

PCO 8224/5

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# IN CONFIDENCE

## Dairy Industry Restructuring (Transfer of Export Licences) Regulations 2007

Governor-General

### Order in Council

At Wellington this        day of        2007

Present:

in Council

Pursuant to section 28A of the Dairy Industry Restructuring Act 2001, His Excellency the Governor-General, 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 Dairy Industry Restructuring (Transfer of Export Licences) Regulations 2007.

### **2 Commencement**

These regulations come into force on **date to be specified**.

### **3 Interpretation**

In these regulations, **Act** means the Dairy Industry Restructuring Act 2001.

#### *Transferring export licences*

### **4 Transferring export licences**

- (1) Any person who holds an export licence may transfer all or part of the licence to another person who is eligible to hold an export licence.
- (2) However, an export licence holder—
  - (a) may transfer part of his or her export licence only if the part represents 20 metric tonnes or more of a single product to a designated market for a quota year; and
  - (b) may not transfer part of his or her export licence that has already been used.
- (3) Subclause (1) also applies to a person who is removed from the register of export licence holders, but only in relation to a licence held by the person at the time of removal.
- (4) This regulation is subject to section 28 of the Act.

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*Application and registration of transfer of export licences*

**5 Application for registration**

- (1) The transferor and the transferee of all or part of an export licence must jointly apply to the chief executive in writing for registration of the transfer on the register of export licence holders.
- (2) A separate application must be made for each designated market and quota year that is the subject of a transfer under these regulations.
- (3) An application must contain the information set out in section 29B(2) of the Act.
- (4) The chief executive may require the transferor or the transferee, or both, to supply information additional to that contained in the application.
- (5) If the transferor or the transferee fails to supply the information within 1 month after the request, or within such further time as the chief executive may allow, the application lapses.
- (6) If an application for the registration of a transfer of all or part of an export licence relates to period 2 of the quota year for butter to the European Communities,—
  - (a) the application must also state that the transfer relates to period 2 of the quota year for the exporting of butter to the European Communities; and
  - (b) that fact must be recorded on the register of export licence holders.
- (7) In subclause (6)(a), **period 2** means a period of 6 months beginning on 1 July and ending on 31 December.

**6 Registration of transfer**

- (1) On receipt of a properly completed application, the chief executive must register the transferee as an export licence holder if subclause (3) is satisfied.
- (2) The transfer of all or part of an export licence may be registered at any time during a quota year, but not during the last 15 days of the quota year.
- (3) Only a person eligible to hold an export licence may be registered as an export licence holder.

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**7 Effective transfer**

A transfer under these regulations becomes effective only if—

- (a) the transfer has been registered in the register of export licence holders in accordance with regulation 6; and
- (b) the chief executive, or a person authorised by the chief executive, has notified the transferor and the transferee of the registration of the transfer.

*Refusal to register and deregistration*

**8 Refusal to register**

(1) If the chief executive proposes to refuse to register a person as an export licence holder, the chief executive must give the transferee—

- (a) a notice containing the grounds on which the chief executive proposes to refuse to register the transferee; and
- (b) a copy of any information the chief executive relied on in proposing to refuse to register the transferee; and
- (c) a reasonable opportunity to make written submissions or be heard in respect of the matter.

(2) Where the chief executive finally determines to refuse to register a person as an export licence holder, the chief executive must as soon as practicable notify the person, in writing, of—

- (a) the decision; and
- (b) the reasons for the decision, and the facts on which it is based.

**9 Removal from register of export licence holders**

(1) The chief executive may remove a person from the register of export licence holders if satisfied that the person is disqualified from being registered as an export licence holder by virtue of regulation 6(3).

(2) Before removing a person from the register, the chief executive must notify the person in writing of his or her intention, giving the reasons for that intention and the facts on which it is based.

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*Access to register of export licence holders*

**10 Access to register of export licence holders**

- (1) The chief executive must allow a holder of an export licence, on receipt of written request, to inspect information on the register that relates to his or her licence.
- (2) Access must be provided during each working day at the times determined by the chief executive, and may be provided by any means the chief executive considers appropriate, including electronic means.
- (3) The chief executive must provide a copy of the information described in subclause (1) to an export licence holder on payment of the prescribed fee (if any).

*Notification requirements*

**11 Notification**

- (1) If any person is to be notified of any matter under these regulations, written notice of the matter must be given or supplied to the person either personally or by post or facsimile addressed to the person, or by electronic means acceptable to the person, at—
  - (a) the person's address as given under regulation 5(3):
  - (b) the person's electronic address, if known:
  - (c) the person's last known business or residential address, in any other case.
- (2) If a solicitor represents that he or she is authorised to accept a notice on behalf of a person, it is sufficient notification to deliver the notice to the solicitor if the solicitor signs a memorandum stating that he or she accepts the notice on behalf of the person.
- (3) If a notice is posted to a person (whether physically or by electronic means), it is to be treated as having been received by the person not later than 3 days after the date on which it was posted, unless the person proves that, otherwise than through fault on the person's part, it was not so received.

Clerk of the Executive Council.

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Explanatory note **Dairy Industry Restructuring (Transfer of  
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### 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 **date to be specified**, govern the transfer of export licences between persons eligible to hold export licences under the Dairy Industry Restructuring Act 2001 (the **Act**).

These regulations provide,—

- in *regulation 4(1)*, that any person who holds an export licence under the Act may transfer all or part of that licence to another eligible person:
- in *regulation 4(2)*, that an export licence holder may transfer part of that export licence only if the part represents 20 metric tonnes or more of a single product to a single market within a quota year:
- in *regulation 5*, the application process for a transferor and a transferee to register the transfer of an export licence:
- in *regulation 6*, the registration of a transfer on the register of export licence holders (the **register**):
- in *regulation 7*, the requirements for an effective transfer:
- in *regulation 8*, the process of refusal by the chief executive to register a person as an export licence holder:
- in *regulation 9*, the process of removal of a person from the register:
- in *regulation 10*, for access to the register.
- in *regulation 11*, notification requirements if any person is to be notified of any matter under the regulations.

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

Date of notification in *Gazette*:

These regulations are administered by the Ministry of Agriculture and Forestry.

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