



Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2021

I, Andrew Edgar Francis Metcalfe AO, Secretary of the Department of Agriculture, Water and the Environment, make the following rules.

Dated 19 March 2021

Andrew Edgar Francis Metcalfe AO
Secretary of the Department of Agriculture, Water and the Environment

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1 Name

This instrument is the *Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2021*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	Immediately after the commencement of section 3 of the <i>Export Control Act 2020</i> .	3 am (A.C.T.) 28 March 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Export Control Act 2020*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendment of the Export Control (Tariff Rate Quotas) Order 2019

Export Control (Tariff Rate Quotas) Order 2019

1 Section 1

Omit “(Tariff Rate Quotas) Order 2019”, substitute “(Tariff Rate Quotas—General) Rules 2021”.

2 Section 3

Repeal the section, substitute:

3 Authority

- (1) Subject to subsection (2), this instrument is made under the *Export Control Act 2020*.
- (2) Part 3 of Chapter 7 is made under the following:
 - (a) the *Export Control Act 2020*;
 - (b) item 92 of Schedule 3 to the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*.

3 Section 5

Omit “This”, substitute “For the purposes of section 264 of the Act, this”.

4 Section 6

Insert:

Act means the *Export Control Act 2020*, and includes:

- (a) legislative instruments made under the *Export Control Act 2020*; and
- (b) the Regulatory Powers Act as it applies in relation to the *Export Control Act 2020*.

5 Section 6 (definition of Australia-US Free Trade Agreement)

After “in force”, insert “for Australia”.

6 Section 6 (definition of Indonesia-Australia Comprehensive Economic Partnership Agreement)

Omit “amended”, substitute “in force for Australia”.

7 Section 6 (definition of initial decision)

Repeal the definition.

8 Section 6 (definition of Japan-Australia Economic Partnership Agreement)

Omit “amended”, substitute “in force for Australia”.

9 Section 6

Repeal the following definitions:

- (a) definition of *relevant liability*;
- (b) definition of *relevant person*.

10 Section 6 (at the end of the definition of *tariff rate quota certificate*)

Add:

Note: A tariff rate quota certificate is not a government certificate (see the definition of *government certificate* in section 12 of the Act).

11 Subsection 22(1)

Omit “make a written request to the Secretary to”.

12 Subsection 22(1)

Omit “(the *transferee*). The request must include”, substitute “(the *transferee*) by notifying the Secretary, in writing, of”.

13 Subsection 22(2)

Omit “request” (wherever occurring), substitute “notice”.

14 Subsection 37(1)

Omit “make a written request to the Secretary to”.

15 Subsection 37(1)

Omit “(the *transferee*). The request must include”, substitute “(the *transferee*) by notifying the Secretary, in writing, of”.

16 Subsection 37(3)

Omit “request” (wherever occurring), substitute “notice”.

17 Section 65

Omit “a licence granted under section 10 of the *Australian Meat and Live-stock Industry Act 1997*”, substitute “an export licence”.

18 Section 89K

Omit “a licence granted under section 10 of the *Australian Meat and Live-stock Industry Act 1997*”, substitute “an export licence”.

19 Section 95

Omit “a licence granted under section 10 of the *Australian Meat and Live-stock Industry Act 1997*”, substitute “an export licence”.

20 Paragraph 114(2)(a)

Omit “Australia”, substitute “Australian territory”.

21 Paragraph 115(2)(c)

After “relevant”, insert “Commonwealth”.

22 At the end of subsection 115(3)

Add:

Note: A decision not to issue a tariff rate quota certificate is a reviewable decision (see section 120 of this instrument and Part 2 of Chapter 11 of the Act).

23 Subparagraph 119(2)(b)(ii)

Omit “Australia”, substitute “Australian territory”.

24 Subparagraph 119(2)(b)(v)

After “relevant”, insert “Commonwealth”.

25 At the end of subsection 119(2)

Add:

Note: A decision under subsection (2) to revoke a tariff rate quota certificate is a reviewable decision (see section 120 of this instrument and Part 2 of Chapter 11 of the Act).

26 Sections 120 to 124

Repeal the sections, substitute:

120 Reviewable decisions

For the purposes of subsection 381(2) of the Act:

- (a) a decision referred to in column 1 of an item in the following table made under the provision referred to in column 2 of the item is a reviewable decision; and
- (b) the person referred to in column 3 of the item is the relevant person for the reviewable decision.

