



# Dairy Produce Regulations 1986

**Statutory Rules 1986 No. 166 as amended**

made under the

*Dairy Produce Act 1986*

---

This compilation was prepared on 25 October 2005  
taking into account amendments up to SLI 2005 No. 231

Prepared by the Office of Legislative Drafting and Publishing,  
Attorney-General's Department, Canberra

---

## Contents

<b>Part I</b>	<b>Preliminary</b>	
	1 Name of Regulations [see Note 1]	6
	2 Interpretation	6
	2A Gross value of production	6
<b>Part 2</b>	<b>Export control</b>	
<b>Division 2.1</b>	<b>General</b>	
	2.01 Interpretation	8
	2.02 Object of Part 2	8
	2.03 Declaration of regulated dairy produce	9
	2.04 Declaration of regulated dairy markets	9
<b>Division 2.2</b>	<b>Export of regulated dairy produce to the European regulated dairy market</b>	
	2.05 Application of Division 2.2	9
	2.06 Definitions for Division 2.2	9
	2.07 Application for approval to export	10
	2.08 Grant of approval to export	11
	2.09 Conditions of approval to export	12
	2.10 Period of approval to export	12
	2.11 Application for entitlement to export	13
	2.12 Allocation of entitlement to export	13
	2.13 Entitlement account and notice of entitlement	15
	2.14 Application fee — entitlement to export	16
	2.15 Conditions of entitlement to export	16
	2.16 Period of entitlement	16
	2.17 Transfer of entitlement to export	17
<b>Division 2.3</b>	<b>Export of regulated dairy produce to the US, other than under the FTA</b>	
	2.18 Application of Division 2.3	18
	2.19 Definitions for Division 2.3	18
	2.20 Application for approval to export	19
	2.21 Grant of approval to export	20
	2.22 Conditions of approval to export	21

	Page	
2.23	Period of approval to export	22
2.24	Application for entitlement to export eligible produce	22
2.25	Allocation of entitlement to export eligible produce	23
2.26	Entitlement account and notice of entitlement	24
2.27	Application fee — entitlement to export	25
2.28	Conditions of entitlement to export	25
2.29	Period of entitlement	26
2.30	Transfer of entitlement to export eligible produce	27
<b>Division 2.3A</b>	<b>Export of regulated dairy produce (other than Schedule 1A produce) to the US under the FTA</b>	
<b>Subdivision 2.3A.1</b>	<b>General</b>	
2.30A	Application of Division 2.3A	28
2.30B	Definitions for Division 2.3A	28
2.30BA	Meaning of <i>new entrant</i>	29
2.30C	Categories and sub-categories of dairy produce	29
<b>Subdivision 2.3A.2</b>	<b>Quota allocation for categories other than ice cream and ODP category — 2005 only</b>	
2.30D	Application of Subdivision 2.3A.2	31
2.30E	Definitions for Subdivision 2.3A.2	31
2.30F	Meaning of <i>02/03 export amount</i>	31
2.30G	Applications for allocation of quota	32
2.30H	Disadvantaged applicants	33
2.30I	Preliminary allocations of quota	33
2.30J	Identifying primary and secondary applicants	35
2.30K	Final quota allocations to primary applicants for a category with a set-aside	35
2.30L	Final quota allocations — secondary applicants for a category with a set-aside	36
2.30M	Final quota allocations — Non-fat Dried Milk Powder and Skim Milk Powder	36
2.30O	Secretary to tell applicant about amount of quota	37
<b>Subdivision 2.3A.3</b>	<b>Quota allocation for categories other than ice cream and ODP category — 2006 and subsequent years</b>	
2.30P	Application of Subdivision 2.3A.3	38
2.30Q	Applications by new entrants for allocation of quota	38
2.30R	Allocation of quota	38
<b>Subdivision 2.3A.4</b>	<b>Export approvals for ice cream and ODP category</b>	
2.30S	Application of Subdivision 2.3A.4	40
2.30SA	Definition for Subdivision 2.3A.4	40

	Page
2.30T Access amounts	41
2.30U Applications for export approvals	41
2.30V Export approvals	42
2.30W Forfeiture of approval	43
<b>Subdivision 2.3A.5 Miscellaneous</b>	
2.30X Application for quota certificate — categories other than ice cream and ODP category	44
2.30Y Export of dairy products	44
2.30Z Transfer of quota	44
2.30ZA Forfeiture of quota	45
2.30ZB Quota is withdrawn if not used	47
2.30ZC Approval to export from withdrawn quota	47
2.30ZD Fees (Act, s 54)	47
<b>Division 2.4 Miscellaneous</b>	
2.31 Variation and revocation of approval or entitlement	48
2.32 Review of decisions	48
2.33 Address for applications and information in writing	49
2.34 Delegation by Secretary	49
<b>Part III Records, returns and payment of levies</b>	
5 Records to be kept	50
6 Returns of purchases of relevant dairy produce	51
7 Returns in relation to dairy products	52
8 Authorised agent	53
9 Execution of documents by a company	53
<b>Part V Miscellaneous</b>	
16 Prescribed milk fat content	54
17 Prescribed protein content	54
<b>Schedule 1A Regulated dairy produce</b>	55
Part 1 Definitions	55
Part 2 Dairy produce for the European Union	55
Part 3 Dairy produce for the United States of America	56
Part 4 Dairy produce for the US under the FTA	57
<b>Schedule 1B</b>	60
Part 1 Category A produce	60
Part 2 Category B produce	61

---

		Page
<b>Schedule 1</b>	<b>Appointment of authorised agent</b>	63
Form		63
<b>Schedule 2</b>	<b>Milk fat and protein content — kind of dairy produce</b>	64
<b>Schedule 3</b>	<b>Milk fat and protein content — class of dairy produce</b>	68
<b>Notes</b>		69

**Regulation 1**

---

**Part I Preliminary****1 Name of Regulations** [see Note 1]

These Regulations are the *Dairy Produce Regulations 1986*.

**2 Interpretation**

- (1) In these Regulations:

*Act* means the *Dairy Produce Act 1986*.

*AQIS* means the Australian Quarantine and Inspection Service.

*casein* includes all caseinates and co-precipitates.

*Department* means the Department of Agriculture, Fisheries and Forestry.

*month* means one of the 12 months of the year.

*Secretary* means the Secretary of the Department.

- (2) In these Regulations:

- (a) a reference to a person who purchases relevant dairy produce shall be read as a reference to a person who purchases from the producer relevant dairy produce on which levy is imposed; and
- (b) a reference to an authorised agent shall be read as a reference to a person appointed under regulation 8 to be an authorised agent.

**2A Gross value of production**

- (1) For subsection 6 (5) of the Act, the Minister must determine the amount of the gross value of production of milk, for a financial year (the *relevant financial year*), by using:

$$\frac{A + B + C}{3}$$

where:

*A* is the estimated value of milk to be produced in the relevant financial year.

**Regulation 2A**

---

*B* is the value of milk produced in the financial year immediately before the relevant financial year (the *previous financial year*).

*C* is the value of milk produced in the financial year immediately before the previous financial year.

- (2) In subregulation (1), a reference to the value of milk produced, or to the estimated value of milk to be produced, in a financial year is a reference to the production figure supplied by the Australian Bureau of Agricultural and Resource Economics that shows:
- (a) the gross value of milk produced by the dairy industry in that financial year; or
  - (b) the estimated gross value of milk to be produced by the dairy industry for that financial year.

**Regulation 2.01**

---

## **Part 2                      Export control**

### **Division 2.1              General**

#### **2.01              Interpretation**

(1) In this Part:

*consignment* means a single shipment of regulated dairy produce that is exported by sea or air to a single consignee.

*shipped weight*, in relation to regulated dairy produce, means the weight, in kilograms, of the produce after it is loaded for shipment.

(2) In this Part, a *significant change* takes place in relation to an exporter if:

(a) the exporter changes any of the following:

- (i) its name, or the registered business name under which it carries on business;
- (ii) its business address or other contact details;
- (iii) the kind of business it undertakes; or

(b) for an exporter that is a corporation — the exporter becomes an externally administered body corporate (within the meaning of the *Corporations Act 2001*); or

(c) for an exporter that is a sole trader — the exporter becomes bankrupt.

#### **2.02              Object of Part 2**

The object of this Part is to establish a system of export control that:

- (a) facilitates the orderly export of regulated dairy produce to regulated dairy markets in respect of that produce; and
- (b) enables the Commonwealth to administer Australia's entitlements to export dairy produce at reduced, or special, tariff rates to particular dairy markets.

**Regulation 2.06**

---

**2.03 Declaration of regulated dairy produce**

For paragraph 52 (a) of the Act, each of the following dairy produce is declared to be regulated dairy produce on or after 1 January 2004:

- (a) dairy produce described in Part 2 of Schedule 1A to which a reduced tariff rate will apply on entry into the European Union;
- (b) dairy produce described in Parts 3 and 4 of Schedule 1A.

**2.04 Declaration of regulated dairy markets**

For paragraph 52 (b) of the Act:

- (a) the European Union is declared to be, on or after 1 January 2004, a regulated dairy market in respect of regulated dairy produce mentioned paragraph 2.03 (a); and
- (b) the United States of America is declared to be, on or after 1 January 2004, a regulated dairy market in respect of regulated dairy produce mentioned in paragraph 2.03 (b).

**Division 2.2 Export of regulated dairy produce to the European regulated dairy market**

**2.05 Application of Division 2.2**

This Division applies to a consignment that is to be exported to the European Union for the entitlement year 2004 or any entitlement year after that.

**2.06 Definitions for Division 2.2**

In this Division:

*entitlement account*, in relation to an exporter's entitlement, means the account in which the Department records:

- (a) the amount of entitlement to export regulated dairy produce that is held by the exporter, under regulation 2.12, subregulation 2.16 (3) or regulation 2.17, for an entitlement year; and

### Regulation 2.07

---

- (b) the shipped weight of the produce that is exported by the exporter for the entitlement year.

**entitlement year**, in relation to entitlement to export regulated dairy produce, means the calendar year for which the entitlement is allocated.

**European regulated dairy market** means the regulated dairy market declared under paragraph 2.04 (a).

**Guidelines for exports to the EU** means the *Guidelines for the Control of Regulated Dairy Produce Exported to the European Union* published by the Department, as in force at the commencement of this Part.

*Note* The Guidelines for exports to the EU are available at [www.affa.gov.au/quota](http://www.affa.gov.au/quota).

**holder of entitlement** means an exporter that holds entitlement to export under regulation 2.12, subregulation 2.16 (3) or regulation 2.17.

**IMA 1 certificate** means the inward monitoring arrangements certificate required by the European Commission for dairy produce imported into the European regulated dairy market at a reduced tariff rate.

### 2.07 Application for approval to export

- (1) Before a consignment of regulated dairy produce is exported to the European regulated dairy market, the exporter of the produce must obtain an approval to export the consignment.
- (2) An application for approval must be in a form approved by the Secretary and include the following information:
  - (a) the name of the exporter making the application;
  - (b) the exporter's business address;
  - (c) in relation to the regulated dairy produce to be exported in the consignment:
    - (i) its type; and
    - (ii) what its shipped weight is or will be; and
    - (iii) the name and address of the manufacturer of the produce;
  - (d) the name of the importer;

**Regulation 2.08**

---

- (e) the name of the ship or air freight carrier and the voyage or flight number;
  - (f) the port of loading and the date of loading;
  - (g) the name of the final destination country;
  - (h) the intended port of discharge.
- (3) An application for approval to export a consignment is taken to have been made by an exporter if the Department is notified by AQIS that the exporter has given notice of intention to export the consignment under Part 8 of the *Prescribed Goods (General) Orders 1985*.

