Secretary's right to verify information provided in an application. Where data for an applicant's dairy production in either of the base years of 2002 or 2003 varies significantly from one another as provided in Regulation 2.30H, the applicant may be disadvantaged. A disadvantaged applicant may seek to nominate a single year to be used when calculating the applicant's entitlement to an allocation of quota. The nominated year will then be used for both the export and the production components of the entitlement calculation made under Regulation 2.30I.

Regulation 2.30H provides for the conditions that must apply for an applicant to be considered as a disadvantaged applicant. To be a disadvantaged applicant, an applicant must show that in 40% or more of the dairy produce categories for which it applies, its 2003 dairy production exceeds, or is less than, its 2002 dairy production. Where a disadvantaged applicant nominates a year for its production data, that year is to be used for exports and production for the calculation of its quota allocation for all quota categories.

Regulation 2.201 provides definitions for the terminology applied to the calculations used to determine an applicant's preliminary quota allocation and a disadvantaged applicant's preliminary quota allocation for those FTA categories that have a set aside amount applied and for the FTA category Non-fat Milk Powder and Skim Milk Powder, which has no set aside amount. The Regulations provide that the preliminary allocation for an applicant that is not a disadvantaged applicant will be the sum of its exports and its production of the relevant category for the base years of 2002 and 2003, divided by the sum of all applicants' exports and production for the same period as a proportion of the access amount. Where the calculation is applied to disadvantaged applicants, the exports and production will be based on the year nominated by the applicant for both exports and production. The amount of exports is given twice the weighting of production in this calculation.

Regulation 2.30J provides for applicants to be either primary or secondary applicants for FTA quota categories. The regulation identifies that applicants whose preliminary allocation in a

category that has a set aside amount is at least half the minimum amount for that category, then the applicant will be a primary applicant. This reflects that an allocation less than but at least half the minimum allocation will be rounded up to the minimum amount, with the effect that applicants having the minimum allocation after rounding will be primary applicants. An applicant that is not a primary applicant will be a secondary applicant.

Regulation 2.30K provides for how the final quota allocations for primary applicants are worked out for FTA categories that have set aside amounts. The Regulation provides that applicants' preliminary allocations for each category, calculated under Regulation 2.301, will be rounded up or down to an amount divisible by the minimum allocation for that category. Where the total of these rounded amounts is less than 95% of the category access amount, the difference will be distributed proportionally to primary applicants. Where the total of these rounded amounts is more than 95% of the category access amount, the difference will be withdrawn proportionally from primary applicants. The final allocation for each primary applicant will be its primary allocation plus any amount distributed or less any amount withdrawn using the above method.

Regulation 2.30L provides for how the final quota allocations for secondary applicants are worked out for FTA categories that have set aside amounts. The Regulation provides that an amount equal to 5% of the access amount for FTA categories (the set aside amount) will be divided equally by the number of secondary applicants. If the resulting amount is equal to or less than the minimum allocation then each applicant receives an allocation equal to that amount derived from that calculation for the FTA category. If the resulting amount is greater than the minimum allocation then each applicant receives the minimum allocation for the FTA category and the balance is distributed equally among all applicants having an allocation equal to or less than the greater of 5% of the access amount or four times the minimum allocation for the FTA category.

Regulation 2.30M provides for how the final quota allocations for primary applicants are worked out for the Non-fat Dried Milk Powder and Skim Milk Powders FTA category (that has no set aside amount). The Regulation provides that applicants' preliminary allocations for each category will be rounded up or down to an amount divisible by the minimum allocation for the Non-fat and Skim Milk Powders FTA category. Where the total of these rounded amounts is less than the category access amount, the difference will be distributed proportionally to all applicants. Where the total of these rounded amounts is more than the category access amount, the difference will be withdrawn proportionally from all applicants. The final allocation for each primary applicant will be its primary allocation plus any amount distributed or less any amount withdrawn using the above method.

Regulation 2.30N provides that the final allocation for cream is granted subject to the applicant having obtained by 30 June 2005 US registration of approved premises to supply cream or presented evidence that US registration of approved premises to supply cream will be granted before 23 August 2005. Where an applicant has not obtained the necessary registration, its final allocation will be withdrawn and redistributed to the other quota holders in proportion to the amounts of quota each holds.

Regulation 2.300 provides that if the Secretary grants quota to an applicant, then the Secretary must provide to the applicant a statement identifying the amount of quota granted.

Subdivision 2.3A.3 provides conditions relating to the allocation of quota for regulated dairy produce to the USA under the FTA other than ice cream and Other Dairy Products for 2006 and subsequent years.

Regulation 2.30P provides that Subdivision 2.3A.3 sets out the allocation process for 2006 and each subsequent year for FTA dairy categories other than ice cream and Other Dairy Products.

Regulation 2.30Q provides that a dairy manufacturer may apply in an approved form to the Secretary for an allocation of quota for 2006 and each subsequent year.

