EXPLANATORY STATEMENT

DEPARTMENT OF AGRICULTURE, FISHERIES & FORESTRY

AUSTRALIAN MEAT AND LIVE-STOCK INDUSTRY (BEEF EXPORT TO THE UNITED STATES OF AMERICA - QUOTA YEAR 2011) ORDER 2010 (THE ORDER)

1. Statutory Basis
1.1 Under the Australian Meat and Live-stock (Quotas) Act 1990 and the Australian Meat and Live-stock Industry Act 1997, the Commonwealth may, where restrictions are imposed on exports of Australian meat, establish a scheme to allocate quotas among the holders of export licences.

1.2 This order is made under section 17 of the Australian Meat and Live-stock Industry Act 1997.

2. Background to the Order
2.1 In 1995, the United States of America (US) applied a tariff rate quota (TRQ) regime to certain beef imports in response to agreement reached during the Uruguay Round of the World Trade Organisation discussions. Australia’s share of the country specific access was an annual tariff rate quota (based on the calendar year) of 378,214 tonnes at 4.4 cents per kilogram. Beef exported outside the quota incurred an ad valorem tariff of 26.4%.

2.2 This quota was reached for the first time in December 2001. Under the provisions of the Australian Meat and Live-stock (Quotas) Act 1990 and the Australian Meat and Live-stock Industry Act 1997 a part-year quota allocation was introduced for the period July to December 2002.

2.3 The Government also appointed a quota management panel to recommend appropriate quota allocation processes for 2003 and subsequent years. The panel’s recommendations, agreed by the Government, were incorporated into the order for the 2003, 2004 and 2005 quota years.

2.4 The Australia-US Free Trade Agreement (AUSFTA) became effective on 1 January 2005 and provided for increased access for beef totalling 70,000 tonnes over 18 years. However, under the AUSFTA the periodic increases were unable to increase until the earlier of 2007 or US beef exports returning to 2003 levels. The in-quota tariff reverted to zero from 1 January 2005.

2.5 The Government instituted an independent review of the US beef quota arrangements in 2005. The recommendations from that review were accepted for implementation from the 2006 quota year and are reflected in this order.

2.6 A Best Practice Regulation Preliminary Assessment conducted in line with Office of Best Practice Regulation guidelines indicates that amendments made by this order are of a minor or machinery nature and do not substantially alter existing arrangements.
3. **Summary of the Order**

3.1 This order explains the method by which in-quota beef may be exported to the US in 2011. The quota will be managed on a first-come first-served basis with a safeguard trigger to apply if shipments to the US reach 85% of the TRQ before 1 October 2011. Where the trigger level for exports is not reached before 1 October 2011 the first-come first-served arrangements will continue until the end of the 2011 quota year.

3.2 There are no company-specific quota allocations. However, eligible exporters (as defined in section 9 of the order) will be informed of their Provisional Trigger Allocation (PTA) in the November prior to the commencement of the new quota year. The PTA is to be made only if the safeguard trigger is met.

3.3 On and after 1 January 2011, a consignment of beef can be imported into the US as quota meat only if there is a US beef certificate for that consignment.

3.4 Before a US beef certificate is obtained, an approval must be obtained by the licensed exporter (as defined in section 5 of the order).

3.5 Before an approval is obtained, a licensed exporter must have all information completed through the Request for Permit obtained by AQIS.

3.6 The order also provides for the trading of PTA quota entitlement between exporters, designed to assist the orderly conduct of commercial activity during the quota year after the PTA has been implemented.

3.7 PTA quota allocated to exporters but unused at the end of the quota year limits the maximisation of Australia’s annual access amount. For this reason, PTA quota entitlement uncommitted by quota holders in mid October is withdrawn and made available to other eligible exporters, with a view to fully utilising the quota amount each year.

4. **Explanation of Sections Under the Order**

4.1 **Section 1 – Name of order**

This section provides how the order is to be cited.