**2.08 Grant of approval to export**

- (1) The Secretary must grant an approval to export a consignment of regulated dairy produce if:
- (a) an application is made, or is taken to have been made, by the exporter under regulation 2.07; and
  - (b) the exporter is a holder of entitlement to export the produce; and
  - (c) the exporter will not exceed its entitlement as a result of the export of the consignment; and
  - (d) the Secretary has no reason to believe that the total shipped weight of regulated dairy produce that, under the law of the European Union, may be imported into the European regulated dairy market from Australia will be exceeded as a result of the export.
- (2) If an approval to export is granted to an exporter, the Secretary must give the exporter a written notice of approval that sets out:
- (a) the shipped weight of regulated dairy produce that may be exported in the consignment; and
  - (b) the day the approval takes effect; and
  - (c) the conditions of the approval.

*Note* Under subsection 53 (1) of the Act a person is guilty of an offence if the person exports regulated dairy produce to a regulated dairy market and the person does not hold an approval in relation to the export.



---

**Regulation 2.12**

---

the end of the 28th day after the day the approval takes effect; or

- (b) if paragraph (a) does not apply — on the earlier of:
  - (i) 3 months after the day the approval takes effect; and
  - (ii) the end of 31 December in the entitlement year for which the consignment is exported.

### **2.11 Application for entitlement to export**

- (1) An application for entitlement to export regulated dairy produce to the European regulated dairy market for an entitlement year must be made to the Secretary, in writing:
  - (a) for the entitlement year 2004 — before 14 November 2003; and
  - (b) for any entitlement year after 2004 — before 1 November in the year before the entitlement year.
- (2) An exporter is taken to have applied for entitlement to export regulated dairy produce for an entitlement year if the exporter:
  - (a) has, at any time during the 2 years immediately preceding the entitlement year, exported to the European Union dairy produce described in Part 2 of Schedule 1A to which a reduced tariff rate applied on entry into the European Union; and
  - (b) for the entitlement year 2004 — has not given to the Department, before 14 November 2003, written notice that the exporter does not wish to be allocated entitlement for the entitlement year; and
  - (c) for any entitlement year after 2004 — has not given to the Department, before 1 November in the year before the entitlement year, written notice that the exporter does not wish to be allocated entitlement for the entitlement year.

### **2.12 Allocation of entitlement to export**

- (1) Entitlement to export regulated dairy produce to the European regulated dairy market for an entitlement year may be allocated by the Secretary, before the entitlement year, to an exporter that:



---

**Regulation 2.13**

- (b) if paragraph (a) does not apply — invite exporters to apply for the amount of entitlement.
- (6) This regulation does not require the Secretary to allocate entitlement to a particular exporter, or to any exporters, if the Secretary considers that it would not be in the best interests of the dairy industry to make the allocation.

**2.13 Entitlement account and notice of entitlement**

- (1) If entitlement to export is allocated to an exporter under regulation 2.12, the Secretary:
  - (a) must create an entitlement account for the exporter's entitlement; and
  - (b) must give to the exporter written notice of the allocation.
- (2) Notice under paragraph (1) (b) must include:
  - (a) details of the regulated dairy produce to which the entitlement relates; and
  - (b) details of the amount of entitlement allocated; and
  - (c) details of the application fee that the exporter must pay under regulation 2.14; and
  - (d) the conditions of the entitlement; and
  - (e) a statement to the effect that, if the exporter is dissatisfied with the amount of entitlement allocated, the exporter may apply to the Administrative Appeals Tribunal for review of that decision.
- (3) If entitlement to export is not allocated to an exporter that meets the requirements in paragraphs 2.12 (1) (a) and (b), the Secretary, within 7 days after making the decision:
  - (a) must give to the exporter a written notice that sets out the reasons for the decision; and
  - (b) must include in the written notice a statement to the effect that, if the exporter is dissatisfied with the Secretary's decision, the exporter may apply to the Administrative Appeals Tribunal for review of the decision.

*Note* See regulation 2.32 concerning review of decisions.



**Regulation 2.17**

---

- (ii) if the entitlement is withdrawn from the exporter under subregulation (2) — the day the entitlement is withdrawn.
- (2) Any unused amount of an exporter's entitlement may be withdrawn by the Secretary if, on or before 23 August in an entitlement year, the exporter:
- (a) is not granted, under regulation 2.08, approval to export the unused amount of entitlement; or
  - (b) does not tell the Department, in writing, how the exporter intends to deal with the unused amount of entitlement.

*Note* Before 20 August in each entitlement year, the Department will send a notice about the requirement in paragraph 2.16 (2) (b) to each exporter that is a holder of entitlement under regulation 2.12 or 2.17 for the entitlement year.

- (3) If an unused amount of entitlement is withdrawn from an exporter under subregulation (2), the Secretary may allocate the amount to another exporter in accordance with the Guidelines for exports to the EU.

## **2.17 Transfer of entitlement to export**

- (1) An exporter (the *transferor*) that is a holder of entitlement may transfer all or part of the entitlement to another exporter (the *transferee*) if the transferor gives the Department written notice of the following information:
- (a) the name of the transferor and the transferee;
  - (b) the entitlement account from which the entitlement is being transferred;
  - (c) if the transferee is a holder of entitlement to export the produce — the entitlement account to which the entitlement is being transferred;
  - (d) the amount of entitlement being transferred;
  - (e) whether the purpose of the transfer is to enable the transferee to export regulated dairy produce on behalf of the transferor;
  - (f) whether the transfer will be temporary or permanent.

**Regulation 2.18**

---

- (2) A transfer of entitlement does not take effect until the day the Department receives notice of the transfer under subregulation (1).
- (3) If the Department receives notice under subregulation (1), the Secretary must:
  - (a) if the transferee is not a holder of entitlement to export the produce — create an entitlement account for the transferee's entitlement; and
  - (b) record the transfer in the entitlement account of the transferor and the transferee.
- (4) Entitlement that is transferred under this regulation is subject to the same conditions that applied to the entitlement before it was transferred.
- (5) Paragraph 2.16 (1) (b) applies to entitlement that is transferred under this regulation as if the entitlement transferred were entitlement allocated under regulation 2.12.

**Division 2.3                      Export of regulated dairy produce  
to the US, other than under the  
FTA**

**2.18                      Application of Division 2.3**

This Division applies in relation to consignments of eligible produce that are to be exported to the United States of America for the year 2004 or any year after that, other than produce that is mentioned in Part 4 of Schedule 1A.

**2.19                      Definitions for Division 2.3**

In this Division:

*eligible produce* means regulated dairy produce:

- (a) exported to an importer that is, under the law of the United States of America, licensed to receive a special rate of duty for dairy produce imported within the aggregate quantity of dairy produce that may be imported into the

**Regulation 2.20**

---

United States of America from Australia in a calendar year; and

- (b) to which the special rate of duty is applied.

*Note* The aggregate quantity of dairy produce that may be imported into the United States of America from Australia at a special rate of duty is contained in additional U.S. notes 16, 18, 19 and 25. For the definition of *additional U.S. note*, see Part 1 of Schedule 1A.

*entitlement account*, in relation to an exporter's entitlement, means the account in which the Department records:

- (a) the amount of entitlement to export regulated dairy produce as eligible produce that is held by the exporter, under regulation 2.25, subregulation 2.29 (3) or regulation 2.30, for an entitlement year; and
- (b) the shipped weight of the produce that is exported by the exporter as eligible produce for the entitlement year.

*entitlement year*, in relation to an entitlement to export regulated dairy produce as eligible produce, means the calendar year for which the entitlement is allocated.

*Guidelines for exports to the USA* means the *Guidelines for the Control of Regulated Dairy Produce Exported to the United States of America* published by the Department, as in force at the commencement of this Part.

*Note* The Guidelines for exports to the USA are available at [www.affa.gov.au/quota](http://www.affa.gov.au/quota).

*holder of entitlement* means an exporter that holds entitlement to export under regulation 2.25, subregulation 2.29 (3) or regulation 2.30.

**2.20 Application for approval to export**

- (1) Before a consignment of regulated dairy produce is exported to the United States of America, the exporter of the produce must obtain an approval to export the consignment.
- (2) An application for approval must be in a form approved by the Secretary and include the following information:
- (a) the name of the exporter making the application;
- (b) the exporter's business address;

### Regulation 2.21

---

- (c) in relation to the regulated dairy produce to be exported in the consignment:
    - (i) its type; and
    - (ii) what its shipped weight is or will be; and
    - (iii) the name and address of the manufacturer of the produce;
  - (d) the name of the importer;
  - (e) the name of the ship or air freight carrier and the voyage or flight number;
  - (f) the port of loading and the date of loading;
  - (g) the intended port of discharge.
- (3) An application for approval to export a consignment is taken to have been made by an exporter if the Department is notified by AQIS that the exporter has given notice of intention to export the consignment under Part 8 of the *Prescribed Goods (General) Orders 1985*.

### 2.21 Grant of approval to export

- (1) The Secretary must grant an approval to export a consignment of regulated dairy produce if an application is made, or is taken to have been made, by an exporter under regulation 2.20 and:
- (a) for an approval to export a consignment of regulated dairy produce as eligible produce:
    - (i) the exporter will not exceed its entitlement to export the produce as a result of the export; and
    - (ii) the Secretary has no reason to believe that the total shipped weight of eligible produce that, under the law of the United States of America, may be imported into the United States of America from Australia will be exceeded as a result of the export; or
  - (b) if paragraph (a) does not apply — the exporter gives the Department a declaration, in a form approved by the Secretary, that the produce will not enter the United States of America as eligible produce.

**Regulation 2.22**

---

- (2) If an approval to export is granted to an exporter, the Secretary must give the exporter a written notice of approval that sets out:
- (a) the shipped weight of regulated dairy produce that may be exported in the consignment; and
  - (b) the day the approval takes effect; and
  - (c) the conditions of the approval.

*Note* Under subsection 53 (1) of the Act a person is guilty of an offence if the person exports regulated dairy produce to a regulated dairy market and the person does not hold an approval in relation to the export.

**2.22 Conditions of approval to export**

- (1) An approval to export a consignment of regulated dairy produce, that is granted to an exporter under paragraph 2.21 (1) (a), is subject to the following conditions:
- (a) the exporter must continue to be the holder of the entitlement on the basis of which the approval is granted;
  - (b) the exporter must not exceed its entitlement as a result of the export of the consignment;
  - (c) the exporter must notify the Department in writing if it becomes likely that the consignment will not be accepted for entry into the United States of America;
  - (d) if the shipped weight of produce in the consignment (the ***actual shipped weight***) is less than the shipped weight stated in the notice of approval under subregulation 2.21 (2) (the ***approved shipped weight***), the exporter will be taken to have exported the approved shipped weight unless the exporter tells the Department in writing, within 28 days after the produce is loaded for shipment, the actual shipped weight;
  - (e) any other condition that the Secretary considers appropriate.
- (2) An approval to export a consignment of regulated dairy produce, that is granted to an exporter under paragraph 2.21 (1) (b), is subject to the following conditions:
- (a) if the shipped weight of produce in the consignment (the ***actual shipped weight***) is not equal to the shipped weight stated in the notice of approval under subregulation

**Regulation 2.23**

---

2.21 (2) (the *approved shipped weight*), the exporter must tell the Department in writing, within 28 days after the produce is loaded for shipment, of the actual shipped weight;

- (b) any other condition that the Secretary considers appropriate.

