

EXPLANATORY STATEMENT

Export Control Act 1982

Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Order 2020

Legislative Authority

Section 23A of the *Export Control Act 1982* (the Act) provides that the Secretary of the Department of Agriculture, Water and the Environment (the department) may make orders providing for, or in relation to, the establishment and administration of a system or systems of tariff rate quotas for the export of goods.

The power to make the *Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Order 2020* (the Order) was delegated by the Secretary under section 19 of the Act on 5 March 2020 to the Assistant Secretary responsible for quota administration. The delegated power, when exercised by the Assistant Secretary is, under section 19(2) of the Act, deemed to have been exercised by the Secretary. A delegation of the Secretary's powers or functions under the Act can be made to an authorised officer. The Assistant Secretary was appointed as an authorised officer on 1 February 2020 under section 20 of the Act and has been delegated the power under section 23A.

Purpose

The purpose of the Order is to provide for the establishment and administration of a system of tariff rate quotas for the export of feed grain to Indonesia. The tariff rate quota permits Australian exporters to export stipulated volumes of feed grain to Indonesia at a reduced tariff rate.

Background

Indonesia allows Australia to ship quantities of feed grain to Indonesia each calendar year (1 January to 31 December) at reduced tariff rates under a country-specific tariff rate quota.

Australia manages the tariff rate quota on a cost-recovery basis. The aim of the quota administration is to optimise the value of the tariff rate quota for the collective benefit of the respective Australian agricultural industries.

Impact and Effect

The Order provides for administrative arrangements to ensure fair and equitable access by quota users to the Indonesian market. The ability to reserve quota ensures exporters have the necessary certainty that they can access the quota prior to preparing a consignment.

Consultation

Before making the instrument, the department consulted with exporter stakeholders and the industry representative body, Grain Trade Australia, regarding the feed grain tariff rate quota for the Indonesia Australia Comprehensive Economic Partnership Agreement (IA-CEPA).

The Office of Best Practice Regulation was consulted and advised that the IA-CEPA Analysis of Regulatory Impact on Australia (ARIA) certified by the Department of Foreign Affairs and Trade met the requirements of a regulation impact statement.

Details/Operation

Details of the Order are set out in Attachment A.

Other

The Order is compatible with human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

The Order is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Order 2020

Part 1—Preliminary

Section 1 – Name

This section provides that the name of the Order is the *Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Order 2020*.

Section 2 – Commencement

This section provides that the Order is to commence the day after it is registered.

Section 3 – Authority

This section provides that the Order is made under section 23A of the *Export Control Act 1982*.

Section 4 - Purpose of this instrument

This section provides the purpose of the Order as relating to the establishment and administration of a system of tariff rate quotas for the export of feed grain to Indonesia.

Section 5 – Definitions

This section provides definitions of terms used within the Order.

annual access amount, for a quota year, means the weight of feed grain that may, under the Indonesia-Australia Comprehensive Economic Partnership Agreement, be exported from Australia to Indonesia in the quota year at a reduced tariff rate.

certificate application period, for an eligible feed grain contract, means the period specified in the contract for applications for tariff rate quota certificates to be made. This is referenced in paragraph (c) of the definition of *eligible feed grain contract*. The certificate application period ensures a person has a clear plan for export in order to apply for a reservation of quota, so a reservation cannot be speculative. This increases the likelihood of quota being available to be reserved by those in a position to use it.

consignment means a single shipment (by sea or air) of feed grain that is exported to a single consignee.

eligible feed grain contract means a contract between a person and a consignee in Indonesia to export feed grain that:

- (a) is signed by both parties; and

- (b) specifies the total weight of feed grain to be exported to the consignee under the contract; and
- (c) specifies a period, no longer than 2 months, in which applications for tariff rate quota certificates for consignments to be exported will be made.

The requirement to provide a contract signed by both parties ensures that only a person who intends and is likely to use the quota can apply for and receive a reservation of quota. The contract represents the intention of the parties to export and justifies why an amount of quota should be reserved.

feed grain means feed grain of a kind that may be exported from Australia to Indonesia at a reduced tariff rate under the Indonesia-Australia Comprehensive Economic Partnership Agreement.

Indonesia-Australia Comprehensive Economic Partnership Agreement means the Indonesia-Australia Comprehensive Economic Partnership Agreement done at Jakarta on 4 March 2019.

Note: The Agreement could in 2020 be viewed free of charge in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

initial decision: see section 25.

Each of the following decisions is an *initial decision*: a decision not to reserve an amount of tariff rate quota entitlement under section 10, a decision not to issue a tariff rate quota certificate under subsection 14(1), a decision to cancel a tariff rate quota certificate under subsection 15(2), and a decision to cancel a tariff rate quota entitlement under subsection 22(1).

quota year means a period of 12 months beginning on 1 January.

relevant destination authority means the authority or body that is responsible for regulating the importation of feed grain into Indonesia.

relevant liability means:

- (a) a fee imposed under the *Export Control (Fees) Order 2015* that is due and payable; or
- (b) a charge prescribed by the *Export Charges (Imposition—Customs) Regulation 2015* that is due and payable; or
- (c) a charge prescribed by the *Export Charges (Imposition—General) Regulation 2015* that is due and payable.

relevant person, for an initial decision referred to in column 1 of an item in the table in section 25, means the person referred to in column 3 of that item.

reservation amount: a person's reservation amount for an eligible feed grain contract and a quota year is the amount of tariff rate quota entitlement that the Secretary reserved under section 9 for export under the contract in that quota year.

