



Dairy Produce Amendment Regulations 2005 (No. 2)¹

Select Legislative Instrument 2005 No. 231

I, JOHN LANDY, Administrator 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 20 October 2005

JOHN LANDY
Administrator

By the Administrator's Command

PETER McGAURAN
Minister for Agriculture, Fisheries and Forestry

1 Name of Regulations

These Regulations are the *Dairy Produce Amendment Regulations 2005 (No. 2)*.

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] Regulation 2.30B, definition of *dairy manufacturer*

omit

a person who:

insert

a person who, for commercial purposes:

[2] Subregulation 2.30BA (1), definition of *new entrant*

omit

has not held an allocation of quota for the category before the year.

insert

did not hold an allocation of quota for the category in the previous year.

[3] Regulation 2.30Q

omit

A new entrant

insert

- (1) A new entrant

[4] Regulation 2.30Q

insert

- (2) An application for an allocation of quota for a particular year (other than 2006) must be made before 15 October in the previous year.

[5] Subregulation 2.30R (1), including the note

substitute

- (1) In this regulation:

primary quota holder, in relation to a category under this Subdivision and a year, means a person who:

- (a) at any time during the previous year, held an allocation of quota for the category that was greater than:
- (i) 5% of the access amount for the category; or
 - (ii) 4 times the minimum amount for the category; and
- (b) has a net quota for the category for the previous year that is greater than zero.

secondary quota holder, in relation to a category under this Subdivision and a year, means a person who:

- (a) is not a primary quota holder but:
- (i) held an allocation of quota for the category in the previous year; and
 - (ii) has a net quota for the category for the previous year that is greater than zero; or
- (b) is a new entrant.

total forfeits, in relation to a category under this Subdivision and a year, means the sum of the amounts of quota for the category forfeited for the year by all quota holders under subregulations 2.30Z (6) and 2.30ZA (3).

Note Although only dairy manufacturers are entitled to apply for an allocation of quota, other persons, such as exporters, may acquire quota by a transfer under regulation 2.30Z.

- (1A) For this regulation, a person's ***net quota*** for a category for a year is worked out by:
- (a) adding:
 - (i) the amount of quota allocated to the person for the category for the year; and
 - (ii) any amounts of quota for the category that were permanently transferred, or taken to have been permanently transferred, to the person under regulation 2.30Z in the year; and
 - (b) subtracting from the result any amounts of quota for the category that were:
 - (i) permanently transferred, or taken to have been permanently transferred, from the person under regulation 2.30Z in the year; or
 - (ii) forfeited, under subregulation 2.30Z (6) or 2.30ZA (3) or both, by the person for the next year.

[6] Subregulations 2.30R (2A) and (3)

substitute

- (3) If there are no secondary quota holders, 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 holder's net quota for the previous year.

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 for the year; and
- (b) the total forfeits for the year.

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

Step 1. Allocate to each primary quota holder and secondary quota holder an amount equal to the holder's net quota for the previous year.

Step 2. Allocate to each primary quota holder and secondary 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) half of the additional access amount for the year; and
- (b) the total forfeits for the year.

Step 3. Allocate an equal amount to each secondary quota holder so that the sum of the allocations for this step equals half of the additional access amount for the year.

[7] Subregulation 2.30T (2)

renumber as subregulation (1)

[8] Regulation 2.30T

insert

- (2) After the end of 23 August in a year, any access amount remaining for a sub-category of the FTA category Other Dairy Products may be used for exports of dairy produce in another sub-category of that category.

[9] Subregulations 2.30Z (5) and (6), including the note
substitute

- (5) If a transferor transfers an amount of quota to the same transferee in each of 2 consecutive years (not including 2005), the transferor is taken to have permanently transferred the following amount of quota to the transferee in the second year:
- (a) if the amount transferred in each year is the same — that amount;
 - (b) if the amount transferred in each year is different — the lesser of the 2 amounts.
- (6) If a transferor transfers an amount of quota to different transferees in each of 2 consecutive years (not including 2005), the transferor forfeits the following amount of quota for the third year:
- (a) if the amount transferred in each year is the same — that amount;
 - (b) if the amount transferred in each year is different — the lesser of the 2 amounts.

Note Quota forfeited under subregulation (6) becomes available to other applicants in the third year: see subregulations 2.30R (3) and (4).

[10] Regulation 2.30ZA
substitute

2.30ZA Forfeiture of quota

- (1) This regulation applies in relation to quota for dairy produce in an FTA category other than the ice cream and ODP category.
- (2) In this regulation:
shipping year means the period of 12 months commencing on 1 November in a year and ending on 31 October in the next year.

- (3) If the amount of dairy produce exported by the holder of quota is, in each of 2 consecutive shipping years (not including the shipping year ending on 31 October 2005), less than 95% of the holder's quota for the year in which the shipping year ends, the holder forfeits, for the year in which the third shipping year ends, an amount of quota that is:

$$\frac{(\text{first year quota} - \text{first year exports}) + (\text{second year quota} - \text{second year exports})}{2}$$

where:

first year exports is the amount of the produce that the holder:

- (a) exported in the first shipping year; or
- (b) if subregulation (4) applies to the holder — is taken to have exported in the first shipping year.

first year quota is the holder's quota for the produce for the year in which the first shipping year ends, plus any amounts of quota permanently transferred (or taken to have been permanently transferred) to the holder in the year and less any amounts of quota permanently transferred (or taken to have been permanently transferred) from the holder in the year.

second year exports is the amount of the produce that the holder:

- (a) exported in the second shipping year; or
- (b) if subregulation (4) applies to the holder — is taken to have exported in the second shipping year.

second year quota is the holder's quota for the produce for the year in which the second shipping year ends, plus any amounts of quota permanently transferred (or taken to have been permanently transferred) to the holder in the year and less any amounts of quota permanently transferred (or taken to have been permanently transferred) from the holder in the year.

- (4) If the amount of the produce exported by the holder is, in each of the 2 consecutive shipping years, less than 5% of the holder's quota, the holder is taken to have exported no produce in the 2 shipping years.

[11] Regulation 2.30ZB, heading
substitute

2.30ZB Quota is withdrawn if not used

[12] Regulation 2.30ZB
omit

the holder forfeits the unused quota.

insert

the unused quota is withdrawn from the holder.

[13] Regulation 2.30ZC, heading
substitute

2.30ZC Approval to export from withdrawn quota

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

omit

forfeited quota application day

insert

withdrawn quota application day

[15] Subregulations 2.30ZC (2) and (4)

omit each mention of

forfeited

insert

withdrawn

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.