*Note* Under subsection 53 (2) of the Act a person who holds an approval in relation to an export of regulated dairy produce to a regulated dairy market is guilty of an offence if the export is not in accordance with the conditions of the approval.

**2.23      Period of approval to export**

An approval to export a consignment:

- (a) takes effect on the date specified for that purpose in the notice of approval given under subregulation 2.21 (2); and
- (b) ceases to have effect on the earlier of:
  - (i) 3 months after the day the approval takes effect; and
  - (ii) the end of 31 December in the year for which the consignment is exported.

**2.24      Application for entitlement to export eligible produce**

- (1) An application for entitlement to export regulated dairy produce as eligible produce to the United States of America for an entitlement year must be made to the Secretary, in writing:
  - (a) for the entitlement year 2004 — before 14 November 2003; and
  - (b) for any entitlement year after 2004 — before 1 November in the year before the entitlement year.
- (2) An exporter is taken to have applied for entitlement to export regulated dairy produce as eligible produce for an entitlement year if the exporter:
  - (a) has, at any time during the 2 years immediately preceding the entitlement year, exported to the United States of America as eligible produce dairy produce described in Part 3 of Schedule 1A; and
  - (b) for the entitlement year 2004 — has not given to the Department, before 14 November 2003, written notice that

**Regulation 2.25**

---

the exporter does not wish to be allocated entitlement for the entitlement year; and

- (c) for any entitlement year after 2004 — has not given to the Department, before 1 November in the year before the entitlement year, written notice that the exporter does not wish to be allocated entitlement for the entitlement year.

**2.25 Allocation of entitlement to export eligible produce**

- (1) Entitlement to export regulated dairy produce as eligible produce to the United States of America for an entitlement year may be allocated by the Secretary, before the entitlement year, to an exporter that:
  - (a) applies, or is taken to have applied, under regulation 2.24 for entitlement to export the produce as eligible produce for the entitlement year; and
  - (b) meets the criteria specified in the Guidelines for exports to the USA.
- (2) In deciding what amount of entitlement to allocate to an exporter under subregulation (1), the Secretary must take into consideration the Guidelines for exports to the USA.

*Note* The total amount of entitlement that the Secretary may allocate for an entitlement year is equal to the total shipped weight of regulated dairy produce that, under the law of the United States of America, may be imported into the United States of America from Australia at a special rate of duty for the entitlement year.

- (3) The Secretary must not allocate, to an exporter, entitlement to export regulated dairy produce as eligible produce for an entitlement year if:
  - (a) the exporter was allocated entitlement to export the produce as eligible produce in the 2 years before the entitlement year; and
  - (b) the exporter:
    - (i) did not export any of the produce to the United States of America as eligible produce in those 2 years; or
    - (ii) transferred, whether or not to a holder of entitlement, all of the entitlement temporarily in those 2 years.

**Regulation 2.26**

---

- (4) Subregulation (3) does not apply if the exporter (the *transferor*):
- (a) transferred the entitlement temporarily to another exporter (the *transferee*) for the purpose of enabling the transferee to export regulated dairy produce as eligible produce on behalf of the transferor; and
  - (b) notified the Department, in accordance with paragraph 2.30 (1) (e), of the purpose of the transfer.
- (5) If, in accordance with subregulation (3), an amount of entitlement for an entitlement year is not allocated to an exporter, the Secretary may:
- (a) if, in the 2 years before the entitlement year, the entitlement was transferred to the same exporter — allocate the amount of entitlement to that exporter; or
  - (b) if paragraph (a) does not apply — invite exporters to apply for the amount of entitlement.
- (6) This regulation does not require the Secretary to allocate entitlement to a particular exporter, or to any exporters, if the Secretary considers that it would not be in the best interests of the dairy industry to make the allocation.

**2.26 Entitlement account and notice of entitlement**

- (1) If entitlement to export is allocated to an exporter under regulation 2.25, the Secretary:
- (a) must create an entitlement account for the exporter's entitlement; and
  - (b) must give to the exporter written notice of the allocation.
- (2) Notice under paragraph (1) (b) must include:
- (a) details of the regulated dairy produce to which the entitlement relates; and
  - (b) details of the amount of entitlement allocated; and
  - (c) details of the application fee that the exporter must pay under regulation 2.27; and
  - (d) the conditions of the entitlement; and

---

**Regulation 2.28**

- (e) a statement to the effect that, if the exporter is dissatisfied with the amount of entitlement allocated, the exporter may apply to the Administrative Appeals Tribunal for review of that decision.
- (3) If entitlement to export is not allocated to an exporter that meets the requirements in paragraphs 2.25 (1) (a) and (b), the Secretary, within 7 days after making the decision:
  - (a) must give to the exporter a written notice that sets out the reasons for the decision; and
  - (b) must include in the written notice a statement to the effect that, if the exporter is dissatisfied with the Secretary's decision, the exporter may apply to the Administrative Appeals Tribunal for review of the decision.

*Note* See regulation 2.32 concerning review of decisions.

**2.27 Application fee — entitlement to export**

- (1) If an exporter is allocated, under regulation 2.25, entitlement to export, the exporter must pay an application fee in respect of the exporter's application for the entitlement.
- (2) The application fee payable by an exporter is for each kilogram of regulated dairy produce allocated, under regulation 2.25, to the exporter for the entitlement year to which the application relates is:
  - (a) for 2004 — 0.3 of a cent; and
  - (b) for a year after 2004 — 0.7 of a cent.

**2.28 Conditions of entitlement to export**

Entitlement to export that is allocated, under regulation 2.25, to an exporter for an entitlement year is subject to the following conditions:

- (a) the amount of regulated dairy produce exported by the exporter as eligible produce for the entitlement year must not exceed the amount of entitlement allocated to the exporter for that produce;

**Regulation 2.29**

---

- (b) the exporter must, within 14 days after a significant change occurs, tell the Department in writing of the change;
- (c) any other condition the Secretary considers appropriate.

**2.29 Period of entitlement**

- (1) Entitlement to export that is allocated, under regulation 2.25, to an exporter for an entitlement year:
  - (a) commences on the later of:
    - (i) 1 January in the entitlement year; and
    - (ii) the day the exporter pays the application fee under regulation 2.27; and
  - (b) continues to have effect until the earlier of:
    - (i) the day the amount of regulated dairy produce exported by the exporter as eligible produce is equal to the amount of entitlement allocated to the exporter for that produce; and
    - (ii) if the entitlement is withdrawn from the exporter under subregulation (2) — the day the entitlement is withdrawn.
- (2) Any unused amount of an exporter's entitlement may be withdrawn by the Secretary if, on or before 23 August in an entitlement year, the exporter:
  - (a) is not granted, under regulation 2.21, approval to export the unused amount of entitlement; or
  - (b) does not tell the Department, in writing, how the exporter intends to deal with the unused amount of entitlement.

*Note* Before 20 August in each entitlement year, the Department will send a notice about the requirement in paragraph 2.29 (2) (b) to each exporter that is a holder of entitlement under regulation 2.25 or 2.30 for the entitlement year.

- (3) If an unused amount of entitlement is withdrawn from an exporter under subregulation (2), the Secretary may allocate the amount to another exporter in accordance with the Guidelines for exports to the USA.

**Regulation 2.30**

---

**2.30 Transfer of entitlement to export eligible produce**

- (1) An exporter (the *transferor*) that is a holder of entitlement may transfer all or part of the entitlement to another exporter (the *transferee*) if the transferor gives the Department written notice of the following information:
  - (a) the name of the transferor and the transferee;
  - (b) the entitlement account from which the entitlement is being transferred;
  - (c) if the transferee is a holder of entitlement to export the produce — the entitlement account to which the entitlement is being transferred;
  - (d) the amount of entitlement being transferred;
  - (e) whether the purpose of the transfer is to enable the transferee to export regulated dairy produce as eligible produce on behalf of the transferor;
  - (f) whether the transfer will be temporary or permanent.
- (2) A transfer of entitlement does not take effect until the day the Department receives notice of the transfer under subregulation (1).
- (3) If the Department receives notice under subregulation (1), the Secretary must:
  - (a) if the transferee is not a holder of entitlement to export the produce — create an entitlement account for the transferee's entitlement; and
  - (b) record the transfer in the entitlement account of the transferor and the transferee.
- (4) Entitlement that is transferred under this regulation is subject to the same conditions that applied to the entitlement before it was transferred.
- (5) Paragraph 2.29 (1) (b) applies to entitlement that is transferred under this regulation as if the entitlement transferred were entitlement allocated under regulation 2.25.

Part 2	Export control
Division 2.3A	Export of regulated dairy produce (other than Schedule 1A produce) to the US under the FTA

## Regulation 2.30A

---

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

#### Subdivision 2.3A.1    **General**

#### 2.30A    **Application of Division 2.3A**

This Division applies in relation to consignments of dairy produce, mentioned in Part 4 of Schedule 1A, that are to be imported into the US without tariff.

*Note* For this Part, products are imported into the US under the terms of the free trade agreement.

#### 2.30B    **Definitions for Division 2.3A**

In this Division:

*access amount*, for an FTA category of dairy produce for a year, is the maximum amount of the produce that, under the FTA, may be exported in the year.

*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.

*category with a set-aside* means an FTA category of dairy produce mentioned in column 2 of an item in Table 2.30C, in which the set-aside percentage set out in column 5 of the item is more than zero.

*dairy manufacturer* means a person who, for commercial purposes:

- (a) collects milk from farms and processes it; or
- (b) purchases dairy produce and:
  - (i) subjects it to a process that changes it from one kind of produce to another (for example, milk into yoghurt); or
  - (ii) repackages it.

**Regulation 2.30C**

---

**EXDOC** means the electronic documentation system maintained by the Australian Quarantine and Inspection Service for the control and issue of export health certificates.

**export** means export to the US under this Division.

**FTA** or **free trade agreement** means the Australia-United States Free Trade Agreement done at Washington DC on 18 May 2004, as amended from time to time.

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

**ice cream and ODP category** means the ice cream sub-category of the FTA category Creams and Ice Cream and the FTA category Other Dairy Products.

**minimum allocation**, for an FTA category of dairy produce mentioned in column 2 of an item in Table 2.30C, means the amount set out in column 4 of the item.

**US** means the United States of America.

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

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

**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**

**Regulation 2.30C**

*category*), the access amount for 2005 is the amount set out in column 3 of the item.

