



# Export Control (Prescribed Goods — General) Order 2005

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I, WARREN ERROL TRUSS, Minister for Agriculture, Fisheries and Forestry, make this Order under regulation 3 of the *Export Control (Orders) Regulations 1982*.

Dated 6 January 2005

WARREN TRUSS  
Minister for Agriculture, Fisheries and Forestry

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## Part 1 Preliminary

### 1.01 Name of Order

This Order is the *Export Control (Prescribed Goods — General) Order 2005*.

### 1.02 Commencement

This Order commences on 1 July 2005.

### 1.03 Application of this Order

Unless the contrary intention appears, this Order is to be read as one with each other Order made under regulation 3 of the *Export Control (Orders) Regulations 1982*.

### 1.04 Purposes of this Order

The purposes of this Order are as follows:

- (a) to prescribe general matters required or permitted, by the *Export Control Act 1982*, to be prescribed;
- (b) to prescribe matters generally necessary or convenient to be prescribed for carrying out or giving effect to that Act, including:
  - (i) ensuring transparency and consistency in decision making;
  - (ii) the registration of establishments engaged in the preparation of prescribed goods for export;
  - (iii) the issue of export permits and government certificates;
  - (iv) the declaration of official marks and marking devices;
  - (v) the transmission of information and documents.

### 1.05 Interpretation

- (1) In this Order:

*Act* means the *Export Control Act 1982*.

*corporation* means a legal person that is not an individual.

*convicted* has the meaning given by subsection 85ZM (1) of the *Crimes Act 1914*.

*Export Control Order* means a legislative instrument (regardless of whether it is called *Order* or *Orders*) made under regulation 3 of the *Export Control (Orders) Regulations 1982*.

*Export Meat Orders* means the *Export Control (Meat and Meat Products) Orders 2005*.

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***edible offal*** has the same meaning as in the Export Meat Orders.

***game animal, game meat*** and ***game meat product*** have the same respective meanings as in the Game, Poultry and Rabbit Meat Orders.

***Game, Poultry and Rabbit Meat Orders*** means Export Control Orders No. 3 of 1985 as amended and in force from time to time.

***government certificate*** means:

- (a) a certificate about prescribed goods the issue of which is authorised by an Export Control Order, being a certificate as to:
  - (i) matters about which a country requires certification before the goods may be imported into that country from Australia; or
  - (ii) requirements of the Act that must be satisfied before the goods may be exported from Australia; or
  - (iii) matters concerning goods of the kind that are to be exported; or
- (b) a certificate about goods other than prescribed goods, being a certificate as to:
  - (i) matters about which a country requires certification before the goods may be imported into that country from Australia; or
  - (ii) matters concerning goods of the kind that are to be exported; or

***importing country authority***, for goods being, or to be, exported, means the authority responsible for regulating the import of the goods into the country to which the goods are being or are to be exported.

***meat*** and ***meat products*** have the same respective meanings as in the Export Meat Orders.

***occupier***:

- (a) in relation to a registered establishment, means the individual, person or other legal entity in whose name the establishment is registered; or
- (b) in relation to an establishment that is not registered, means:
  - (i) the individual, corporation or other legal entity that operates the business that prepares prescribed goods at the establishment; or
  - (ii) if the operator of that business cannot be ascertained, the person in charge of operations at the establishment.

***prescribed goods*** — see section 3 of the Act.

*Note* In section 3 of the Act, ***prescribed goods*** is defined as follows:

***prescribed goods*** means goods, or goods included in a class of goods, that are declared by the regulations to be prescribed goods for the purposes of this Act.

The prescription of prescribed goods is in the relevant Export Control Order for the kind of goods concerned, except for animal food and pharmaceutical material. For those goods, see section 1.07 of this Order.

Anything that can, under the Act, be done by the regulations can also be done by Order, except the creation of an offence — see the Act, paragraph 25 (2) (g) and subsections 25 (3) to (8).

***registered*** means registered under this Order.

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**relevant Commonwealth liability**, in relation to an establishment, means a liability to the Commonwealth for:

- (a) a fee payable under the Act; or
- (b) a fee for a service by an authorised officer; or
- (c) a fee in respect of the registration of an establishment, performed at, or in respect of, the establishment; or
- (d) a fee payable under the *Australian Meat and Livestock Industry Act 1997*; or
- (e) charge or levy the collection of which is provided for by the *Export Inspection and Meat Charges Collection Act 1985*, the *Meat Export Charge Collection Act 1984* or the *Primary Industries Levies and Charges Collection Act 1991*; or
- (f) a penalty for failure to pay such a charge or levy.

**serious offence** means an offence against a law of the Commonwealth or a State or Territory for which the maximum penalty is a period of imprisonment or a fine of 10 penalty units or more.

- (2) For the purposes of this Order, a person is taken to manage or control the operations carried on, or to be carried on, in an establishment if he or she has, or would have:
  - (a) authority to direct the operations, or an important or substantial part of the operations; or
  - (b) authority to direct a person who has, or would have, authority of the kind referred to in paragraph (a) in the exercise of that authority or proposed authority.

## **1.06 Application of Orders to partnerships**

- (1) A provision of an Export Control Order applies, in relation to anything to be done under it, to a partnership as if the partnership were a person, but with the modifications set out in this section.
- (2) If the provision would otherwise require or permit something to be done by the partnership, the thing may be done by 1 or more of the partners on behalf of the partnership.
- (3) An obligation that would otherwise be imposed on the partnership by the provision is imposed on each partner instead, but may be discharged by any of the partners.
- (4) The partners are jointly and severally liable to pay an amount that would otherwise be payable by the partnership under the provision.
- (5) If the provision is a penal provision, a contravention of it that would otherwise be committed by the partnership is taken to have been committed by each partner who:
  - (a) did the relevant act or made the relevant omission; or
  - (b) aided, abetted, counselled or procured the relevant act or omission; or

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- (c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly or whether by any act or omission of the partner).
- (6) For the purposes of subsection (5):
  - (a) to establish that a partnership engaged in a particular conduct, it is sufficient to show that the conduct was engaged in by a partner:
    - (i) in the ordinary course of the business of the partnership; or
    - (ii) within the scope of the actual or apparent authority of the partner; and
  - (b) to establish that a partnership had a particular state of mind when it engaged in that conduct, it is sufficient to show that the partner had the relevant state of mind.
- (7) For the purposes of the provision, a change in the composition of a partnership does not affect the continuity of the partnership.

**1.07 Declaration of certain prescribed goods**

- (1) For the purposes of the definition of *prescribed goods* in section 3 of the Act, the following are declared to be prescribed goods:
  - (a) animal food;
  - (b) pharmaceutical material.

*Note* Goods are normally declared to be prescribed goods in the Export Control Order that applies to them. There is no other Export Control Order applicable to goods of those kinds.

- (2) However, only Part 3, Part 6 and Part 17 of this Order apply to prescribed goods of those kinds.
- (3) For the purposes of this section, Part 8 of the *Prescribed Goods (General) Orders 1985* is taken to continue in force, and applies to prescribed goods that are animal food or pharmaceutical material.
- (4) The following provisions of the Export Meat Orders apply to animal food that is meat, or a meat product, within the meaning of suborder 8.1 of those Orders:
  - (a) clause 3 of Schedule 4;
  - (b) paragraph 2.1 (f) and subclause 8.2 of Schedule 7.
- (5) The following provisions of the Export Meat Orders apply to pharmaceutical material that is meat, or a meat product, within the meaning of suborder 8.1 of those Orders:
  - (a) clause 3 of Schedule 4;
  - (b) paragraph 2.1 (g) and subclause 8.2 of Schedule 7.



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## Part 2                      Application of Export Control Orders

### 2.01      Export Control Orders not to apply to certain exports

- (1) Subject to subsection (2), an expression used in this section that is also used in the *Sea Installations Act 1987* has the same meaning in this section as in that Act.
- (2) For the purposes of subsection (3) and paragraph (4) (f), a sea installation is ***installed*** at a particular time if, under section 6 of the *Sea Installations Act 1987*, it would be taken to be installed in an adjacent area at that time.
- (3) For paragraphs (4) (a) and (f), a resources industry mobile unit (within the meaning given by the *Sea Installations Act 1987*) that is not installed is taken to be a ship.
- (4) Neither this Order nor any other Export Control Order applies to prescribed goods to which any of the following paragraphs applies:
  - (a) goods that are ships' stores, being goods for the use of the passengers and crew, or for the service of the ship, on a voyage from Australia;
  - (b) goods that are aircraft's stores, being goods for the use of the passengers and crew, or for the service of the aircraft, on a flight from Australia;
  - (c) goods that have been imported into Australia and held in bond;
  - (d) goods that are imported into Australia and re-exported in the same covering and under the same trade description as the covering and trade description in or under which they were imported;
  - (e) goods that are consigned to an external territory for consumption within the Territory;
  - (f) goods that are consigned to a resources industry structure that is installed within the Joint Petroleum Development Area (within the meaning given by the *Petroleum (Timor Sea Treaty) Act 2003*), for consumption on the structure;
  - (g) goods that are exported in a consignment of no more than:
    - (i) for liquid goods — 10 litres; or
    - (ii) for goods of any other kind — 10 kilograms.

### 2.02      Export Control Orders not to apply to certain goods exported to New Zealand

- (1) This Order, and any other Export Control Order, applies to prescribed goods that are being exported to New Zealand only if the goods are:
  - (a) grain (within the meaning given by the Grain, Plants and Plant Products Orders); or

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- (b) plants, or plant products for which a certificate is required by or under a law of New Zealand.
- (2) Subsection (1) does not prevent the issue of a certificate for goods of a kind for which such a certificate is required by or under a New Zealand law.
- (3) Such a certificate is to be issued in accordance with any Export Control Order that would, but for subsection (1), apply to the goods.

