

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Agriculture, Fisheries and Forestry

*Export Control Act 1982*

*Export Control (Plants and Plant Products) Order 2011*

Subsection 25(1) of the *Export Control Act 1982* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act or necessary or convenient to be prescribed for the carrying out or giving effect to the Act.

Paragraph 25(2)(g) of the Act provides that the Governor-General may make regulations empowering the Minister to make orders, not inconsistent with the regulations, with respect to any matter for or in relation to which provision may be made by the regulations.

Regulation 3 of the *Export Control (Orders) Regulations 1982* (the Regulations) provides that the Minister may, by instrument in writing, make orders, not inconsistent with regulations made under the Act, with respect to any matter for or in relation to which provision may be made by regulations under the Act.

Section 3 of the Act defines “prescribed goods” as goods, or goods included in a class of goods, that are declared by the Regulations to be prescribed goods for the purposes of the Act. Section 7 of the Act provides that the Regulations may prohibit the export of prescribed goods from Australia absolutely or to a specified place or unless specified conditions or restrictions are complied with or to a specified place unless conditions or restrictions are complied with.

The purpose of the new *Export Control (Plants and Plant Products) Order 2011* (Order) is to regulate the export of prescribed grain, fresh fruits, fresh vegetables, hay and straw, and plants and plant products for which a phytosanitary or any other certificate is required by declaring those goods to be prescribed goods under the Act and specifying the conditions and restrictions for their export.

The Order amalgamates the *Export Control (Plants and Plant Products) Orders 2005* and the *Export Control (Hay and Straw) Orders 2005*. The purpose of the Order is to:

- simplify the legislative framework for the export of plants and plant products from Australia
- facilitate, enhance and sustain Australia’s exports by providing systems which ensure compliance with the International Plant Protection Convention obligations, overseas country requirements and any other relevant standards that enhance safety or improve market access
- improve efficiency and effectiveness in delivery of export certification services along the export supply chain
- enable an effective transition to an improved export certification and inspection system thereby reducing the cost of the Department’s services to export industries.

The Department of Agriculture, Fisheries and Forestry (DAFF) consulted extensively with industry on the making of the Order. The regulation impact statement included in this explanatory statement provides a detailed account of the nature of the consultation.

Details of the new Order are set out below:

## **Part 1 – Preliminary**

This Part identifies the goods that the Order applies to and includes definitions that apply throughout the Order.

### **Section 1**

This section provides that the name of the Order is the *Export Control (Plants and Plant Products) Order 2011*.

### **Section 2**

This section provides that the Order commences on the day after it is registered.

### **Section 3**

This section lists the goods to which the Order applies and declares those goods to be prescribed goods for the purposes of the definition of *prescribed goods* in section 3 of the Act.

### **Section 4**

This section sets out that the *Export Control (Prescribed Goods - General) Order 2005* (the General Order) is to be read with the Order.

### **Section 5**

Subsection 5.1 sets out the definitions for the purposes of the Order.

Subsection 5.2 sets out that when the words “Penal provision” are set out at the foot of a provision of a section, the provision is taken to provide that it is a penal provision for the purposes of subregulation 4(1) of the Regulations. If the provision specifies that it is a penal provision of a particular level, the applicable penalty is that specified in that subregulation. The Regulations allow for five levels of penal provisions. The penalty for a level 1 penal provision is 10 penalty units; the penalty for a level 2 penal provision is 20 penalty units; and so on.

### **Section 6**

This section defines the meaning of prescribed grain.

### **Section 7**

This section allows the Secretary to determine that specified tests or certificates are required for specified prescribed goods or specified prescribed goods for export to specified countries. Such a determination could be used to ensure that Australian plant exports meet a particular standard that is not related to phytosanitary health. For example, it could be used to ensure that exports of stock feed potentially containing a biological contaminant do not pose any animal health threat to live stock. These requirements may be published as an DAFF notice or circular and may be incorporated into guidelines, manuals and the like on the DAFF website.