4.2 **Section 2 – Commencement**

This section provides that the order commences on the day after it is registered on the Federal Register of Legislative Instruments (FRLI).

4.3 **Section 3 – Application of this order**

Subsection 3 (1) provides that the order applies to meat derived from cattle that meets certain classifications identified in the Harmonised Tariff Schedule of the US.

Subsection 3 (2) confirms that the order does not apply to edible offal, canned or processed meat or to ships’ stores.

Subsection 3 (3) provides a definition for processed meat.

4.4 **Section 4 – Purpose of the order**

This section confirms that the order sets out the conditions under which beef can be exported to the US at zero tariff.

4.5 **Section 5 - Definitions**
This section provides for a number of definitions used in the order.

4.6 **Section 6 – Approval to export beef before trigger day**

Subsection 6 (1) provides that the Secretary must issue an approval to export beef if the exporter applies for approval to export a consignment of quota in the approved form, and provided the amount of quota for which certificates have been issued in 2011 does not exceed 408 214 000 kilograms (kg).

Subsection 6 (2) requires that the approval must specify an export deadline to identify when the export must have taken place.

Subsection 6 (3) provides that the Secretary must not issue an approval for exports where the application is made after the trigger day.

4.7 **Section 7 – How to get a US beef quota certificate**

This section provides that the Secretary must issue a US beef quota certificate to an exporter that holds an approval for the consignment of quota beef and makes the appropriate entry in EXDOC for the consignment.

4.8 **Section 8 – Notices about PTAs**

Subsection 8 (1) provides that the secretary must send a notice to all eligible exporters that exported qualifying beef to the US during either of the years commencing on 1 November 2008 and ending on 31 October 2010.

Subsection 8 (2) provides that the notice must advise exporters that if the recipient acknowledges the notice on or before the trigger day (if it occurs) the exporter will be deemed to have applied for a provisional trigger allocation (PTA). Under the *Australian Meat and Live-stock (Quotas) Act 1990* an exporter may only be granted quota if it applies to the Secretary.

4.9 **Section 9 – Calculation of PTAs**

Subsection 9 (1) provides for a number of definitions used in section 9.

Subsection 9 (2) sets out the formula used to determine an exporter’s share of the 61 232 000 kg available for allocation as the PTA for 2011. An exporter’s share of the PTA is arrived at by multiplying 61 232 000 by the exporter’s share (expressed as a fraction) of recorded shipped weight of exports of qualifying beef into the USA in shipping year 2008 and shipping year 2009. An example is worked below.

Subsection 9 (4) provides that the minimum PTA is 1 000 kg and that an amount calculated for an exporter under subsection 9 (3) that is less than 1 000 kg is deemed to be nil.
Example: Company X has exported 25,651,000 kilograms of qualifying beef to the US in the 12-month period from 1 November 2008. The same company exported 26,437,000 kilograms to the US in the 12-month period from 1 November 2009. Therefore, the total of Company X’s export of qualifying beef to the US in shipping years 2009 and 2010 is 52,088,000 kilograms.

The total amount of qualifying beef shipped by all eligible exporters to the US in shipping year 2007 was 375,579,462 kilograms and in shipping year 2008 the total amount of qualifying beef shipped by all exporters to the US was 314,684,558 kilograms. Therefore, the total amount of qualifying beef to the US in shipping years 2007 and 2008 is 690,264,020 kilograms.

Company X’s US beef quota PTA entitlement is calculated by multiplying the PTA amount by Company X’s qualifying beef exports to the US in 2007 and 2008 and dividing by the total of all exporters’ qualifying exports over the same period.

That is:

\[
\text{PTA amount} \times \frac{\text{Company X’s exports}}{\text{All exporters exports}} = \text{Company X’s PTA Entitlement}
\]

or

\[
61,232,000 \text{ kgs} \times \frac{52,088,000 \text{ kgs}}{690,264,020 \text{ kgs}} = 46,206,342 \text{ kgs}
\]

4.10 Section 10 – Notices about intended use of PTAs

This section applies only if the safeguard mechanism is triggered in 2011 (subsection 10(1)).

