

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2005 No. 107**

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

#### *Dairy Produce Amendment Regulations 2005 (No. 1)*

Section 53 of the *Dairy Produce Act 1986* (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 *Dairy Produce Regulations 1986* (the Principal Regulations) currently describe the conditions necessary to obtain approval to export certain regulated dairy products.

The purpose of these Regulations is to amend some of the existing provisions for the granting of approvals to export regulated dairy produce to the United States of America that is exported under the terms of the agreement mentioned in the *US Free Trade Agreement Implementation Act 2004*.

The Regulations amend Divisions 2.3 and 2.3A in Part 2 of the Principal Regulations (Export control), which provide for the arrangements outlined above.

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.

Under the Australia-United States of America Free Trade Agreement (the FTA), quota controlled access to the United States of America is applied, without tariff, to certain dairy produce imported from Australia and these dairy products are defined as regulated dairy produce under the current regulations. Australia's arrangements to administer associated tariff-rate quotas for those dairy products were provided by an amending regulation that came into effect with the adoption of the FTA. The government has agreed that the arrangements could be improved and refined by the amendment of certain Regulations.

The Regulations enhance the Principal Regulations and have been developed in consultation with the dairy industry to ensure, as far as possible, that a common, transparent and equitable process is in place for each of the applicable quotas for regulated dairy produce to the United States of America regulated dairy market. The Regulations also make minor technical and drafting amendments to the Principal Regulations. A detailed explanation of the Regulations is provided in the Attachment.

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

These regulations commenced on the day after their registration on the Federal Register of Legislative Instruments.

## **DAIRY PRODUCE AMENDMENT REGULATIONS 2005 (No. 1)**

Details of the Regulations are as follows:

Regulation 1 provides for the name of the Regulations to be the *Dairy Produce Amendment Regulations 2005 (No. 1)*.

Regulation 2 provides that the regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

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 heading for Division 2.3A be replaced by a new heading to identify that Division 2.3A deals with exports of regulated dairy produce (other than produce mentioned in Part 4 of Schedule 1A) to the US under the Free Trade Agreement (FTA).

Item [2] provides that regulation 2.30B be amended by inserting 'in this Division:' before the definition for **access amount**, to reflect more accurately how the terms so described are used.

Item [3] provides that for regulation 2.30B the definition of '**allocation of quota**' be replaced by a new definition: '**allocation of quota** means an authorisation, given to a person, setting out the maximum amount of dairy produce of an FTA category that the person is entitled to export under this Division'. The new definition reflects more accurately how the terms so described are used.

Item [4] provides that for regulation 2.30B the definition of '**FTA category**' be replaced by a new definition: '**FTA category**, of dairy produce, means a category within the meaning given in regulation 2.30C'. The new definition reflects more accurately how the terms so described are used.

Item [5] provides that for regulation 2.30B after the definition of '**US**', a new definition be inserted: '**working day** means a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory'.

Item [6] provides that after regulation 2.30B, a new regulation, **2.30BA Meaning of new entrant** be added that defines what is meant by a new entrant as it is applied to applicants seeking access to quota entitlement in future years.

Item [7] provides that regulation 2.30C (except the table) be replaced by a new subregulation (1) that confirms the 2005 access amounts of regulated dairy produce under FTA categories and subcategories as those shown in column 3 of Table 2.30C.

Item [8] provides that item 10, Other Dairy Products in Table 2.30C, be further divided into subcategories A and B that reflect the division already made in Schedule 1B.

Item [9] provides that a new subregulation (2) be inserted in regulation 2.30C (after Table 2.30C) that defines subcategory A produce and subcategory B produce newly included in Table 2.30C under Item [8].

Item [10] is a technical amendment that provides for consistent terminology in regulation 2.30D by inserting 'FTA' after 'quota for each'.

Item [11] is a technical amendment that provides for consistent terminology in subregulation 2.30J(1) by omitting 'the applicant's' and inserting 'an applicant's'.