Reviewable decisions

Item	Column 1 Reviewable decision	Column 2 Provision under which the reviewable decision is made	Column 3 Relevant person for the reviewable decision
1	Not to issue a tariff rate quota certificate	Subsection 115(2)	The person who applied for the certificate
2	To revoke a tariff rate quota certificate	Subsection 119(2)	The person to whom the certificate was issued

121 Modifications of powers on review of decisions

- (1) For the purposes of subsections 386(1) and (3) of the Act, this section modifies:
 - (a) the powers of the Secretary or an internal reviewer, under subsection 383(4) of the Act, when reviewing a reviewable decision mentioned in section 120 of this instrument; and
 - (b) the powers of the Administrative Appeals Tribunal, under subsection 43(1) of the *Administrative Appeals Tribunal Act 1975*, when reviewing:
 - (i) a reviewable decision mentioned in section 120 of this instrument made by the Secretary personally; or
 - (ii) a decision of the Secretary, or an internal reviewer, under section 383 of the Act that relates to a reviewable decision mentioned in section 120 of this instrument.
- (2) If a decision not to issue a tariff rate quota certificate to a person in relation to a consignment of a quota type for export in a quota year is set aside at a time, a

certificate may only be issued for the amount for which a certificate could be issued to the person at that time under Chapter 2 of this instrument in relation to the consignment for export in that quota year.

Note: Chapter 2 provides methods for issuing tariff rate quota certificates. Chapter 3 determines which method applies for consignments of a particular quota type.

- (3) If:
- (a) a decision to revoke a tariff rate quota certificate issued to a person in relation to a consignment of a quota type for export in a quota year is set aside at a time; and
 - (b) the amount for which the certificate was issued is more than the amount (the **available amount**) for which a certificate could be issued to the person at that time under Chapter 2 of this instrument for a consignment of that quota type for export in that quota year;
- the revoked certificate may only be reinstated for the available amount.

27 Sections 125 and 126

Repeal the sections, substitute:

125 Audits

- (1) For the purposes of subsections 270(4) and (5) of the Act, this section makes provision for and in relation to an audit of export operations in relation to a kind of goods covered by Chapter 3 of this instrument carried out by:
- (a) a person who has applied for a tariff rate quota certificate in relation to the goods; or
 - (b) a person to whom a tariff rate quota certificate in relation to the goods has been issued (whether or not the certificate has been revoked).

Note: The Secretary may require an audit to be conducted of the export operations under paragraph 266(1)(f) of the Act. Part 1 of Chapter 9 of the Act and this section provide for the conduct of an audit.

- (2) An audit must be conducted:
- (a) as expeditiously as possible; and
 - (b) in a way that results in minimal interference to the export operations to which the audit relates.
- (3) After an auditor completes an audit, or the audit ends, the auditor must make a written report of the audit.
- (4) Within 14 business days after the audit is completed or ends, the auditor must:
- (a) give the audit report to the Secretary in a manner approved by the Secretary; and
 - (b) give a copy of the audit report to the relevant person for the audit.

Note: For the person who is the **relevant person** for an audit, see section 269 of the Act.

126 Use of computer programs to make decisions

Kinds of decisions

- (1) For the purposes of paragraph 286(2)(a) of the Act, the following decisions under provisions of this instrument may be made by the operation of a computer

program (an *authorised computer program*) under an arrangement made under subsection 286(1) of the Act:

- (a) a decision under section 11, 12 or 18 to issue a tariff rate quota certificate;
 - (b) a decision under section 21 to allocate a requested amount of tariff rate quota entitlement;
 - (c) a decision under section 25 to issue a tariff rate quota certificate;
 - (d) a decision under section 30 to allocate an amount of tariff rate quota entitlement;
 - (e) a decision under section 36 to issue a tariff rate quota certificate;
 - (f) a decision under section 42 or 45 to allocate an amount of tariff rate quota entitlement;
 - (g) a decision under section 49 or 52 to issue a tariff rate quota certificate;
 - (h) a decision under subsection 119(1) to revoke a tariff rate quota certificate on request.
- (2) To avoid doubt, subsection (1) does not apply to a decision under section 115 not to issue a tariff rate quota certificate.

Persons who may use computer program

- (3) For the purposes of paragraph 286(2)(b) of the Act, the following persons may use an authorised computer program for a decision referred to in subsection (1) of this section:
- (a) an exporter of a kind of goods covered by Chapter 3 of this instrument;
 - (b) an agent of an exporter of a kind of goods covered by Chapter 3 of this instrument;
 - (c) an authorised officer;
 - (d) an APS employee in the Department;
 - (e) a person performing services for the Department under a contract;
- if the Secretary has given the person a unique identifier to enable the person to access the computer program.

Conditions of use of computer program

- (4) For the purposes of paragraph 286(2)(c) of the Act, a person who may use an authorised computer program under subsection (2) of this section must:
- (a) be satisfied on reasonable grounds that information entered into the computer program by the person for the purpose of enabling decisions to be made by operation of the computer program is true and correct; and
 - (b) ensure that the information is accurately entered into the computer program.

28 At the end of Chapter 7

Add:

Part 3—Transitional provisions relating to the Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2021

136 Definition for this Part

In this Part:

commencement time means the time when the *Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2021* commence.

137 Audit required but not commenced before commencement time

- (1) This section applies if:
 - (a) the Secretary had, under section 125 of this instrument as in force before the commencement time, required an audit to be carried out in relation to a tariff rate quota certificate or certificates issued to a person; and
 - (b) the audit had not commenced before the commencement time.
- (2) The requirement is taken to be a requirement under paragraph 266(1)(f) of the Act for an audit to be conducted of export operations carried out by the person in relation to the kind of goods for which the tariff rate quota certificate or certificates were issued.