## **Part 2 – Conditions on export of prescribed goods**

This Part sets out requirements that must be complied with for the export of the prescribed goods listed in section 3. If a requirement is not complied with, the export is prohibited, and an offence under the Act may be committed by the exporter.

The offences under the Act are serious penal provisions that can attract terms of imprisonment.

### **Section 8**

Subsection 8.1 prohibits the export of prescribed goods unless the requirements in the Order are complied with.

Subsection 8.2 prohibits the export of split vetch absolutely.

A contravention of the prohibitions may be an offence under the Act.

### **Section 9**

This section specifies the conditions that need to be met before a consignment of prescribed goods can be exported. It is effectively a checklist for all the approvals that must be in place before prescribed goods can be exported.

## **Part 3 – Prescribed goods inspected for phytosanitary certification**

This part deals with the preparation of prescribed goods for export in a registered establishment.

The person responsible for compliance is the occupier of the establishment at which the preparation is carried out. “Occupier” is defined in subsection 5.1. For a registered establishment, the occupier is the person in whose name the establishment is registered.

### **Section 10**

Subsection 10.1 requires that a person who wishes to apply for registration of an establishment must comply with the requirements for a registered establishment in Schedule 3. Applications for registration are made under Part 4 of the General Order which sets out the application and approval process, the fit and proper person test, conditions and length of registration as well as the process for renewing or changing a registration.

Subsection 10.2 requires that a registered establishment must be operated in accordance with Schedule 3. Schedule 3 sets out the additional requirements that apply to registered establishments for export plants and plant products. A failure to comply can lead to suspension or cancellation of registration.

### **Section 11**

This section requires that prescribed goods intended for export are prepared and presented for inspection at a registered establishment.

### **Section 12**

This section requires that goods may be transported between registered establishments only in accordance with orders and instructions from an authorised officer.

### **Section 13**

This section imposes an obligation on an occupier of an establishment to keep records of dates of packing and establishments at which the goods were originally packed for at least two years if the prescribed goods have originated at a different registered establishment. Record keeping requirements are set out in clause 4 of Schedule 3.

### **Part 4 – Notice of intention to export**

This part requires that a notice of intention to export be given to an authorised officer in accordance with section 6 of the Act.

### **Section 14**

This section sets out the requirements for a notice of intention to export prescribed goods. The notice must be in an approved form and identify the exporter, specify the tests and certificates that are requested for the goods, allow identification of the goods, include a declaration by the person giving the notice that the requirements for giving notice have been complied with and must be given to an authorised officer by the person who intends to export the goods with sufficient time to allow any inspections and the issue of the export permit and any necessary certificates.

### **Section 15**

This section directs that the exporter identified in the notice is responsible for ensuring that the prescribed goods continue to comply with the requirements up until the time the goods are exported. This means that the exporter is responsible for keeping the goods in the location and condition that is stated in the notice unless they have taken action consistent with the Order.

### **Section 16**

This section requires that certificates of analysis as are approved by the Secretary in respect of the goods must be provided to an authorised officer at the time of inspection of the goods. This section refers to the Secretary's power under section 7 to determine that specific tests or certificates are required.

### **Part 5 – Inspection for export compliance**

This part sets out the process for ensuring that goods are export compliant.

### **Section 17**

This section sets out the conditions under which an authorised officer may declare a consignment of prescribed goods to be passed as export compliant. An authorised officer must be satisfied that the conditions under 17.1 are met and inspection or sampling of the goods has been carried out in accordance with Schedule 2.

### **Section 18**

This section provides that prescribed goods which are passed as export compliant and that are stored in a registered establishment are taken to remain export compliant for a period not exceeding 28 days as specified by the authorised officer.