## **Part 3 Exemptions**

### **3.01 Granting of exemption**

The Secretary may exempt prescribed goods from specified provisions, or all provisions, of this Order or any other Export Control Order that applies to the goods:

- (a) if the goods are a commercial sample and:
  - (i) in the case of goods that are liquid, their volume is no more than 50 L; and
  - (ii) in the case of goods that are not liquid, their mass is no more than 60 kg; or
- (b) if the goods are for experimental purposes; or
- (c) in exceptional circumstances; or
- (d) in special commercial circumstances.

### **3.02 Application for exemptions**

- (1) A person who seeks an exemption under this Division must apply for the exemption at least 10 clear working days, or any shorter period that the Secretary allows, before the proposed date of export or preparation of the goods.
- (2) The application:
  - (a) must be in writing; and
  - (b) must specify the provisions of this Order, and of any other Export Control Order, from which exemption is sought; and
  - (c) must give the reason for seeking the exemption; and
  - (d) must contain enough information to allow the Secretary to identify the goods, including, if possible, the following information:
    - (i) the name and address of the person who intends to export the goods;
    - (ii) the name and address of the consignee, or the words 'to order';
    - (iii) the intended port of loading of the goods;
    - (iv) the intended ship and voyage number or airline flight number;
    - (v) the intended date of departure of the ship or aircraft onto which the goods are to be loaded;

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- (vi) the intended port of discharge of the goods;
- (vii) if the country of origin of the goods is not Australia, their country of origin;
- (viii) the foreign country of intended final destination of the goods;
- (ix) the place where the goods can be inspected,
- (x) the date on which the goods can be inspected;
- (xi) if a government certificate is to be sought in respect of the goods, the State or Territory in which the certificate will be applied for;
- (xii) the number allotted to the registered establishment in which processing of the goods last took place;
- (xiii) the shipping or other identifying marks relating to the goods;
- (xiv) if available, any identification number that appears on a container system unit and, in relation to that unit, an indication of the goods it will contain;
- (xv) the number and kind of packages.

**3.03 Grant and effect of exemptions**

- (1) If the Secretary grants the exemption, the Secretary must give a written instrument to the applicant setting out the terms of the exemption.
- (2) The provision or provisions of this Order, or any other Export Control Order, specified in the instrument do not apply to, or in relation to, the goods specified in the instrument.

## **Part 4 Registered establishments**

### **Division 4.1 Preliminary**

#### **4.01 Definitions for Part**

In this Part:

**liability undertaking** means an undertaking to pay a relevant Commonwealth liability, and includes an undertaking entered into under order 19A of the *Prescribed Goods (General) Orders 1985*.

### **Division 4.2 How establishments become registered**

#### **4.02 Exception for certain ships**

This Part does not apply to a ship that is used for the carriage of prescribed goods that are being:

- (a) exported from Australia; or
- (b) transported between Australian ports.

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#### 4.03 Application for registration

- (1) The occupier of an establishment may apply in writing, in a form approved by the Secretary, for the registration of the establishment.
- (2) The application must include:
  - (a) the name and business address of the occupier, and:
    - (i) if the occupier is a corporation — the name and address of the person, or each person, who is to manage or control the operations to be carried on in the establishment; or
    - (ii) if the occupier is a partnership — the names and addresses of the partners; and
  - (b) the location of the premises; and
  - (c) their external boundary; and
  - (d) if the premises are a ship:
    - (i) its name; and
    - (ii) its home port; and
    - (iii) the place in Australia where it can be inspected; and
  - (e) particulars of:
    - (i) export operations; and
    - (ii) other operations likely to affect the export operations; to be carried on in the establishment; and
  - (f) if the occupier is an individual — subject to Part VIIC of the *Crimes Act 1914*, particulars of any serious offence of which he or she has been convicted; and
  - (g) if the occupier is a corporation — subject to Part VIIC of the *Crimes Act 1914*, particulars of any serious offence of which any person who is to manage or control the operations to be carried on in the establishment has been convicted; and
  - (h) if the occupier is a partnership — subject to Part VIIC of the *Crimes Act 1914*, particulars of any serious offence of which any of the partners has been convicted; and
  - (i) any other information required in the particular case by an Export Control Order.

*Note* For the meaning of *serious offence*, see subsection 1.05 (1).

#### 4.04 Registration requirements for new establishments

- (1) Subject to any other Export Control Order, the Secretary must register an establishment if:
  - (a) its registration has been applied for in accordance with section 4.03; and
  - (b) the establishment is constructed so as to comply with any Export Control Order that applies to the operations to be carried on in it; and

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- (c) if any other Export Control Order requires the equipment available or to be available in the establishment to be approved, the equipment has been, or will be, approved; and
  - (d) the equipment available or to be available in the establishment is adequate for the carrying on of those operations in an efficient and hygienic manner; and
  - (e) the laundry, first aid and safety services for authorised officers are adequate; and
  - (f) the export operations to be carried out in the establishment are compatible with one another; and
  - (g) operations, other than export operations, that are to be carried on in the establishment will not affect the hygienic preparation of prescribed goods; and
  - (h) any relevant Commonwealth liability has been paid; and
  - (i) the Secretary is satisfied that:
    - (i) if the occupier is an individual — he or she; or
    - (ii) if the occupier is a corporation — each person who is to manage or control the operations to be carried on in the establishment; or
    - (iii) if the occupier is a partnership — each of the partners; is a fit and proper person; and
  - (j) the prescribed fee has been paid.
- (2) If a relevant Commonwealth liability is payable in relation to the establishment, the liability is taken to have been paid for the purposes of paragraph (1) (h) if:
- (a) the Secretary has entered into an arrangement for its payment with the occupier of the establishment; and
  - (b) there are exceptional circumstances; and
  - (c) the amount was payable to the Commonwealth before 29 April 1985.
- (3) The Secretary must register the premises despite the non-payment of a relevant Commonwealth liability if he or she is satisfied that:
- (a) the applicant became the occupier before the relevant date; and
  - (b) none of the following persons:
    - (i) the occupier;
    - (ii) a person having a beneficial interest in the occupier;
    - (iii) if the occupier holds the premises of the establishment on a trust, a beneficiary of that trust;was a party to an arrangement to avoid or delay payment of the liability; and
  - (c) any consideration for the right to occupy the establishment was calculated without regard to the possibility that the liability may be payable by the occupier.

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- (4) For paragraph (3) (a), the **relevant date** is:
- (a) if the establishment was, on the date the applicant became the occupier, registered under the Export Control Orders made on 5 December 1983 — 13 August 1984; and
  - (b) in any other case — 29 April 1985.

#### 4.05 Who is a fit and proper person

- (1) The Secretary may, in deciding whether a person is a fit and proper person for the purposes of the Act, the regulations, this Order or another Export Control Order, have regard to any of the following:
- (a) subject to Part VIIC of the *Crimes Act 1914*, whether the person has been convicted of an offence against the Act, another law of the Commonwealth, or a law of a State or Territory;
  - (b) whether a relevant Commonwealth liability is payable by the person, either alone or jointly with another person or other persons;
  - (c) whether the person has made a false or misleading statement:
    - (i) in any application or notice under the Act, the regulations or an Export Control Order; or
    - (ii) otherwise, either orally or in writing, in relation to operations, or proposed operations, at a registered establishment, or a proposed registered establishment, or in any way relating to the export of prescribed goods;
  - (d) whether the person has failed to comply with any notice, instruction, condition or restriction under the Act, the regulations or an Export Control Order;
  - (e) whether the person, either alone or jointly with another person:
    - (i) has been refused a licence, permit or approval to export prescribed goods; or
    - (ii) has been granted such a licence, permit or approval that has been revoked, suspended or cancelled;
  - (f) any other relevant matter in relation to the person;
  - (g) whether an associate of the person is not a fit and proper person for the purposes of the Act, the regulations or an Export Control Order, having regard to any of the matters referred to in paragraphs (a) to (g).
- (2) If a person has been charged with an offence, the Secretary may postpone deciding whether he or she is a fit and proper person until the charge is finally determined or withdrawn.
- (3) In paragraph (1) (g) and subsection (2), a reference to an associate of a person (**the person concerned**) includes:
- (a) a person who is or was a consultant, adviser, partner, representative on retainer, employer or employee of the person concerned or of any corporation of which the person concerned is an officer or employee, or in which the person concerned holds shares; and
  - (b) the spouse or de facto spouse of the person concerned; and

- (c) any other person who is or was:
    - (i) directly or indirectly concerned in; or
    - (ii) in a position to control or influence the conduct of;  
a business or undertaking of the person concerned, or of a corporation of which the person concerned is an officer or employee, or in which the person concerned holds shares; and
  - (d) a corporation of which the person concerned, or any other person mentioned in paragraph (a), (b) or (c), is, or was at a relevant date, an officer or employee, or in which the person concerned or any of those other persons holds shares or held shares on a relevant date.
- (4) For the purposes of paragraph (3) (d), **relevant date** means the date on which:
- (a) an offence referred to in paragraph (1) (a) was, or is alleged to have been, committed; or
  - (b) a fee, charge, levy or penalty:
    - (i) was, or is alleged to have been, incurred; or
    - (ii) was, or is alleged to have been, due for payment; or
    - (iii) in the case of a penalty — was imposed or was due for payment;  
or
  - (c) a false or misleading statement referred to in paragraph (1) (d) was, or is alleged to have been, made; or
  - (d) the contravention referred to in paragraph (1) (e) occurred or is alleged to have occurred; or
  - (e) the licence, permit or approval referred to in paragraph (1) (f) was refused, revoked, suspended or cancelled or the conduct giving rise to the refusal, revocation, suspension or cancellation occurred, or is alleged to have occurred.