**Table 2.30C Categories**

Item	FTA category	Access amount 2005	Minimum allocation	Set-aside percentage
1	American Cheese	500 t	20 t	5
2	Butter	1 500 t	20 t	5
3	Cheddar Cheese	750 t	20 t	5
4	Condensed Milk	3 000 t	20 t	5
5	Creams and Ice Cream	Sub-category cream: 5 000 000 L Sub-category ice cream: 2 500 000 L	Sub-category cream: 20 000 L Sub-category ice cream: 0	Sub-category cream: 5 Sub-category ice cream: 0
6	European-type Cheese	2 000 t	10 t	5
7	Goya Cheese	2 500 t	20 t	5
8	Non-fat Dried Milk Powder and Skim Milk Powder	100 t	20 t	0
9	Other Cheese	3 500 t	10 t	5
10	Other Dairy Products	Sub-category A produce: 1 350 t Sub-category B produce: 150 t	Sub-category A produce: 0 t Sub-category B produce: 0 t	Sub-category A produce: 0 Sub-category B produce: 0
11	Other Milk Powder	4 000 t	20 t	5
12	Swiss-type Cheese	500 t	10 t	5

- (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.

**Subdivision 2.3A.2 Quota allocation for categories other than ice cream and ODP category — 2005 only**

**2.30D Application of Subdivision 2.3A.2**

Subdivision 2.3A.2 applies in relation to the allocation of quota for each FTA category of dairy produce, other than produce in the ice cream and ODP category, for 2005.

**2.30E Definitions for Subdivision 2.3A.2**

*disadvantaged applicant* has the meaning given by regulation 2.30H.

*primary applicant* and *secondary applicant* have the respective meanings given in regulation 2.30J.

**2.30F Meaning of 02/03 export amount**

- (1) For each FTA category of dairy produce that was exported in 2002 and 2003, the *02/03 export amount* of the category is calculated by:
- (a) determining, from data in EXDOC, the sum of:
    - (i) the total amount of produce in the category exported during 2002 and 2003 by all applicants under regulation 2.30G, other than a disadvantaged applicant; and
    - (ii) twice the total amount of produce in the category exported by all disadvantaged applicants during the year nominated by the applicant under subregulation 2.30G (5); and

**Regulation 2.30G**

---

- (b) subtracting, from this amount, the total amount of quota allocated in the equivalent category exported under Divisions 2.2 and 2.3 in 2002 and 2003.
- (2) For paragraph (1) (b), a category mentioned in:
  - (a) column 2 of an item in the following table, exported under Division 2.2 in 2002 and 2003; or
  - (b) column 3 of an item in the table, exported under Division 2.3 in 2002 and 2003;
 is the *equivalent* of the FTA category mentioned in column 4 of the item.

**Table    Equivalentents to FTA categories**

Item	Division 2.2 category	Division 2.3 category	FTA category
1	Cheddar cheese and cheddar cheese for processing	Cheddar cheese	Cheddar cheese
2	[Not applicable]	American-type cheese	American-type cheese
3	[Not applicable]	Swiss and Emmentaler cheese	Swiss-type cheese
4	[Not applicable]	Other cheese	Other cheese

**2.30G    Applications for allocation of quota**

- (1) A dairy manufacturer may apply to the Secretary for an allocation of quota for 2005.
- (2) An application must:
  - (a) be made in a form approved by the Secretary; and
  - (b) include information showing the amount of dairy produce of each FTA category produced by the manufacturer in 2002 and 2003.
- (3) For paragraph (2) (b), dairy produce that is repackaged by a manufacturer is taken not to have been *produced* by the manufacturer.

---

**Regulation 2.30I**

- (4) It is a condition of an application that, upon request, the applicant will give the Secretary access to records so that the Secretary can confirm the accuracy of the information given for paragraph (2) (b).
- (5) If an applicant believes that, because the amounts of the applicant's production in 2002 or 2003 were significantly different from one another, the applicant would be disadvantaged if both years were used to make the calculations for subregulation 2.30I (2) or (3), the applicant may also include in the application a request that only the applicant's production for a nominated year be taken into account when calculating quota for each category of produce.

**2.30H Disadvantaged applicants**

If:

- (a) an applicant under regulation 2.30G makes a request under subregulation 2.30G (5); and
- (b) in 40% or more of the FTA categories of dairy produce produced by the applicant in 2003, the amount produced:
  - (i) exceeds the amounts produced in 2002 by 25% or more; or
  - (ii) is less than the amounts produced in 2002 by 25% or more;

then:

- (c) the applicant is a *disadvantaged applicant*; and
- (d) if quota is allocated to the applicant, the amounts of the applicant's export and production for the nominated year are used to calculate quota allocations for all categories.

**2.30I Preliminary allocations of quota**

- (1) In this regulation:

*AA*, of dairy produce in an FTA category, means the access amount of that category for 2005.

*AEA* (or *applicant's export amount*), of dairy produce in an FTA category, means the amount of produce of the category exported by the applicant (other than produce exported under

**Regulation 2.30I**

---

Divisions 2.2 and 2.3) during 2002 and 2003, calculated using data from EXDOC.

**AEY** (or *applicant's exports for year*), of dairy produce in an FTA category, means the amount of produce of the category exported by the applicant (other than produce exported under Divisions 2.2 and 2.3) in the year nominated by the applicant under subregulation 2.30G (5), calculated using data from EXDOC.

**APA** (or *applicant's production amount*), of dairy produce in an FTA category, means the amount of produce of the category produced by the applicant during 2002 and 2003, calculated from the data given by the applicant under subregulation 2.30G (5).

**APY** (or *applicant's production for year*), of dairy produce in an FTA category, means the amount of the category of dairy produce produced by the applicant in the year nominated by the applicant under subregulation 2.30G (5).

**TPA** (or *total production amount*), of dairy produce in an FTA category, means the sum of:

- (a) the total amount of produce of the category that was produced by all applicants, other than disadvantaged applicants, in 2002 and 2003, calculated from the data given by the applicants under paragraph 2.30G (2) (b); and
  - (b) twice the total amount of produce in the category produced by all disadvantaged applicants during the year nominated by the applicant under subregulation 2.30G (5).
- (2) The preliminary quota allocation, to an applicant that is not a disadvantaged applicant, for a category with a set-aside is:

$$AA \times \frac{(AEA \times 2) + APA}{(02/03 \text{ export amount} \times 2) + TPA}$$

- (3) The *preliminary quota allocation*, to a disadvantaged applicant, for a category with a set-aside is:

$$AA \times \frac{(AEY \times 4) + (APY \times 2)}{(02/03 \text{ export amount} \times 2) + TPA}$$

**Regulation 2.30K**

---

**2.30J Identifying primary and secondary applicants**

- (1) If an applicant's preliminary quota allocation for a category with a set-aside is at least half of the minimum allocation for the produce, the applicant is a *primary applicant* for that category.
- (2) An applicant that is not a primary applicant is a *secondary applicant* for the category.

**2.30K Final quota allocations to primary applicants for a category with a set-aside**

- (1) The following steps show how to work out, for each primary applicant, the final quota allocation for a category with a set-aside.

Step 1. For each primary applicant, round the amount of the preliminary quota allocation, calculated under regulation 2.30I, so it is divisible by the amount of the minimum allocation with no remainder, 50% of an allocation being rounded up.

Step 2. If the sum of the rounded amounts calculated in Step 1 is less than 95% of the access amount for the category, subtract the total of the sum of the rounded amounts from 95% of the access amount, giving the *additional amount*.

Step 3. Allocate extra quota to the primary applicants in proportion to each applicant's preliminary quota allocation, so that the sum of the extra quota allocations equals the additional amount.

Step 4. If the total of the rounded amounts calculated in Step 1 is more than 95% of the access amount for the category, subtract 95% of the access amount from the total of the rounded amounts, giving the *withdrawal amount*.

Step 5. Withdraw quota, from the primary applicants whose preliminary quota allocations exceed the minimum amount, in proportion to each of these applicants' preliminary quota allocation so that the sum of the withdrawn quota allocations equals the withdrawal amount.

**Regulation 2.30L**

---

- (2) The final quota allocation for each primary applicant is:
- (a) if the sum of the rounded amounts calculated in Step 1 equals 95% of the access amount for the category — the amount resulting after Step 1; or
  - (b) if an additional amount is calculated — the amount resulting after Step 3, rounded to the nearest tonne, 500kg being rounded up; or
  - (c) if a withdrawal amount is calculated — the amount resulting after Step 5, rounded to the nearest tonne, 500kg being rounded up.

**2.30L Final quota allocations — secondary applicants for a category with a set-aside**

The following steps show how to work out, for secondary applicants, the final quota allocation for a category with a set-aside.

Step 1. Divide 5% of the access amount by the number of secondary applicants.

Step 2. If the result of Step 1 is equal to or less than the minimum allocation for the category, the final quota allocation for each applicant is an amount equal to the result of Step 1.

Step 3. If the result of Step 1 is an amount greater than the minimum allocation for the category:

- (a) the final quota allocation for each applicant is an amount equal to the minimum allocation; and
- (b) the remaining amount is allocated equally between all applicants whose final quota allocation is equal to or less than:
  - (i) 5% of the access amount; or
  - (ii) 4 times the minimum allocation.

**2.30M Final quota allocations — Non-fat Dried Milk Powder and Skim Milk Powder**

- (1) The following steps show how to work out the final quota allocation to an applicant for the FTA categories Non-fat Dried Milk Powder and Skim Milk Powder.

---

**Regulation 2.300**

Step 1. For each applicant, round the amount of the preliminary quota allocation calculated under regulation 2.30I so it is divisible by the amount of the minimum allocation with no remainder, 50% of a minimum allocation being rounded up.

Step 2. If the sum of the rounded amounts calculated in Step 1 is less than the access amount for the category, subtract the total of the rounded amounts from the access amount, giving the *additional amount*.

Step 3. Allocate extra quota to all the applicants in proportion to each applicant's preliminary quota allocation so that the extra quota allocations equal the additional amount.

Step 4. If the total of the rounded amounts calculated in Step 1 is more than the access amount for the category, subtract the access amount from the total of the rounded amounts, giving the *withdrawal amount*.

Step 5. Withdraw quota from each applicant whose allocation exceeds the minimum allocation, in proportion to each applicant's preliminary quota allocation, so that the sum of the withdrawn quota allocations equals the withdrawal amount.

- (2) The final quota allocation for each applicant is:
- (a) if the sum of the rounded amounts calculated in Step 1 equals the access amount for the category — the amount resulting after Step 1; or
  - (b) if an additional amount is calculated — the amount resulting after Step 3, rounded to the nearest tonne, 500kg being rounded up; or
  - (c) if a withdrawal amount is calculated — the amount resulting after Step 5, rounded to the nearest tonne, 500kg being rounded up.

**2.300 Secretary to tell applicant about amount of quota**

If the Secretary grants an allocation of quota to an applicant, the Secretary must give the applicant a statement setting out the amount of the quota.

**Regulation 2.30P**

---

**Subdivision 2.3A.3 Quota allocation for categories other than ice cream and ODP category — 2006 and subsequent years**

**2.30P Application of Subdivision 2.3A.3**

Subdivision 2.3A.3 applies in relation to the allocation of quota for each FTA category of dairy produce, other than produce in the ice cream and ODP category, for 2006 and each subsequent year.

**2.30Q Applications by new entrants for allocation of quota**

- (1) 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.
- (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.

**2.30R Allocation of quota**

- (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

**Regulation 2.30R**

---

(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.