138 Audit in progress before commencement time

- (1) This section applies if:
 - (a) the Secretary had, under section 125 of this instrument as in force before the commencement time, required an audit to be carried out; and
 - (b) the audit had commenced before the commencement time but had not been completed at that time.
- (2) The auditor must complete the audit as if section 125, as in force before the commencement time, had not been repealed. For the purposes of the audit, the approval of the auditor (under subsection 125(2) as in force before the commencement time) continues in force.

139 Review of decisions

Chapter 5 of this instrument, as in force immediately before the commencement time, continues to apply in relation to:

- (a) an initial decision that was made under this instrument before the commencement time; and
- (b) a decision of the Secretary (whether made before or after the commencement time) following a reconsideration of an initial decision referred to in paragraph (a).

140 Confidentiality of information

Information obtained under, or in accordance with, or in performing functions or exercising powers under, this instrument before the commencement of the Act is taken to be protected information for the purposes of the Act.

29 Amendments of listed provisions

Further amendments			
Item	Provision	Omit	Substitute
1	Section 6 (note to the definition of <i>uncommitted annual access amount</i>)	cancelled	revoked
2	Subsection 7(2) (note)	cancelled	revoked
3	Section 14 (note to the definition of <i>uncommitted trigger amount</i>)	cancelled	revoked
4	Section 27 (note to the definition of <i>uncommitted new entrant access amount</i>)	cancelled	revoked
5	Section 27 (note to the definition of <i>uncommitted standard access amount</i>)	cancelled	revoked
6	Subsection 38(1) (note 1)	cancelled	revoked
7	Subsection 38(2)	cancelled	revoked
8	Section 40 (heading)	Cancellations	Revocation
9	Subsection 40(1) (heading)	Cancellation	Revocation
10	Subsection 40(1)	cancelled	revoked
11	Subsection 40(2) (heading)	Cancellation	Revocation
12	Paragraph 40(2)(b)	cancelled	revoked
13	Subsection 40(3) (heading)	Cancellation	Revocation
14	Paragraph 40(4)(b)	cancelled	revoked
15	Paragraph 45(1)(a)	cancelled	revoked
16	Section 118 (note)	cancelled	revoked
17	Section 119 (heading)	Cancellation	Revocation
18	Subsection 119(1) (heading)	Cancellation	Revocation
19	Subsection 119(1)	cancel	revoke
20	Subsection 119(2) (heading)	Cancellation	Revocation
21	Subsection 119(2)	cancel	revoke
22	Subsection 119(3) (heading)	cancellation	revocation
23	Subsection 119(3)	cancel	revokes
24	Paragraphs 119(3)(a) and (b) and (4)(a)	cancellation (wherever occurring)	revocation
25	Subsection 119(5) (heading)	cancellation	revocation
26	Subsection 119(5)	cancelled	revoked

Schedule 2—Amendment of the Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Order 2020

Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Order 2020

1 Section 1

Omit “*Order 2020*”, substitute “*Rules 2021*”.

2 Section 3

Repeal the section, substitute:

3 Authority

(1) Subject to subsection (2), this instrument is made under the *Export Control Act 2020*.

(2) Division 1 of Part 7 is made under the following:

- (a) the *Export Control Act 2020*;
- (b) item 92 of Schedule 3 to the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*.

3 Section 4

Omit “This”, substitute “For the purposes of section 264 of the Act, this”.

4 Section 5

Insert:

Act means the *Export Control Act 2020*, and includes:

- (a) legislative instruments made under the *Export Control Act 2020*; and
- (b) the Regulatory Powers Act as it applies in relation to the *Export Control Act 2020*.

5 Section 5 (definition of *Indonesia-Australia Comprehensive Economic Partnership Agreement*)

Omit “2019.”, substitute “2019, as in force for Australia from time to time.”.

6 Section 5

Repeal the following definitions:

- (a) definition of *initial decision*;
- (b) definition of *relevant liability*;
- (c) definition of *relevant person*.

7 Section 5 (at the end of the definition of *tariff rate quota certificate*)

Add:

Note: A tariff rate quota certificate is not a government certificate (see the definition of *government certificate* in section 12 of the Act).

8 Paragraph 10(c)

After “relevant”, insert “Commonwealth”.

9 At the end of section 10

Add:

Note: A decision not to reserve an amount of tariff rate quota entitlement is a reviewable decision (see section 25 of this instrument and Part 2 of Chapter 11 of the Act).

10 Paragraph 14(1)(c)

After “relevant”, insert “Commonwealth”.

11 At the end of subsection 14(2)

Add:

Note: A decision not to issue a tariff rate quota certificate is a reviewable decision (see section 25 of this instrument and Part 2 of Chapter 11 of the Act).

12 Subparagraph 15(2)(b)(ii)

Omit “Australia”, substitute “Australian territory”.

13 Subparagraph 15(2)(b)(v)

After “relevant”, insert “Commonwealth”.