Subsection 10 (2) provides that the Secretary must, on the trigger day, send a notice to each licensed exporter that advises the date of the trigger day and that those with a PTA are authorised to use it.

Subsection 10 (3) provides that holders of a PTA must notify the Secretary before the end of the tenth working day after the trigger day about whether they intend to use all or some of their allocation.

Subsection 10 (4) provides that, where they indicate they will use the quota, exporters must apply for approvals within a further five working days.

Subsection 10 (5) provides that any quota identified as not being used or not supported by applications for approval will be withdrawn and included in an ‘uncommitted quota pool’.

Subsection 10 (6) provides that any PTA not advised to the Secretary as being used will be withdrawn and included in an ‘uncommitted quota pool’.

Subsection 10 (7) provides that quota traded under section 14 must be notified to the Department’s Quota Administration and Statistics Unit before the end of the tenth working day after the trigger day (if it occurs).
4.11 **Section 11 – What happens if export cannot be completed**

Subsections 11 (1) and (2) provide that where approval has been given for an export but the export cannot be completed by the deadline, the exporter must notify the Secretary within five working days of the reasons the export could not be made and the Secretary may amend the approval.

Subsection 11 (3) provides that if the exporter does not notify the Secretary within the required time and the Secretary does not amend the approval, the approval lapses.

Subsection 11 (4) provides that if the approval lapses before the trigger day (if it occurs) the approval is not taken to have been issued.

Subsection 11 (5) provides that if the approval lapses after the trigger day the quota is returned to the uncommitted quota pool.

4.12 **Section 12 - Use of uncommitted quota pool**

Subsections 12 (1) and (2) provide that where quota is available in the uncommitted quota pool, any exporter may apply after the notice day for approval to export.

Subsection 12 (3) provides that if the exporter’s application is for less than the amount available in the uncommitted quota pool the Secretary must give the exporter an approval and must also specify an export deadline for each approval.

Subsection 12 (4) provides that the Secretary must issue a beef quota certificate and the amount approved is then deducted from the available uncommitted quota.

4.13 **Section 13 – What happens if export from uncommitted quota pool cannot be completed**

Subsections 13 (1) and (2) provide that where approval has been given for an export from the uncommitted quota pool but the export cannot be completed by the deadline, the exporter must notify the Secretary within five working days after the deadline of the reasons the export could not be made and the Secretary may amend the approval.

Subsection 13 (3) provides that if the exporter does not notify the Secretary within the required time, the approval lapses and the quota is returned to the uncommitted quota pool.

4.14 **Section 14 - PTA trading**

Subsection 14 (1) provides that an exporter granted a PTA may trade all or part of its allocation with another licensed exporter.

Subsections 14 (2) and (3) provide that trades must be notified to the Department’s Quota Administration and Statistics Unit within ten working days of the trigger day (if this occurs) or the trade is not deemed to have occurred. Recipients of trade quota will be required to notify the Secretary about how they intend to deal with the quota in the manner detailed in section 10.

Subsection 14 (4) provides that quota traded, by consignment, to an exporter acting as an agent of the quota holder for the purpose only of exporting that
consignment will not be forfeited if notification of that trade occurs after ten working days from the trigger day.

4.15 Section 15 - Review of certain decisions
This section provides that exporters may seek a review from the Administrative Appeals Tribunal of decisions by the Secretary relating to the amendment of approvals to export issued under this order.

4.16 Section 16 - Where to send notices and documents
This provision specifies address and contact details of the Department’s Quota Administration and Statistics Unit.

4.17 Section 17 - Sunsetting
This section specifies that this order ceases to have effect at the end of 31 December 2011.