(2) For this regulation, the **additional access amount** for a category under this Subdivision for the year is:

$$\text{PAA} \times \text{percentage increase}$$

where:

**percentage increase** is the yearly percentage increase for the category under the terms of the FTA.

**PAA** (or **previous access amount**) is the access amount of the category of dairy produce for the previous year.

(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.

**Regulation 2.30S**

---

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.

- (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.

**Subdivision 2.3A.4 Export approvals for ice cream and ODP category**

**2.30S Application of Subdivision 2.3A.4**

Subdivision 2.3A.4 applies in relation to export approvals for dairy produce in the ice cream and ODP category that are to be granted in 2005 and each subsequent year.

**2.30SA Definition for Subdivision 2.3A.4**

In this Subdivision:

**Regulation 2.30U**

---

*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.

**2.30T Access amounts**

- (1) The access amounts for 2006 and each subsequent year for dairy produce in the ice cream and ODP category are calculated by increasing the amounts for the previous year by the appropriate percentage specified for the category in the FTA.
- (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.

**2.30U Applications for export approvals**

- (2) A person may apply to the Secretary for an export approval under this Subdivision.
- (3) An application must:
  - (a) be in a form approved by the Secretary; and
  - (b) be for approval to export a specified amount of the category or sub-category of produce; and
  - (c) specify the day or days on which the applicant intends to export the produce.
- (4) Applications for approval to export in a particular year may be made on or after the application day in the previous year.
- (5) The application must include evidence that the applicant's consignments of produce will be imported into the US.
- (6) For subregulation (5), *evidence* includes the following:
  - (a) a copy of the agreement, or the relevant part of the agreement, under which the produce will be imported into the US;

**Regulation 2.30V**

---

- (b) a statement describing:
  - (i) an agreement that has been made (including an agreement that is subject to quota being available);  
or
  - (ii) an offer to enter an agreement of a kind mentioned in subparagraph (i);even if confidential matters are not included in the statement.

**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

**Regulation 2.30W**

---

- (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.
- (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.

**2.30W Forfeiture of approval**

- (1) Subregulation (2) applies in relation to an approval to export an amount of dairy produce under this Subdivision if the holder of the approval fails to export at least 95% of the amount by:
- (a) the day or days specified for paragraph 2.30U (3) (c) for the export of the produce; or

**Regulation 2.30X**

---

(b) if the export is delayed for a reason or reasons beyond the control of the holder — no more than 28 days after each day specified for the export.

(2) The approval for the amount not exported is withdrawn.

**Subdivision 2.3A.5 Miscellaneous**

**2.30X Application for quota certificate — categories other than ice cream and ODP category**

- (1) The holder of unused quota for dairy produce other than produce in the ice cream and ODP category may apply to the Secretary for a quota certificate in respect of any amount of the unused quota.
- (2) If the Secretary approves the application, the Secretary must give the applicant a quota certificate as evidence of the approval.

**2.30Y Export of dairy products**

A quota certificate issued under subregulation 2.30V (4) or 2.30X (2) in respect of an FTA category of dairy produce is evidence of an approval to export the produce.

*Note* Dairy produce without a certificate will not be imported into the US free of tariff.

**2.30Z Transfer of quota**

- (1) The holder of quota for an FTA category of dairy produce, other than a new entrant, (the *transferor*) may transfer some or all of the quota to another person (the *transferee*).
- (2) The terms of a transfer agreement must provide that the transfer:
  - (a) is permanent; or
  - (b) is to revert to the transferor at the end of the year for which the transfer is made.

**Regulation 2.30ZA**

---

- (3) A transfer is not validly made unless the transferor sends the Secretary a notice that includes the following:
  - (a) the name of the transferor and the transferee;
  - (b) the amount of quota being transferred;
  - (c) whether the transfer is permanent, or reverts to transferor at the end of the year.
- (4) It is not a transfer of quota if a holder authorises an agent to export dairy produce on behalf of the holder.
- (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).

**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.

**Regulation 2.30ZA**

---

- (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.

**2.30ZB Quota is withdrawn 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 unused quota is withdrawn from the holder.

**2.30ZC Approval to export from withdrawn quota**

- (1) In this regulation:  
*withdrawn 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 withdrawn 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 withdrawn under regulation 2.30ZB.
- (3) The Secretary must deal with applications on a first-come-first-served basis.
- (4) However if, on withdrawn quota application day, applications are made for more than the withdrawn 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.

**Regulation 2.31**

---

**Division 2.4                      Miscellaneous**

**2.31                      Variation and revocation of approval or entitlement**

- (1) The Secretary may at any time vary or revoke an approval granted, or an entitlement allocated or transferred, under this Part if:
  - (a) the Secretary is satisfied that the approval or entitlement is no longer consistent with the object of this Part; or
  - (b) the Secretary considers that it is in the best interests of the dairy industry to make the variation or revocation.
- (2) The holder of an approval or entitlement may ask the Secretary, in writing, for a variation to be made to the approval or entitlement.
- (3) The holder of an approval or entitlement may surrender the approval or entitlement at any time by giving notice in writing to the Department.
- (4) The Secretary may vary an approval or entitlement:
  - (a) by adding, varying or revoking a condition of the approval or entitlement; or
  - (b) by varying the period of the approval or entitlement.
- (5) If the Secretary makes a variation or revocation under this regulation, the Secretary must give the holder of the approval or entitlement written notice of the decision that states:
  - (a) the reasons for the decision; and
  - (b) the day on which the variation or revocation takes effect; and
  - (c) that the exporter may apply to the Administrative Appeals Tribunal for a review of the decision.

**2.32                      Review of decisions**

An application may be made to the Administrative Appeals Tribunal for review of a decision under this Part:

- (a) to impose a condition, under paragraph 2.09 (f), 2.22 (1) (e) or 2.22 (2) (b), on an approval to export a consignment; or

**Regulation 2.34**

---

- (b) not to allocate entitlement to export; or
- (c) to allocate a particular amount of entitlement to export; or
- (d) to impose a condition, under paragraph 2.15 (c) or 2.28 (c), on entitlement to export; or
- (e) to vary or revoke an approval or entitlement.

**2.33 Address for applications and information in writing**

An application that may be made, or information or notice that must be given in writing, to the Department under this Part must be addressed to the Quota Administration and Statistics Unit and:

- (a) sent to:
  - Department of Agriculture, Fisheries and Forestry
  - GPO Box 858
  - CANBERRA ACT 2601; or
- (b) sent by e-mail to:
  - quota.admin@affa.gov.au; or
- (c) sent by fax to:
  - 02 6272 4585.

**2.34 Delegation by Secretary**

- (1) The Secretary may, in writing, delegate to an SES employee, or acting SES employee, of the Department all or any of the Secretary's powers and functions under this Part (except this power of delegation).
- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Secretary.

**Regulation 5**

---

**Part III                      Records, returns and payment  
of levies****5                      Records to be kept**

- (1) A person who has, in any month, purchased relevant dairy produce shall keep proper records showing, in respect of that month:
  - (a) the quantity of whole milk purchased by the person in the month;
  - (b) the quantities of each kind of whole milk products purchased by the person in the month;
  - (c) the quantity of milk fat contained in the whole milk purchased by the person in the month;
  - (d) the quantity of milk fat contained in each kind of whole milk products purchased by the person during the month;
  - (e) the total amount payable in levies on the milk fat content of the whole milk purchased by the person during the month; and
  - (f) the total amount payable in levies on the milk fat content of each kind of whole milk products purchased by the person during the month.
- (2) The proprietor of a factory at which dairy products are produced shall keep proper records showing, in respect of each month:
  - (a) the quantity of each kind of dairy products produced at the factory in that month;
  - (b) the quantity of each kind of dairy products purchased by the proprietor in that month;
  - (c) the quantity of each kind of dairy products used by the proprietor in the production of dairy products in that month;
  - (d) the quantity of each kind of dairy products sold by the proprietor in that month for export;

**Regulation 6**

---

- (e) the quantity of each kind of dairy products sold by the proprietor in that month to the Corporation;
- (f) the quantity of each kind of dairy products sold by the proprietor in that month otherwise than for export or to the Corporation;
- (g) the quantity of each kind of dairy products, being products that had been exported from Australia, imported by the proprietor into Australia in that month;
- (h) the quantity of each kind of dairy products disposed of by the proprietor in that month otherwise than by sale or use in the production of dairy products;
- (j) the quantity of each kind of dairy products held in stock by the proprietor on the first day of that month;
- (k) the quantity of each kind of dairy products held in stock by the proprietor at the end of that month; and
- (l) with respect to each kind of dairy products referred to in paragraph (b), (c), (d), (e), (f), (g), (h), (j) or (k), the production period in which the dairy products of that kind were produced.

**6 Returns of purchases of relevant dairy produce**

- (1) A person who has, in any month, purchased relevant dairy produce shall, on or before the twenty-eighth day of the next succeeding month, furnish to the Department a return containing such of the following particulars with respect to the relevant dairy produce so purchased as are applicable:
  - (a) the month in which the person purchased the relevant dairy produce;
  - (b) the quantity of milk fat contained in the whole milk purchased in that month;
  - (c) the quantity of milk fat contained in each kind of the whole milk products purchased in that month;
  - (d) the total amount payable in levies on the milk fat content of the whole milk purchased in that month;
  - (e) the total amount payable in levies on the milk fat content of each kind of the whole milk products purchased in that month;

**Regulation 7**

---

- (f) the total amount payable in levies in respect of the relevant dairy produce.
- (2) A return referred to in subregulation (1) shall:
  - (a) state the full name and address of the person furnishing the return; and
  - (b) contain a declaration signed by the person furnishing the return or his or her authorised agent, stating that the information furnished in the return is true and correct in every particular.
- (3) A return under subregulation (1) must be furnished to the office of the Department in Canberra.

**7 Returns in relation to dairy products**

- (1) This regulation applies to:
  - (a) a person who is the proprietor of a factory at which dairy products are produced;
  - (b) a person who is the importer of dairy products referred to in section 5 or 8 of the second Levy Act; and
  - (c) the Corporation.
- (2) Where, in any month, dairy products on which levy is imposed have been sold by or on behalf of a person to whom this regulation applies, or have been used by the person in the production of other products, whether dairy products or not, the person shall, on or before the fourteenth day after the last day of the month immediately following the month in which the dairy products were sold or so used, furnish to the Department a return containing such of the following particulars in respect of that last-mentioned month as are applicable:
  - (a) the quantity of each kind of dairy products sold in that month, other than dairy products that have been exported from Australia or sold to the Corporation;
  - (b) the quantity of each kind of dairy products used by the person in that month in the production of other products;
  - (c) in respect of each kind of dairy products referred to in paragraph (a) or (b), the total amount of levy payable in respect of the dairy products so sold or used.

---

**Regulation 9**

---

- (3) A return referred to in subregulation (2) shall:
  - (a) state the full name and address of the person furnishing the return; and
  - (b) contain a declaration, signed by the person furnishing the return or his or her authorised agent, stating that the information furnished in the return is true and correct in every particular.
- (4) A return made pursuant to subregulation (1) shall be furnished to the Department by lodging it at the principal office of the Department in Canberra.