## **Section 19**

This section applies section 6.09 of the General Order in relation to prescribed goods that have been passed as export compliant. Order 6.09 deals with inspection of prescribed goods where the condition of the goods has changed. If an authorised officer believes that the condition of export compliant goods has changed for any reason before the goods have been exported, the authorised officer can order that the goods be re-inspected. If an export permit has been issued, the Secretary can suspend that export permit until the re-inspection is completed. It is likely that this would only apply if the change to the goods was significant and relevant to the matters in subsections 17.1(a) and (b), for example if the goods had become infested with pests.

## **Section 20**

Subsection 20.1 sets out the process for dealing with prescribed goods that are found to not be export compliant.

Subsection 20.2 requires that an exporter or packer must advise the authorised officer in writing that the goods are being resubmitted for inspection, provide evidence of further preparation, treatment or processing operations and hold the goods.

Subsection 20.3 sets out that prescribed goods which have been treated with insecticide or fumigant must not be re-presented for inspection until after the safety precautions specified on the registered label have been observed or in the absence of such information, as approved by the Secretary. The safety precaution as determined by the Secretary will be described in the Plant Export Operations Manual on the DAFF website.

## **Section 21**

This section requires that prescribed goods which are to be re-inspected or are no longer export compliant must be segregated from goods which are export compliant.

## **Part 6 – Packaging and trade descriptions**

This part sets out the process for ensuring that the packaging and trade descriptions for the goods to be exported are suitable.

## **Section 22**

This section requires that the packaging and other materials used for prescribed goods must be unused and clean or, if designed for multiple uses and previously used, must be cleaned and re-conditioned to the satisfaction of an authorised officer.

## **Section 23**

This section describes the characteristics of packaging and other materials to be used for prescribed goods.

## **Section 24**

This section requires that trade descriptions be applied to all prescribed goods for export. Trade descriptions must be adequate and accurate. Any trade description that accompanies goods must be adequate to identify the goods, it must accurately describe them, and it must contain any specific information that the importing country requires. An inaccurate trade description may not only breach the Order (and be an offence under the Act) but also be a breach of the *Trade Practices Act 1974*.

## **Part 7 – Exporting in packages**

### **Section 25**

This requires that a person must not package prescribed goods for export unless they have been passed as export compliant.

## **Part 8 – Exporting in containers**

This part allows for container approvals to be issued by authorised officers in relation to prescribed goods intended for export. Subsection 5.1 provides that “container” means a shipping container or any other unit of cargo handling equipment designed to protect goods being exported. Goods can only be loaded into a container after an authorised officer has inspected the container and found it to be free from contamination, pests, or any source of contamination or pests. If a container is not loaded with goods immediately after it has been inspected, it must be sealed with a tamper-evidence seal. The seal must remain intact until immediately before the container is loaded with goods.

### **Section 26**

This section requires that a person not load prescribed goods intended for export into a container unless an authorised officer has issued a container approval for the container.

### **Section 27**

This section ensures that prescribed goods are only loaded for export if an authorised officer has inspected the container in accordance with Schedule 4 and has given a written container approval. Schedule 4 deals with inspection requirements for the issue of container approval.

### **Section 28**

This section provides that a container approval is valid for 28 days after the date on which it was given.

### **Section 29**

This section allows an authorised officer to cancel a container approval if they have reasonable cause to believe that since the issue of the approval the conditions of the container have changed.

### **Section 30**

This section requires that the person to whom a paper version of the container approval has been issued must surrender the container approval and any copy in their possession to an authorised officer if the approval has been cancelled.

This section is subject to a level 4 penal provision. A breach is punishable by up to 40 penalty units and may attract a fine of up to \$4,400.

### **Section 31**

Subsection 31.1 provides that where a container is approved under section 27 and it is not to be loaded immediately the authorised officer must seal the container with a tamper-evidence seal and apply an inspection sticker.

Subsection 31.2 requires that the person responsible for the prescribed goods that are to be loaded into the container must not load the container unless the seal is intact and must not remove or obliterate the inspection sticker.