#### **4.06 Undertakings to pay certain liabilities to Commonwealth**

- (1) This section applies if:
  - (a) an application has been made for the registration of an establishment;  
and
  - (b) a relevant Commonwealth liability has not been paid.
- (2) For paragraph 4.04 (1) (h), the amount of the liability is taken to have been paid if:
  - (a) the proposed occupier of the establishment has given a written undertaking to the Secretary to pay the amount, on terms agreed with the Secretary; and
  - (b) the Secretary considers that it is appropriate to accept the undertaking in the circumstances.
- (3) For paragraph (2) (b), the Secretary must take into account:
  - (a) the financial position of the proposed occupier; and

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- (b) the nature and likely cost of the operations proposed to be carried on at the establishment; and
  - (c) whether the proposed occupier will be able to meet:
    - (i) the undertaking; and
    - (ii) the cost of the operations; and
  - (d) any other relevant considerations.
- (4) Such an undertaking must include a term that the amount payable is to be reduced by any amounts paid by, or on behalf of, the person who incurred the fee, charge, levy or penalty to which the amount outstanding relates (*the original debtor*).
- (5) An undertaking may be varied at any time by agreement between the Secretary and the proposed occupier.
- (6) The Secretary may agree to a variation if:
  - (a) taking into account the matters mentioned in subsection (3), the Secretary considers that it is appropriate to agree to the variation in the circumstances; and
  - (b) the variation does not reduce the proposed occupier's liability.
- (7) The amount payable under an undertaking:
  - (a) is a debt due to the Commonwealth; and
  - (b) may be recovered in a court of summary jurisdiction.
- (8) A payment by the proposed occupier under an undertaking:
  - (a) must be applied to reduce the amount outstanding; and
  - (b) is taken, for the purposes of paragraph 4.04 (1) (h), to reduce, by the amount of the payment, the amount owed to the Commonwealth.
- (9) However, the liability of the original debtor to pay the full amount of the amount outstanding is not affected by an undertaking under this section or by payments made under the undertaking.
- (10) If the amount outstanding is made up of 2 or more amounts of a kind referred to in the definition of *relevant Commonwealth liability*, the Secretary may decide how payments under the undertaking are to be applied against the amounts.
- (11) If the sum of payments made under the undertaking and by, or on behalf of, the original debtor exceeds the amount outstanding, the excess paid over the amount outstanding must be refunded to the proposed occupier.



#### **4.07 Conditions of registration**

- (1) Compliance with the terms of any applicable liability undertaking (including any variation) is a condition of the registration of an establishment.

*Note* Failure to comply with a condition of registration is a ground for suspension or revocation of that registration — see paragraph 4.25 (b) and subparagraph 4.29 (1) (g) (ii), respectively.

- (2) For the purpose of ensuring that an establishment remains registered only if it continues to meet the criteria for its registration, the Secretary may impose a condition on its registration.
- (3) Such a condition may be in the same terms as a law, of the State or Territory in which the establishment is located, that applies to an establishment of that kind.

#### **4.08 Registration period**

The registration of an establishment comes into force on the date on which the Secretary registers the establishment, or another date (if any) specified in the certificate of registration for the purpose, and remains in force (unless sooner revoked):

- (a) if the certificate of registration specifies a period as the period for which the establishment will be registered — until the end of that period; or
- (b) if the occupier notifies the Secretary in writing that the occupier wishes the registration to cease on a particular day and the day is after the Secretary receives the notice — until the end of that day; or
- (c) if the occupier notifies the Secretary in writing that the occupier wishes the registration to cease, but does not specify a particular day, or specifies a day that is before the Secretary receives the notice — until the end of the day on which the Secretary receives the notice.

#### **4.09 Number and certificate**

If the Secretary registers an establishment, the Secretary must:

- (a) allot a number to the establishment; and
- (b) issue to the occupier a certificate of registration that specifies:
  - (i) the export operations for which the establishment has been registered; and
  - (ii) the number allotted to it; and
  - (iii) the period for which the establishment is registered.

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### 4.10 Copy of certificate to be displayed

The occupier of a registered establishment commits an offence if the current certificate of registration for the establishment is not displayed prominently in the establishment.

*Level 1 penal provision.*

*Note* Contravention of a penal provision is an offence — see section 17.05 and subregulation 4 (1) of the *Export Control (Orders) Regulations 1982*. Contravention of a level 1 penal provision is punishable by a fine of 10 penalty units — see paragraph 4 (1) (b) of those Regulations.

Such a contravention is an offence of strict liability — see subregulation 4 (2) of those Regulations. For *strict liability*, see section 6.1 of the *Criminal Code*.

## Division 4.3 Renewal of registration

### 4.11 Application for renewal

- (1) The occupier of a registered establishment may apply in writing to the Secretary for the renewal of the registration of the establishment.
- (2) An application for renewal of the registration of an establishment must reach the Secretary not less than 28 days before the registration expires, or within such shorter period as the Secretary allows.
- (3) Section 4.03 applies to an application for renewal except that the occupier need not give the Secretary information or a document that the Secretary already has.
- (4) If an application for the renewal of the registration of an establishment is not made before the registration expires, a later application for renewal of the registration is to be treated as an application for its registration.

### 4.12 Renewal of registration

- (1) The Secretary must renew the registration of an establishment if:
  - (a) the occupier applies, in accordance with section 4.11, for its renewal; and
  - (b) Export Control Orders that apply to the establishment are being complied with; and
  - (c) the equipment in the establishment:
    - (i) is being operated in an efficient and hygienic manner; or
    - (ii) if is not being operated at all, is capable of being so operated; and
  - (d) only those export operations for which the establishment is registered are being carried on in the establishment; and
  - (e) either:
    - (i) any relevant Commonwealth liability in relation to the establishment has been paid; or

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- (ii) if a liability undertaking is in effect in relation to the establishment, the undertaking is being complied with; and
- (f) the Secretary is satisfied that:
  - (i) the person in whose name the establishment is registered has not ceased to be a fit and proper person; or
  - (ii) if the occupier of the premises is a corporation, no person who manages or controls operations carried on in the establishment has ceased to be a fit and proper person; or
  - (iii) if the occupier of the premises is a partnership, none of the partners has ceased to be a fit and proper person;as the case requires.
- (2) If the Secretary renews the registration of the establishment, the Secretary must issue a certificate that specifies:
  - (a) the export operations for which the establishment is registered; and
  - (b) the number allotted to it.

**4.13 Number and certificate**

If the Secretary renews the registration of an establishment, the Secretary must issue to the occupier a new certificate of registration that specifies:

- (a) the export operations for which the establishment has been registered; and
- (b) the number allotted to it; and
- (c) the period during which the establishment is registered.

**Division 4.4 Changes of which Secretary must be notified**

**4.14 Secretary to be notified if occupancy ceases**

If the person in whose name an establishment is registered ceases to be the occupier of the establishment, the person must, before or within 7 days after the date on which the person ceases to be the occupier, notify the Secretary in writing of the date on which the person ceased to be the occupier.

**4.15 Registration lapses if occupancy ceases**

If a person ceases to be the occupier of a registered establishment, the registration of the establishment lapses:

- (a) if a notice under section 4.14 is received by the Secretary — at the end of the day on which the notice is received; or
- (b) otherwise — at the end of the 7th day after the date on which the person ceased to be the occupier.

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### 4.16 Notification of change in corporation or partnership

- (1) If a corporation is the occupier of a registered establishment, and there is a change in any person who manages or controls the operations carried on at the establishment, the occupier must, within 7 days after the change, notify the Secretary in writing of:
  - (a) the date on which the change occurred; and
  - (b) the name and address of the person who has commenced to manage or control the operations carried on at the establishment.
- (2) If a partnership is the occupier of a registered establishment, and there is a change in the membership of the partnership, the occupier must, within 7 days after the change, notify the Secretary in writing of:
  - (a) the date on which the change occurred; and
  - (b) the name and address of the person who has become a member of the partnership.

### 4.17 Continuation of registration after change in management or control etc

If:

- (a) the Secretary has been notified of a change in accordance with subsection 4.16 (1) or (2); and
- (b) the Secretary is satisfied that the person who has commenced to manage or control the operations carried on at the establishment, or the person who has become a member of the partnership, is a fit and proper person;

the registration of the establishment continues.

### 4.18 Other events of which occupier must inform Secretary

The occupier of a registered establishment must give the Secretary written notice of any of the following events or circumstances within 7 days after the occurrence of the event or circumstance:

- (a) if the occupier is an individual:
  - (i) he or she is convicted of a serious offence; or
  - (ii) he or she becomes bankrupt; or
  - (iii) he or she executes a deed of arrangement or a deed of assignment under Part X of the *Bankruptcy Act 1966*;
- (b) if the occupier is a corporation:
  - (i) the occupier, or a person who manages or controls the operations carried on at the establishment, is convicted of a serious offence; or
  - (ii) a court orders that the occupier be wound up; or
  - (iii) a resolution is passed that it be wound up voluntarily; or
  - (iv) it enters into administration, as defined in section 435C of the *Corporations Act 2001*;

- (c) if the occupier is a partnership:
  - (i) any of the partners is convicted of a serious offence; or
  - (ii) the partnership is dissolved.

*Note* For the meaning of *serious offence*, see subsection 1.05 (1).

#### **4.19 Change of occupier's name or address**

If there is a change in the name or business address of the occupier of a registered establishment, the occupier must, within 7 days after the change, notify the Secretary in writing.

##### *Level 1 penal provision*

*Note* Contravention of a penal provision is an offence — see section 17.05 and subregulation 4 (1) of the *Export Control (Orders) Regulations 1982*. Contravention of a level 1 penal provision is punishable by a fine of 10 penalty units — see paragraph 4 (1) (b) of those Regulations.

Such a contravention is an offence of strict liability — see subregulation 4 (2) of those Regulations. For *strict liability*, see section 6.1 of the *Criminal Code*.