Subregulation 2.30R(1) provides definitions for terminology used in the Regulation, including primary and *secondary quota holders*, *new entrants* and *percentage increase*.

Subregulation 2.30R (2) and (3) provide for the distribution of increased quota to primary quota holders, secondary quota holders and new entrants that results from the annual increases to the access amount under the FTA. The Regulations provide that each primary quota holder and secondary quota holder will be allocated an amount, taking into account any quota forfeited by quota holders as a result of the compulsory withdrawal of quota to the uncommitted amount and any quota transferred to or from the quota holder. An amount equal to 50% of the annual increase under the FTA is distributed to all quota holders in proportion to the amount of quota attributed to quota holders after adjustments for forfeited or transferred quota. The Regulations also provide for the distribution of increased quota to secondary quota holders and new entrants that results from the annual increases to the access amount under the FTA. The Regulations provide that an amount equal to 50% of the annual increase under the FTA is distributed equally to all new entrants and secondary quota holders.

Subdivision 2.3A.4 provides conditions relating to approvals for the export of regulated dairy produce to the USA under the FTA categories Ice Cream and Other Dairy Products.

Regulation 2.30S provides that Subdivision 2.3A.4 sets out the allocation process for 2005 and subsequent years for FTA dairy categories Ice Cream and Other Dairy Products.

Regulation 2.30T provides that the access amount for the FTA category Other Dairy Products in 2005 will be divided in accordance with the subcategories identified in Parts 1 (1,350 tonnes) and 2 (150 tonnes) of Schedule 1 B and that the annual increases for these and the FTA category Ice Cream will increase in subsequent years by the percentages specified for these categories in the FTA.

Regulation 2.30U provides for the applications for approval to export dairy produce under the FTA Ice Cream and Other Dairy Produce categories. The regulation provides that applications may be made to the Secretary in an approved form on or after 1 November of the year preceding the quota year for approval to export during the quota year and the information that must be provided when applications are made.

Regulation 2.30V provides that while exports have not reached the identified access amount for the ice cream and Other Dairy Products categories the Secretary must deal with applications for approval to export on a first come first served basis. The Secretary must issue a certificate that ensures access to the US of the applicant's consignment at a tariff rate commensurate with the FTA. The regulations also provide that no applicant may receive approval to export in a quota year an amount more than one third of the access amount for each category. The Regulation further provides that, where applications made on the application day exceed the category access amount, that amount will be divided equally among all applicants but that no applicant will receive an amount greater than the amount for which it applied.

Regulation 2.30W provides that a quota holder will forfeit all or part of its quota approval under this subdivision if it fails to export 95% of the approved amount on the day proposed for the export of the approved consignment or, where any delay is beyond the control of the approval holder, 28 days after the due date for export.

Subdivision 2.3A.4 provides miscellaneous conditions relating to the export of regulated dairy produce to the USA under the FTA.

Regulation 2.30X provides that the holder of unused quota for categories other than ice cream and Other Dairy Produce may apply to the Secretary for a quota certificate in regard to any quota not used from its quota allocation. Where the application does not exceed the available balance and the Secretary approves the application, the Secretary must issue a quota certificate.

Regulation 2.30Y provides that a certificate issued under Subregulation 2.30V(4) or 2.30X(2) is evidence that approval for the relevant consignments as quota consignments has been given.

Regulation 2.30Z provides for the transfer of quota entitlement and what dairy manufacturers must do if an entitlement transfer is implemented between two persons.

Regulation 2.30ZA provides for the forfeiture of unused quota that may apply from 2007 and subsequent years. The Regulation provides that where a quota holder fails to export 95% of its quota for two consecutive years, the holder's allocation for the third year will be its allocation for the previous year, less the average of the quota it did not use in the previous two years.

Regulation 2.30ZB provides that the Secretary may withdraw quota if in the year for which the quota was allocated, the quota holder requests in writing that quota be withdrawn or on or after 23 August in that year a quota holder has not told the Secretary in writing how it intends to deal with any unused quota it may hold. The Secretary may re-allocated any quota withdrawn to another person that applies if the applicant can show the quota will be used in that quota year.

Regulation 2.30ZC provides for the conditions relating to payment by exporters of a fee under the regulations and sets the fee rate, which will be 0.7 cent per kilogram of quota exported by an applicant under a quota certificate given under Division 2.3A.

Item [9] provides that after Part 3 of Schedule 1 A, a new Part 4 be inserted: **PART 4 Dairy produce for the US under the FTA.** Part 4 of Schedule 1 A provides the definition of dairy produce to be declared as regulated dairy produce for the US under the FTA. Following Part 4, a new Schedule 1 B is inserted. Schedule 1 B provides the definition of Category A and category B dairy produce to be included under the Other Dairy Products category for export to the US under the FTA.