The note to the definition explains that the reservation amount does not change over time, unless it is varied under section 12. The amount of tariff rate quota entitlement for the contract and quota year will reduce over time as tariff rate quota certificates are issued for consignments of feed grain for export under the contract in the quota year.

tariff rate quota certificate means a tariff rate quota certificate issued under this instrument.

tariff rate quota entitlement: see section 6.

uncommitted annual access amount: the uncommitted annual access amount for a quota year at a particular time is the annual access amount for the quota year reduced by the sum of:

- (a) the total weight for which tariff rate quota certificates have been issued in relation to consignments of feed grain for export to Indonesia in that quota year; and
- (b) the total amounts of tariff rate quota entitlements at that time of all persons for all eligible feed grain contracts and that quota year.

The note to the definition explains that if a tariff rate quota certificate in relation to a consignment is cancelled, the certificate is taken never to have been issued (see section 19).

Section 6 – Tariff rate quota entitlement

This section provides a definition of tariff rate quota entitlement used within the Order.

Subsection 6(1) provides that in the instrument, a person has a tariff rate quota entitlement for an eligible feed grain contract and a quota year if:

- a) the Secretary has reserved an amount of tariff rate quota entitlement under section 9 for export under the contract in that quota year, and
- b) the entitlement has not been cancelled under section 22 (cancellation by Secretary), 23 (cancellation on request) or 24 (entitlement cancelled at the end of certificate application period).

Subsection 6(2) provides that the amount of a person's tariff rate quota entitlement at a particular time is the reservation amount for the contract and the quota year reduced by the total weight for which tariff rate quota certificates have been issued before that time in relation to consignments for export to Indonesia under the contract in that quota year.

Note 1 to subsection 6(2) explains that the amount reserved by the Secretary does not change over time, unless it is varied under section 12, whereas the amount of tariff rate quota entitlement for the contract and quota year will reduce over time as tariff rate quota certificates are issued for consignments of feed grain for export under the contract in the quota year.

Note 2 to subsection 6(2) directs the reader to section 19 and explains that if a tariff rate quota certificate in relation to a consignment is cancelled, the certificate is taken never to have been issued.

Subsection 6(3) provides that an amount includes a zero amount. This ensures a distinction is made between if a person is still considered to have an entitlement whereby section 15 (cancellation of tariff rate quota certificates) can be applied where necessary, compared to if a person no longer has an entitlement and section 16 (replacement tariff rate quota certificates) can be applied where necessary.

Part 2 – Reservation of tariff rate quota entitlement

Section 7 – Applications to reserve tariff rate quota entitlement

Subsection 7(1) provides that a person may apply to the Secretary to reserve an amount of tariff rate quota entitlement for export of feed grain to Indonesia in a quota year under an eligible feed grain contract (defined in section 5).

Subsection 7(2) provides that the maximum amount of tariff rate quota entitlement that the person may apply to reserve is 110% of the total weight of feed grain specified in the contract. The additional 10% caters for tolerance weights that are required for bulk shipping of grain, with regard to ensuring the balance of a vessel.

Subsection 7(3) provides that an application must not be made before 1 November in the calendar year immediately before the quota year. This ensures all applicants are afforded an equitable opportunity to apply.

The note to subsection 7(3) explains that a person also must not make an application in certain periods after having a previous amount of tariff rate quota entitlement cancelled (see subsections 23(6) and 24(4)). This ensures exclusion periods to applications can be enforced.

Subsection 7(4) provides that an application must be accompanied by a copy of the eligible feed grain contract and state the amount of tariff rate quota entitlement that the applicant wishes to reserve. The requirement to provide a contract signed by both parties ensures that only a person who is likely to use the quota can apply for and receive a reservation of quota. The contract represents the intention of the parties to export and justifies why an amount of quota should be reserved. The requirement to state the amount of tariff rate quota entitlement being requested to reserve, separate from the amount stated in the contract, is to enable the applicant to include a tolerance weight (as detailed in subsection 7(2)) if required.

The note to subsection 7(4) refers the reader to section 30 for additional requirements and other matters relating to applications.

Section 8 – Applications to be dealt with in order of receipt

Section 8 provides that the Secretary must deal with applications made under subsection 7(1) in the order in which the applications are received by the Secretary. This ensures equitable treatment of applicants.

The note to section 8 refers the reader to subsection 30(7) which deals with when an application is taken to be received by the Secretary.

Section 9 – Reserving tariff rate quota entitlement

Subsection 9(1) provides that section 9 applies in relation to an application under subsection 7(1).

Subsection 9(2) provides that, subject to section 10, the Secretary must reserve an amount of tariff rate quota entitlement for export by the applicant under the eligible feed grain contract in the quota year if, at the time the Secretary deals with the application:

- a) the uncommitted annual access amount (defined in section 5) for the quota year is greater than zero; and
- b) if the application was made before 1 May in the quota year—the total of the applicant’s reservation amounts for eligible feed grain contracts for the quota year is less than 150,000 tonnes.