### **Division 4.5 Alterations to registered establishments**

#### **4.20 Alterations or additions to be approved**

- (1) Subject to subsection (2), an alteration or addition must not be made to:
  - (a) a registered establishment; or
  - (b) an establishment the registration of which has been applied for; unless:
    - (c) the occupier submits to the Secretary a proposal for the alteration or addition, in accordance with any Export Control Order that applies to the establishment; and
    - (d) the establishment will, after proposed alteration or addition comply with the other Order; and
    - (e) the Secretary has approved the proposal in writing.
- Note* An unauthorised alteration of, or addition to, a registered establishment is grounds for revocation of its registration — see section 4.29.
- (2) Subsection (1) does not apply to a minor alteration or addition that does not or is not likely to:
  - (a) make the establishment unhygienic; or
  - (b) affect the manner in which prescribed goods can be inspected.

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## **Division 4.6 Variation of export operations**

### **4.21 Additional operations not to be carried out**

The occupier of a registered establishment must not carry out, in the establishment, an export operation for which the establishment is not registered.

*Level 3 penal provision.*

*Note* Contravention of a penal provision is an offence — see section 17.05 and subregulation 4 (1) of the *Export Control (Orders) Regulations 1982*. Contravention of a level 3 penal provision is punishable by a fine of 30 penalty units — see paragraph 4 (1) (b) of those Regulations.

Such a contravention is an offence of strict liability — see subregulation 4 (2) of those Regulations. For *strict liability*, see section 6.1 of the *Criminal Code*.

### **4.22 Application for approval of additional operations**

- (1) If the occupier of a registered establishment wishes to carry on, at the establishment, an export operation for which the establishment is not registered, the occupier must apply in writing to the Secretary.
- (2) Section 4.03 applies in relation to the application except that the occupier need not give the Secretary information or a document that the Secretary already has.

### **4.23 Secretary may vary registration**

- (1) If:
  - (a) the occupier of a registered establishment ceases to be a fit and proper person; or
  - (b) if the occupier of the establishment is a corporation — a person who manages or controls the operations carried on at the establishment is not, or ceases to be, a fit and proper person; or
  - (c) if the occupier of the establishment is a partnership — a member of the partnership is not, or ceases to be, a fit and proper person; or
  - (d) there are reasonable grounds to believe that circumstances in relation to the condition of, or the equipment in, a registered establishment have changed; or
  - (e) there are reasonable grounds to believe that the suitability of a registered establishment for the export operations for which it has been registered has changed;the Secretary may:
  - (f) vary the conditions to which the registration of the establishment is subject in any way that the Secretary thinks fit; or
  - (g) vary the registration of the establishment by reducing the number of export operations that may be carried on at the establishment.

- (2) In paragraph (1) (f), *varying* the conditions of registration includes imposing, adding or substituting a condition of registration.

#### **4.24 New certificate of registration**

If the Secretary varies the conditions of the registration of an establishment, or varies the registration of an establishment, in a way that requires an alteration to the establishment's certificate of registration, the Secretary must issue a new certificate of registration to the occupier of the establishment within 7 days.

### **Division 4.7 Suspension of registration**

#### **4.25 Grounds for suspension**

If:

- (a) the Secretary has reasonable grounds to believe that a provision of the Act or an Export Control Order is not being complied with in respect of:
- (i) the condition of a registered establishment; or
  - (ii) the carrying on of operations in a registered establishment; or
  - (iii) the export of prescribed goods that have been prepared in a registered establishment; or
- (b) there are grounds for the revocation of the registration of an establishment;

the Secretary may, by notice in writing, suspend the registration of the establishment in respect of 1 or more of the export operations, either all or in part, for which the establishment is registered.

*Note* For the grounds for revocation of the registration of an establishment, see subsection 4.29.

#### **4.26 Period of suspension**

- (1) A suspension under section 4.25:
- (a) remains in force for the period specified in the notice of suspension; and
  - (b) cannot be renewed.
- (2) The period of suspension must not exceed:
- (a) 28 days; or
  - (b) any longer period (not being longer than 2 months) determined by the Secretary in writing in respect of 1 or more, or all, of the export operations for which the establishment is registered.

#### **4.27 Suspension for non-payment of debts**

- (1) If the amount of a relevant Commonwealth liability in relation to an establishment is not paid within 30 days after the date on which it was due

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for payment, the Secretary may give the occupier of the establishment a notice in writing (*notice of payment due*).

- (2) If, on the 8th day after the notice of payment due was served on the occupier, the amount has not been paid to the Department and the occupier of the establishment has not entered into an arrangement with the Secretary to pay it, the Secretary may suspend the registration of the establishment.
- (3) For the purposes of subsection (2), if the notice is served by posting it to the occupier of the establishment, the notice is taken to have been served on the occupier on the 3rd working day after it was posted to the establishment.

### 4.28 Establishment not registered for certain purposes during suspension

If the registration of an establishment has been suspended in respect of 1 or more of the export operations for which the establishment is registered, the establishment is taken, during the period of the suspension, not to be registered for the purposes of any other Export Control Order that requires the establishment to be registered in respect of that operation.

## Division 4.8 Revocation of registration

### 4.29 Grounds for revocation

- (1) The Secretary may, by notice in writing, revoke the registration of an establishment in respect of 1 or more of the export operations for which the establishment is registered if there are reasonable grounds to believe that:
  - (a) the establishment has ceased to comply with any Export Control Order that applies to it; or
  - (b) export operations being carried on in the establishment have ceased to comply with any Export Control Order that applies to them; or
  - (c) alterations or additions have been made to the establishment, or to equipment in the establishment, otherwise than in accordance with any Export Control Order that applies to the establishment or equipment; or
  - (d) the equipment in the establishment is no longer adequate for the carrying on of operations in an efficient and hygienic manner; or
  - (e) any operations being carried on in the establishment are being carried on in a manner that may affect the hygienic preparation of prescribed goods; or
  - (f) prescribed goods, other than the prescribed goods in respect of which the establishment is registered, are prepared at the establishment; or
  - (g) the occupier of the establishment has failed to comply with:
    - (i) a provision of the Act; or
    - (ii) a condition of the registration; or
    - (iii) a requirement of section 4.16, 4.18 or 4.19; or
    - (iv) a notice of suspension under section 4.25; or



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- (v) a notice under section 4.31 requiring the occupier to cease export operations; or
  - (vi) an instruction about the preparation of prescribed goods issued by an authorised officer in the course of his or her duties; or
  - (h) any of the following persons is not, or ceases to be, a fit and proper person:
    - (i) if the occupier of the establishment is a corporation — the occupier or a person who manages or controls the operations carried on at the establishment;
    - (ii) if the occupier of the establishment is a partnership — a member of the partnership;
    - (iii) in any other case — the occupier of the establishment; or
  - (i) an authorised officer has been prevented, by the use of force, obstruction or intimidation, from performing his or her duties at the establishment.
- (2) If:
- (a) the registration of an establishment has been suspended under section 4.27; and
  - (b) the amount payable is not paid within 90 days of the suspension; the Secretary may, by written notice to the occupier of the establishment, revoke the registration of the establishment.
- (3) The Secretary may, by written notice to the occupier of a registered establishment, revoke its registration if:
- (a) the occupier is convicted of a serious offence; or
  - (b) a person who manages or controls the operations carried on at the establishment is convicted of a serious offence.

Note For the meaning of *serious offence*, see subsection 1.05 (1).

**4.30 Notice of revocation**

- (1) If the Secretary revokes the registration of an establishment, the Secretary must notify the occupier of the establishment, in writing, of the revocation.
- (2) The revocation has effect when the notice of it is given to the occupier of the establishment, or on a later day specified in the notice.

**Division 4.9 Suspension of operations**

**4.31 Suspension related to hygiene, inspection etc**

- (1) If there are reasonable grounds to believe that:
  - (a) prescribed goods are being prepared at a registered establishment under unhygienic conditions or in an unhygienic manner; or

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- (b) an animal from which prescribed goods may be derived is not being handled humanely in accordance with any applicable Export Control Order; or
  - (c) the proper inspection of prescribed goods at an establishment is not possible;  
an authorised officer may direct the occupier of the establishment to suspend, wholly or in part, the carrying on at the establishment of 1 or more export operations specified in the direction until:
  - (d) prescribed goods can be prepared at the establishment under hygienic conditions or in a hygienic manner, as the case requires; or
  - (e) animals from which prescribed goods may be derived can be handled humanely in accordance with any applicable Export Control Order; or
  - (f) the proper inspection of prescribed goods at the establishment is again possible.
- (2) If the period needed by the occupier to comply with the direction is likely to be longer than 2 hours, the direction must be given in writing.

**4.32 Suspension at request of occupier**

If the occupier of a registered establishment tells the Secretary in writing that export operations at the establishment will not be carried on for a period, the Secretary may suspend the carrying on at that establishment of any export operations that are specified in the notice for such period (not exceeding the period specified in the notice) and on such conditions, as the Secretary thinks fit.

## **Part 5                      Electronic transmission of information and documents**

**5.01 Electronic communication systems**

- (1) For the purposes of section 24A of the Act, information or a document that is to be transmitted electronically from a person to another person for the purposes of a provision of the Act must be transmitted by means of the system known as EXDOC.
- (2) The following may be given by being transmitted using that system:
  - (a) an application for an export permit;
  - (b) an amendment or withdrawal of such an application;
  - (c) a permit or the revocation of a permit;
  - (d) an application for a government certificate;
  - (e) a government certificate.
- (3) A reference in paragraph (2) (a) to an application for an export permit includes a notice of intention to export.

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- (4) If that system is inoperative, the information must be given in the manner specified by the Secretary in writing.

*Note* A document or information that is transmitted by means of the EXDOC system is taken to have been given — see subsection 24A (6) of the Act.