This section is subject to a level 2 penal provision. A breach is punishable by up to 20 penalty units and may attract a fine of up to \$2,200.

## **Part 9 – Exporting in bulk vessels**

This part provides that before a vessel can be used for transporting goods in bulk, both a marine surveyor and an authorised officer must inspect it. The marine surveyor must be satisfied that the area for carrying the goods is suitable and that the goods will not become contaminated, wet or odorized. The authorised officer must be satisfied that the hold and any other cargo on the vessel is free from any source of contamination or pests.

### **Division 1 – Surveys of bulk vessels**

#### **Section 32**

This section provides for the appointment of a marine surveyor or surveyors to survey the vessel.

#### **Section 33**

This section requires a marine surveyor to survey the bulk vessel to establish whether the vessel is suitable to carry the prescribed goods in the holds or areas of the vessel proposed. If the marine surveyor is satisfied that the vessel is free of conditions that could result in contaminating, wetting or imparting an odour to goods and is a suitable vessel to carry the goods in the areas proposed they may issue a certificate to that effect. The marine surveyor must not issue a certificate if they are not so satisfied.

This section is subject to a level 4 penal provision. A breach is punishable by up to 40 penalty units and may attract a fine of up to \$4,400.

#### **Section 34**

This section provides that for the purposes of issuing a vessel approval under section 37 an authorised officer may only accept a certificate referred to in section 33 if the name of the marine surveyor issuing the certificate appears in a declaration made under section 32.

### **Division 2 – Vessel approvals**

This division provides that prescribed goods intended for export in bulk must not be loaded into a bulk vessel without approval. The approval, suspension and cancellation of vessel approval are outlined in this division.

#### **Section 35**

This section prohibits a person from loading prescribed goods intended for export in bulk into a bulk vessel without vessel approval to load the vessel.

#### **Section 36**

This section outlines how an application for vessel approval must be made.

### **Section 37**

Subsection 37.1 provides that on receiving an application for a vessel approval an authorised officer must request and receive a copy of the certificate of the marine surveyor and inspect the vessel in accordance with Schedule 5 which deals with inspection of bulk vessels.

Subsection 37.2 provides that an authorised officer must issue a vessel approval if they are satisfied that the cargo spaces and other parts of the vessel or any cargo already loaded in the vessel are not likely to infest or infect the goods with pests and that no material is present in the cargo spaces and other parts of the vessel that is likely to harbor pests or disease.

### **Section 38**

This section provides that a vessel approval is valid for 28 days after the date it was issued.

### **Section 39**

Subsection 39.1 allows an authorised officer to suspend a vessel approval if they have reasonable cause to believe that since the issue of the approval the conditions on the vessel have changed.

Subsection 39.2 provides that if following a suspension an authorised officer inspects the vessel and having regard to its condition is satisfied that the condition or restriction applicable to the prescribed goods has not been complied with, the authorised officer must cancel the vessel approval.

### **Section 40**

This section requires that the person to whom a vessel approval has been issued to must surrender the vessel approval and any copy in their possession to an authorised officer if the approval has been suspended or cancelled.

This section is subject to a level 4 penal provision. A breach is punishable by up to 40 penalty units and may attract a fine of up to \$4,400.

## **Part 10 – Export permit**

This part deals with the issuing of export permits.

### **Section 41**

Subsection 41.1 provides that part 6 of the General Order applies in relation to the granting of an export permit in respect of prescribed goods. Part 6 of the General Order provides detailed procedures and circumstances within which an export permit can be issued, updated, varied or revoked. It also describes the obligations of an exporter who has applied for an export permit or who holds one.

Subsection 41.2 prohibits the export of prescribed goods without an export permit for the goods.

