



Dairy Produce Amendment Regulations 2005 (No. 1)¹

Select Legislative Instrument 2005 No. 107

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 7 June 2005

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 2005 (No. 1)*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Amendment of *Dairy Produce Regulations 1986*

Schedule 1 amends the *Dairy Produce Regulations 1986*.

Schedule 1 Amendments

(regulation 3)

[1] Division 2.3A, heading

substitute

**Division 2.3A Export of regulated dairy produce
(other than Schedule 1A produce)
to the US under the FTA**

[2] Regulation 2.30B, before definition of *access amount*

insert

In this Division:

[3] **Regulation 2.30B, definition of *allocation of quota***

substitute

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.

[4] **Regulation 2.30B, definition of *FTA category***

substitute

FTA category, of dairy produce, means a category within the meaning given in regulation 2.30C.

[5] **Regulation 2.30B, after definition of *US***

insert

working day means a day that is not a Saturday, Sunday or public holiday in the Australian Capital Territory.

[6] **After regulation 2.30B**

insert

2.30BA Meaning of *new entrant*

- (1) In this Division:

new entrant, in relation to an FTA category of dairy produce in a year, means a dairy manufacturer (including a related entity of a manufacturer) who has not held an allocation of quota for the category before the year.

- (2) For subregulation (1), an entity (the ***first entity***) is a ***related entity*** of another entity (the ***second entity***) if:
- (a) the second entity controls the first entity; or
 - (b) the first entity controls the second entity; or
 - (c) both the first entity and the second entity are controlled by the same person.

[7] Regulation 2.30C, except the table*substitute***2.30C Categories and sub-categories of dairy produce**

- (1) For an FTA category or sub-category of dairy produce mentioned in an item in column 2 of Table 2.30C (an **FTA category**), the access amount for 2005 is the amount set out in column 3 of the item.

[8] Table 2.30C, item 10*substitute*

10	Other Dairy Products	Sub- category A produce: 1 350 t	Sub- category A produce: 0 t	Sub- category A produce: 0
		Sub- category B produce: 150 t	Sub- category B produce: 0 t	Sub- category B produce: 0

[9] Regulation 2.30C, after Table 2.30C*insert*

- (2) For item 10 of Table 2.30C:
- subcategory A produce*** means produce that corresponds to any US Harmonised Tariff Code set out in column 2 of Part 1 of Schedule 1B.
- subcategory B produce*** means produce that corresponds to any US Harmonised Tariff Code set out in column 2 of Part 2 of Schedule 1B.

[10] Regulation 2.30D

after

quota for each

insert

FTA

[11] Subregulation 2.30J (1)

omit

the applicant's

insert

an applicant's

[12] Regulation 2.30N

omit

[13] Regulation 2.30P

omit

each category,

insert

each FTA category of dairy produce,

[14] Regulation 2.30Q

substitute

2.30Q Applications by new entrants for allocation of quota

A new entrant may apply to the Secretary, in a form approved by the Secretary, for an allocation of quota for 2006 and each subsequent year.

[15] Regulation 2.30R, definition of *new entrant*

omit

[16] Subregulation 2.30R (3)

omit everything before

Step 1.

insert

- (2A) If there are no secondary quota holders or new entrants, the following steps show how to work out, for each primary quota holder, the quota allocation for each category under this Subdivision.

Step 1. Allocate to each primary quota holder an amount equal to the amount of quota allocated to the holder for the previous year, taking into account any amounts of quota that were:

- (a) forfeited, under subregulation 2.30Z (6) or 2.30ZA (2) or both, by the holder in that year; and
- (b) transferred to or from the holder, under regulation 2.30Z.

Step 2. Allocate to each primary quota holder an amount of quota in proportion to the holder's allocation under Step 1, so that the sum of the additional amounts equals the sum of:

- (a) the additional access amount; and
- (b) total forfeits.

- (3) If there are 1 or more secondary quota holders, new entrants or both, the following steps show how to work out, for each primary quota holder, secondary quota holder and new entrant, the quota allocation for each category under this Subdivision.

[17] After regulation 2.30S

insert

2.30SA Definition for Subdivision 2.3A.4

In this Subdivision:

application day means:

- (a) 1 November in any year; or
- (b) if 1 November in a year is not a working day — the next working day after 1 November.