**5.02 Use of identifying codes**

- (1) The Secretary must allot an identifying code to a person who applies to be registered to use the EXDOC system.
- (2) The Secretary must take reasonable steps to ensure that a transmission by means of the EXDOC system to a person other than the Secretary:
- (a) contains the identifying code of the person intended to receive it; and
  - (b) is transmitted to that person.
- (3) The sender of an electronic transmission to the Secretary must authenticate the transmission by including the sender's identifying code in the transmission.

## **Part 6 Export permits and related matters**

**6.01 Meaning of *application* for export permit**

- (1) In this Part:
- (a) a reference to an application for an export permit for prescribed goods includes any other application or notice that has effect as an application for an export permit, whether or not it also has any other effect; and
  - (b) a reference to applying for an export permit includes giving such a notice.
- (2) In particular, and without limiting subsection (1), a reference to an application for an export permit includes a notice of intention to export if the notice has the effect of an application for an export permit.

**6.02 Issue of permits**

If a person has applied for a permit to export prescribed goods in accordance with the requirements of any Export Control Order that applies to the goods, and there are reasonable grounds for believing that:

- (a) the conditions and restrictions specified in any such Order have been complied with; and
- (b) information given to the Secretary in, or in connection with, the application is correct and complete and that there is a sound basis for the information;

the Secretary may issue an export permit for the export of the goods.

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**6.03 Variation of permits after issue**

- (1) The Secretary may vary an export permit to:
  - (a) correct any error on the face of the permit; or
  - (b) if there has been a relevant change since the permit was issued, to update the information on the face of the permit.
- (2) If the Secretary varies an export permit, he or she must notify the exporter in writing of the variation.

**6.04 Validity of permit**

An export permit is valid for 28 days after it is issued.

**6.05 Permit may be revoked if goods do not comply etc**

If there are reasonable grounds to believe, in relation to an export of prescribed goods, that:

- (a) the conditions and restrictions applicable to the export in any Export Control Order have not been complied with; or
- (b) information given to the Secretary in, or in connection with, an application for an export permit for the export is incorrect or incomplete or that there is not a sound basis for the information;

the Secretary may:

- (c) reject the goods for export; and
- (d) revoke any export permit issued for the goods.

**6.06 Revoked permit to be surrendered**

If an export permit is revoked, the exporter must surrender the permit to an authorised officer before the end of the working day after the day on which the permit was revoked.

*Level 1 penal provision*

*Note* Contravention of a penal provision is an offence — see section 17.05 and subregulation 4 (1) of the *Export Control (Orders) Regulations 1982*. Contravention of a level 1 penal provision is punishable by a fine of 10 penalty units — see paragraph 4 (1) (b) of those Regulations.

Such a contravention is an offence of strict liability — see subregulation 4 (2) of those Regulations. For *strict liability*, see section 6.1 of the *Criminal Code*.

**6.07 Exporter to be responsible for goods**

The person named as the exporter of prescribed goods in an application for an export permit for the goods is responsible for ensuring that, until the goods are exported, they continue to comply with any condition or restriction:

- (a) that is specified in an Export Control Order; and
- (b) that must be satisfied before the goods are exported.

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**6.08 Inspection and verification of condition of goods**

- (1) If:
- (a) a person has applied for an export permit for prescribed goods and an authorised officer has had an opportunity to inspect the goods; and
  - (b) the authorised officer has reasonable grounds to believe that:
    - (i) any condition or restriction on the export of the goods in any applicable Export Control Order, being a condition or restriction that must be satisfied before the goods are exported, is complied with; and
    - (ii) the importing country requirements for the goods have been complied with;the officer may give a written statement of verification to that effect.
- (2) The authorised officer may carry out any inspection or examination, and take any sample, necessary for those purposes.

**6.09 Inspection of goods if condition changed etc**

If an authorised officer has reasonable grounds to believe that:

- (a) an Export Control Order that applies to prescribed goods has not been complied with; or
- (b) the condition of the goods has changed,  
before or after the granting of an export permit for the goods but before the export of the goods:
- (c) an authorised officer must inspect the goods; and
- (d) if an export permit has been issued for the goods, the Secretary may suspend the permit until the inspection and any analysis of the goods is completed.

**6.10 Abandonment of intention to export**

- (1) If prescribed goods have been inspected and passed for human consumption and the intention to export the goods is abandoned, the occupier of the establishment at which the goods are located must notify the Secretary in writing of that fact.
- (2) The occupier must not remove the goods from the establishment until any applicable requirements of any Export Control Order have been complied with.
- (3) A notice under subsection (1) has effect as a withdrawal of any application for a government certificate or export permit for the goods.

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**6.11 Inspection of suspect goods**

If an authorised officer has reasonable grounds to believe that prescribed goods are not fit for export, the officer may:

- (a) inspect the goods in accordance with any Export Control Order that applies to them; or
- (b) retain the goods for the purpose of so inspecting them.

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**Part 7 Automated issue of permits**

*Note* This Part is reserved for future use.

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**Part 8 Government certificates****8.01 Purpose of this Part**

- (1) Section 23 of the Act authorises the regulations to provide for the issue of certificates in relation to goods to be exported from Australia.
- (2) This Part is about the issue of such certificates.

**8.02 Applications for government certificates**

- (1) A person may apply to the Secretary for the issue of a government certificate in relation to goods that are to be imported into a country.

*Note* For offences in relation to making false or misleading statements, see the *Criminal Code*, Part 7.4.

- (2) The Secretary may accept information in an application for an export permit as satisfying any requirement to give the same information in an application for a government certificate.
- (3) A reference in subsection (2) to an application for an export permit includes a notice of intention to export.

**8.03 Issue of government certificates for prescribed goods**

The Secretary may issue a government certificate for prescribed goods if the Secretary is satisfied that the following have been complied with:

- (a) the conditions and restrictions in any applicable Export Control Order that must be satisfied before the goods may be exported from Australia;
- (b) the importing country requirements for the goods;
- (c) any matters to be specified on the certificate concerning goods of the kind that are to be exported.

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**Section 8.05****8.04 Restrictions on issuing government certificates for prescribed goods**

- (1) The Secretary must not issue a government certificate for prescribed goods if:
  - (a) a permit for the export of the goods has not been issued; or
  - (b) a permit for the export of the goods has been issued, but has ceased to have effect; or
  - (c) the Secretary is not satisfied that:
    - (i) the information given to the Secretary in, or in connection with, the application for the certificate is correct and complete; or
    - (ii) there is a sound basis for the information.
- (2) The Secretary need not issue a government certificate for prescribed goods if the Secretary is satisfied that:
  - (a) the exporter of the goods has not consented to an authorised officer having access to the exporter's business premises for the purpose of audit; or
  - (b) the exporter has failed to comply with the requirements of any applicable Export Control Order.

*Note* For cancellation of a government certificate by the Secretary, see subsection 23 (3) of the Act.

**8.05 Government certificates for goods other than prescribed goods**

- (1) The Secretary may issue a government certificate for goods other than prescribed goods.
- (2) A person who intends to export goods that are not prescribed goods, and who intends to apply for a government certificate for the goods, must apply in writing to the Secretary for a direction as to the procedures to be followed, and requirements to be satisfied, for the issue of the certificate.
- (3) The application must be signed by the exporter and must:
  - (a) describe the goods to be exported; and
  - (b) name the exporter; and
  - (c) describe the certificate sought; and
  - (d) specify the establishment or each establishment at which the goods are to be prepared.
- (4) The Secretary may give a direction in writing as to the procedures and requirements for the issue of the certificate.
- (5) The direction may be to the effect that specified Export Control Orders, or provisions of Export Control Orders, are to be taken to apply to, or in relation to, the issue of the certificate.

**Part 9****Approved arrangements**

## Section 13.01

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*Note* This Part is reserved for future use.

## Part 10 Exporters' obligations

*Note* This Part is reserved for future use.

## Part 11 Audit

*Note* This Part is reserved for future use.

## Part 12 Alternative methods of compliance

*Note* This Part is reserved for future use.

## Part 13 Official marks and official marking devices

### 13.01 Tolerances for dimensions of official marks

The dimensions specified for an official mark, or a part of such a mark, in this Part are subject to the following tolerances:

- (a) for dimensions up to 10 mm —  $\pm 1$  mm;
- (b) for dimensions over 10 mm —  $\pm 2$  mm.

### 13.02 Declaration of official mark — *Australia Inspected*

- (1) For the purposes of the definition of *official mark* in section 3 of the Act, a mark of the following design (but with the registration number of the establishment at which the relevant prescribed goods were prepared substituted for 'A' ), and of the dimensions set out in subsection (2), is an official mark:





**Section 13.03**

- (2) The dimensions are those specified in column 3 of the following table, except that:
- (a) for a mark on a computer-generated prescribed tag, the dimensions may be as specified in column 4; and
  - (b) for a mark on:
    - (i) small edible offal;
    - (ii) a small meat cut; or
    - (iii) a carcase or part of a carcase to be further processed before export;
 the dimensions may be as specified in column 5; and
  - (c) for a mark on a tag other than a computer-generated prescribed tag, the dimensions may be as specified in column 5.

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Section or component of the mark	Normal size mark (mm)	Computer-generated prescribed tag mark (mm)	Small size mark (mm)
1	Width of mark	65	24	32
2	Height of mark	45	17	22
3	Height of letters	8	2	3
4	Height of registration number	10	5	3

**13.03 Declaration of official mark — *Australia Inspected* (for lamb)**

- (1) For the purposes of the definition of *official mark* in section 3 of the Act, a mark of the following design (but with the registration number of the establishment at which the relevant prescribed goods were prepared substituted for 'A'), and of the dimensions set out in subsection (2), is an official mark:



**Section 13.04**

- (2) The dimensions are those specified in column 3 of the following table, except that, in the case of a mark on:

- (a) small lamb meat cuts; or
- (b) lamb carcasses or portions of lamb carcasses to be further processed before export;

the dimensions may be as specified in column 4.

