



## **Animal Products (Regulated Control Scheme—Dairy Export Quota Products) Regulations 2008**

Anand Satyanand, Governor-General

### **Order in Council**

At Wellington this 19th day of May 2008

Present:

His Excellency the Governor-General in Council

Pursuant to sections 38 and 166(1)(b) of the Animal Products Act 1999, His Excellency the Governor-General, on the recommendation of the Minister given in accordance with section 39 of the Animal Products Act 1999, and acting on the advice and with the consent of the Executive Council, makes the following regulations.

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**Regulations****1 Title**

These regulations are the Animal Products (Regulated Control Scheme—Dairy Export Quota Products) Regulations 2008.

**2 Commencement**

These regulations come into force on 1 July 2008.

**Part 1****Preliminary provisions****3 Regulated control scheme imposed**

- (1) These regulations impose a regulated control scheme in relation to dairy products processed for designated dairy quota markets.
- (2) The scheme comprises these regulations together with any associated specifications made by the Director-General.

#### 4 Prime purpose of scheme

The prime purpose of the scheme is to make provision for the control and management of the processing of dairy material and products intended for export into quota markets, to meet any applicable designated market access requirements for designated markets.

#### 5 Activities to which scheme applies

This scheme applies to—

- (a) the processing of dairy material and dairy products intended for export to designated markets; and
- (b) the export of dairy products to those markets.

#### 6 Persons to whom scheme applies

This scheme applies to and imposes obligations on—

- (a) processors of dairy material or products intended for export to designated dairy quota markets; and
- (b) holders of export licences for dairy products intended for those markets.

#### 7 Relationship between scheme and other regulations and specifications

- (1) These regulations are additional to any regulations and specifications made under the Act.
- (2) Without limiting subclause (1), every person to whom regulation 9(1) applies must comply with any specifications and detailed requirements set by the Director-General for approved quota compliance programmes.
- (3) Despite subclauses (1) and (2), to the extent that this scheme is inconsistent with any other regulations or specifications made under the Act, this scheme prevails.

#### 8 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

**Act** means the Animal Products Act 1999

**approved quota compliance programme** means a quota compliance programme approved by the Director-General under Part 2 of these regulations

**dairy quota products** means dairy products intended for export to a designated market

**designated market** means a market listed in Schedule 5 or 5A of the Dairy Industry Restructuring Act 2001

**designated market access requirement** means an access requirement in respect of dairy quota products issued or accepted by the Director-General under Part 5 of the Act, and may include a requirement accepted by the Director-General otherwise than under Part 5 of the Act

**Director-General** means the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the Act

**export licence** has the same meaning as in section 5 of the Dairy Industry Restructuring Act 2001

**IMA certificate** means the inward monitoring arrangement certificate in the form specified by the Director-General, having regard to designated market access requirements, that enables dairy products to be imported into the European Communities under a country-specific tariff quota

**processing** means the activity of dairy processing (within the meaning of section 4 of the Act) of dairy material or products intended for export to a designated market

**recognised laboratory** means a laboratory recognised as an agency under section 103 of the Act for the purposes of these regulations

**scheme**, or **regulated control scheme**, means these regulations and any associated specifications, specified requirements, and determinations given or made by the Director-General

**specification** means a requirement in relation to and forming part of this scheme specified by notice under section 167(1) of the Act, and **specifies** and **specified** have a corresponding meaning.

- (2) Unless the context otherwise requires, any other term used in these regulations and defined in the Dairy Industry Restructuring Act 2001 or the Animal Products Act 1999 has the same meaning as in those Acts.

## Part 2

### Quota compliance programmes

#### 9 Compliance with approved quota compliance programme

- (1) All persons who process for export, or export, a dairy quota product to a designated market must carry out that activity in accordance with a quota compliance programme approved under this Part.
- (2) The operator of an approved quota compliance programme must notify the Director-General within 24 hours of official notification if a consignment approved for export and exported under the programme is refused import entry by a foreign government to a designated market.