The limitation of 150,000 tonnes is to cater for bulk grain exports while ensuring that a single exporter cannot reserve the entire quota volume. This limitation ceases on 1 May of the quota year as sufficient time is deemed to have past to allow interested exporters to apply for a reservation (reservations having opened on the previous 1 November (subsection 7(3)), providing six months). If quota is still available for reservation after this time it is deemed suitable to allow any exporter in a position to use it to apply, regardless of the amount they already have reserved.

The note to subsection 9(2) explains that section 10 deals with when the Secretary may decide not to reserve an amount of tariff rate quota entitlement.

Subsection 9(3) provides that the amount the Secretary must reserve is the lowest of the following amounts:

- a) the amount of tariff rate quota entitlement applied for;
- b) the uncommitted annual access amount at the time the Secretary deals with the application;
- c) if the application was made before 1 May in the quota year—the difference, at the time the Secretary deals with the application, between 150,000 tonnes and the total of the applicant’s reservation amounts for eligible feed grain contracts for the quota year.

This ensures that an applicant can receive the amount they applied for where quota is available and within the 150,000 tonne limit up until 1 May of the quota year.

Subsection 9(4) provides that, for the purposes of paragraph 2(b) and 3(c) (being in regard to applications made before 1 May and therefore the 150,000 tonne reservation limit still applying), the total of the applicant’s reservation amounts for eligible feed grain contracts and the quota year is taken to be reduced by the amount of any tariff rate quota entitlement of the person for an eligible feed grain contract and the quota year that has been cancelled under section 22, 23 or 24. This recognises that amounts of tariff rate quota entitlement that have been cancelled should no longer be considered as reserved.

Section 10 – When Secretary may decide not to reserve tariff rate quota entitlement

Section 10 provides that the Secretary may decide not to reserve an amount of tariff rate quota entitlement for export by the applicant under the eligible feed grain contract in the quota year if the Secretary considers that it is not appropriate to do so, taking into account any or all of the following:

- a) any failure by the applicant to comply with a request made under subsection 31(3) (requests relating to audits),
- b) if a licence is required under a law of the Commonwealth to export consignments of feed grain under the contract—whether the applicant holds such a licence,
- c) any relevant liability in relation to a tariff rate quota certificate that has not been paid by the applicant (including if the applicant is jointly liable with another person or other persons),

- d) whether the applicant's business as an exporter of feed grain is not financially viable or is not likely to remain so,
- e) whether it would not be in the best interests of the feed grain industry for the reservation to be made.

These grounds are intended to provide the Secretary discretion to consider circumstances where it may not be appropriate to reserve a quota entitlement including, but not limited to, risks to Australia's export markets or failure to pay for services.

Section 11 – Outcome of application

Subsection 11(1) provides that if the Secretary reserves an amount of tariff rate quota entitlement for export of feed grain by the application under the eligible feed grain contract in the quota year, the Secretary must:

- (a) make an entry reflecting the reservation in an electronic system maintained by the Department; and
- (b) give the applicant written notice of the reservation amount for the contract and the quota year.

This ensures proper record keeping to support the Department's functions and audit requirements, and ensures the applicant is notified of the amount of their reservation.

Subsection 11(2) provides that if the Secretary does not reserve an amount of tariff rate quota entitlement for export of feed grain by the applicant under the eligible feed grain contract in the quota year, the Secretary must give the applicant written notice stating:

- a) that the application was not successful; and
- b) the reasons why the applications was not successful; and
- c) if the decisions was made under section 10—information about the applicant's right have the decision reviewed.

The note to subsection 11(2) explains that an application might also not be successful because the uncommitted annual access amount for the quota year is zero, or because the applicant already has 150,000 tonnes reserved before 1 May in the quota year. In these instances there is no discretion in making the decision and therefore the decision is not reviewable.

Section 12 – Application to vary reservation amount

Subsection 12(1) provides that a person who has a tariff rate quota entitlement for an eligible feed grain contract (the *original contract*) and a quota year may, if the total weight of feed grain to be exported under the contract is varied (the *varied contract*), make an application to the Secretary to vary the reservation amount for the contract. For example, this may occur if the contract was varied to add additional consignments, or if a contract was reduced due to issues with production and supply of the product.

Subsection 12(2) provides that subsections 7(2) and (4) and sections 8 to 11 apply to the application as if it were an application under subsection 7(1). This ensures that in an application to vary the reservation amount, the necessary information must be provided, that applications are dealt with in the order of receipt, and necessary decision-making considerations are made.

The note to subsection 12(2) directs the reader to section 30 for additional requirements and other matters relating to applications.

Subsection 12(3) provides that, for the purposes of dealing with applications under section 9, the applicant is taken not to have a reservation amount and tariff rate quota entitlement for the contract and the quota year. The purpose is explained in the note to subsection 12(3), that this prevents the contract from being double-counted by excluding the original contract from calculations in relation to the varied contract.

Subsection 12(4) provides that if, under section 9, the Secretary reserves an amount of tariff rate quota entitlement for export in the quota year under the varied contract (the *new reservation amount*):

- a) the new reservation amount becomes the applicant's reservation amount for the contract and the quota year, and
- b) the applicant's tariff rate quota entitlement for the contract and the quota year is the new reservation amount reduced by the weight for which tariff rate quota certificates have already been issued in relation to consignments for export to Indonesia in the quota year under the original contract. This ensures that quota amounts that have already been used are still treated as such.