Column 1	Column 2	Column 3	Column 4
Item	Section of mark	Normal size mark (mm)	Small size mark (mm)
1	Width of oval mark	65	32
2	Height of oval mark	45	22
3	Breadth of lamb frame	40	21
4	Height of lamb frame	15	8
5	Minimum height of letters	8	3
6	Minimum height of registration number	10	3

**13.04 Declaration of official mark — *Restricted Australia***

- (1) For the purposes of the definition of *official mark* in section 3 of the Act, a mark of the following design (but with the registration number of the establishment at which the goods were prepared substituted for 'A'), and of the dimensions set out in subsection (2), is an official mark:



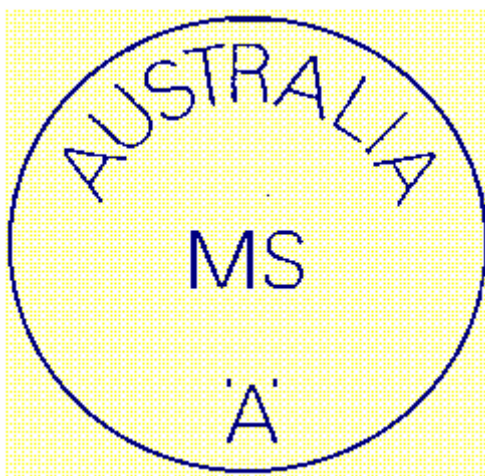
- (2) The dimensions are as follows:
- (a) the diameter of the circle — 65 mm;

## Section 13.05

- (b) the height of the letters — at least 8 mm;
- (c) the height of the registered number — at least 10 mm.

### 13.05 Declaration of official marks — halal meat

- (1) For the purposes of the definition of *official mark* in section 3 of the Act, a mark of the following design (but with the identifying mark of a recognised Islamic body, within the meaning of order 331 of the *Export Meat Orders 1985*, substituted for 'A'), and of the dimensions set out in subsection (2), is an official mark:

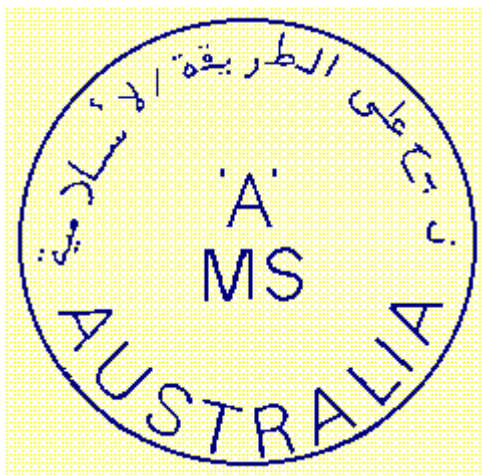


- (2) The dimensions are those specified in column 3 of the following table except that, in the case of a mark on:
- (a) a tag; or
  - (b) a carcase or part of a carcase to be processed before export;
- the dimensions may be those specified in column 4 of the table.

Column 1	Column 2	Column 3	Column 4
Item	Section of mark	Normal size mark (mm)	Mark size for tags (mm)
1	Diameter of mark	65	32
2	Minimum height of letters	8	5

**Section 13.06**

- (3) For the purposes of the definition of **official mark** in section 3 of the Act, a mark of the following design (but with an abbreviation of the name of the State or Territory in which the registered establishment at which the goods were produced is located substituted for 'A'), and of the dimensions set out in subsection (4), is declared to be an official mark:



- (4) The dimensions are those specified in column 3 of the following table except that, in the case of a mark on:
- a tag; or
  - a carcase or part of a carcase to be processed for export;
- the dimensions may be as specified in column 4 of the table.

Column 1	Column 2	Column 3	Column 4
Item	Section of mark	Normal-size mark (mm)	Mark on a tag (mm)
1	Diameter of mark	65	32
2	Minimum height of letters	8	3

**13.06 Declaration of official marks — foreign country identification**

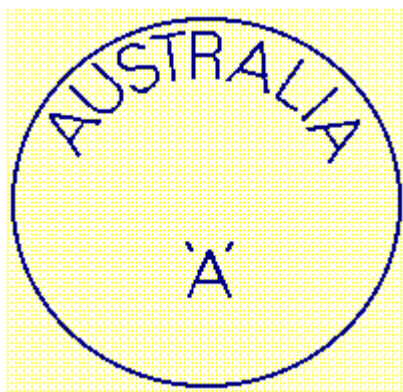
- (1) In this section:

**Export Meat Manual** means volume 2, *Importing Country Requirements*, of the *Export Meat Manual* published by the Department of Agriculture, Fisheries and Forestry on 1 July 2005.

*Note* The Export Meat Manual is available on line at [www.daff.gov.au](http://www.daff.gov.au).

**Section 13.07**

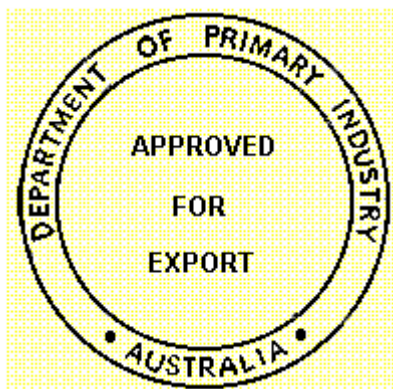
- (2) For the purposes of the definition of *official mark* in section 3 of the Act, a mark of the following design (but with a foreign country identification mark, as specified in the Export Meat Manual, substituted for 'A'), and of the dimensions set out in subsection (3), is declared to be an official mark:



- (3) The dimensions are as follows:
- (a) the diameter of the circle — 50 mm;
  - (b) the height of the letters in the word 'Australia' — at least 6 mm; and
  - (c) the dimensions of the foreign country identification mark — as specified for the mark in the Export Meat Manual.

**13.07 Declaration of official marks — approved for export**

- (1) For the purposes of the definition of *official mark* in section 3 of the Act, a mark of the following design is an official mark:



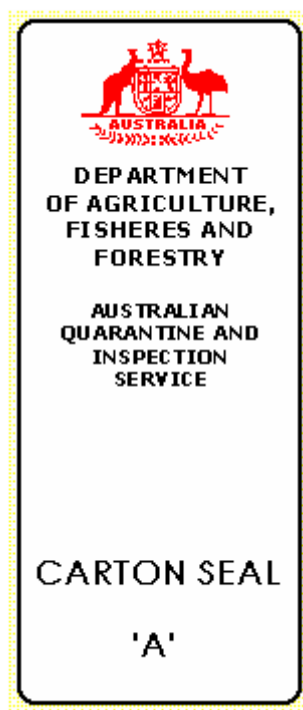
**Section 13.08**

- (2) The dimensions are those specified in column 3 of the following table except that, in the case of a mark on a small package or a small tag, the dimensions may be those specified in column 4 of the table:

Column 1	Column 2	Column 3	Column 4
Item	Section of mark	Normal size mark (mm)	Small size mark (mm)
1	Diameter of outer circle	50	28
2	Diameter of inner circle	40	21
3	Minimum height of letters between inner and outer circles	3	2
4	Minimum height of letters in inner circle	4	3

**13.08 Declaration of official marks — carton seals**

- (1) For the purposes of the definition of *official mark* in section 3 of the Act, a mark:
- (a) of the following design (but with a number, or a combination of letters and numbers, substituted for 'A'); and
  - (b) printed in black, except for the Coat of Arms which is printed in red, on a white or security background; and
  - (c) of the dimensions set out in subsection (2);
- is an official mark:



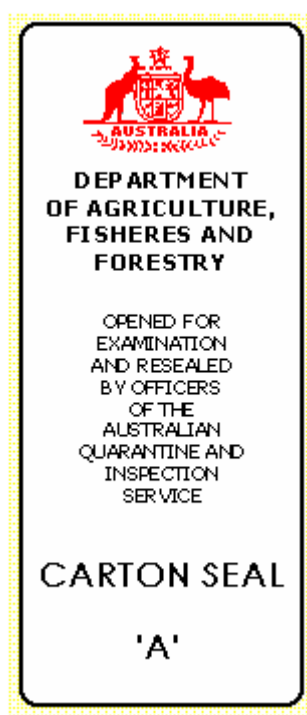
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Section 13.09

- (2) The dimensions of the mark are:
  - (a) width not less than 45 mm, and not more than 75 mm; and
  - (b) height not less than 125 mm, and not more than 160 mm.
- (3) The mark may include a security code.

**13.09 Declaration of official marks — goods opened for inspection and re-sealed**

- (1) For the purposes of the definition of *official mark* in section 3 of the Act, a mark:
  - (a) of the following design (but with a number, or a combination of letters and numbers, substituted for 'A')
  - (b) printed in green, except for the Coat of Arms which is printed in red, on a white or security background; and
  - (c) of the dimensions set out in subsection (2);is an official mark:



- (2) The dimensions are:
  - (a) width not less than 45 mm, and not more than 75, mm; and
  - (b) height not less than 125 mm, and not more than 160 mm.
- (3) The mark may include a security code.

