

## Serial Number 1938/105.



**THE EXPORT BUTTER-BOX POOL REGULATIONS 1938.**

GALWAY, Governor-General.

**ORDER IN COUNCIL.**

At the Government House at Wellington, this 1st day of  
September, 1938.

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL.

PURSUANT to the Agriculture (Emergency Powers) Act, 1934, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

**REGULATIONS.**

**REGULATION 1.—PRELIMINARY.**

(1) These regulations may be cited as the Export Butter-box Pool Regulations 1938.

(2) For the purpose of these regulations, unless the context otherwise requires,—

“ Board ” means the New Zealand Dairy Board :

“ Director ” means the Director of the Dairy-produce Export Division of the Primary Products Marketing Department :

“ Export butter-boxes ” means butter-boxes of either of the types prescribed by the Dairy-produce Regulations 1938,\* in which butter may be packed for export and exported, and includes box boards in shooks cut ready for assembling into export butter-boxes of any of the said types :

“ Export cheese-crates ” means cheese-crates of the type prescribed by the Dairy-produce Regulations 1938, in which full-cream cheese may be packed for export and exported and includes boards in shooks cut ready for assembling into export cheese-crates :

“ Licensee ” means any person licensed under these regulations to manufacture export butter-boxes, or cheese-crates, or both, and includes the proprietor of a manufacturing dairy where such proprietor manufactures his own export butter-boxes, or cheese-crates, or both :

“ Manufacturing dairy ” means any premises registered as a creamery or whey-butter factory as provided by the Dairy-produce Regulations 1938\* :

“ Minister ” means the Minister of Agriculture :

\* Statutory Regulations 1938, Serial number 1938/91.

“Proprietor” means the owner of a manufacturing dairy, whether jointly or severally, and includes the owner’s agent or manager, and in the case of a company includes the manager, secretary, or other principal officer thereof :

“Season” means the period from the 1st day of August in any year to the 31st day of July in the next following year, both days inclusive :

“The said Act” means the Agriculture (Emergency Powers) Act, 1934.

(3) Any contracts entered into by the Board in pursuance of these regulations that if made between private persons—

- (a) Must be by deed, shall, when made by the Board, be in writing under the common seal of the Board :
- (b) Must be in writing signed by the parties to be charged therewith, may, when made by the Board, be in writing signed by any person acting on behalf of and under the express or implied authority of the Board :
- (c) Might be made orally without writing may, when made by the Board, be made orally without writing by any person acting on behalf of and under the express or implied authority of the Board.

(4) Any notice, license, demand, or other document to be given, issued, made, or executed by the Board shall be sufficient if verified by the signature of the secretary of the Board for the time being or issued under the common seal of the Board.

(5) The Export Butter-box Pool Regulations 1937\* are revoked.

(6) All licenses, agreements, and generally all acts of authority, and all other documents, matters, acts, and things which originated under the regulations hereby revoked and are of continuing effect at the time of the coming into force of these regulations shall enure for the purpose of these regulations as fully and effectually as if they had originated under the corresponding provisions of these regulations and accordingly shall, where necessary, be deemed to have so originated.

#### REGULATION 2.—SUPPLY OF EXPORT BUTTER-BOXES.

(1) (i) In order to ensure for all proprietors requiring the same a regular supply of export butter-boxes the Board shall, from the coming into force of these regulations, be the sole and exclusive agent of every proprietor for the purpose of purchasing export butter-boxes.

(ii) Accordingly, it shall not be lawful for any proprietor to purchase export butter-boxes save through the Board as his agent.

(2) No proprietor shall pack butter intended for export beyond New Zealand or ship butter for export beyond New Zealand in an export butter-box which was not purchased by the Board in pursuance of these regulations.

(3) Any proprietor manufacturing butter for export beyond New Zealand and requiring export butter-boxes in which to pack such butter shall, on or before the 1st day of April in every year, notify the Board of the number and type of export butter-boxes that he estimates he will require for the next ensuing season, and thereupon the Board shall be at liberty to arrange for the supply of such export butter-boxes from licensees or, if need be, from manufacturers outside New Zealand, upon such terms as the Board thinks fit.

\* Statutory Regulations 1936-7, Serial number 172/1937, page 647.

(4) No licensee shall have any direct right of action against a proprietor in regard to any matters arising out of butter-boxes supplied, but all remedies of the licensee shall be available solely against the Board.