**8 Authorised agent**

- (1) A person who is required to furnish a return under regulation 6 or 7 may, by instrument in writing signed by that person, appoint a person to be his or her authorised agent for the purpose of signing on his or her behalf the declaration contained in that return.
- (2) An instrument referred to in subregulation (1) shall be in accordance with the form in Schedule 1.
- (3) A person who, pursuant to subregulation (1), appoints a person to be his or her authorised agent for the purpose of signing on his or her behalf the declaration contained in a return shall lodge the instrument of appointment at the place at which the return is required by these Regulations to be lodged.

**9 Execution of documents by a company**

- (1) Where these Regulations provide that a declaration or instrument of appointment shall be signed by a person and that person is a company, the declaration or instrument of appointment may be signed on behalf of the company by a director or a secretary of the company.
- (2) In subregulation (1), a reference to a company shall be read as including a reference to a co-operative society incorporated under a law of a State or Territory.

**Regulation 16**

---

**Part V                      Miscellaneous****16                      Prescribed milk fat content**

- (1) For the purposes of paragraph 111A (3) (a) of the Act, the milk fat content prescribed in relation to dairy produce of a kind referred to in column 2 of an item in Schedule 2 is the amount, expressed as a percentage of the total content of that kind of dairy produce, specified in column 3 of that item.
- (2) For the purposes of paragraph 111A (3) (b) of the Act, the milk fat content prescribed in relation to a class of dairy produce referred to in column 2 of an item in Schedule 3 is the amount, expressed as a percentage of the total content of that class of dairy produce, specified in column 3 of that item.

**17                      Prescribed protein content**

- (1) For the purposes of paragraph 111A (4) (a) of the Act, the protein content prescribed in relation to dairy produce of a kind referred to in column 2 of an item in Schedule 2 is the amount, expressed as a percentage of the total content of that kind of dairy produce, specified in column 4 of that item.
- (2) For the purposes of paragraph 111A (4) (b) of the Act, the protein content prescribed in relation to a class of dairy produce referred to in column 2 of an item in Schedule 3 is the amount, expressed as a percentage of the total content of that class of dairy produce, specified in column 4 of that item.

---

## Schedule 1A Regulated dairy produce

(regulation 2.03)

### Part 1 Definitions

In this Schedule:

**additional U.S. note** means an additional U.S. note to chapter 4 of the Harmonized Tariff Schedule.

**CN code** means the European Commission Combined Nomenclature code used in Commission Regulation (EC) No 2535/2001.

**Commission Regulation (EC) No 2535/2001** means the regulation of that name in the *Official Journal of the European Communities L 341/29*, dated 22 December 2001.

**Harmonized Tariff Code** means the code used in the Harmonized Tariff Schedule.

**Harmonized Tariff Schedule** means revision 2 of the *Harmonized Tariff Schedule of the United States of America*, as in force at the commencement of this Schedule.

### Part 2 Dairy produce for the European Union

Item	Dairy produce
------	---------------

- |   |  |
|---|--|
| 1 | Dairy produce to which quota number 09.4522 in Annex III.A to Commission Regulation (EC) No 2535/2001 applies, being cheese for processing that: <ul style="list-style-type: none"><li>(a) will enter the European Union under CN code number 0406 90 01; and</li><li>(b) is used for processing cheese products to which subheading 0406 30 of the CN code applies.</li></ul> |
| 2 | Dairy produce to which quota number 09.4521 in Annex III.A to Commission Regulation (EC) No 2535/2001 applies, being whole cheddar cheese that: <ul style="list-style-type: none"><li>(a) will enter the European Union under CN code number 0406 90 21; and</li></ul>   |

**Item Dairy produce**

---

- (b) has a fat content of 50% or more by weight in the dry matter; and
- (c) has matured for at least 3 months; and
- (d) is either:
  - (i) a conventional flat cylindrical shape with a net weight of no less than 33 kilograms and no more than 44 kilograms; or
  - (ii) a cubic block or parallelepiped shape with a net weight of 10 kilograms or more.

*Note* Quota numbers 09.4521 and 09.4522 set out the tariff quotas that apply to dairy produce that is imported into the European Union from Australia at a reduced tariff rate.

**Part 3 Dairy produce for the United States of America**

**Item Dairy produce**

---

- 1 Dairy produce mentioned in additional U.S. note 16, being cheese, and substitutes for cheese, that:
  - (a) will enter the United States of America under subheading 0406.10.04, 0406.10.84, 0406.20.89, 0406.30.89 or 0406.90.95 of the Harmonized Tariff Code; and
  - (b) is not any of the following:
    - (i) cheese not containing cow's milk;
    - (ii) soft ripened cow's milk cheese;
    - (iii) cheese (other than cottage cheese) that contains 0.5% or less by weight of butterfat;
    - (iv) an article to which the United States of America applies a quantitative limitation under any of additional U.S. notes 17 to 25.
- 2 Dairy produce mentioned in additional U.S. note 18, being each of the following produce that will enter the United States of America under subheading 0406.10.24, 0406.20.31, 0406.20.65, 0406.30.24, 0406.30.65, 0406.90.08 or 0406.90.76 of the Harmonized Tariff Code:
  - (a) cheddar cheese;
  - (b) cheese;
  - (c) substitutes for cheese that contain, or are processed from, cheddar cheese.

---

**Item Dairy produce**

---

- 3 Dairy produce mentioned in additional U.S. note 19, being each of the following produce that will enter the United States of America under subheading 0406.10.34, 0406.20.36, 0406.20.69, 0406.30.34, 0406.30.69, 0406.90.52 or 0406.90.82 of the Harmonized Tariff Code:
- (a) American-type cheese, including Colby, washed curd and granular cheese but not cheddar cheese;
  - (b) cheese;
  - (c) substitutes for cheese that contain, or are processed from, American-type cheese mentioned in paragraph (a).
- 4 Dairy produce mentioned in additional U.S. note 25, being Swiss and Emmentaler cheese that:
- (a) have eye formation; and
  - (b) will enter the United States of America under subheading 0406.90.46 of the Harmonized Tariff Code.
- 

*Note* Additional U.S notes 16, 18, 19 and 25 set out the aggregate quantity of dairy produce that may be imported into the United States of America from Australia at a special rate of duty.

## **Part 4 Dairy produce for the US under the FTA**

---

**Item Produce**

---

- 1 Dairy produce mentioned in Annex 2-B to the (FTA) Schedule of the United States, General Notes, being *Creams and Ice Cream* products that will enter the United States of America within the Free Trade Agreement preferential tariff-rate quota under subheading 0401.30.25, 0403.90.16 and 2105.00.20 of the Harmonised Tariff Code.
- 2 Dairy produce mentioned in Annex 2-B to the (FTA) Schedule of the United States, General Notes, being *Condensed Milk* products that will enter the United States of America within the Free Trade Agreement preferential tariff-rate quota under subheading 0402.91.70, 0402.91.90, 0402.99.45 and 0402.99.55 of the Harmonised Tariff Code.

<b>Item</b>	<b>Produce</b>
3	Dairy produce mentioned in Annex 2-B to the (FTA) Schedule of the United States, General Notes, being <i>Butter</i> products that will enter the United States of America within the Free Trade Agreement preferential tariff-rate quota under subheading 0401.30.75, 0402.21.90, 0403.90.65, 0403.90.78, 0405.10.20, 0405.20.30, 0405.90.20, 2106.90.26 and 2106.90.36 of the Harmonised Tariff Code.
4	Dairy produce mentioned in Annex 2-B to the (FTA) Schedule of the United States, General Notes, being <i>Non-fat Dried Milk Powder and Skim Milk Powder</i> products that will enter the United States of America within the Free Trade Agreement preferential tariff-rate quota under subheading 0402.10.50 and 0402.21.25 of the Harmonised Tariff Code.
5	Dairy produce mentioned in Annex 2-B to the (FTA) Schedule of the United States, General Notes, being <i>Other Milk Powder</i> products that will enter the United States of America within the Free Trade Agreement preferential tariff-rate quota under subheading 0402.21.50, 0403.90.45, 0403.90.55, 0404.10.90, 2309.90.28 and 2309.90.48 of the Harmonised Tariff Code.
6	Dairy produce mentioned in Annex 2-B to the (FTA) Schedule of the United States, General Notes, being <i>Other Dairy Products</i> that will enter the United States of America within the Free Trade Agreement preferential tariff-rate quota under subheading 0402.29.50, 0402.99.90, 0403.10.50, 0403.90.95, 0404.10.15, 0404.90.50, 0405.20.70, 1517.90.60, 1704.90.58, 1806.20.26, 1806.20.28, 1806.20.36, 1806.20.38, 1806.20.82, 1806.20.83, 1806.20.87, 1806.20.89, 1806.32.06, 1806.32.08, 1806.32.16, 1806.32.18, 1806.32.70, 1806.32.80, 1806.90.08, 1806.90.10, 1806.90.18, 1806.90.20, 1806.90.28, 1806.90.30, 1901.10.30, 1901.10.40, 1901.10.75, 1901.10.85, 1901.20.15, 1901.20.50, 1901.90.43, 1901.90.47, 2105.00.40, 2106.90.09, 2106.90.66, 2106.90.87, and 2202.90.28 of the Harmonised Tariff Code.
7	Dairy produce mentioned in Annex 2-B to the (FTA) Schedule of the United States, General Notes, being <i>Cheddar Cheese</i> products that will enter the United States of America within the Free Trade Agreement preferential tariff-rate quota under subheading 0406.10.28, 0406.20.33, 0406.20.67, 0406.30.28 and 0406.30.67, 0406.90.12 and 0406.90.78 of the Harmonised Tariff Code.

---

<b>Item</b>	<b>Produce</b>
8	Dairy produce mentioned in Annex 2-B to the (FTA) Schedule of the United States, General Notes, being <i>American Cheese</i> products that will enter the United States of America within the Free Trade Agreement preferential tariff-rate quota under subheading 0406.10.38, 0406.20.39, 0406.20.71, 0406.30.38, 0406.30.71, 0406.90.54 and 0406.90.84 of the Harmonised Tariff Code.
9	Dairy produce mentioned in Annex 2-B to the (FTA) Schedule of the United States, General Notes, being <i>Swiss-type Cheese</i> products that will enter the United States of America within the Free Trade Agreement preferential tariff-rate quota under subheading 0406.90.48 of the Harmonised Tariff Code.
10	Dairy produce mentioned in Annex 2-B to the (FTA) Schedule of the United States, General Notes, being <i>European-type Cheese</i> products that will enter the United States of America under subheading 0406.10.18, 0406.10.48, 0406.10.58, 0406.10.68, 0406.20.28, 0406.20.48, 0406.20.53, 0406.20.63, 0406.20.75, 0406.20.79, 0406.20.83, 0406.30.18, 0406.30.48, 0406.30.53, 0406.30.63, 0406.30.75, 0406.30.79, 0406.30.83, 0406.40.70, 0406.90.18, 0406.90.32, 0406.90.37, 0406.90.42, 0406.90.68, 0406.90.74, 0406.90.88 and 0406.90.92 of the Harmonised Tariff Code.
11	Dairy produce mentioned in Annex 2-B to the (FTA) Schedule of the United States, General Notes, being <i>Other Cheese</i> products that will enter the United States of America under subheading 0406.10.08, 0406.10.88, 0406.20.91, 0406.30.91 and 0406.90.97 of the Harmonised Tariff Code.
12	Dairy produce mentioned in Annex 2-B to the (FTA) Schedule of the United States, General Notes, being <i>Goya Cheese</i> products that will enter the United States of America under subheading 0406.90.33 of the Harmonised Tariff Code.