Subsection 12(5) provides that if the Secretary does not reserve an amount of tariff rate quota entitlement for export under the varied contract, the applicant's reservation amount and amount of tariff rate quota entitlement for the original contract and the quota year are unchanged. This ensures an applicant is not disadvantaged due to an unsuccessful variation request.

Part 3 – Tariff rate quota certificates

Section 13 – Issue of tariff rate quota certificates using tariff rate quota entitlement

Subsection 13(1) provides that a person who has a tariff rate quota entitlement for an eligible feed grain contract and a quota year may, if the amount of the entitlement is greater than zero, apply to the Secretary for a tariff rate quota certificate in relation to a consignment to be exported to Indonesia under the contract in the quota year.

Subsection 13(2) provides that an application must be made during the certificate application period for the contract (defined in section 5). This means that an application must be made within the period specified in the eligible feed grain contract for applications for tariff rate quota certificates. Applications outside of the certificate application period cannot be made.

The note to subsection 13(2) directs the reader to section 30 for additional requirements and other matters relating to applications.

Subsection 13(3) provides that subject to section 14, the Secretary must issue a tariff rate quota certificate to the applicant in relation to the consignment.

The note to subsection 13(3) explains that section 14 deals with when the Secretary may decide not to issue a certificate.

Subsection 13(4) provides that the certificate must be issued for the lower of either the weight of the consignment applied for or the amount of the applicant's tariff rate quota entitlement for the contract and the quota year at the time the Secretary deals with the application. This

ensures that an exporter cannot receive a certificate for a volume greater than their entitlement.

The note to subsection 13(4) refers the reader to subsection 6(2) and explains that the amount of the applicant's tariff rate quota entitlement for the contract and the quota year is reduced by the weight for which the tariff rate quota certificate is issued. This ensures the correct accounting of quota usage to avoid issuing certificates in excess of the allowable quota volume.

Section 14 – When Secretary may decide not to issue tariff rate quota certificate

Subsection 14(1) provides that the Secretary may decide not to issue a tariff rate quota certificate to an applicant under subsection 13(1) if the Secretary considers that it is not appropriate to issue the certificate, taking into account any or all of the following:

- a) any failure by the applicant to comply with a request made under subsection 31(3) (requests relating to audits);
- b) if a licence is required under a law of the Commonwealth to export consignments of feed grain under the contract—whether the applicant holds such a licence;
- c) any relevant liability in relation to a tariff rate quota certificate that has not been paid by the applicant (including if the applicant is jointly liable with another person or other persons);
- d) whether the applicant's business as an exporter of feed grain is not financially viable or is not likely to remain so;
- e) whether it would not be in the best interests of the feed grain industry for the certificate to be issued.

Subsection 14(2) provides that if the Secretary decides not to issue a tariff rate quota certificate, the Secretary must give the applicant written notice stating the reasons for the decision and providing information about the applicant's right to have the decision reviewed (detailed in Part 5- Reviewable decisions).

Section 15 – Cancellation of tariff rate quota certificates

Subsection 15(1) provides that the Secretary must cancel a tariff rate quota certificate in relation to a consignment for export to Indonesia if:

- (a) the person to whom the certificate was issued requests the Secretary to do so; and
- (b) the certificate has not been accepted by the relevant destination authority; and
- (c) if hard copies of the certificate were issued, the person must also give the Secretary all of the hard copies of the certificate or a declaration, in any form the Secretary requires and accompanied by any evidence the Secretary requires, about why the copies cannot be given.

This section provides exporters with the flexibility to ask for issued certificates to be cancelled. The provision does not allow certificates that have already been accepted by the relevant destination authority to be cancelled.

Subsection 15(2) provides that the Secretary may cancel a tariff rate quota certificate in relation to a consignment for export to Indonesia if:

- a) the certificate has not been accepted by the relevant destination authority; and
- b) if any of the following circumstances apply:
 - o the certificate is incorrect in any respect;

- the consignment did not leave Australia within 6 weeks after the certificate was issued;
- the person to whom the certificate was issued fails to comply with a request under subsection 31(3) (requests relating to audits);
- the person does not hold, or has ceased to hold, any licence required under a law of the Commonwealth to export the consignment;
- a relevant liability in relation to a tariff rate quota certificate has not been paid by the person (including if the person is jointly liable with another person or other persons);
- the person's business as an exporter of feed grain is not financially viable or is not likely to remain so;
- the Secretary considers that it would not be in the best interests of the feed grain industry for the person to continue to hold the certificate.

The note to subsection 15(2) explains that the Secretary must notify the person to whom the certificate was issued, as required under paragraph 18(1)(b).

Section 16 – Replacement tariff rate quota certificate

Subsection 16(1) provides that a person to whom a tariff rate quota certificate (the *original certificate*) was issued in relation to a consignment for export to Indonesia under an eligible feed grain contract in a quota year may apply to the Secretary for a new tariff rate quota certificate (the *replacement certificate*) to be issued in relation to a consignment for export to Indonesia under the contract in the quota year if:

- a) the original certificate has not been accepted by the relevant destination authority and has not been cancelled, and
- b) the tariff rate quota entitlement of the person for the eligible feed grain contract and quota year has been cancelled.