(5) Any claim of a proprietor or the Board for butter-boxes short delivered or for butter-boxes supplied not conforming to the requirements of the Dairy-produce Regulations 1938, or any other matter arising out of the supply of export butter-boxes shall be made and prosecuted by the Board, but the Board shall be entitled to an indemnity to its satisfaction to be furnished by the proprietor before any such claim is made or prosecuted.

(6) Nothing contained in this regulation shall give any proprietor a right of action against the Board where the Board finds it impracticable for any reason to procure from licensees the boxes required by the proprietor.

#### REGULATION 3.—PRICES TO LICENSEES.

(1) The prices to be paid to licensees for export butter-boxes supplied or to be supplied under these regulations shall be ascertained in each season as follows :—

(a) The Director of Forestry shall estimate the price which he considers each licensee will have to pay for the timber to be used by him during the season for the manufacture of export butter-boxes, and, having regard to the reasonable quantity of timber which the licensee should use for the manufacture of the particular types of export butter-boxes he proposes to manufacture, the Director of Forestry shall estimate the value of the timber used by the licensee in the manufacture of each type of export butter-box :

(b) The Minister shall from time to time fix a manufacturing allowance which will be paid to licensees for the manufacture of each type of export butter-box made, but all licensees shall receive the same manufacturing allowance for export butter-boxes of any particular type :

(c) The provisional price to which each licensee shall be entitled for the export butter-boxes supplied by him to the Board shall be obtained for each type of box manufactured by the licensee by adding the timber value estimated pursuant to paragraph (a) hereof to the manufacturing-allowance estimated pursuant to paragraph (b) hereof. The provisional price shall be subject to adjustment as hereinafter provided.

(2) Every licensee shall forthwith on delivery by him of any butter-boxes pursuant to these regulations furnish to the Board a delivery-note containing particulars of such delivery.

(3) Not later than the last day of every month every licensee shall furnish to the Board a detailed statement of the sum claimed by him as due for the provisional price of all butter-boxes delivered by him during the period from the 20th day of the last preceding month up to and including the 20th day of the month by the last day of which the statement is furnished.

(4) Payment of the amount of every such statement when duly rendered and if approved by the Board as correct shall be made by the Board to the licensee on the 20th day of the month following the month on the last day of which the statement is required to be furnished.

(5) At any time during the season, or after the close of a season, the Board, in consultation with the Director of Forestry, may consider any evidence that the prices actually and reasonably paid by any licensee for timber used in the making of export butter-boxes was higher or lower than the value of such timber estimated as aforesaid, and may thereupon adjust accordingly the provisional price payable to that licensee, and any such adjustment may in the Board's discretion be retrospective so as to relate to boxes already delivered and paid for.

(6) Any sum found to be due to the Board by a licensee in consequence of any such adjustment shall be payable by the licensee to the Board on demand, and in default of payment may be recovered by the Board as a debt in any Court of competent jurisdiction.

#### REGULATION 4.—PRICES TO PROPRIETORS OF MANUFACTURING DAIRIES.

(1) Proprietors shall pay to the Board for export butter-boxes supplied under these regulations a provisional price for delivery ex box-factory, which shall in respect of any one season be uniform for export butter-boxes of any one type.

(2) The provisional prices for delivery ex factory shall be arrived at as follows :—

(a) The Board shall estimate at the beginning of each season the average price at which export butter-boxes are obtainable by the Board during the season from licensees, allowing a reserve for the purpose of meeting any adjustment that may subsequently be made in prices payable to licensees :

(b) The Board shall, in respect of each type of export butter-box, fix from time to time what it considers to be fair and reasonable charges for packing butter in export butter-boxes of that type and for assembling and closing export butter-boxes of that type :

(c) The Board shall estimate the cost for the season to the Board of acting as the agent of the proprietors and carrying out the powers and duties conferred and imposed on the Board by these regulations, including such portion or proportion of the overhead expenses of the Board's office as may be fixed by the Board and the reasonable expenses (the amount of which shall be fixed by the Minister) incurred by any Minister of the Crown on behalf of the Board or by reason of any duty imposed on such Minister by these regulations :

(d) Taking into account the price charges and cost referred to in paragraphs (a), (b), and (c) hereof, the Board shall from time to time notify a provisional price for each type of export butter-box : Provided that any such provisional price may from time to time be modified by the Board if in its opinion any change of circumstances makes it proper that a modification should be made.