## **Part 11 – Phytosanitary and other certification**

This part deals with the issuing of phytosanitary and other certificates. A phytosanitary certificate is a government-to-government certificate issued in accordance with the



International Plant Protection Convention or at the request of an importing country authority. A phytosanitary certificate certifies that the consignment of plants or plant products:

- has been inspected in accordance with appropriate procedures
- has been tested according to appropriate procedures
- is sourced from particular areas
- is considered to be free from quarantine pests
- is considered to be practically free from other injurious pests
- conforms to the current phytosanitary regulations of the importing country.

Other certificates or tests can be required by the Secretary under section 7. Such certificates or tests would be used to ensure that Australian plant exports meet a particular standard that is not related to phytosanitary health.

### **Section 42**

This section provides that where an exporter requires a certificate as to the condition of prescribed goods for which an export permit has been granted, the export permit is taken to be that certificate except where separate certification is required.

### **Section 43**

Subsection 43.1 provides that if a certificate is required the exporter must submit to an authorised officer information required by the authorised officer in relation to the prescribed goods, a declaration of where and when the goods may be inspected and any necessary certificates of analysis.

Subsection 43.2 requires that if a phytosanitary certificate is required for the prescribed goods, an exporter must provide an authorised officer with details of all requirements that are to be certified on the certificate. The information must be given at the time the notice of intention to export is submitted.

Subsection 43.3 provides that an inspection of prescribed goods for which a phytosanitary certificate is required must be carried out in accordance with Schedule 2.

Subsection 43.4 provides that the requirements relating to the issuing of phytosanitary certificates are set out in Schedule 6.

### **Section 44**

This section prohibits any person other than an authorised officer from issuing a phytosanitary certificate or document purporting to be a phytosanitary certificate.

This section is subject to a level 5 penal provision. A breach is punishable by up to 50 penalty units and may attract a fine of up to \$5,500.

## **Part 12 – Miscellaneous**

### **Section 45**

Subsection 45.1 allows the Secretary to require audits by a qualified person for compliance with the Act and the Order. An audit may be for the following matters:

- the operation of a registered establishment, including the work of authorised officers relating to the establishment
- operations for the export of prescribed goods

- operations for the certification of prescribed goods
- the work of an authorised officer.

Subsection 45.2 allows the Secretary to specify the scope of an audit.

Subsection 45.3 provides that an audit may be unannounced.

Subsection 45.4 provides that the auditor must give the person responsible for the matter being audited a copy of the audit report.

Subsection 45.5 provides that for section 45 a qualified person is an authorised officer who is an employee of an agency of the government of the Commonwealth or of a State or Territory; and the Secretary is satisfied has the necessary skills and experience to perform the audit required, and will do so objectively, fairly and accurately.

### **Section 46**

This section requires occupiers of an establishment and exporters to provide assistance to auditors.

The assistance that must be provided is the assistance required by the auditor that is reasonably necessary to enable the auditor to perform the audit. Subsection 46.2 sets out a non-exhaustive list of the matters that constitute assistance to an auditor, including access to premises, providing information to the auditor and operating equipment.

### **Section 47**

This section allows the Secretary to determine electronic methods for electronic notification and certification under this Order.

### **Section 48**

Subsection 48.1 prohibits a person from altering, adding or deleting a certificate or permit under the Order except in accordance with subsection 48.2.

This subsection is subject to a level 2 penal provision. A breach is punishable by up to 20 penalty units and may attract a fine of up to \$2,200.

Subsection 48.2 provides that if a certificate or permit has been given under the Order and an authorised officer is satisfied that any details mentioned in the certificate or permit have changed, otherwise than in a way that is material to the issuing of the certificate or permit, the details may be altered by the authorised officer.

This subsection is subject to a level 2 penal provision. A breach is punishable by up to 20 penalty units and may attract a fine of up to \$2,200.

## **Part 13 – Repeal and transitional**

This Part contains repeal provisions and transitional arrangements for the commencement of the Order.

## **Section 49**

This section repeals the *Export Control (Plants and Plant Products) Orders 2005*, the *Export Control (Hay and Straw) Orders 2005* and any orders that amended this Order.