#### 10 Application for approval of quota compliance programme

- (1) Any person may apply in writing to the Director-General for approval of a quota compliance programme.
- (2) A quota compliance programme—

- (a) may be developed by the applicant for approval, having regard to the particular circumstances and processes of the applicant; or
- (b) may be based on a template or model that has been specified by the Director-General by notice under section 167 of the Act for the purposes of this scheme.

## **11 Requirements for approval of quota compliance programme**

The Director-General may approve a quota compliance programme where satisfied that it makes adequate provision (where applicable) for the following matters:

- (a) the designation of an operator to carry out the approved quota compliance programme, and be subject to obligations in respect of it, under this scheme:
- (b) dairy quota products to be made according to designated market access requirements:
- (c) the carrying out of testing and sampling according to designated market access requirements:
- (d) procedures to manage dairy quota products that do not meet designated market access requirements:
- (e) documented systems and procedures to identify dairy quota products and to capture, record, receive, process, and transfer data relating to those products:
- (f) the keeping, availability for inspection, and inspection of records for ascertaining compliance of the applicant with the quota compliance programme:
- (g) the storage of dairy quota products in a manner that ensures compliance with designated market access requirements:
- (h) the secure and reliable transportation of dairy quota products:
- (i) the designation of persons who are responsible for the supply of data and provision of dairy quota products compliance declarations under these regulations:
- (j) provisions relating to export systems for dairy quota products, including (without limitation) systems for selection and loading of compliant products into containers, and managing transfer of data into a quota management system maintained by the Director-General:
- (k) any other matters required in specifications for quota compliance programmes.

## **12 Procedure where Director-General declines to approve quota compliance programme**

Where the Director-General proposes to decline an application for approval of a quota compliance programme submitted under regulation 10, he or she must—

- (a) notify the applicant in writing accordingly; and
- (b) state the reasons for the proposed decision to decline approval; and
- (c) give the applicant a reasonable opportunity to make written or (where appropriate) oral submissions on the reasons for the proposed decision, before issuing a formal notice in writing declining approval; and
- (d) in all cases, supply a written notice of the cancellation, amendment, or correction, to the applicant, including a date on which the cancellation, amendment, or correction is to take effect.

## **13 Notification of approval or refusal to issue approval for quota compliance programme**

- (1) In any case where the Director-General approves a quota compliance programme or (having followed the process set out in regulation 12) declines to approve a programme, he or she must issue an approval or refusal of approval in writing to the applicant.
- (2) In the case of an approval, the notification must include the date on which the quota compliance programme is to take effect.
- (3) The Director-General must supply a certified copy of any approval to any recognised person or agency performing export verification functions for the applicant that has been notified to the Director-General as part of the application for the quota compliance programme, or at any subsequent time.

## **14 Amendments to approved quota compliance programmes**

- (1) The operator of an approved quota compliance programme must amend that programme, and (subject to subclause (4)(a)) apply for approval of that amendment, where any change, event, or other matter (the **event**) means that the programme—
  - (a) no longer makes adequate provision for any applicable matter required by regulation 11; or
  - (b) otherwise impacts, or will impact, on the fitness for the intended purpose of the dairy quota products concerned.
- (2) The operator must amend the programme and apply for approval of the amendment—
  - (a) before the event, where the operator knows of the event in advance; and
  - (b) in all other cases, without unreasonable delay.

- (3) The application for approval of an amendment must be made in a manner (if any) specified by the Director-General.
- (4) The Director-General may, by notice under section 167 of the Act, specify matters in relation to the amendment of quota compliance programmes, including—
  - (a) the kinds of amendments that require approval and those that do not, and situations in which amendments may be required; and
  - (b) any amount of notice that may be required in respect of events or matters of a kind known to the operator in advance that will require an amendment to a quota compliance programme; and
  - (c) the form or requirements for an application to amend a quota compliance programme.