(3) In respect of butter-boxes obtained on behalf of proprietors for manufacturing dairies situate in the North Island from box-factories situate in the South Island the Board may fix some place other than the box-factory as a substituted place of delivery to which the provisional prices fixed and notified as aforesaid shall apply.

(4) If any export butter-boxes supplied to a proprietor are boxes imported by the Board under the provisions of these regulations, the provisional prices thereof shall be the provisional prices fixed and notified as aforesaid, but the Board shall fix a place of delivery ex wharf or ex rail in substitution for delivery ex box-factory as hereinbefore provided.

(5) If any export butter-boxes purchased and stored by the Board under these regulations are supplied to a proprietor the provisional prices thereof shall be the provisional prices fixed and notified as aforesaid, and such boxes, notwithstanding the actual place of delivery thereof to the proprietor, shall be deemed to be delivered ex box-factory or ex substituted place of delivery or ex wharf or ex store as the Board may in any case decide, and any difference between freight to manufacturing dairy from actual place of delivery and freight to manufacturing dairy from constructive place of delivery shall be adjusted between the Board and the proprietor.

(6) Invoices for export butter-boxes supplied to any proprietor by a licensee or by the Board in any month shall be rendered to such proprietor by the Board as delivery notes are received by the Board from the licensee, and a monthly statement shall be rendered by the Board to such proprietor within seven days after the end of that month or so soon thereafter as practicable, and the amount shown as owing in such statement shall be due and payable by such proprietor to the Board on the 15th day of the month in which the statement is rendered.

(7) If any proprietor fails to pay to the Board the full amount of any account for export butter-boxes supplied through the Board on the due date of payment then—

- (a) The Board may notify the Director of the amount due by the proprietor, and thereupon the Director shall be entitled, without further authority than this regulation, to deduct the amount owing from any moneys that are then payable or may subsequently to the receipt of such notice become payable to the proprietor out of the Dairy Industry Account and to pay the same to the Board whose receipt shall be sufficient discharge for the same; and
- (b) The Board may recover the amount due as a debt in any Court of competent jurisdiction; and
- (c) The Board may decline to permit the supply of any export butter-boxes to the proprietor in default so long as such default continues.

(8) Forthwith after the end of every season the Board shall ascertain the outlay made and incurred by the Board and properly referable to the accounts of that season in respect of the following matters:—

- (a) The purchase of export butter-boxes from licensees and manufacturers outside New Zealand, including any adjustment relating to the price of timber:

(b) The expenses incurred by the Board in carrying out the powers and duties conferred and imposed on the Board by these regulations, including such portion or proportion of the overhead expenses of the Board's office as may be fixed by the Board, and the reasonable expenses (the amount of which shall be fixed by the Minister concerned in consultation with the Board) incurred by any Minister of the Crown on behalf of the Board or by reason of anything to be done by a Minister under these regulations.

(9) Thereupon the Board shall fix and notify such final prices to be payable by proprietors to the Board for export butter-boxes of each respective type as will recoup the outlay aforesaid.

(10) If a final price be less than the provisional price, the Board shall forthwith at its discretion either make a refund of the difference to any proprietor affected or credit the amount thereof to the current account of such proprietor in the books of the Board.

(11) If a final price exceeds the provisional price every proprietor affected shall pay the excess to the Board within thirty days after demand by the Board in that behalf giving particulars of the amount demanded.

(12) If any proprietor fails to pay to the Board the full amount of any such demand within the time aforesaid the provisions of clause (7) of this regulation shall apply.

#### REGULATION 5.—FURTHER POWERS OF BOARD.

(1) It shall be lawful for the Board, with the approval of the Minister, to import export butter-boxes in such quantities as the Minister may approve, whether for immediate delivery to proprietors or for storage as hereinafter provided.

(2) It shall be lawful for the Board, with the approval of the Minister, to store or arrange for the storage at such places and under such conditions as the Board deems fit of any export butter-boxes acquired by the Board, whether from licensees in New Zealand or from manufacturers outside New Zealand.

(3) Notwithstanding anything in these regulations hereinbefore contained, the Board shall have an absolute discretion to permit any individual proprietors or proprietors of manufacturing dairies situate in any district defined by the Board to obtain export butter-boxes otherwise than as hereinbefore provided and to use the same for packing and exporting butter from New Zealand where in the opinion of the Board it is desirable that such proprietors should be exempted from the provisions of these regulations.

(4) Any permission under the last preceding clause hereof may be granted for such period and subject to such conditions as the Board thinks fit, and the Board may at any time in its discretion withdraw any permission so granted.