14 Subsection 15(2) (note)

Omit “Note:”, substitute “Note 1:”.

15 At the end of subsection 15(2)

Add:

Note 2: A decision under subsection (2) to revoke a tariff rate quota certificate is a reviewable decision (see section 25 of this instrument and Part 2 of Chapter 11 of the Act).

16 Paragraph 22(1)(c)

After “relevant”, insert “Commonwealth”.

17 Subsection 22(1) (note)

Omit “take”, substitute “taken”.

18 Subsection 22(1) (note)

After “9(4)”, insert “”.

19 At the end of subsection 22(3)

Add:

Note: A decision to revoke a tariff rate quota entitlement is a reviewable decision (see section 25 of this instrument and Part 2 of Chapter 11 of the Act).

20 Subsection 23(3) (note)

Omit “take”, substitute “taken”.

21 Subsection 24(1) (note)

Omit “take”, substitute “taken”.

22 Sections 25 to 29

Repeal the sections, substitute:

25 Reviewable decisions

For the purposes of subsection 381(2) of the Act:

- (a) a decision referred to in column 1 of an item in the following table made under the provision referred to in column 2 of the item is a reviewable decision; and
- (b) the person referred to in column 3 of the item is the relevant person for the reviewable decision.

Reviewable decisions			
Item	Column 1 Reviewable decision	Column 2 Provision under which the reviewable decision is made	Column 3 Relevant person for the reviewable decision
1	Not to reserve an amount of tariff rate quota entitlement	Section 10	The person who applied for the reservation amount
2	Not to issue a tariff rate quota certificate	Subsection 14(1)	The person who applied for the certificate
3	To revoke a tariff rate quota certificate	Subsection 15(2)	The person to whom the certificate was issued
4	To revoke a tariff rate quota entitlement	Subsection 22(1)	The person who held the entitlement

26 Modifications of powers on review of decisions

- (1) For the purposes of subsections 386(1) and (3) of the Act, this section modifies:
 - (a) the powers of the Secretary or an internal reviewer, under subsection 383(4) of the Act, when reviewing a reviewable decision mentioned in section 25 of this instrument; and
 - (b) the powers of the Administrative Appeals Tribunal, under subsection 43(1) of the *Administrative Appeals Tribunal Act 1975*, when reviewing:
 - (i) a reviewable decision mentioned in section 25 of this instrument made by the Secretary personally; or
 - (ii) a decision of the Secretary, or an internal reviewer, under section 383 of the Act that relates to a reviewable decision mentioned in section 25 of this instrument.

Tariff rate quota certificates

- (2) If a decision not to issue a tariff rate quota certificate to a person in relation to a consignment for export under an eligible feed grain contract in a quota year is set aside at a time, a certificate may only be issued in relation to the consignment for:

- (a) if the person has a tariff rate quota entitlement for the contract at that time—the amount for which a certificate could be issued to the person in relation to the consignment under section 13 of this instrument at that time; or
 - (b) if the person does not have a tariff rate quota entitlement for the contract at that time—the lower of the following amounts:
 - (i) the weight of the consignment;
 - (ii) the uncommitted annual access amount for the quota year at that time.
- (3) If:
- (a) a decision to revoke a tariff rate quota certificate issued to a person in relation to a consignment for export under an eligible feed grain contract in a quota year is set aside at a time; and
 - (b) the amount for which the certificate was issued is more than the amount (the *available amount*) for which a certificate could be issued to the person under section 13 or 16 of this instrument in relation to a consignment for export to Indonesia under the contract in the quota year at that time;
- the revoked certificate may only be reinstated for the available amount.

Tariff rate quota entitlements

- (4) If a decision not to reserve an amount of tariff rate quota entitlement for export by a person under an eligible feed grain contract in a quota year is set aside at a time, the amount of tariff rate quota entitlement that may be reserved for the person is the amount that could be reserved for the person at that time for export under the contract in the quota year.
- (5) If:
- (a) a decision to revoke a tariff rate quota entitlement for export by a person under an eligible feed grain contract in a quota year is set aside at a time; and
 - (b) the amount of tariff rate quota entitlement that was revoked is more than the uncommitted annual access amount for the quota year at that time (the *available amount*);
- the tariff rate quota entitlement may only be reinstated for the available amount.

23 Sections 31 and 32

Repeal the sections, substitute:

31 Other circumstances in which Secretary may require audit

- (1) For the purposes of paragraph 266(1)(g) of the Act, the Secretary may require an audit to be conducted of export operations in relation to feed grain carried out by:
- (a) a person who has applied to reserve an amount of tariff rate quota entitlement in relation to feed grain; or
 - (b) a person for whom an amount of tariff rate quota entitlement has been reserved for export in relation to feed grain (whether or not the entitlement has been revoked).

Note: An audit may also be conducted of export operations carried out in relation to feed grain by a person who has applied for a tariff rate quota certificate or to whom a tariff rate quota certificate has been issued (see paragraph 266(1)(f) of the Act). Part 1 of

Chapter 9 of the Act and section 32 of this instrument provide for the conduct of an audit.