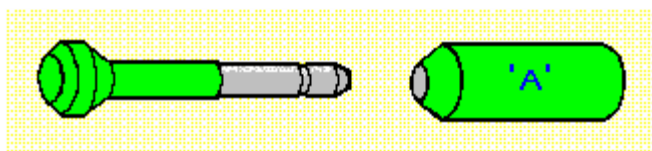


**Section 13.10****13.10 Declaration of official marks — seal**

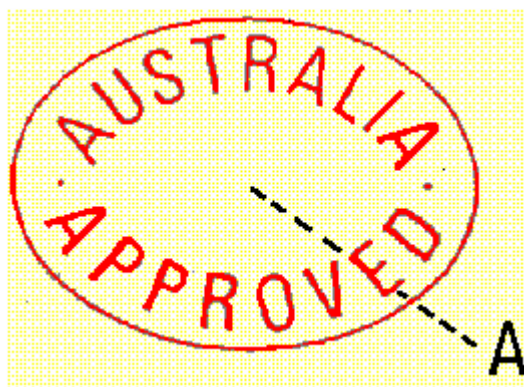
For the purposes of the definition of *official mark* in section 3 of the Act, a seal of the following design (but with a number, or a combination of letters and numbers, substituted for 'A') is an official mark:

**13.11 Declaration of official marks — DAFFA**

For the purposes of the definition of *official mark* in section 3 of the Act, a seal of the following design (but with the word *Australia*, the letters *DAFFA* and a number, or a combination of letters and numbers, substituted for 'A'), coated in green plastic, is an official mark:

**13.12 Declaration of official marks — Australia Approved**

- (1) For the purposes of the definition of *official mark* in section 3 of the Act, a mark of the following design (but with the registration number of the establishment at which the relevant prescribed goods were prepared inserted in the space marked A), and of the dimensions set out in subsection (2), is an official mark:





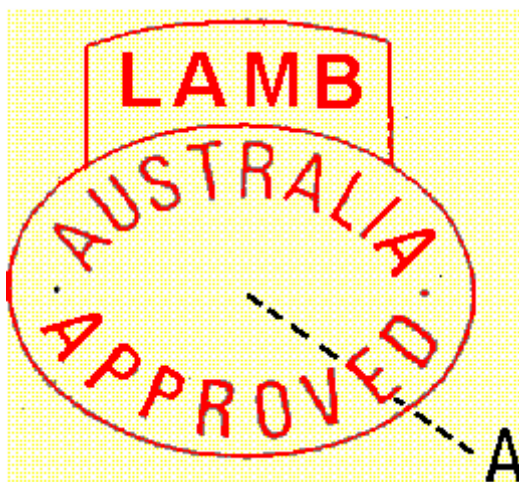
**Section 13.13**

- (2) The dimensions are those specified in column 3 of the following table, except that, in the case of a mark on a small game meat cut, the dimensions may be those specified in column 4 of the table:

Column 1	Column 2	Column 3	Column 4
Item	Section of mark	Normal size mark (mm)	Small size mark (mm)
1	Width of oval mark	50	32
2	Height of oval mark	39	22
3	Minimum height of letters	6	3
4	Minimum height of registration number	8	3

**13.13 Declaration of official marks — Australia Approved (lamb)**

- (1) For the purposes of the definition of *official mark* in section 3 of the Act, a mark of the following design (but with the registration number of the establishment at which the goods were prepared inserted in the space marked A), and of the dimensions set out in subsection (2), is an official mark:



- (2) The dimensions are those specified in column 3 of the following table, except that, in the case of a mark on small lamb meat cuts, the dimensions may be those specified in column 4 of the table:

Column 1	Column 2	Column 3	Column 4
Item	Section of mark	Normal size mark (mm)	Small size mark (mm)
1	Width of oval mark	60	32
2	Height of oval mark	45	22
3	Breadth of lamb frame	40	21

**Section 13.14**

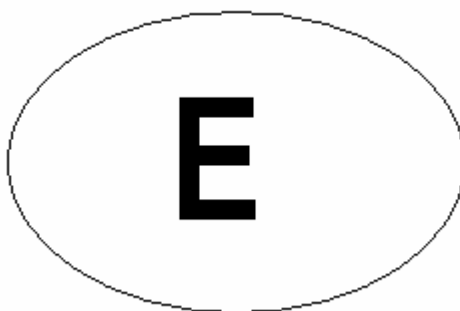
Column 1	Column 2	Column 3	Column 4
Item	Section of mark	Normal size mark (mm)	Small size mark (mm)
4	Height of lamb frame	15	8
5	Minimum height of letters	8	3
6	Minimum height of registration number	10	3

**13.14 Declaration of official mark**

For the purposes of the definition of *official mark* in section 3 of the Act, a mark of the following design (but with a number representing the user of the mark for XXXX) is an official mark:

**13.15 Declaration of official mark — European Union mark**

- (1) For the purposes of the definition of *official mark* in section 3 of the Act, a mark of the following design, of the dimensions set out in subsection (2), is an official mark:



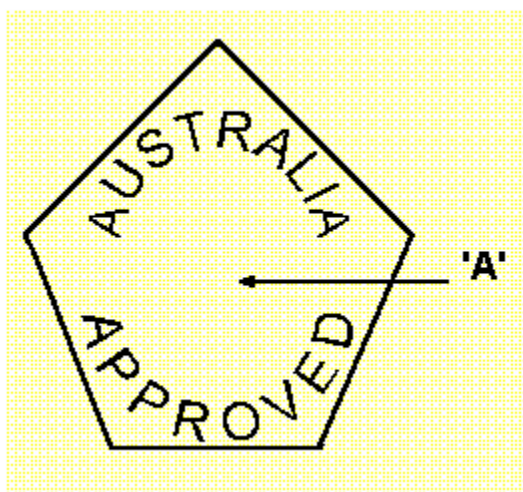
**Section 13.16**

- (2) The dimensions are those specified in column 3 of the following table, except that, in the case of a mark on a small item or the end panel of a carton, the dimensions may be those specified in column 4 of the table:

Column 1	Column 2	Column 3	Column 4
Item	Section of mark	Normal-size mark	Small-size mark
1	Width	65	32
2	Height	45	22
3	Minimum height of letter E	10	3

**13.16 Declaration of official marks — pentagonal mark**

- (1) For the purposes of the definition of *official mark* in section 3 of the Act, a mark of the following design (but with the registration number of the establishment at which the goods were prepared inserted in the space marked A), and of the dimensions set out in subsection (2), is an official mark:



- (2) The dimensions are those specified in column 3 of the following table, except that, in the case of a mark on a small item or the end panel of a carton, the dimensions may be those specified in column 4 of the table:

Column 1	Column 2	Column 3	Column 4	Column 5
Item	Element of mark	Normal-size mark (mm)	Small-size mark (mm)	Computer-generated mark (mm)
1	Height of mark	60	35	24
2	Width of mark	60	35	24
3	Height of letters	8	3	2
4	Minimum height of registration number	10	3	2

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**Section 13.17****13.17 Declaration of official marking devices**

For the purposes of the definition of *official marking device* in section 3 of the Act, a device that can apply an official mark is an official marking device.

**13.18 Use and possession of official marks etc**

- (1) In this section, a reference to an *approved arrangement* is a reference to an approved arrangement approved under another Export Control Order.
- (2) A person must not:
- (a) manufacture an official mark or official marking device; or
  - (b) have in his or her possession an official marking device;
- unless the Secretary has given the person approval in writing to do so.

*Note* Contravention of subsection (2) is an offence. See the Act, section 14.

- (3) A person must not:
- (a) have in his or her possession an official mark (other than an official mark that has been applied to goods); or
  - (b) apply an official mark;
- unless:
- (c) the person is an authorised officer, or is acting in accordance with a direction of an authorised officer; or
  - (d) the person is designated in an approved arrangement as a person who may do the relevant act, and the act is done in accordance with the approved arrangement; or
  - (e) the person has been approved by the Secretary in writing as a person who may do the act in a specified registered establishment, and in relation to specified prescribed goods, and does the act in the specified establishment and in relation to the specified goods.

*Note* Contravention of subsection (3) is an offence. See the Act, section 14.

- (4) A person must not engage in conduct if the result is that an official mark is altered in a way that is misleading or deceptive.

*Note* Contravention of subsection (4) is an offence. See the Act, section 14.

**13.19 Security of official marking devices**

An official mark or official marking device must be stored securely when not in use.

**13.20 Record-keeping as to use of official marking devices**

A daily record must be made of the manufacture, receipt, use and defacement of official marks and the manufacture, receipt, use and destruction of official marking devices.

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**Section 14.02**

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**13.21 Damaged official marking devices etc**

An official marking device that is damaged, worn or otherwise unfit for applying an official mark must be given, as soon as practicable, to an authorised officer.

**Part 14 Sampling and analysis****14.01 How sampling and analysis are to be done**

- (1) Sampling of prescribed goods for the purposes of an Export Control Order must be done in accordance with:
  - (a) a method of sampling specified in the Order; or
  - (b) if no method of sampling is so specified:
    - (i) an applicable method specified in the Food Standards Code; or
    - (ii) an applicable method specified in a relevant standard published by Standards Australia; or
    - (iii) any other appropriate, validated, scientifically-based method that ensures that accurate results will be obtained.
- (2) The analysis of a sample for the purposes of an Export Control Order must be done in accordance with:
  - (a) a method of analysis specified in the Order; or
  - (b) if no method of analysis is so specified:
    - (i) an applicable method specified in the Food Standards Code; or
    - (ii) an applicable method specified in a relevant standard published by Standards Australia; or
    - (iii) any other appropriate, validated science-based method that ensures that accurate results will be obtained.
- (3) The occupier of an establishment to which this Part applies must not fail to comply with subsection (1) or (2).

**14.02 Who can analyse samples**

The following persons or bodies may analyse, inspect or examine a sample that an authorised officer has taken while exercising his or her powers under Part III of the Act:

- (a) an authorised officer;
- (b) a laboratory accredited by NATA to carry out the proposed analysis, inspection or examination;
- (c) another laboratory approved by the Secretary to carry out the proposed analysis, inspection or examination.

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**Section 14.03**

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**14.03 Certificate of analysis as evidence**

In proceedings in respect of an offence against the Act or an Export Control Order (including a contravention of an Export Control Order that is an offence because of regulation 4 of the *Export Control (Orders) Regulations 1982*), a certificate by a person or laboratory referred to in section 14.02 is evidence of the facts stated in it.