This is to cater for the circumstance where a person has a legitimate need to change to a tariff rate quota certificate (such as correcting an error) after an entitlement has been cancelled (such as where the certificate application period has ended).

Note 1 to subsection 16(1) clarifies that if a person still has a tariff rate quota entitlement (that is, the entitlement has not been cancelled) the person may request to cancel a tariff rate quota certificate under subsection 15(1) and apply for a new certificate under section 13.

Note 2 directs the reader to section 30 for additional requirements and other matters relating to applications.

Subsection 16(2) provides that the Secretary must issue a replacement certificate to the applicant in relation to the consignment.

Subsection 16(3) provides that the replacement certificate must be issued for the lowest of the following amount:

- a) the weight of the consignment;
- b) the difference between:
 - the reservation amount for the eligible feed grain contract and the quota year; and
 - the total weight for which tariff rate quota certificates (other than the original certificate) have been issued in relation to consignments for export under the eligible feed grain contract;
- c) the sum of:

- the uncommitted annual access amount at the time the Secretary deals with the application; and
- the amount for which the original certificate was issued.

This subsection ensures that in the circumstance where a person is requesting a change of certificate to reduce the weight, the certificate can be issued.

This subsection ensures that in the circumstance where a person is requesting a change of certificate to increase the weight, and when the person's tariff rate quota entitlement for the contract was cancelled with an unused amount of quota, consideration can be given to the person accessing that amount if needed and if still available. If the person's tariff rate quota entitlement for the contract was cancelled but the unused amount was zero, the person cannot receive a replacement certificate for an increased weight.

Subsection 16(4) provides that when the Secretary issues the replacement certificate, the Secretary must cancel the original certificate.

Section 17 – Recording issue of tariff rate quota certificate

Section 17 provides that if the Secretary issues a tariff rate quota certificate to a person under section 13 or 16, the Secretary must:

- a) record the issue of the certificate in an electronic system maintained by the Department; and
- b) either send the certificate to the person or give the person written notice that the certificate has been issued.

This ensures proper recording to support the Department's functions and audit requirements and ensures the applicant receives the certificate or is notified of the issuance.

Section 18 – Recording cancellation of tariff rate quota certificate

Subsection 18(1) provides that if the Secretary cancels a tariff rate quota certificate under section 15 or 16, the Secretary must:

- a) record the cancellation of the certificate in an electronic system maintained by the Department; and
- b) if the cancellation was under subsection 15(2) (cancellation on the Secretary's own initiative) give the person to whom the certificate was issued written notice of the cancellation.

This ensures proper recording to support the Department's functions and audit requirements and ensures that the exporter receives notice if the Secretary cancels a tariff rate quota certificate on the Secretary's own initiative.

Subsection 18(2) provides that a notice under paragraph (1)(b) must include the reasons for the cancellation and information about the person's right to have the decision reviewed (detailed in Part 5).

Section 19 – Effect of cancellation on calculations

Section 19 provides that for the purposes of working out the weight of tariff rate quota certificates that have been issued in relation to consignments, a tariff rate quota certificate that is cancelled is taken never to have been issued. This ensures that amounts of tariff rate

quota entitlement relating to cancelled certificates can be issued again, so no amount of quota is lost due to cancellations.

Section 20 – When tariff rate quota certificate has effect

Subsection 20(1) provides that if a tariff rate quota certificate in relation to a consignment for export to Indonesia in a quota year is issued before the start of the quota year, the certificate has no effect before the start of the quota year (beginning 1 January, section 5).

Subsection 20(2) provides that a tariff rate quota certificate in relation to a consignment for export to Indonesia in a quota year ceases to have effect if the consignment is not accepted for entry into Indonesia before the end of the quota year or if the relevant destination authority has set an earlier expiry date, that expiry date. This makes clear that a certificate must be used within its stated period of effect.

Section 21 – Tariff rate quota certificates not transferable or able to be varied

Section 21 provides that a tariff rate quota certificate is not transferable and may not be varied in any respect. This section includes a note that a certificate may be cancelled and, subject to the requirements of this instrument, a new certificate might be issued with similar contents. This section supports the integrity of the reservation system by preventing any circumvention of the reservation process. It also supports the integrity of certificates, providing greater confidence to trading partners.

Part 4 – Cancelling tariff rate quota entitlements

Section 22 – Secretary may cancel tariff rate quota entitlement

Subsection 22(1) provides that the Secretary may cancel the tariff rate quota entitlement of a person for an eligible feed grain contract and a quota year if any of the following apply:

- a) the person fails to comply with a request under subsection 31(3) (requests relating to audits),
- b) the person does not hold, or has ceased to hold any licence required under a law of the Commonwealth to export consignments of feed grain under the contract,
- c) a relevant liability in relation to a tariff rate quota certificate has not been paid by the person (including if the person is jointly liable with another person or other persons),
- d) the person's business as an exporter of feed grain is not financially viable or is not likely to remain so,
- e) the Secretary considers that it would not be in the best interests of the feed grain industry for the person to continue to have the tariff rate quota entitlement.