- (2) For the purposes of paragraph 266(2)(f) of the Act, an audit may relate to whether a matter stated in connection with an application to reserve an amount of tariff rate quota entitlement in relation to feed grain is correct.

32 Conduct of audit

- (1) For the purposes of subsections 270(4) and (5) of the Act, this section makes provision for and in relation to an audit of export operations in relation to feed grain carried out by:
- (a) a person who has applied to reserve an amount of tariff rate quota entitlement in relation to feed grain; or
 - (b) a person for whom an amount of tariff rate quota entitlement has been reserved in relation to feed grain (whether or not the entitlement has been revoked); or
 - (c) a person who has applied for a tariff rate quota certificate in relation to feed grain; or
 - (d) a person to whom a tariff rate quota certificate in relation to feed grain (whether or not the certificate has been revoked).
- (2) An audit must be conducted:
- (a) as expeditiously as possible; and
 - (b) in a way that results in minimal interference to the export operations to which the audit relates.
- (3) After an auditor completes an audit, or the audit ends, the auditor must make a written report of the audit.
- (4) Within 14 business days after the audit is completed or ends, the auditor must:
- (a) give the audit report to the Secretary in a manner approved by the Secretary; and
 - (b) give a copy of the audit report to the relevant person for the audit.

Note: For the person who is the *relevant person* for an audit, see section 269 of the Act.

33 Use of computer programs to make decisions

Kinds of decisions

- (1) For the purposes of paragraph 286(2)(a) of the Act, the following decisions under provisions of this instrument may be made by the operation of a computer program (an *authorised computer program*) under an arrangement made under subsection 286(1) of the Act:
- (a) a decision under section 9 to reserve an amount of tariff rate quota entitlement (but not a decision under section 10 not to reserve an amount);
 - (b) a decision under section 13 to issue a tariff rate quota certificate (but not a decision under section 14 not to issue a certificate);
 - (c) a decision under subsection 15(1) to revoke a tariff rate quota certificate upon request;
 - (d) a decision under section 16 to issue a replacement tariff rate quota certificate.

Persons who may use computer program

- (2) For the purposes of paragraph 286(2)(b) of the Act, the following persons may use an authorised computer program for a decision referred to in subsection (1) of this section:
- (a) an exporter of feed grain;
 - (b) an agent of an exporter of feed grain;
 - (c) an authorised officer;
 - (d) an APS employee in the Department;
 - (e) a person performing services for the Department under a contract;
- if the Secretary has given the person a unique identifier to enable the person to access the computer program.

Conditions of use of computer program

- (3) For the purposes of paragraph 286(2)(c) of the Act, a person who may use an authorised computer program under subsection (2) of this section must:
- (a) be satisfied on reasonable grounds that information entered into the computer program by the person for the purpose of enabling decisions to be made by operation of the computer program is true and correct; and
 - (b) ensure that the information is accurately entered into the computer program.

24 At the end of the instrument

Add:

Part 7—Application, saving and transitional provisions

Division 1—Transitional provisions relating to the Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2021

34 Definition for this Division

In this Division:

commencement time means the time when the *Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2021* commence.

35 Audit required but not commenced before commencement time

Audit in relation to tariff rate quota certificate

- (1) If:
- (a) the Secretary had, under section 31 of this instrument as in force before the commencement time, required an audit to be carried out in relation to a tariff rate quota certificate or certificates issued to a person; and
 - (b) the audit had not commenced before the commencement time;
- the requirement is taken to be a requirement under paragraph 266(1)(f) of the Act for an audit to be conducted of export operations carried out by the person in relation to feed grain.

Audit in relation to reserved tariff rate quota entitlement

- (2) If:
- (a) the Secretary had, under section 31 of this instrument as in force before the commencement time, required an audit to be carried out in relation to an amount or amounts of tariff rate quota entitlement reserved for a person; and
 - (b) the audit had not commenced before the commencement time;
- the requirement is taken to be a requirement under section 31 of this instrument as in force after the commencement time for an audit to be conducted of export operations carried out by the person in relation to feed grain.

36 Audit in progress before commencement time

- (1) This section applies if:
- (a) the Secretary had, under section 31 of this instrument as in force before the commencement time, required an audit to be carried out; and
 - (b) the audit had commenced before the commencement time but had not been completed at that time.
- (2) The auditor must complete the audit as if section 31, as in force before the commencement time, had not been repealed. For the purposes of the audit, the approval of the auditor (under subsection 31(2) as in force before the commencement time) continues in force.

37 Review of decisions

Part 5 of this instrument, as in force immediately before the commencement time, continues to apply in relation to:

- (a) an initial decision that was made under this instrument before the commencement time; and
- (b) a decision of the Secretary (whether made before or after the commencement time) following a reconsideration of an initial decision referred to in paragraph (a).

38 Confidentiality of information

Information obtained under, or in accordance with, or in performing functions or exercising powers under, this instrument before the commencement of the Act is taken to be protected information for the purposes of the Act.