[18] Subregulation 2.30T (1)

omit

[19] Subregulation 2.30U (1)

omit

[20] Paragraph 2.30U (3) (b)

after

category

insert

or sub-category

[21] Regulation 2.30V

substitute

2.30V Export approvals

- (1) The Secretary:
 - (a) must, unless subregulation (2) applies, deal with applications made under regulation 2.30U on a first-come-first-served basis; and

(b) must not approve, for export, a total amount of dairy produce in a category that exceeds the access amount for the category.

(2) If, on the application day, applications are made for more than the access amount of dairy produce, then the following steps show how to work out the amount for each applicant.

Step 1. Divide the access amount by the number of applicants, giving the *provisional amount*.

Step 2. Determine whether distributing the provisional amount to each applicant would lead to any applicant being approved to export a greater amount than the applicant applied for (that is, being an *excess-quota applicant*).

Step 3. If the result of Step 2 is that there are no excess-quota applicants:

- (a) each applicant receives an approval to export an amount that is equal to the provisional amount; and
- (b) this subregulation is satisfied.

Step 4. If the result of Step 2 is that there are 1 or more excess-quota applicants:

- (a) each excess-quota applicant receives an approval to export the amount applied for; and
- (b) the total of the amounts mentioned in paragraph (a) are taken to be subtracted from the access amount; and
- (c) the excess-quota applicants are eliminated; and
- (d) Steps 1, 2, 3 and, if necessary, this Step are repeated until this subregulation is satisfied.

(3) However, before 1 July in the year following application day, the Secretary must not grant an approval if the grant would result in the applicant being approved to export more than a third of the access amount for the category.

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- (4) If, on 1 July following an application day (or if 1 July in a year is not a working day, the next working day after 1 July), the total amount of dairy produce approved for export under this regulation is less than the access amount, the Secretary may accept applications for export approvals for the remainder of the access amount, including applications from persons who were approved to export an amount before that day.
- (5) The Secretary must:
- (a) deal with applications under subregulation (4) on a first-come-first-served basis; or
 - (b) if, on the day mentioned in subregulation (4), applications are made for more than the remaining access amount — use the steps set out in subregulation (2) to work out the amount to be granted to each applicant.
- (6) If the Secretary grants an export approval to an applicant, he or she must give the applicant a quota certificate as evidence of the approval.
- (7) An export approval granted under this regulation is not transferable.

[22] Subregulation 2.30Z (1)

after

dairy produce

insert

, other than a new entrant,

[23] Regulations 2.30ZB and 2.30ZC

substitute

2.30ZB Quota is forfeited if not used

If, by the end of 23 August in a year, the holder of quota for an FTA category of dairy produce for the year has not applied, under regulation 2.30X, for quota certificates for all the quota, the holder forfeits the unused quota.

2.30ZC Approval to export from lapsed quota

- (1) In this regulation:
forfeited quota application day means 25 August in each year, or, if 25 August in a year is not a working day, the next working day after 25 August.
- (2) On or after forfeited quota application day in a year, a person may apply to the Secretary for approval to export a consignment of an amount of dairy produce corresponding to some or all of any quota forfeited under regulation 2.30ZB.
- (3) The Secretary must deal with applications on a first-come-first-served basis.
- (4) However if, on forfeited quota application day, applications are made for more than the forfeited quota, the Secretary must use the steps set out in subregulation 2.30V (2) to work out the amount to be granted to each applicant, as if the access amount and the application day mentioned in subregulation 2.30V (2) were the amount to be granted and the forfeited quota application day respectively.
- (5) An export approval granted under this regulation is not transferable.

2.30ZD Fees (Act, s 54)

For paragraph 54 (2) (b) of the Act, the fee for an approval to export dairy produce under this Division is:

- (a) 0.7 of a cent for each kilogram of dairy produce other than cream or ice cream; and
- (b) 0.7 of a cent for each litre of cream or ice cream; that the applicant is entitled to export under the approval.

[24] Schedule 1B, heading

substitute

Schedule 1B

(subregulation 2.30C (2))

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.