#### REGULATION 6.—LICENSES FOR MANUFACTURE.

(1) No person shall manufacture export butter-boxes or cheese-crates in New Zealand save and except in pursuance of a license issued under the provisions of these regulations and in the premises named in the license.

(2) Every application for a license under this regulation shall be made in writing to the Board, signed by or on behalf of the manufacturer, in or to the effect of the form numbered 1 set out in the Schedule hereto. It shall be sufficient if one application be made in respect of the manufacture of both butter-boxes and cheese-crates.

(3) Every such license shall authorize the licensee to carry on the manufacture of export butter-boxes, or cheese-crates, or both, as the case may be, in the premises or respective premises specified in such license.

(4) Every person who was carrying on the manufacture of export butter-boxes, or cheese-crates, or both at the date of the coming into force of these regulations and who makes application in the prescribed form within thirty days thereafter and enters into the agreement referred to in clause (8) of this regulation shall be entitled as of right to the issue of a license, but such license may at the discretion of the Board be limited so as to permit the licensee to carry on the manufacture of export butter-boxes and cheese-crates respectively in the premises or respective premises being used for such manufacture at the date of the coming into force of these regulations and in no other premises.

(5) Should a licensee be desirous of manufacturing export butter-boxes, or cheese-crates, or both in premises in addition to or in substitution for the premises or respective premises specified in his existing license, then he shall make application to the Board in the prescribed form, and the Board may in its discretion grant him a fresh license accordingly.

(6) In respect of every application from a person other than a person referred to in clause (4) hereof the Board, before granting a license in respect of any such application, shall take into consideration the following matters :—

- (a) The economic necessity for the establishment in the district of a factory or additional factory of the kind proposed :
- (b) The prospect of carrying on successfully the manufacture of export butter-boxes or cheese-crates or export butter-boxes and cheese-crates, as the case may be, to the extent proposed in the premises mentioned in the application having regard to all relevant circumstances :
- (c) The probable effect of competition from the factory in respect of which the applicant seeks a license on the quality of the goods which might be manufactured therein or in competing factories.

(7) The Board in respect of any application made under the last preceding clause of this regulation shall have an absolute discretion to refuse a license, but shall not grant a license without the previous approval of the Minister.

(8) As a condition of granting any license for the manufacture of butter-boxes the licensee shall enter into an agreement with the Board in or to the effect of the form numbered 2 set out in the Schedule hereto.

(9) A license granted to an applicant in pursuance of this regulation shall be in the form numbered 3 set out in the Schedule hereto.

(10) The Board shall have full power and authority, without prejudice to any other remedies it may have against the licensee, to revoke any license to manufacture export butter-boxes issued under this regulation—

- (a) If it is established to the satisfaction of the Board that the licensee has made persistent default in any contract entered into with the Board or deemed under these regulations to have entered into with the Board:
- (b) If the provisional price which the Board is prepared to fix as being the price which such licensee should be paid for export butter-boxes under Regulation 3 hereof is in the opinion of the Board an uneconomic price to pay for export butter-boxes having regard to all other relevant circumstances.

(11) Such revocation shall be effected by notice in writing given by the Board to the licensee, and shall take effect from the receipt by such licensee of the notice or such later date as the Board in such notice shall fix.

(12) No licensee shall supply, in pursuance of any contract made with him by the Board under these regulations or by the proprietor of any manufacturing dairy registered as a cheese-factory, any export butter-box or export cheese-crate that does not conform in every respect to the requirements prescribed for export butter-boxes or export cheese-crates by the Dairy-produce Regulations 1938.

(13) If any licensee fails in the opinion of the Board to comply with the last preceding clause of this regulation, the Board may in its discretion, by notice in writing to the licensee, revoke the license issued to him under these regulations without prejudice to the liability of the licensee to the penalty imposed by section 3 of the Agriculture (Emergency Powers) Amendment Act, 1936.

(14) No other provisions of these regulations than the foregoing provisions of this regulation shall apply to export cheese-crates or to the manufacture, sale, or purchase of export cheese-crates.

## SCHEDULE.

Form No. 1.