The note to subsection 22(1) refers the reader to subsection 9(4) and explains that for the purposes of paragraphs 9(2)(b) and (3)(c), the total of the person's reservation amounts for eligible feed grain contracts and the quota year is taken to be reduced by any tariff rate quota entitlement cancelled under this section. This recognises that amounts of tariff rate quota entitlement that have been cancelled should no longer be considered as reserved.

Subsection 22(2) provides that if the Secretary cancels a person's tariff rate quota entitlement for an eligible feed grain contract and a quota year under subsection 22(1), the Secretary must record the cancellation of the entitlement in an electronic system maintained by the Department and give the person written notice that the entitlement has been cancelled. This

ensures proper record keeping to support the Department's functions and audit requirements and ensures the person is notified of the cancellation.

Subsection 22(3) provides that a notice under paragraph (2)(b) must include the reasons for the cancellation and information about the person's right to have the decision reviewed (detailed in Part 5 – Reviewable decisions).

Section 23 – Cancellation of tariff rate quota entitlement on request

Subsection 23(1) provides that a person who has a tariff rate quota entitlement for an eligible feed grain contract and a quota year may give the Secretary a written notice (a *cancellation notice*) stating that:

- a) the person does not want to make further applications for tariff rate quota certificates for consignments under the contract; and
- b) the person wants the tariff rate quota entitlement for the contract to be cancelled.

This ensures that unwanted quota is returned and is made available to others who may wish to apply for a reservation when the person gives a cancellation notice.

Subsection 23(2) provides that a cancellation notice must be given to the Secretary before the end of the certificate application period (defined in section 5) for the contract. The note to the subsection directs the reader to section 24 and explains that if no notice is given and an amount of tariff rate quota entitlement remains at the end of the certificate application period, the entitlement will be cancelled and the person will be excluded from applying for further reservation amounts for a period defined in section 24.

Subsection 23(3) provides that if the Secretary receives a cancellation notice, the person's tariff rate quota entitlement for the contract and the quota year is cancelled at the time the Secretary receives the notice.

The note to subsection 23(3) refers the reader to subsection 9(4) and explains that for the purposes of paragraphs 9(2)(b) and (3)(c), the total of the person's reservation amounts for eligible feed grain contracts and the quota year is taken to be reduced by any tariff rate quota entitlement cancelled under this section. This recognises that amounts of tariff rate quota entitlement that have been cancelled should no longer be considered as reserved.

Subsection 23(4) provides that if at the time the Secretary receives the notice, the person has made one or more applications for a tariff rate quota certificate in relation to a consignment to be exported under the contract in the quota year that the Secretary has not dealt with, the entitlement is cancelled when the Secretary has dealt with all of the applications. This ensures the person can be proactive in returning unneeded quota amounts without detriment to their applications.

Subsection 23(5) provides that the Secretary must record the cancellation of the entitlement in an electronic system maintained by the Department. This ensures proper record keeping to support the Department's functions and audit requirements.

Subsection 23(6) provides that if the amount of the cancelled tariff rate quota entitlement for the contract and the quota year is more than 25% of the reservation amount for the contract and quota year, the person must not make an application under section 7 for a period of 28 days beginning on the day the Secretary receives the cancellation notice. This is to deter

applicants requesting entitlements beyond which they can reasonably expect to export. This supports the policy of encouraging quota to be available to those who are in a position to use it.

Section 24 – Entitlement cancelled at end of certificate application period

Subsection 24(1) provides that if a person has a tariff rate quota entitlement for an eligible feed grain contract and a quota year at the end of the certificate application period for the contract (and has not given the Secretary a cancellation notice in accordance with section 23), the entitlement is cancelled at the start of the day after the last day of the certificate application period for the contract (the *cancellation time*).

The note to subsection 24(1) refers the reader to subsection 9(4) and explains that for the purposes of paragraphs 9(2)(b) and (3)(c), the total of the person's reservation amounts for eligible feed grain contracts and the quota year is taken to be reduced by any tariff rate quota entitlement cancelled under this section. This recognises that amounts of tariff rate quota entitlement that have been cancelled should no longer be considered as reserved.

Subsection 24(2) provides that if at the cancellation time the person has made one or more applications for a tariff rate quota certificate in relation to a consignment to be exported under the contract in the quota year that the Secretary has not dealt with, the entitlement is cancelled when the Secretary has dealt with all of the applications. This ensures the person cannot be unfairly disadvantaged by any delay to the Secretary dealing with an application.

Subsection 24(3) provides that the Secretary must record the cancellation of the entitlement in an electronic system maintained by the Department. This ensures proper record keeping to support the Department's functions and audit requirements.

Subsection 24(4) provides that if a person's tariff rate quota entitlement for a contract and quota year is cancelled under this section and the amount of the cancelled entitlement is not zero, the person must not make an application under section 7 (application for a reservation):

- a) for a period of 28 days beginning on the day the entitlement is cancelled; or
- b) if the amount of the cancelled entitlement is equal to the person's reservation amount for the contract and quota year—until 1 May in the next quota year.