---

## Schedule 1B

(subregulation 2.30C (2))

### Part 1 Category A produce

Item	Code	Abbreviated description of product
1	04022950	Milk and cream, conc, sweetened, in powder, granules/other solid forms, fat by wt>1.5%, not subj GN 15
2	04029990	Milk and cream (except condensed milk) concentrated in non-solid forms, sweetened
3	04031050	Yoghurt, in dry form, whether or not flavoured or containing added fruit or cocoa, not subj to GN 15
4	04039095	Curdled milk/cream/kephir and other fermented or acidified milk/cream, subj to GN 15
5	04041015	Modified whey (except protein conc.), whether or not conc. Or sweetened not subj to GN 15
6	04049050	Dairy products of natural milk constituents (except protein conc.) descry in Ch 4 US Add. Note 1, not subj to GN 15
7	04052070	Other dairy spreads of a type provided in Ch 4, Add. Note 1, not subj to GN 15, over quota
8	19011030	Infant formula with oligossacharides, for retail sale, >10% milk solids, not subj to Ch 19 Note 2, not subj to GN 15
9	19011040	Preps for infant use (dairy prod. Of add US Note 1 to Ch 4), for retail sale, >10% milk solids, not subj to Ch 4 Note 10
10	19011075	Infant formula with oligossacharides, for retail sale, <10% milk solids, not subj to Ch 19 Note 2, not subj to GN 15
11	19011085	Preps for infant use (dairy prod. Of add US Note 1 to Ch 4), for retail sale, <10% milk solids, not subj to Ch 4 Note 10
12	19012015	Mixes for bakers wares (dairy prod of Ch 4, US Note 1), butterfat by wt >25%, not retail, not subj to Ch 4 Note 10, not GN 15
13	19012050	Mixes for bakers wares (dairy prod of Ch 4, US Note 1), butterfat by wt <25%, not retail, not subj to Ch 4 Note 10, not GN 15

Item	Code	Abbreviated description of product
14	19019043	Dairy preps >10% milk solids (Descr in Ch 4, US Note 1) neosi, not subj Ch 4 Note 10, not GN 15
15	19019047	Dairy preps <10% milk solids (Descr in Ch 4, US Note 1) neosi, not subj Ch 4 Note 10, not GN 15
16	21050040	Edible ice except ice cream, dairy products descry in Ch 4 Note 1, neosi
17	21069009	Food preps, neosi, <5.5% butterfat, mixed w/other ingredients, if >16% milk solids, further proc'able, not Ch 4 Note 1, not GN 15
18	21069066	Food preps, neosi, >10% milk solids, dairy products descry in Ch 4 US Note 1, not subj Ch 4 Note 10, not GN 15
19	21069087	Food preps, neosi, <10% milk solids, dairy products descry in Ch 4 US Note 1, not subj Ch 4 Note 10, not GN 15
20	22029028	Non-alcoholic milk-based drinks (except chocolate), not subj Ch 4 Note 10, not GN 15

## Part 2 Category B produce

Item	Code	Abbreviated description of product
1	15179060	Edible mixtures & preparations, dairy products in US add'l note 1 to Ch 4, not subj to GN 15
2	17049058	Sugar confectionery, neosi, w/out cocoa, dairy products subj to add US note 1 to Ch 4
3	18062026	Chocolate, >2 kg, cont milk solids, not in blocks >4.5 kg, >5.5% butterfat, <21% milk solids, not subj GN 15
4	18062028	Chocolate, >2 kg, cont milk solids, not in blocks >4.5 kg, >5.5% butterfat, >21% milk solids, not subj GN 15
5	18062036	Chocolate, >2 kg, cont milk solids, not in blocks >4.5 kg, <21% milk solids, not subj GN 15
6	18062038	Chocolate, >2 kg, cont milk solids, not in blocks >4.5 kg, <21% milk solids, not subj GN 15
7	18062082	Choc./other preps w/cocoa, 2-4.5 kg, (dairy prod of Ch 4 US note 1), <65% sugar, <21% milk solids, not GN 15

---

<b>Item</b>	<b>Code</b>	<b>Abbreviated description of product</b>
8	18062083	Choc./other preps w/cocoa, 2-4.5 kg, (dairy prod of Ch 4 US note 1), <65% sugar, >21% milk solids, not GN 15
9	18062087	Low fat chocolate crumb, sugar by wt <65%, 2-4.5 kg, 21% milk solids, not subj GN 15, not subj Ch 18 note 3
10	18062089	Low fat chocolate crumb, sugar by wt <65%, <2 kg, 21% milk solids, not subj GN 15, not subj Ch 18 note 3
11	18063206	Chocolate, not filled, >5.5% butterfat, <21% milk solids, in blocks/bars/slabs <2 kg
12	18063208	Chocolate, not filled, >5.5% butterfat, >21% milk solids, in blocks/bars/slabs <2 kg
13	18063216	Chocolate, not filled, <21% milk solids, in blocks/bars/slabs <2 kg
14	18063218	Chocolate, not filled, >21% milk solids, in blocks/bars/slabs <2 kg
15	18063270	Cocoa preps (dairy prod of Ch 4 US note 1), <21% milk solids, not filled, in blocks/slabs/bars <2 kg, not 4.10
16	18063280	Cocoa preps (dairy prod of Ch 4 US note 1), >21% milk solids, not filled, in blocks/slabs/bars <2 kg, not 4.10
17	18069008	Cocoa preps (dairy prod of Ch 4 US note 1), <21% milk solids, not filled, not in blocks/slabs/bars <2 kg, not GN 15
18	18069010	Cocoa preps (dairy prod of Ch 4 US note 1), >21% milk solids, not filled, not in blocks/slabs/bars <2 kg, not GN 15
19	18069018	Cocoa preps, bfat by wt >5.5%, <21% milk solids, not in blocks/slabs/bars, not GN 15
20	18069020	Cocoa preps, bfat by wt <5.5%, >21% milk solids, not in blocks/slabs/bars, not GN 15
21	18069028	Cocoa preps, cont milk solids, bfat by wt <5.5%, <21% milk solids, not in blocks/slabs/bars, not 18.3, not GN 15
22	18069030	Cocoa preps, cont milk solids, bfat by wt <5.5%, >21% milk solids, not in blocks/slabs/bars, not 18.3, not GN 15

---

---

## Schedule 1      **Appointment of authorised agent**

(regulation 8)

### Form

COMMONWEALTH OF AUSTRALIA  
DAIRY PRODUCE REGULATIONS 1986  
APPOINTMENT OF AUTHORISED AGENT

To the Secretary, Department of Agriculture, Fisheries and Forestry,  
Canberra

I, *(full name and address)* hereby appoint —  
*(full name and address)*

a specimen of whose signature appears below, to be my authorised agent  
for the purpose of signing on my behalf the declaration  
contained in any return that I am required to furnish to you  
under regulation 6 or 7 of the *Dairy Produce Regulations 1986*.

Dated

*(Signature of person appointing authorised agent)*

Authorised agent

## Schedule 2 Milk fat and protein content — kind of dairy produce

(subregulation 16 (1), subregulation 17 (1))

Column 1 Item No.	Column 2 Kind of Dairy Produce	Column 3 Milk Fat (%)	Column 4 Protein (%)
<b>BUTTER AND BUTTERFAT PRODUCTS</b>			
1	Anhydrous milk fat	99.0	0.1
2	Butteroil	99.5	0.3
3	Ghee	99.8	0.1
<b>CASEINS</b>			
4	Casein	1.5	85.0
5	Casein — edible/industrial	0.5	84.0
<b>CHEESES</b>			
6	Bakers	8.5	9.5
7	Blue vein	32.5	19.5
8	Brie	28.0	18.0
9	Camembert	25.5	17.5
10	Cheddar	33.0	24.5
11	Cheddar — kosher	33.0	24.5
12	Cheddar — reduced fat	23.8	27.9
13	Cheddar — reduced fat and salt	24.5	28.0
14	Cheddar — reduced salt	34.0	24.0
15	Cheedham	26.5	24.5
16	Cheese spread	21.5	16.0
17	Cheshire	31.5	23.0
18	Colby	31.5	23.0
19	Cottage	8.5	15.0

---

<b>Column 1 Item No.</b>	<b>Column 2 Kind of Dairy Produce</b>	<b>Column 3 Milk Fat (%)</b>	<b>Column 4 Protein (%)</b>
20	Cottage — creamed	4.5	16.0
21	Cottage — creamed low fat	2.5	12.5
22	Cottage — low fat	2.2	17.7
23	Cotto	10.5	26.5
24	Cream cheese	33.0	7.5
25	Curd	32.0	24.5
26	Devondale seven	7.0	26.0
27	Edam	27.0	26.4
28	Edam — reduced fat	18.5	32.0
29	Emmenthal	29.0	26.5
30	Fetta	19.0	18.5
31	Fetta — low salt	25.0	17.5
32	Fetta — reduced fat	13.5	20.5
33	Goshred	26.0	26.5
34	Gouda	28.5	25.5
35	Goya	30.5	34.5
36	Granular	32.0	24.5
37	Gruyere	29.0	27.5
38	Haloumy	16.0	20.5
39	Havarti	35.5	18.5
40	Jack	16.0	18.5
41	Melbouno	30.5	34.5
42	Mozzarella	22.0	26.0
43	Mozzarella — reduced fat	17.0	31.0
44	Mungabareena	31.0	17.5
45	Neufchatel	27.8	8.5
46	Parmesan	26.0	34.5
47	Pecorino	27.0	28.0

---

<b>Column 1 Item No.</b>	<b>Column 2 Kind of Dairy Produce</b>	<b>Column 3 Milk Fat (%)</b>	<b>Column 4 Protein (%)</b>
48	Pecorino — reduced fat	23.5	23.5
49	Peparto	30.5	25.0
50	Pizza	15.0	28.0
51	Processed	26.5	20.5
52	Raclette	29.0	24.0
53	Ricotta	9.5	8.5
54	Ricotta — reduced fat	7.5	10.5
55	Romano	26.0	32.0
56	Samsoe	32.0	22.5
57	Shred	26.0	26.5
58	Steppen	24.0	24.5
59	Swiss	29.0	27.5
60	Swiss — reduced fat	21.0	34.0
61	Tilsit	28.5	25.5
	<b>CONDENSED MILK</b>		
62	Sweetened condensed milk — full	8.5	7.5
63	Unsweetened condensed milk — full	8.0	7.5
64	Unsweetened condensed milk — skim	3.0	9.0
	<b>CREAM</b>		
65	Reduced cream	25.0	2.6
66	Rich/pure cream	45.0	1.5
67	Thickened cream	35.0	2.0
68	Whipping cream	40.0	1.7
	<b>CUSTARD</b>		
69	Custard	2.0	4.0
70	Custard — low fat	1.0	4.0
	<b>MILK PRODUCTS</b>		
71	Modified milk — low fat	0.3	3.9