25 Amendments of listed provisions

Further amendments			
Item	Provision	Omit	Substitute
1	Section 5 (note to the definition of <i>uncommitted annual access amount</i>)	cancelled	revoked
2	Paragraph 6(1)(b)	cancelled	revoked
3	Subsection 6(2) (note 2)	cancelled	revoked
4	Subsection 7(3) (note)	cancelled	revoked

Schedule 2 Amendment of the Export Control (Tariff Rate Quotas—Feed Grain Export to Indonesia) Order 2020

Further amendments			
Item	Provision	Omit	Substitute
5	Subsection 9(4)	cancelled	revoked
6	Section 15 (heading)	Cancellation	Revocation
7	Subsection 15(1) (heading)	Cancellation	Revocation
8	Subsection 15(1)	cancel	revoke
9	Subsection 15(2) (heading)	Cancellation	Revocation
10	Subsection 15(2)	cancel	revoke
11	Paragraphs 16(1)(a) and (b)	cancelled	revoked
12	Subsection 16(1) (note 1)	cancellation	revocation
13	Subsection 16(4)	cancel	revoke
14	Section 18 (heading)	cancellation	revocation
15	Subsection 18(1)	cancel	revoke
16	Paragraphs 18(1)(a) and (b) and (2)(a)	cancellation (wherever occurring)	revocation
17	Section 19 (heading)	cancellation	revocation
18	Section 19	cancelled	revoked
19	Section 21 (note)	cancelled	revoked
20	Part 4 (heading)	Cancelling	Revoking
21	Section 22 (heading)	cancel	revoke
22	Subsection 22(1)	cancel	revoke
23	Subsection 22(1) (note)	cancelled	revoked
24	Subsection 22(2)	cancel	revoke
25	Paragraph 22(2)(a)	cancellation	revocation
26	Paragraph 22(2)(b)	cancelled	revoked
27	Paragraph 22(3)(a)	cancellation	revocation
28	Section 23 (heading)	Cancellation	Revocation
29	Subsection 23(1)	cancellation	revocation
30	Paragraph 23(1)(b)	cancelled	revoked
31	Subsection 23(2)	cancellation	revocation
32	Subsection 23(2) (note)	cancelled	revoked
33	Subsection 23(3)	cancellation	revocation
34	Subsection 23(3) (including the note)	cancelled (wherever occurring)	revoked
35	Subsection 23(4)	cancelled	revoked
36	Subsection 23(5)	cancellation	revocation
37	Subsection 23(6)	cancelled	revoked
38	Subsection 23(6)	cancellation	revocation
39	Section 24 (heading)	cancelled	revoked
40	Subsection 24(1)	cancellation notice	revocation notice
41	Subsection 24(1)	cancelled	revoked
42	Subsection 24(1)	cancellation time	revocation time
43	Subsection 24(1) (note)	cancelled	revoked
44	Subsection 24(2)	cancellation	revocation

Further amendments			
Item	Provision	Omit	Substitute
45	Subsection 24(2)	cancelled	revoked
46	Subsection 24(3)	cancellation	revocation
47	Subsection 24(4)	cancelled (wherever occurring)	revoked

Schedule 3—Amendment of the Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Order 2019

Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Order 2019

1 Section 1

Omit “*Order 2019*”, substitute “*Rules 2021*”.

2 Section 3

Repeal the section, substitute:

3 Authority

- (1) Subject to subsection (2), this instrument is made under the *Export Control Act 2020*.
- (2) Division 2 of Part 6 is made under the following:
 - (a) the *Export Control Act 2020*;
 - (b) item 92 of Schedule 3 to the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*.

3 Section 5

Omit “This”, substitute “For the purposes of section 264 of the Act, this”.

4 Section 6 (paragraph (a) of the definition of access amount)

Omit “1354/2011,”, substitute “1354/2011 as that Regulation is in force from time to time,”.

5 Section 6

Insert:

Act means the *Export Control Act 2020*, and includes:

- (a) legislative instruments made under the *Export Control Act 2020*; and
- (b) the Regulatory Powers Act as it applies in relation to the *Export Control Act 2020*.

6 Section 6 (paragraph (b) of the definition of EU-accredited establishment)

Omit “the *Export Control Act 1982*”, substitute “Chapter 4 of the Act”.

7 Section 6 (definition of exporter)

Omit “a meat export licence granted under section 10 of the *Australian Meat and Live-stock Industry Act 1997*”, substitute “an export licence”.

8 Section 6 (definition of *relevant liability*)

Repeal the definition.

9 Section 6 (at the end of the definition of *tariff rate quota certificate*)

Add:

Note: A tariff rate quota certificate is not a government certificate (see the definition of *government certificate* in section 12 of the Act).

10 Paragraph 19(4)(c)

After “relevant”, insert “Commonwealth”.

11 At the end of subsection 19(4)

Add:

Note: A decision not to issue a tariff rate quota certificate is a reviewable decision (see section 29 of this instrument and Part 2 of Chapter 11 of the Act).