Paragraph (4)(a) incentivises entitlement holders to return quota they will not use as soon as possible, making it available to those who are in a position to use it. Paragraph (4)(b) is intended to discourage a person from making an application for a quota entitlement that they will not use. The subsection ensures that it is not necessary for a person with an entitlement of zero to provide a cancellation notification to avoid any exclusion to applying.

Part 5 – Reviewable decisions

Section 25 Initial decisions

Section 25 provides that each of the decisions referred to in column 1 of the following table is an *initial decision*.

Initial decisions			
Item	Column 1 Initial decision	Column 2 Provision under which the initial decision is made	Column 3 Relevant person for the initial decision
1	Not to reserve an amount of tariff rate quota entitlement	Section 10	The person who applied for the reservation amount
2	Not to issue a tariff rate quota certificate	Subsection 14(1)	The person who applied for the certificate
3	To cancel a tariff rate quota certificate	Subsection 15(2)	The person to whom the certificate was issued
4	To cancel a tariff rate quota entitlement	Subsection 22(1)	The person who held the entitlement

Section 26 – Applications for reconsideration by Secretary of initial decision

Subsection 26(1) provides that a relevant person (referred to in column 3 of section 25) for an initial decision may apply to the Secretary to have the initial decision reconsidered.

Subsection 26(2) provides that an application for reconsideration under this section must be in writing and set out the reasons for the application. It must be lodged with the Secretary within 28 days after the day the initial decision first came to the notice of the applicant, or within such longer period as the Secretary allows.

Section 27 - Secretary to reconsider initial decision

Subsection 27(1) provides that on receiving an application under section 26 for reconsideration of an initial decision, the Secretary must reconsider the initial decision and, subject to this Part, the Secretary may affirm or set aside the initial decision. If the Secretary decides to set aside the initial decision, they may make any decision that the person who made the initial decision could have made.

Subsection 27(2) provides that a decision that is set aside by the Secretary ceases to have effect.

Subsection 27(3) provides that a decision of the Secretary to set aside the initial decision and to make another decision under subsection 27(1)(b) takes effect on the day specified in the decision or if a day is not specified, on the day the decision was made.

Subsection 27(4) provides that the Secretary must give the applicant written notice of the Secretary's decision under this section within 45 days after the day when the application for reconsideration was received.

Subsection 27(5) provides that the notice must set out the reasons for the Secretary's decision.

Subsection 27(6) provides that for the purposes of section 28, the Secretary is taken to have affirmed the initial decision if the applicant does not receive notice of the decision on review within 45 days after the day when the application for reconsideration was received. This ensures a review of the initial decision cannot sit unmade indefinitely. The applicant will be

able to exercise their review rights and make an application to the Administrative Appeals Tribunal for review of the decision to affirm the initial decision under subsection 27(6) if they are still unsatisfied (per section 28).

Section 28 – Application for review by Administrative Appeals Tribunal

Section 28 provides that applications may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary under section 27.

Section 29 – Reconsidering and reviewing decisions

Subsection 29(1)(a) provides that for the purposes of reconsidering, or reviewing, a decision, references in section 9 (reserving tariff rate quota entitlement) to an amount at the time the Secretary deals with an application are taken to be references to the amount at the time of the reconsideration or review.

Subsection 29(1)(b) provides that for the purposes of reconsidering, or reviewing, a decision, references in section 13 (issue of tariff rate quota certificates using entitlement) to an amount of a person's tariff rate quota entitlement for a contract and quota year at the time the Secretary deals with an application are taken to be references to:

- for a reconsideration or review at a time when the person has a tariff rate quota entitlement for the contract and quota year—the amount of tariff rate quota entitlement at the time of the reconsideration or review; or
- for a reconsideration or review after the person's tariff rate quota entitlement for the contract and quota year has been cancelled—the uncommitted annual access amount at the time of the reconsideration or review.

This subsection ensures that, given the finite nature of quota and the reservation of entitlements, the limitations of any decisions are clear with regard to the availability of quota.

Subsection 29(2) provides that if:

- a) a decision to cancel a tariff rate quota certificate issued to a person is set aside at a time; and
- b) the amount for which the certificate was issued is more than the amount (the *available amount*) for which a certificate could be issued to the person under section 13 or 16 at that time;

the cancelled certificate may only be reinstated for the available amount.

Subsection 29(3) provides that if:

- a) a decision to cancel a tariff rate quota entitlement is set aside at a time; and
- b) the amount of tariff rate quota entitlement that was cancelled is more than the uncommitted annual access amount at that time (the *available amount*);

the tariff rate quota entitlement may only be reinstated for the available amount.

This section ensures that, regardless of whether the Secretary would make a decision to set aside an initial decision, this action can only be taken to the extent that there is a sufficient amount of quota available at the time the Secretary is reconsidering or reviewing the decision. Due to the agreements in place with trading partners, the certificates issued for any quota type cannot exceed the stated access amount.

Part 6 – Miscellaneous

Section 30 – Matters relating to applications

Subsection 30(1) provides that section 30 applies in relation to an application under any of the following subsections:

- a) subsection 7(1) regarding applications to reserve an amount of tariff rate quota entitlement;
- b) subsection 12(1) regarding applications to vary the reservation amount for an eligible feed grain contract;
- c) subsection 13(1) regarding applications for a tariff rate quota certificate;
- d) subsection 16(1) regarding applications for a replacement tariff rate quota certificate.