*Agriculture (Emergency Powers) Act, 1934, and Export Butter-box Pool Regulations 1938.*

### APPLICATION FOR LICENSE TO CARRY ON THE MANUFACTURE OF EXPORT BUTTER-BOXES [AND/OR EXPORT CHEESE-CRATES].

APPLICATION is hereby made for a license to carry on the manufacture of export butter-boxes [and/or export cheese-crates] in premises the particulars of which are set out below:—

1. Particulars of land and location of factory premises : . . . . .
2. Name of owner : . . . . .
3. If owner is a company, name of secretary : . . . . .
4. Postal address of owner : . . . . .
5. Name of and distance to nearest—
  - (a) Post Office : . . . . .
  - (b) Telegraph or telephone office : . . . . .
  - (c) Railway-station : . . . . .
  - (d) Shipping port : . . . . .



- \*6. Number and type of export butter-boxes which owner has agreed to supply for the current season and the number and type supplied during the season immediately past : . . . . .
- \*7. Maximum output of export butter-boxes of which the factory is capable under normal conditions in any one season—  
 (a) If manufacturing export cheese-crates only : . . . . .  
 (b) If manufacturing both export butter-boxes and export cheese-crates : . . . . .
- \*8. Maximum output of export cheese-crates of which the factory is capable under normal conditions in any one season—  
 (a) If manufacturing export cheese-crates only : . . . . .  
 (b) If manufacturing both export cheese-crates and export butter-boxes : . . . . .

Dated at . . . . ., this . . . . . day of . . . . ., 19..

*Signature of Owner* : . . . . .

\* Strike out the paragraphs or portion thereof which are inapplicable.

Form No. 2.

THIS AGREEMENT made the . . . . . day of . . . . . 193.. between the New Zealand Dairy Board incorporated under the Dairy-produce Act, 1923, and its amendments (hereinafter referred to as the Board) of the one part And . . . . . (hereinafter referred to as the manufacturer) of the other part Whereas regulations are now in force under the Agriculture (Emergency Powers) Act, 1934, in terms of which the Board as the sole agent of the proprietors controls the supply to manufacturing dairies of butter-boxes in which butter for export may be packed And whereas the manufacturer manufactures butter-boxes and has applied for a license under the said regulations And whereas as a condition of obtaining such a license it is necessary that the manufacturer should enter into these presents Now this agreement witnesseth and it is hereby agreed and declared as follows :—

1. The manufacturer agrees to supply to the Board in its capacity as agent under the above-named regulations if and when ordered by the Board export butter-boxes made by the manufacturer upon the premises named in the application of the manufacturer for a license upon the terms and conditions following that is to say :—  
 (a) The Board shall be at liberty to order up to the maximum output of the manufacturer but not exceeding a total of . . . . . boxes of all types in any one season :  
 (b) Deliveries shall be made by the manufacturer ex factory as the Board may direct or require but the manufacturer shall not be bound to deliver more than the monthly quantities hereunder set out.
2. The price to be paid by the Board for all boxes supplied by the manufacturer shall be the price from time to time fixed as required by the above-mentioned regulations.
3. The manufacturer shall be responsible that all boxes of every type strictly conform to the specification as regards description and quality required by the regulations. The Board shall have the right to reject and return any box not strictly conforming to the specification of its type and the manufacturer without prejudice to any other remedies the Board may have shall be liable to pay to the Board by way of liquidated damages one penny (1d.) per box for every box so rejected. Should any dispute arise as to whether any box rejected was in conformity with specifications the dispute shall be referred to some officer of the Dairy Division of the Department of Agriculture to be appointed for the purpose by the Director of the Dairy Division and the decision of that officer based on his own expert knowledge shall be final.
4. The manufacturer shall deliver the boxes ordered by the Board ex factory to such dairy companies and in such quantities as the Board from time to time directs.

Form No. 3.

*Agriculture (Emergency Powers) Act, 1934, and Export Butter-box  
Pool Regulations 1938.*

LICENSE TO CARRY ON THE MANUFACTURE OF EXPORT BUTTER-BOXES [AND/OR  
EXPORT CHEESE-CRATES].

PURSUANT to application in this behalf dated the . . . . . day of . . . . ., 193..  
[*Name of licensee*] is (are) hereby authorized to carry on the manufacture of export  
butter-boxes [and/or export cheese-crates] in the premises described in the said  
application.

This license shall remain in force subject to the provisions of the Export  
Butter-box Pool Regulations 1938 or any regulations in substitution therefor.

. . . . .

Secretary to the New Zealand Dairy Board.

C. A. JEFFERY,

Clerk of the Executive Council.

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Issued under the authority of the Regulations Act, 1936.

Date of notification in *Gazette* : 8th day of September, 1938.

These regulations are administered by the Department of Agriculture.

(Notice No. Ag. 3601.)