Item [12] deletes regulation 2.30N. The regulation is inconsistent with the requirements to deal with allocation of quota entitlements for cream when compared to other regulated dairy produce and the obligations imposed on applicants may not be within their power to meet.

Item [13] is a technical amendment that provides for consistent terminology in regulation 2.30P by omitting 'each category' and inserting 'each FTA category of dairy produce'.

Item [14] provides that regulation 2.30Q be replaced by a new regulation 2.30Q, **Applications by new entrants for allocation of quota**, which identifies that a new entrant may apply to the Secretary of the Department of Agriculture, Fisheries and Forestry for an allocation of quota for 2006 and later years.

Item [15] provides that the definition of '**new entrant**' be omitted from regulation 2.30R. The meaning of 'new entrant' now appears under regulation 2.30BA, (see item [6]).

Item [16] provides a new subregulation 2.30R (2A) which details the steps to be taken to work out quota allocations for dairy produce (other than ice cream and other dairy products) in a year where there are no new entrants or secondary quota holders identified for a FTA category. Subregulation 2.30R(3) is substituted to reflect that it is only used to work out quota allocations in a year where there are one or more secondary quota holders, new entrants or both.

Item [17] provides that, after regulation 2.30S, a new regulation 2.30SA be inserted that defines '*application day*' to mean 1 November or the next working day thereafter, if 1 November is not a working day.

Item [18] provides that subregulation 2.30T(1) be deleted. The division of the subcategories of Other Dairy Products is now detailed in regulation 2.30C, (see item [9]).

Item [19] provides that subregulation 2.30U(1) be deleted. The definitions included in this subregulation now appear in regulation 2.30SA and regulation 2.30B respectively, (see items [17] and [5] respectively).

Item [20] is a technical amendment that provides for consistent terminology in paragraph 2.30U (3) (b) by inserting 'or subcategory' after 'category'.

Item [21] provides that regulation 2.30V is replaced by a new regulation 2.30V **Export approvals**, which applies to the Ice Cream and Other Dairy Products FTA quota categories and subcategories that are managed on a first-come-first-served basis. The new regulation provides that the Secretary must not approve the export of a total amount of dairy produce that is greater than the access amount for the respective category (or subcategory). Where applications are made for more than the access amount, the regulation provides the steps to work out the distribution of the quota amongst the applicants. The regulations provide that before 1 July each year no applicant will be permitted to receive an allocation of more than a third of the access amount. If, on 1 July, approved exports are less than the access amount the Secretary may receive further applications for the remainder, including from exporters already holding approvals for a third of the access amount. These applications are to be dealt with under the same

arrangements as outlined in subregulation 2.30V (2). The regulation provides that approvals granted under this regulation are not transferable.

Item [22] provides for consistent terminology in subregulation 2.30Z (1) by inserting ‘, other than a new entrant’ after ‘dairy produce’.

Item [23] provides that regulations 2.30ZB and 2.30ZC be substituted with new regulations 2.30ZB, 2.30ZC and 2.30ZD. Regulation **2.30ZB Quota is forfeited if not used** provides that any remaining quota not supported by an application for approval under regulation 2.30X by 23 August each year is forfeited by the quota holder. Regulation **2.30ZC Approval to export from lapsed quota** provides that a person may apply on or after 25 August each year for approval to export a consignment of regulated dairy produce using the quota forfeited under regulation 2.30ZB. If the total for all applications exceeds the forfeited quota available the Secretary must use the steps described in subregulation 2.30V (2) to work out quota to be granted to each applicant. Quota derived from such an approval cannot be transferred. **Regulation 2.30ZD Fees (Act, s54)** provides that the fee for an approval to export dairy produce under this Division is 0.7 cents per kilogram or 0.7 cents per litre (for cream or ice cream). (Paragraph 54(2)(b) of the Act permits the regulations to provide for fees in respect of such applications.)

Item [24] provides that the heading for Schedule 1B is substituted with a new reference: ‘subregulation 2.30C (2)’.