**14.04 Copy of certificate of analysis**

If goods have been analysed for the purposes of an Export Control Order, the analyst may, at the written request of the occupier of the establishment at which the goods are located, or the exporter of the goods, and on payment of a fee calculated to recover the cost of the analysis, give a copy of the certificate of analysis to the occupier or exporter.

**Part 15 Directions powers**

*Note* This Part is reserved for future use.

**Part 16 Reconsideration and review of decisions****16.01 Definitions — decision and initial decision**

In this Part:

**decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

**initial decision** means a decision made under an Export Control Order by the Secretary or a delegate of the Secretary, but does not include:

- (a) a decision to grant an export permit or a government certificate; or
- (b) a decision under section 16.03.

**16.02 Application for reconsideration by Secretary**

- (1) A person whose interests are affected by an initial decision may apply to the Secretary to reconsider the decision.
- (2) The application:
  - (a) must be in writing; and
  - (b) must set out the reasons for the application; and
  - (c) must be lodged with the Secretary within 28 days after the date on which the initial decision first came to the notice of the applicant or within such further period as the Secretary allows.

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**Section 17.01****16.03 Secretary to reconsider decision**

On receipt of an application in accordance with section 16.02, the Secretary must reconsider the initial decision, and may make any decision that he or she might have made in the first instance.

**16.04 Effect of Secretary's decision**

- (1) If the Secretary makes a decision under section 16.03, the initial decision reconsidered ceases to have effect.
- (2) The Secretary must give the applicant notice in writing of the Secretary's decision within 45 days after the day on which the application was received.
- (3) The notice must set out the reasons for the Secretary's decision.

**16.05 Application to Administrative Appeals Tribunal**

Application may be made to the Administrative Appeals Tribunal, for review of a decision of the Secretary under section 16.03, by or on behalf of a person whose interests are affected by the decision.

## **Part 17 Miscellaneous**

**17.01 Application and removal of identification**

- (1) If an authorised officer retains, for the purpose of inspection, analysis, treatment, disposition or a similar purpose:
  - (a) anything found at premises used or apparently used for the preparation of prescribed goods; or
  - (b) anything found in or on a vehicle used or apparently used for the transport of prescribed goods; or
  - (c) an area (including any facilities, equipment or services installed there) that is part of a registered establishment or other premises used or apparently used for the preparation of prescribed goods; or
  - (d) a vehicle used or apparently used for the transport of prescribed goods; he or she may identify the thing, area, premises or vehicle by attaching to it a tag or a similar means of identification.
- (2) A person other than:
  - (a) an authorised officer; or
  - (b) a person acting under the direction of an authorised officer;must not remove such a tag or means of identification attached by an authorised officer.

*Level 1 penal provision*

*Note* Contravention of a penal provision is an offence — see section 17.05 and subregulation 4 (1) of the *Export Control (Orders) Regulations 1982*. Contravention of a

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**Section 17.02**

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level 1 penal provision is punishable by a fine of 10 penalty units — see paragraph 4 (1) (b) of those Regulations.

Such a contravention is an offence of strict liability — see subregulation 4 (2) of those Regulations. For *strict liability*, see section 6.1 of the *Criminal Code*.

**17.02 Handling of goods etc identified at registered establishment etc**

If an authorised officer has identified a thing, area or vehicle in accordance with section 17.01:

- (a) in the case of a thing that needs to be removed, the thing must not be used until the occupier of the registered establishment, or the owner of the premises or vehicle (as the case may be) applies, in writing, to an authorised officer for:
  - (i) approval to remove the thing; or
  - (ii) if a system of corrective action is to be instituted for the routine removal of a particular kind of thing, approval of the system; and
- (b) in the case of a thing or area that needs to be corrected in some way, the thing or area must not be used until the occupier of the registered establishment, or the owner of the premises or vehicle (as the case may be) applies, in writing, to an authorised officer for:
  - (i) approval of any corrective action that may be necessary; or
  - (ii) if a system of corrective action is to be instituted for the routine correction of a particular defect, approval of that system; and
- (c) the thing or area must not be interfered with, used or further processed until an authorised officer has given approval in writing for its correction in that way.

*Level 1 penal provision*

*Note* Contravention of a penal provision is an offence — see section 17.05 and subregulation 4 (1) of the *Export Control (Orders) Regulations 1982*. Contravention of a level 1 penal provision is punishable by a fine of 10 penalty units — see paragraph 4 (1) (b) of those Regulations.

Such a contravention is an offence of strict liability — see subregulation 4 (2) of those Regulations. For *strict liability*, see section 6.1 of the *Criminal Code*.

**17.03 Provision of services of authorised officers**

- (1) For the purposes of this section, an establishment the registration of which has been suspended or revoked is taken to continue to be registered for 28 days after the suspension or revocation.
- (2) If the occupier of a registered establishment applies to the Secretary, under an Export Control Order, for the Secretary to make available the services of an authorised officer, the Secretary is not obliged to make available the services of such an officer.
- (3) The Secretary may, in deciding whether to make available the services of such an officer, take into account:
  - (a) the availability of authorised officers; and



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- (b) good management practices;  
in satisfying as many as possible of such applications within applicable budgetary limits.
- (4) The Secretary may also take into account the need to protect the health and safety of authorised officers while carrying out their duties in or around such an establishment.

**17.04 Obligation to comply with directions of authorised officers**

- (1) For the purposes of this section, an establishment the registration of which has been suspended or revoked is taken to continue to be registered for 28 days after the suspension or revocation.
- (2) The occupier of a registered establishment, or an employee or agent of such an occupier, must comply with a direction given by an authorised officer under an Export Control Order within the time specified in the direction.

*Level 1 penal provision*

*Note* Contravention of a penal provision is an offence — see section 17.05 and subregulation 4 (1) of the *Export Control (Orders) Regulations 1982*. Contravention of a level 1 penal provision is punishable by a fine of 10 penalty units — see paragraph 4 (1) (b) of those Regulations.

Such a contravention is an offence of strict liability — see subregulation 4 (2) of those Regulations. For *strict liability*, see section 6.1 of the *Criminal Code*.

**17.05 Meaning of *Penal provision* and *Level x penal provision***

If the words *Penal provision*, or the words *Level x penal provision* (where *x* is a number from 1 to 5), are set out at the foot of a provision of an Export Control Order, the provision is a penal provision, or a penal provision of that level, as the case requires.

*Note* A penal provision is a provision contravention of which is an offence — see subregulation 4 (1) of the *Export Control (Orders) Regulations 1982*. Such a contravention is an offence of strict liability — see subregulation 4 (2) of those Regulations. For the levels of penal provisions, see paragraph 4 (1) (b) of those Regulations. For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Part 18 Transitional, savings and repeals**

**18.01 Repeal of *Prescribed Goods (General) Orders 1985***

The following Orders are repealed:

- No. 1 of 1985
- No. 8 of 1985
- No. 12 of 1985
- No. 2 of 1986
- No. 4 of 1986

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- No. 7 of 1986
- No. 8 of 1986
- No. 1 of 1987
- No. 13 of 1987
- No. 3 of 1988
- No. 5 of 1990
- No. 3 of 1991
- No. 3 of 1992
- No. 4 of 1992
- No. 5 of 1992
- No. 12 of 1992
- No. 5 of 1996
- No. 10 of 1996
- No. 3 of 1997
- No. 5 of 1997
- No. 7 of 1997
- No. 1 of 1998
- No. 1 of 1999
- No. 1 of 2000
- No. 2 of 2000
- No. 1 of 2003
- No. 1 of 2004
- No. 2 of 2004
- No. 3 of 2004
- No. 4 of 2004.

**18.02 Transitional — administrative actions under repealed Orders**

- (1) If:
  - (a) an administrative action was taken by a person under the Orders repealed by section 18.01 (the *old Orders*); and
  - (b) a corresponding action may be taken under this Order;
 the action continues to have effect as if it had been taken under this Order.
- (2) Despite the repeal of the old Orders, each instrument made in writing under the old Orders and mentioned in an item in column 2 of the table continues to have effect, and may be revoked, varied, suspended or amended, as if the old Orders were still in force.

**Table Instruments continuing in force****Item Instrument or instruments**

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- |   |  |
|---|--|
| 1 | Any certificate issued for goods exported to New Zealand |
|---|--|

**Section 18.02**

<b>Item</b>	<b>Instrument or instruments</b>
2	A notice made in writing under order 8A, specifying that orders apply
3	The registration of an establishment (including instruments providing for renewal, assignment, approval of alterations, approval of additional operations, variation, reinstatement, suspension or revocation)
4	The acceptance, under order 19A, of an undertaking to pay an amount outstanding
5	A certificate of registration, issued under order 21
6	A direction to suspend operations, given by an officer under order 51
7	A suspension of operations under order 51A or 52
8	An approval of tinplate coverings under order 55 or of plastics under order 56
9	An approval of interference with trade description under order 64 or of a trade description under order 66
10	A notice of intention to export given under order 68
11	A waiver under order 68
12	An export permit granted under order 75
13	A condemnation by an authorized officer under order 84
14	An approval or an authorisation of a person under order 89
15	An approval under order 91
16	A direction given by an authorized officer under order 94
17	An approval of a design of an official mark under Schedule 4, 5, 6, 7, 8, 9, 10 or 11
18	A direction, under Schedule 4, 7, 8, 9 or 10, relating to a mark
19	An approval of a laboratory under order 96
20	An approval of a means of identification and any direction for applying and removing of a means of identification under order 98A
21	An approval under order 98B
22	An approval of a substance, and the specification of the level at which the substance is to be used, under order 99
23	Approval of chemical compounds and related determinations under Part 23