12 Paragraph 20(7)(c)

After “relevant”, insert “Commonwealth”.

13 At the end of subsection 20(7)

Add:

Note: A decision not to issue a tariff rate quota certificate is a reviewable decision (see section 29 of this instrument and Part 2 of Chapter 11 of the Act).

14 Subsection 21(2)

Omit “Australia”, substitute “Australian territory”.

15 Subparagraph 23(2)(b)(ii)

Omit “Australia”, substitute “Australian territory”.

16 Subparagraph 23(2)(b)(v)

After “relevant”, insert “Commonwealth”.

17 At the end of subsection 23(2)

Add:

Note: A decision under subsection (2) to revoke a tariff rate quota certificate is a reviewable decision (see section 29 of this instrument and Part 2 of Chapter 11 of the Act).

18 At the end of subsection 28(5)

Add:

Note: A decision not to issue a tariff rate quota certificate is a reviewable decision (see section 29 of this instrument and Part 2 of Chapter 11 of the Act).

19 Sections 29 to 32

Repeal the sections, substitute:

29 Reviewable decisions

For the purposes of subsection 381(2) of the Act:

- (a) a decision referred to in column 1 of an item in the following table made under the provision referred to in column 2 of the item is a reviewable decision; and
- (b) the person referred to in column 3 of the item is the relevant person for the reviewable decision.

Reviewable decisions

Item	Column 1 Reviewable decision	Column 2 Provision under which the reviewable decision is made	Column 3 Relevant person for the reviewable decision
1	Not to issue a tariff rate quota certificate	Subsection 19(4)	The person who applied for the certificate
2	Not to issue a tariff rate quota certificate	Subsection 20(7)	The person who applied for the certificate
3	To revoke a tariff rate quota certificate	Subsection 23(2)	The person to whom the certificate was issued
4	Not to issue a tariff rate quota certificate	Subsection 28(4)	The person who applied for the certificate

30 Modifications of powers on review of decisions

- (1) For the purposes of subsections 386(1) and (3) of the Act, this section modifies:
 - (a) the powers of the Secretary or an internal reviewer, under subsection 383(4) of the Act, when reviewing a reviewable decision mentioned in section 29 of this instrument; and
 - (b) the powers of the Administrative Appeals Tribunal, under subsection 43(1) of the *Administrative Appeals Tribunal Act 1975*, when reviewing:
 - (i) a reviewable decision mentioned in section 29 of this instrument made by the Secretary personally; or
 - (ii) a decision of the Secretary, or an internal reviewer, under section 383 of the Act that relates to a reviewable decision mentioned in section 29 of this instrument.
- (2) If a decision not to issue a tariff rate quota certificate to a person for export of a consignment of eligible meat to a quota destination in a quota year is set aside at a time, a certificate may only be issued for the amount for which a certificate could be issued to the person at that time under section 19 or 20 of this instrument in relation to the consignment for export to that quota destination in that quota year.

Note: If the original decision was made under section 19 before the Secretary allocates amounts under section 17, but was set aside after the Secretary allocates amounts, section 20 would be the section under which a certificate could be issued to the person at the time the original decision was set aside.
- (3) If:
 - (a) a decision to revoke a tariff rate quota certificate issued to a person in relation to a consignment of eligible meat for export to a quota destination in a quota year is set aside at a time; and
 - (b) the amount for which the certificate was issued is more than the amount (the **available amount**) for which a certificate could be issued to the person

at that time under section 19 or 20 of this instrument in relation to a consignment for export to that quota destination in that quota year; the revoked certificate may only be reinstated for the available amount.

20 Sections 33 and 34

Repeal the sections, substitute:

33 Audits

- (1) For the purposes of subsections 270(4) and (5) of the Act, this section makes provision for and in relation to an audit of export operations in relation to lamb, mutton or goatmeat carried out by:
- (a) a person who has applied for a tariff rate quota certificate in relation to lamb, mutton or goatmeat; or
 - (b) a person to whom a tariff rate quota certificate in relation to lamb, mutton or goatmeat has been issued (whether or not the certificate has been revoked).

Note: The Secretary may require an audit to be conducted of the export operations under paragraph 266(1)(f) of the Act. Part 1 of Chapter 9 of the Act and this section provide for the conduct of an audit.

- (2) An audit must be conducted:
- (a) as expeditiously as possible; and
 - (b) in a way that results in minimal interference to the export operations to which the audit relates.
- (3) After an auditor completes an audit, or the audit ends, the auditor must make a written report of the audit.
- (4) Within 14 business days after the audit is completed or ends, the auditor must:
- (a) give the audit report to the Secretary in a manner approved by the Secretary; and
 - (b) give a copy of the audit report to the relevant person for the audit.

Note: For the person who is the *relevant person* for an audit, see section 269 of the Act.

