



Australian Government

Australian Quarantine  
and Inspection Service

## Dairy Review Unit – Export Program

# Appeals Information Kit

A guide to appealing decisions under the  
Export Control (Milk and Milk Products) Orders

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## 1. Purpose

To advise exporters and registered establishments of the appeals provisions in the Export Control (Milk and Milk Products) Orders 2005.

## 2. Background

The *Export Control Act 1982 (ECA)* enables AQIS to issue export certificates to meet importing country requirements, to meet the requirements of legislation or to confirm matters in relation to goods exported. The *ECA* prohibits exports for prescribed goods, including milk and milk products, unless certain conditions are met including issue of export permits and that the goods are made available for inspection as required.

The Export Control (Prescribed Goods – General) Orders 2005 provide for registration of premises and management of export registered establishments.

The Export Control (Milk and Milk Products) Orders 2005 provide specific requirements to enable compliance with importing country requirements and provision of export certification.

Actions or decisions taken under this legislation will affect clients and provisions have been made to enable reconsideration or review of those decisions.

## 3. Definitions and meanings

<b>DRU</b>	Dairy Review Unit
<b>DAFF</b>	Department of Agriculture, Fisheries and Forestry
<b>AQIS</b>	Australian Quarantine and Inspection Services
<b>Delegate of the Secretary</b>	Decisions taken under the <i>Export Control Act 1982</i> must be made by a delegate of the Secretary. That is a person who has legal, written approval by the Secretary under the nominate legislation to take those decisions.
<b>Approved Arrangement</b>	An approved arrangement means an arrangement approved under clause 14 of Schedule 2 of the Export Control (Milk and Milk Products) Orders 2005 and includes a variation of an arrangement in the circumstances specified in suborder 78.5 and clause 20 of Schedule 2 of the Export Control (Milk and Milk Products) Orders 2005.
<b>Milk and milk products</b>	The Export Control (Milk and Milk Products) Orders 2005 apply to the following products: <ul style="list-style-type: none"> <li>a) milk (other than colostrum) obtained from an animal of the bovine species</li> <li>b) the following milk products derived from milk (other than colostrum) obtained from an animal of the bovine species <ul style="list-style-type: none"> <li>(i) flavoured milk and modified milk</li> <li>(ii) cream and thickened cream</li> <li>(iii) butter, butter concentrate, buttermilk, concentrated buttermilk, dairy blend, ghee (clarified butter) and anhydrous milk fat (butter oil)</li> <li>(iv) casein, caseinate and cheese</li> </ul> </li> </ul>

	<p>(v) whey, whey cream and concentrated whey cream</p> <p>(vi) cultured milk and yoghurt</p> <p>(vii) butter milk powder, lactose powder, milk sugar, powdered milk, skim milk powder, whey powder, milk protein powder, condensed milk, milk minerals and other milk concentrates</p> <p>(viii) dips containing yoghurt, cream cheese or other dairy base</p> <p>(ix) any other like milk product a major component of which is milk.</p> <p>If an importing country requires certification for other products, then the Export Control (Milk and Milk Products) Orders 2005 may apply.</p>
<b>Major component</b>	<p>The ingredient in a milk product which:</p> <p>a) comprises the largest proportion of the milk product by weight or volume</p> <p>b) is in such a proportion by weight or volume that if the ingredient is withdrawn from the milk product, the milk product would no longer have the stated or implied described characteristics.</p>
<b>Milk Orders</b>	Export Control (Milk and Milk Products) Orders 2005

#### 4. What provisions are made to appeal decisions under the Milk Orders?

The Milk Orders allow for review of decisions of authorised officers and review of decisions made by the Secretary. This means that decisions taken by authorised officers conducting inspections and audits may be reconsidered. In addition, decisions taken under the provisions of the Milk Orders enabling the Secretary to make determinations may be reviewed.

#### 5. What are AQIS policies regarding appeals?

AQIS policy requires that:

- all Programs have explicit policies in relation to appeals
- appeals must be handled consistently
- appeals must be managed in accordance with legislative requirements
- appeals can only be considered when they are lodged in accordance with the legislative provisions
- appeals must be in writing and clearly set out the reasons for the appeal and be lodged with in the timeframes provided by legislation
- reconsideration of decisions may result in the decision being upheld or overturned in accordance with legislative requirements
- sanctions will remain in force during any appeals against the sanction

## 6. When can I lodge an appeal?

Appeals in relation to decisions made by an authorised officer under Part 8 of the Milk Orders must be lodged within 7 days in writing. Initial appeals are made under Order 81 of the Milk Orders.

