

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 231

Dairy Produce Amendment Regulations 2005 (No. 2)

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

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 (the US) that is exported under the terms of the agreement mentioned in the *US Free Trade Agreement Implementation Act 2004*.

The Regulations amend Division 2.3A in Part 2 of the Principal Regulations (Export control), which provides 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 US 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 be improved and refined by the further amendment of the Principal Regulations.

The Regulations enhance the Principal Regulations and have been developed in consultation with the dairy industry to ensure, as far as possible, the provision of internal consistency and the avoidance of unintended consequences for each of the applicable quotas for regulated dairy produce to the US regulated dairy market. The Regulations also make minor technical and drafting amendments to the Principal Regulations.

Details of the Regulations are 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.

ATTACHMENT

Details of the Dairy Produce Amendment Regulations 2005 (No. 2)

Regulation 1 – Name of Regulations

This regulation provides for the name of the Regulations to be the *Dairy Produce Amendment Regulations 2005 (No.2)*.

Regulation 2 – Commencement

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

Regulation 3 – Amendment of Dairy Produce Regulations 1986

This regulation provides that Schedule 1 amends the *Dairy Produce Regulations 1986* (the Principal Regulations).

Schedule 1 - Amendments

Item [1] - regulation 2.30B, definition of *dairy manufacturer*

Item [1] provides that regulation 2.30B be amended by deleting ‘a person who’ and inserting ‘a person who, for commercial purposes’, to reflect more accurately how the terms so described are used.

Item [2] - subregulation 2.30BA (1), definition of *new entrant*

Item [2] provides that subregulation 2.30BA (1), definition of *new entrant* be amended by omitting ‘has not held an allocation of quota for the category before the year’ and inserting ‘did not hold an allocation of quota for the category in the previous year’, to reflect more accurately how the terms so described are used.

Item [3] - regulation 2.30Q

Item [3] provides that regulation 2.30Q be amended by omitting ‘A new entrant’ and inserting ‘(1) A new entrant’. This amendment ensures the correct numbering of the regulation after the inclusion of the amendment provided for in Item [4].

Item [4] - regulation 2.30Q

Item [4] provides that for regulation 2.30Q after 2.30Q (1) a new subregulation 2.30Q (2) be inserted that requires applications for an allocation of quota for 2007 and later years to be made before 15 October of the year preceding the year for which quota is sought.

Item [5] - subregulation 2.30R (1), including the note

Item [5] provides that subregulation 2.30R (1) be replaced by a new subregulation 2.30R (1) that redefines what is meant by ‘*primary quota holder*’, ‘*secondary quota holder*’ and ‘*total forfeits*’. The revised definitions clarify the previous definitions to remove possible uncertainties about quota holders’ eligibility to subsequent allocations of quota entitlement. A new subregulation 2.30R (1A) shows how to work

out a person's *net quota* for a category, taking into account previous allocations, transfers and forfeited quota.

Item [6] - subregulation 2.30R (2A) and (3)

Item [6] provides that subregulations 2.30R (2A) and (3) be replaced by new subregulations 2.30R (3) and (4). Subregulation 2.30R (3) describes the steps to be taken to work out the quota allocation for primary quota holders where there are no secondary quota holders. Subregulation 2.30R (4) describes the steps to be taken to work out the quota allocation for primary and secondary quota holders where there are one or more secondary quota holders. The proposed amendments simplify the allocation of quota to primary quota holders by using the process included in the new subregulation 2.30R (1A).

Item [7] - subregulation 2.30T (2)

Item [7] provides that subregulation 2.30T(2) be renumbered as subregulation 2.30T (1) to correct a typographical error in the Principal Regulations.

Item [8] - regulation 2.30T

Item [8] provides that a new subregulation (2) be inserted in regulation 2.30T (after 2.30T (1)) that provides that after 23 August each year, any access amount remaining in a sub-category of the 'Other Dairy Products' category may be used for the exports of dairy produce in another sub-category of 'Other Dairy Products'. This will ensure the greatest possible utilisation of the 'Other Dairy Products' in any year.

Item [9] - subregulations 2.30Z (5) and (6), including the note

Item [9] provides that subregulations 2.30Z (5) and (6), including the note, be replaced with new subregulations (5) and (6) and a new note that clarifies the effect of quota transfers over two consecutive years (not including 2005) and consequent quota forfeits of quota incurred by quota holders. The note identifies that quota forfeited under subregulation 2.30Z (6) becomes available for allocation to other applicants in the third year and refers to new subregulations 2.30R (3) and (4).

Item [10] - regulation 2.30ZA

Item [10] provides that regulation 2.30ZA be replaced with new regulation 2.30ZA that provides a revised process and formula for calculating the amount of quota forfeited in a FTA category other than the 'Ice Cream' and 'Other Dairy Products' categories. The new formula is included to prevent unintended consequences that may have applied as a result of using the previous formula. The new regulation better defines the period used for assessing quota usage. It also includes a process to eliminate the unintended retention of entitlement to impractical amounts of quota by deeming that where a quota holder exports less than 5% of its quota in each of 2 consecutive shipping years, those exports will be taken as zero.

Item [11] - regulation 2.30ZB, heading

Item [11] provides that the heading for regulation 2.30ZB, '**2.20ZB Quota is forfeited if not used**', be replaced with a new heading '**2.20ZB Quota is withdrawn if not used**'. This removes the possible mis-interpretation of 'forfeited', which has a specific meaning in these regulations.

Item [12] - regulation 2.30ZB

Item [12] provides that for regulation 2.30ZB 'the holder forfeits the unused quota' be replaced with 'the unused quota is withdrawn from the holder', consistent with the purpose identified in Item [11].

Item [13] - regulation 2.30ZC, heading

Item [13] provides that the heading for regulation 2.30ZC be replaced with a new heading '**2.30ZC Approval to export from withdrawn quota**'. This provides for standardised terminology in the regulations, consistent with Item [11].

Item [14] - subregulation 2.30ZC (1), definition of *forfeited quota application day*

Item [14] provides that for subregulation 2.30ZC (1), '*forfeited quota application day*' in the definition '*forfeited quota application day*' be replaced with '*withdrawn quota application day*', consistent with the purpose identified in Item [11].

Item [15] - subregulations 2.30ZC (2) and (4)

Item [15] provides that for subregulations 2.30ZC (2) and (4), each mention of 'forfeited' be replaced with 'withdrawn', consistent with the purpose identified in Item [11].