34 Use of computer programs to make decisions

Kinds of decisions

- (1) For the purposes of paragraph 286(2)(a) of the Act, the following decisions under provisions of this instrument may be made by the operation of a computer program (an *authorised computer program*) under an arrangement made under subsection 286(1) of the Act:
- (a) determining under section 10 an amount of tariff rate quota entitlement to be allocated;
 - (b) determining under section 17 an additional amount of tariff rate quota entitlement to be allocated;
 - (c) a decision under section 19 to issue a tariff rate quota certificate (but not a decision under subsection 19(4) not to issue a certificate);
 - (d) a decision under section 20 to issue a tariff rate quota certificate (but not a decision under subsection 20(7) not to issue a certificate);

- (e) a decision under subsection 23(1) to revoke a tariff rate quota certificate on request;
- (f) a decision under section 28 to issue a tariff rate quota certificate (but not a decision under subsection 28(5) not to issue a certificate).

Persons who may use computer program

- (2) For the purposes of paragraph 286(2)(b) of the Act, the following persons may use an authorised computer program for a decision referred to in subsection (1) of this section:
 - (a) an exporter;
 - (b) an agent of an exporter;
 - (c) an authorised officer;
 - (d) an APS employee in the Department;
 - (e) a person performing services for the Department under a contract;if the Secretary has given the person a unique identifier to enable the person to access the computer program.

Conditions of use of computer program

- (3) For the purposes of paragraph 286(2)(c) of the Act, a person who may use an authorised computer program under subsection (2) of this section must:
 - (a) be satisfied on reasonable grounds that information entered into the computer program by the person for the purpose of enabling decisions to be made by operation of the computer program is true and correct; and
 - (b) ensure that the information is accurately entered into the computer program.

21 Before section 36

Insert:

Division 1—Transitional provisions relating to 2020 and 2021 quota years

22 Section 36

Omit “Part”, substitute “Division”.

23 Section 43

Repeal the section, substitute:

43 Repeal of this Division

This Division is repealed at the start of 1 January 2022.

24 At the end of Part 6

Add:

Division 2—Transitional provisions relating to the Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2021

44 Definition for this Division

In this Division:

commencement time means the time when the *Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2021* commence.

45 Audit required but not commenced before commencement time

- (1) This section applies if:
 - (a) the Secretary had, under section 33 of this instrument as in force before the commencement time, required an audit to be carried out in relation to a tariff rate quota certificate or certificates issued to a person; and
 - (b) the audit had not commenced before the repeal of that section.
- (2) The requirement is taken to be a requirement under paragraph 266(1)(f) of the Act for an audit to be conducted of export operations carried out by the person in relation to the kind of goods for which the tariff rate quota certificate or certificates were issued.

46 Audit in progress before commencement time

- (1) This section applies if:
 - (a) the Secretary had, under section 33 of this instrument as in force before the commencement time, required an audit to be carried out; and
 - (b) the audit had commenced before the commencement time but had not been completed at that time.
- (2) The auditor must complete the audit as if section 33, as in force before the commencement time, had not been repealed. For the purposes of the audit, the approval of the auditor (under subsection 33(2) as in force before the commencement time) continues in force.

47 Review of decisions

Part 4 of this instrument, as in force immediately before the commencement time, continues to apply in relation to:

- (a) a decision that was made under this instrument before the commencement time for which an application for reconsideration was permitted under section 29 as in force before the commencement time; and
- (b) a decision of the Secretary (whether made before or after the commencement time) following a reconsideration of a decision referred to in paragraph (a).

48 Confidentiality of information

Information obtained under, or in accordance with, or in performing functions or exercising powers under, this instrument before the commencement of the Act is taken to be protected information for the purposes of the Act.

25 Amendments of listed provisions

Further amendments			
Item	Provision	Omit	Substitute
1	Paragraph 8(b)	cancelled	revoked
2	Section 8 (note 2)	cancelled	revoked
3	Subsection 11(2) (note)	cancelled	revoked
4	Paragraph 11(3)(b)	cancelled	revoked
5	Section 12 (note to the definition of <i>applicant's quota exports</i>)	cancelled	revoked
6	Subsection 14(3) (including the note)	cancelled (wherever occurring)	revoked
7	Subsection 15(3) (including the note)	cancelled (wherever occurring)	revoked
8	Section 16 (heading)	Cancellation	Revocation
9	Section 16 (including the note)	cancelled (wherever occurring)	revoked
10	Subsection 17(1) (including the method statement)	cancelled (wherever occurring)	revoked
11	Subsection 18(3) (including the note)	cancelled (wherever occurring)	revoked
12	Paragraph 20(6)(b)	cancelled	revoked
13	Section 23 (heading)	Cancellation	Revocation
14	Subsection 23(1) (heading)	Cancellation	Revocation
15	Subsection 23(1)	cancel (wherever occurring)	revoke
16	Subsection 23(2) (heading)	Cancellation	Revocation
17	Subsection 23(2)	cancel	revoke
18	Subsection 23(3) (heading)	cancellation	revocation
19	Subsection 23(3)	cancelled	revoked
20	Paragraphs 23(3)(a) and (b)	cancellation (wherever occurring)	revocation
21	Subsection 23(4) (heading)	cancellation	revocation
22	Subsection 23(4)	cancelled	revoked