#### **15 Approval or refusal to approve amendment**

- (1) As soon as practicable after approving an amendment, the Director-General must—
  - (a) notify the applicant in writing accordingly; and
  - (b) where the amendment relates to future events or matters, specify the date or occasion on which the amendment takes effect; and
  - (c) supply to both the applicant and the appropriate recognised agency a certified copy of the amendment (or, where appropriate, of a certified redraft of the relevant part of the programme that incorporates the amendment).
- (2) If the Director-General proposes to refuse to approve an amendment, the Director-General must give the applicant—
  - (a) a notice containing such particulars as will clearly inform the applicant of the grounds on which the Director-General proposes to refuse to approve the amendment; and
  - (b) a reasonable opportunity to make written submissions or, where the Director-General considers appropriate in the circumstances, to be heard in respect of the matter.
- (3) Where, after having considered matters raised under subclause (2)(b) (if any), the Director-General refuses to approve an amendment, the Director-General must as soon as practicable notify that fact to the applicant in writing, giving reasons.

#### **16 Withdrawal or surrender of approval of quota compliance programme**

- (1) The Director-General may withdraw his or her approval of a quota compliance programme—
  - (a) at the written request of the operator of the programme; or

- (b) if, after taking all reasonable steps to obtain all relevant information, the Director-General is no longer satisfied that the programme complies with any requirements of these regulations or specifications for quota compliance programmes made by the Director-General under this scheme.
- (2) The Director-General may not withdraw approval of a quota compliance programme under this regulation unless he or she has first—
  - (a) notified the operator of the programme (whether orally or in writing) of the intention to withdraw approval and the reason for the withdrawal; and
  - (b) given the operator an opportunity to make written submissions or, where the Director-General considers reasonable and practicable in the circumstances, to be heard, in respect of the proposed withdrawal of approval.
- (3) Where, after having considered matters raised under subclause (2)(b) (if any), the Director-General withdraws approval of a programme, the Director-General must—
  - (a) give written notice of that fact to the operator of the programme, giving reasons and specifying the date on which the withdrawal of approval takes effect (which may not be earlier than the date of notification); and
  - (b) notify the appropriate recognised agency of that fact.

### **Part 3**

#### **Miscellaneous provisions**

##### **17 Production of records and test results**

If an approved quota compliance programme, or any requirements or specifications for quota compliance systems made by the Director-General under this scheme, require the keeping of particular records or the making of particular tests, any person authorised by the Director-General for the purpose may direct the person in control of the records or the results of the tests to produce them for inspection by that person during normal business hours.

##### **18 Testing only in recognised laboratories**

All testing of processed dairy quota products must be carried out in a recognised laboratory.

##### **19 Offences**

- (1) A person commits an offence for the purposes of section 135(1)(b) of the Act who fails to comply with regulation 7(2) or 9.
- (2) A person who commits such an offence is liable to the penalty specified in section 135(3) of the Act.

**20 Revocation**

The Dairy Industry (IMA Certification) Regulations 2000 (SR 2000/116) are revoked.

**21 Transitional provisions and savings**

- (1) Any dairy quota compliance programme approved under the Dairy Industry (IMA Certification) Regulations 2000 (being an approval current immediately before the revocation of those regulations) is to be treated as if it had been approved under Part 2 of these regulations.
- (2) The Director-General must review any dairy quota compliance programme to which subclause (1) applies within 1 year after the commencement of these regulations.

Martin Bell,  
for Clerk of the Executive Council.

**Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 1 July 2008, impose a regulated control scheme under Part 3 of the Animal Products Act 1999 in respect of dairy products destined for export to dairy quota markets.

The Dairy Industry (IMA Certification) Regulations 2000 are revoked.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 22 May 2008.

These regulations are administered by the New Zealand Food Safety Authority.