Subsection 30(2) provides that an application must be made in a manner approved, in writing, by the Secretary and if the Secretary has approved a form for making the application, it must include the information required by the form and be accompanied by any documents required by the form.

This subsection includes a note that a person may commit an offence if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code*).

Subsection 30(3) provides that the Secretary may accept any information or document previously given to the Secretary in connection with an application made under this instrument as satisfying any requirement to give that information or document under subsection 30(2). This is included so an applicant is not required to provide the same information twice.

Subsection 30(4) provides that an application is taken not to have been made if the application does not comply with the requirements referred to in subsection 30(2) for the application. This is to ensure that all information must be provided in order for it to be considered an application and therefore to be dealt with in the order received.

Subsection 30(5) provides that the Secretary may request further information from the applicant that is relevant to the application.

Subsection 30(6) provides that any further information in relation to the application (whether or not provided in response to a request under subsection 30(5)) must be given to the Secretary.

Subsection 30(7) provides that an application is taken to be received by the Secretary when the information required by the approved form for the application or otherwise required by the Secretary is received and if further information is requested under subsection 30(5) in relation to the application, that further information is received.

Subsection 30(8) provides that a person who has made an application may withdraw the application at any time before the Secretary makes a decision on the application.

Section 31 - Audits

Subsection 31(1) provides that the Secretary may require an audit to be carried out in relation to the following:

- a) an amount of tariff rate quota entitlement reserved for a person;
- b) all amounts of tariff rate quota entitlements reserved for a person during a specified period;
- c) a tariff rate quota certificate issued to a person;
- d) all tariff rate quota certificates issued to a person during a specified period.

Subsection 31(2) provides that an audit must be carried out by an auditor approved in writing by the Secretary.

Subsection 31(3) provides that a person (the *auditor*) who is carrying out an audit in relation to one or more tariff rate quota entitlements reserved for a person, or tariff rate quota certificates issued to a person, may request the person to do either or both of the following:

- a) produce any documents, records or things that the auditor is satisfied are relevant to the audit;
- b) provide the auditor with all reasonable facilities and assistance for the effective carrying out of the audit.

The Secretary may require an audit to be carried out to verify that the products for which tariff rate quota entitlements were reserved or certificates were issued met all requirements to be considered as eligible products for the tariff rate quota.

Section 32 - Secretary may arrange for use of computer programs to make decisions

Subsection 32(1) provides that the Secretary may arrange for the use, under the Secretary's control, of computer programs for any purposes for which the Secretary may, or must, under this instrument:

- a) make a decision, or
- b) exercise any power or comply with any obligation, or
- c) do anything else related to making a decision referred to in paragraph (a), or related to exercising a power or complying with an obligation referred to in paragraph (b).

Subsection 32(2) provides that subsection 32(1) does not apply in relation to making an initial decision or reconsidering an initial decision under subsection 27. This subsection includes a note, directing the reader to refer to section 25 for details on an initial decision. An initial decision is a decision:

- not to reserve a tariff rate quota entitlement under section 10
- not to issue a tariff rate quota certificate under subsection 14(1)
- to cancel a tariff rate quota certificate under subsection 15(2)
- to cancel a tariff rate quota entitlement under subsection 22(1).

Reconsideration of an initial decision is made by the Secretary under section 27(1). The Secretary's decision is discretionary. The Secretary's decision is not a decision set out under subsection 32(1) and therefore is not a decision that can be made by a computer program.

Computer programs can only be used for making decisions or exercising powers referred to in subsection (1). However, under subsection (2), subsection (1) does not apply to an initial

decision or a decision to reconsider an initial decision. Decisions referred to in subsection (2) are discretionary and therefore are not decisions suitable for computer programs to make.

Subsection 32(3) provides that the Secretary must take all reasonable steps to ensure that decisions made by the operation of a computer program under an arrangement made under subsection 32(1) are correct. This provision reflects that before a computer program is used for decision making, the Secretary will confirm that the design ensures decisions will be accurate and consistent and reflect the requirements set out in this Order and underlying policies. The systems will also be maintained and updated to ensure currency and that decisions continue to be correct.

Subsection 32(4) provides that the Secretary is taken to have:

- a) made a decision, or
- b) exercised a power or complied with an obligation, or
- c) done something else related to the making of a decision or exercise of a power or compliance with an obligation;

that was made, exercised, complied with or done by the operation of a computer program under an arrangement made under subsection 32(1).

Subsection 32(5) provides that the Secretary may make a decision in substitution for a decision the Secretary is taken to have made under paragraph (4)(a) if the Secretary is satisfied that the decision made by the operation of the computer program is incorrect. This is a safeguard in the legislation to recognise that despite the reasonable steps taken under subsection 32(3) to ensure decisions made by computer programs are correct, there can be circumstances where errors occur. This provision ensures such errors can be corrected.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Order 2020.

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the *Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Order 2020* is to set out the administrative arrangements for the fair and equitable access to, and reservation of, the feed grain tariff rate quota operating under the Indonesia-Australia Comprehensive Economic Partnership Agreement. The tariff rate quota permits Australian exporters to export stipulated volumes of particular feed grain products to Indonesia.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

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