### 6.1 What information must I provide when I lodge an Appeal?

Appeals must be lodged in writing and provide the reasons for the appeal. They can be provided by email to [dairy@aqis.gov.au](mailto:dairy@aqis.gov.au) or to the Assistant Dairy Export Program Manager, AQIS PO Box 1006, Tullamarine VIC 3043.

### 6.2 What must AQIS do when an appeal is received?

Within 14 days of receipt of an appeal, AQIS must provide written notice of the decision and the reasons for the decision. This decision is taken under Order 82 of the Milk Orders.

## 7. Appeal of decisions taken under Order 82 of the Milk Orders

### 7.1 Can you appeal decisions taken under Order 82 of the Milk Orders?

Decisions under Order 82 of the Milk Orders may be appealed under Order 86. Again the application must be lodged in writing within 7 days. They can be provided by email to [dairy@aqis.gov.au](mailto:dairy@aqis.gov.au) or to the Dairy Export Program Manager, AQIS PO Box 1006, Tullamarine VIC 3043.

### 7.2 What must AQIS do when an appeal is received in relation to reconsideration of decisions?

AQIS must review the application within 28 days of receipt. Written notice must then be provided in relation to the decision under Order 87 of the Milk Orders and the reasons for the decision.

## 8. Are there other options to appeal decisions?

### 8.1 What other appeal options are there?

Some initial decisions taken under the Milk Orders may be appealed under Part 16 of the Export Control (Prescribed Goods – General) Orders 2005. These appeals must be lodged in writing within 28 days of the decision being taken and must set out the reasons for the application.

Appeals cannot be made under Part 16 of the Export Control (Prescribed Goods – General) Orders 2005 for decisions taken in relation to the following parts of the Milk Orders:

- a) Division VI of Part 2 – exemptions
- b) orders 78 and 79 – alternative regulatory arrangements
- c) order 87 – decisions taken by the secretary in relation to review of decisions of senior authorised officers
- d) Part 2 of Schedule 1 – approval to export from unregistered establishments
- e) clauses 13, 14, 17 and 19 of Schedule 9 – automated export permits, permits given by the Secretary in other circumstances and approval etc of approved arrangements for issuing permits
- f) Part 2 of Schedule 9 – Government certificates.

## 8.2 What must AQIS do when an appeal is received under Part 16?

The Secretary must review the decision and provide written advice of the decision taken under Order 16.03 of the Export Control (Prescribed Goods – General) Orders 2005 and the reasons for the decision within 45 days.

## 9. Can decisions under 16.03 be appealed?

Applications may be made to the Administrative Appeals Tribunal, for review of a decision of the secretary taken under Order 16.03.

## 10. Further information

AQIS Legislation [www.aqis.gov.au/legislation](http://www.aqis.gov.au/legislation) or [www.comlaw.gov.au](http://www.comlaw.gov.au)

Dairy Export Program [www.aqis.gov.au/dairy](http://www.aqis.gov.au/dairy)

EXDOC [www.aqis.gov.au/exdoc](http://www.aqis.gov.au/exdoc)

Food Standards Code [www.foodstandards.gov.au/foodstandardscode/index.cfm#\\_FSCchapter1](http://www.foodstandards.gov.au/foodstandardscode/index.cfm#_FSCchapter1)

## 11. References

### Legislation:

- Export Control Act 1982 [ECA]
- Export Control (Milk and Milk Products) Orders 2005 [Milk Orders]
- Export Control (Prescribed Goods- General) Orders 2005 [PGGOs]
- Export Control (Fees) Orders 2001 [Fees Orders]

## 12. Relevant State Regulatory Authority and AQIS Contacts

Victoria	Dairy Food Safety Victoria	03 9810 5900
New South Wales	NSW Food Authority and the Australian Capital Territory	02 9741 4727
Queensland	Safe Food Queensland	07 3253 9800
Tasmania	Tasmanian Dairy Industry Authority	03 6421 7638
Western Australia	Western Australian Department of Health AQIS	08 9388 4958
South Australia	Dairy Authority of South Australia	08 8223 2277
Northern Territory	Dairy Export Program AQIS	1300 723 241