<b>Column 1 Item No.</b>	<b>Column 2 Kind of Dairy Produce</b>	<b>Column 3 Milk Fat (%)</b>	<b>Column 4 Protein (%)</b>
72	Modified milk — reduced fat	1.4	3.9
73	Skim milk	0.1	3.4
74	Whole milk — flavoured	2.0	3.2
75	Whole milk — flavoured chocolate	3.2	3.0
76	Whole milk — flavoured reduced fat chocolate	1.7	3.3
77	Whole milk — UHT	3.2	3.0
	<b>MILK PROTEIN POWDERS</b>		
78	Buttermilk powder	9.0	31.0
79	Milk protein concentrate 50	1.2	50.0
80	Milk protein concentrate 56	1.2	56.0
	<b>WHEY PRODUCTS</b>		
81	Whey powder (sweet cheddar)	1.2	12.0
82	Whey protein concentrate 50	1.2	50.0
83	Whey protein concentrate 75	1.2	75.0
84	Whey protein concentrate 80	1.2	80.0
	<b>YOGHURTS</b>		
85	Fruit yoghurt — low fat	0.2	5.0
86	Fruit yoghurt — reduced fat	1.0	4.5
87	Natural yoghurt	3.2	4.5
88	Natural yoghurt — A/B culture	0.2	5.5
89	Natural yoghurt — Leben	3.5	4.4
90	Natural yoghurt — low fat	0.2	5.5
91	Natural yoghurt — reduced fat	1.3	4.3

---

## Schedule 3      Milk fat and protein content — class of dairy produce

(subregulation 16 (2), subregulation 17 (2))

<b>Column 1 Item No.</b>	<b>Column 2 Class of Dairy Produce</b>	<b>Column 3 Milk Fat (%)</b>	<b>Column 4 Protein (%)</b>
1	Butter	82.0	0.5
2	Buttermilk	2.0	4.0
3	Raw milk	4.5	3.5
4	Skim milk powder — instant	0.8	35.5
5	Skim milk powder — non-instant	0.8	35.5
6	Whole milk — fresh	3.2	3.0
7	Whole milk powder — instant 26%	26.0	26.5
8	Whole milk powder — non-instant 26%	26.0	26.5

**Table of Instruments****Notes to the *Dairy Produce Regulations 1986*****Note 1**

The *Dairy Produce Regulations 1986* (in force under the *Dairy Produce Act 1986*) as shown in this compilation comprise Statutory Rules 1986 No. 166 amended as indicated in the Tables below.

Under the Legislative Instruments Act 2003, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments. From 1 January 2005 the Statutory Rules series ceased to exist and was replaced with Select Legislative Instruments (SLI series). Numbering conventions remain the same, ie Year and Number.

**Table of Instruments**

<b>Year and number</b>	<b>Date of notification in <i>Gazette</i> or FRLI registration</b>	<b>Date of commencement</b>	<b>Application, saving or transitional provisions</b>
1986 No. 166	30 June 1986	1 July 1986	
1986 No. 237	11 Sept 1986	11 Sept 1986	—
1987 No. 42	24 Mar 1987	24 Mar 1987	—
1987 No. 263	12 Nov 1987	12 Nov 1987	—
1990 No. 384	6 Dec 1990	6 Dec 1990	—
1990 No. 424	21 Dec 1990	1 Jan 1991	—
1990 No. 433	21 Dec 1990	21 Dec 1990	—
1995 No. 209	30 June 1995	1 July 1995	—
1995 No. 310	26 Oct 1995	26 Oct 1995	—
2003 No. 135	26 June 2003	1 July 2003 (see r. 2 and <i>Gazette</i> 2003, No. S228)	—
2003 No. 276	7 Nov 2003	7 Nov 2003	—
2004 No. 253	26 Aug 2004	26 Aug 2004	—
2005 No. 107	8 June 2005 (see F2005L01396)	9 June 2005	—
2005 No. 231	24 Oct 2005 (see F2005L03090)	25 Oct 2005	—

**Table of Amendments****Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
<b>Part I</b>	
R. 1 .....	rs. 2003 No. 135
R. 2 .....	am. 1995 No. 310; 2003 No. 276
R. 2A.....	ad. 2003 No. 135
Part II .....	rep. 2003 No. 276
R. 3 .....	rep. 2003 No. 276
R. 4 .....	am. 1987 Nos. 42 and 263 rep. 1995 No. 310
R. 4A.....	ad. 1986 No. 237 rep. 2003 No. 276
R. 4B.....	ad. 1986 No. 237 rep. 2003 No. 276
<b>Part 2</b>	
Part 2 .....	ad. 2003 No. 276
<b>Division 2.1</b>	
Div. 2.1 of Part 2 .....	ad. 2003 No. 276
R. 2.01 .....	ad. 2003 No. 276
R. 2.02 .....	ad. 2003 No. 276
Note to r. 2.02 .....	rep. 2004 No. 253
R. 2.03 .....	ad. 2003 No. 276 am. 2004 No. 253
R. 2.04 .....	ad. 2003 No. 276
<b>Division 2.2</b>	
Div. 2.2 of Part 2 .....	ad. 2003 No. 276
R. 2.05 .....	ad. 2003 No. 276 am. 2004 No. 253
R. 2.06 .....	ad. 2003 No. 276
R. 2.07 .....	ad. 2003 No. 276
R. 2.08 .....	ad. 2003 No. 276
R. 2.09 .....	ad. 2003 No. 276
R. 2.10 .....	ad. 2003 No. 276
R. 2.11 .....	ad. 2003 No. 276
R. 2.12 .....	ad. 2003 No. 276
R. 2.13 .....	ad. 2003 No. 276
R. 2.14 .....	ad. 2003 No. 276 am. 2004 No. 253
R. 2.15 .....	ad. 2003 No. 276

---

**Table of Amendments**


---

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
R. 2.16 .....	ad. 2003 No. 276
R. 2.17 .....	ad. 2003 No. 276
<b>Division 2.3</b>	
Heading to Div. 2.3 ..... of Part 2	rs. 2004 No. 253
Div. 2.3 of Part 2 .....	ad. 2003 No. 276
R. 2.18 .....	ad. 2003 No. 276 rs. 2004 No. 253
R. 2.19 .....	ad. 2003 No. 276
R. 2.20 .....	ad. 2003 No. 276
R. 2.21 .....	ad. 2003 No. 276
R. 2.22 .....	ad. 2003 No. 276
R. 2.23 .....	ad. 2003 No. 276
R. 2.24 .....	ad. 2003 No. 276
R. 2.25 .....	ad. 2003 No. 276
R. 2.26 .....	ad. 2003 No. 276
R. 2.27 .....	ad. 2003 No. 276 am. 2004 No. 253
R. 2.28 .....	ad. 2003 No. 276
R. 2.29 .....	ad. 2003 No. 276
R. 2.30 .....	ad. 2003 No. 276
<b>Division 2.3A</b>	
Heading to Div. 2.3A ..... of Part 2	rs. 2005 No. 107
Div. 2.3A of Part 2.....	ad. 2004 No. 253
<b>Subdivision 2.3A.1</b>	
R. 2.30A.....	ad. 2004 No. 253
R. 2.30B.....	ad. 2004 No. 253 am. 2005 Nos. 107 and 231
R. 2.30BA .....	ad. 2005 No. 107 am. 2005 No. 231
R. 2.30C.....	ad. 2004 No. 253 am. 2005 No. 107
<b>Subdivision 2.3A.2</b>	
R. 2.30D.....	ad. 2004 No. 253 am. 2005 No. 107
R. 2.30E.....	ad. 2004 No. 253
R. 2.30F.....	ad. 2004 No. 253
R. 2.30G .....	ad. 2004 No. 253
R. 2.30H.....	ad. 2004 No. 253

**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
R. 2.30I .....	ad. 2004 No. 253
R. 2.30J .....	ad. 2004 No. 253 am. 2005 No. 107
R. 2.30K.....	ad. 2004 No. 253
R. 2.30L .....	ad. 2004 No. 253
R. 2.30M .....	ad. 2004 No. 253
R. 2.30N.....	ad. 2004 No. 253 rep. 2005 No. 107
R. 2.30O .....	ad. 2004 No. 253
<b>Subdivision 2.3A.3</b>	
R. 2.30P.....	ad. 2004 No. 253 am. 2005 No. 107
R. 2.30Q .....	ad. 2004 No. 253 rs. 2005 No. 107 am. 2005 No. 231
R. 2.30R.....	ad. 2004 No. 253 am. 2005 Nos. 107 and 231
<b>Subdivision 2.3A.4</b>	
R. 2.30S.....	ad. 2004 No. 253
R. 2.30SA .....	ad. 2005 No. 107
R. 2.30T .....	ad. 2004 No. 253 am. 2005 Nos. 107 and 231
R. 2.30U.....	ad. 2004 No. 253 am. 2005 No. 107
R. 2.30V.....	ad. 2004 No. 253 rs. 2005 No. 107
R. 2.30W.....	ad. 2004 No. 253
<b>Subdivision 2.3A.5</b>	
R. 2.30X.....	ad. 2004 No. 253
R. 2.30Y.....	ad. 2004 No. 253
R. 2.30Z.....	ad. 2004 No. 253 am. 2005 Nos. 107 and 231
R. 2.30ZA.....	ad. 2004 No. 253 rs. 2005 No. 231
Heading to r. 2.30ZB.....	rs. 2005 No. 231
R. 2.30ZB.....	ad. 2004 No. 253 rs. 2005 No. 107 am. 2005 No. 231
Heading to r. 2.30ZC.....	rs. 2005 No. 231
R. 2.30ZC .....	ad. 2004 No. 253 rs. 2005 No. 107 am. 2005 No. 231

---

**Table of Amendments**


---

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

<b>Provision affected</b>	<b>How affected</b>
R. 2.30ZD .....	ad. 2005 No. 107
<b>Division 2.4</b>	
Div. 2.4 of Part 2 .....	ad. 2003 No. 276
R. 2.31 .....	ad. 2003 No. 276
R. 2.32 .....	ad. 2003 No. 276
R. 2.33 .....	ad. 2003 No. 276
R. 2.34 .....	ad. 2003 No. 276
<b>Part III</b>	
R. 6 .....	am. 1990 Nos. 384 and 424
R. 8 .....	am. 1995 No. 209
R. 10 .....	rep. 2003 No. 276
Part IV .....	rep. 2003 No. 276
R. 11 .....	rep. 2003 No. 276
R. 12 .....	rep. 2003 No. 276
R. 13 .....	rep. 1995 No. 209
R. 14 .....	rep. 1995 No. 209
R. 15 .....	ad. 1990 No. 433 rep. 1995 No. 209
<b>Part V</b>	
Part V .....	ad. 1995 No. 209
R. 16 .....	ad. 1995 No. 209
R. 17 .....	ad. 1995 No. 209
<b>Schedule 1A</b>	
Schedule 1A .....	ad. 2003 No. 276 am. 2004 No. 253
<b>Schedule 1B</b>	
Heading to Schedule 1B .....	rs. 2005 No. 107
Schedule 1B .....	ad. 2004 No. 253
<b>Schedule 1</b>	
Heading to Schedule .....	rep. 1995 No. 209
Heading to Schedule 1 .....	ad. 1995 No. 209
Schedule 1 .....	am. 2003 No. 276
<b>Schedule 2</b>	
Schedule 2 .....	ad. 1995 No. 209
<b>Schedule 3</b>	
Schedule 3 .....	ad. 1995 No. 209

---