## **Section 50**

This section provides that any instrument in force or approval given under the repealed orders outlined in section 49 remain in force as if it had been made, issued or given under the Order.

Further if a person was an approved inspector under an approved arrangement under the repealed orders outlined in section 49 the arrangement continues to operate on its terms and the person is taken to be an authorised officer, with the same powers and in the same circumstances as the approved inspector until the arrangement ceases or where the Secretary extends the arrangement upon the end of any such extension.

## **Schedule 1 – Marine surveyors’ qualifications**

This Schedule sets out the qualifications required for a marine surveyor to become *qualified* for the purposes of the Order.

### **Clause 1**

Subclause 1.1 requires that for a marine surveyor to become qualified for the purposes of the Order they must hold the following qualifications:

- a Certificate of Competency as Master Class 1 (Unrestricted) or its current equivalent; or a diploma in Marine Surveying which includes a module on dry bulk cargoes issued by a nationally accredited training establishment; and
- have inspected at least 10 bulk vessels over a maximum period of two years.

Subclause 1.2 sets out that a person who has been a qualified marine surveyor for the purposes of the Order for 3 years or more will cease to be qualified if they have not surveyed at least 3 bulk vessels during the past 3 years for suitability to carry prescribed good.

## **Schedule 2 – Inspection of prescribed goods**

This Schedule imposes requirements for the inspection of prescribed goods including requirements for the treatment of rejected goods, sites of inspection, sampling rates and the screening and blending of goods.

### **Part 1 - Preliminary**

#### **Clause 1**

This clause defines the meaning of the term *sub-sample* used in the Schedule.

#### **Clause 2**

This clause imposes a nil tolerance for pests and contaminants to all prescribed goods and empowers the Secretary to vary this tolerance level under certain circumstances.

Any contaminating material which is found by an authorised officer during an inspection must be reported to the person responsible for the goods.

**Clause 3**

This clause specifies that sampling must be undertaken in accordance with the directions of the Secretary.

**Part 2 – Prescribed goods in bulk****Clause 4**

This clause provides if the reason that prescribed goods were rejected would respond to treatment an authorised officer must order treatment in accordance with Part 4, however the choice of treatment is the responsibility of the owner of the goods or their agent.

**Clause 5**

This clause requires the site of inspection to be well lit and free of environmental hazards. The requirements of clause 5 are designed to ensure that authorised officers are free to carry out their functions in a safe environment.

**Clause 6**

This clause specifies the sampling rate for bulk prescribed grain.

**Clause 7**

This clause applies where there has been unnecessary delay between the discovery of insects and stopping of the stream flow. An export permit or phytosanitary certificate must not be issued for that tonnage of goods unless the goods are discharged.

**Clause 8**

This clause requires that re-presented goods must be inspected in the normal manner and rejected if unsatisfactory conditions are present.

**Clause 9**

This clause sets out the requirements for the screening of goods. The screening of prescribed goods will not be sufficient for the removal of live insects. Goods must be screened to remove large contaminants when automatic sampling is in use. These screenings must be available for examination by the authorised officer during and at the end of each working day.

**Clause 10**

This clause precludes the blending of prescribed goods which have been rejected because of insect infestation. Blending is permitted in the case of contaminants. If blending is being carried out during the pre-weighing or loading of a ship and blended goods are rejected, all cells or other sources feeding the blend must be included in the rejection.

**Part 3 – Prescribed goods inspected for phytosanitary certification****Clause 11**

Subclause 11.1 allows the Secretary to approve inspection procedures for prescribed goods being loaded in bulk into bulk vessels' holds and containers.

Subclause 11.2 allows the Secretary to approve inspection procedures for bagged consignments of prescribed goods.

### **Clause 12**

This clause requires re-inspection of a consignment after a period of 28 days from the original inspection has elapsed. This timeframe depends on whether a foreign country authority specifies an alternative period of time. Re-inspection must be carried out by inspecting and sub-sampling surface layers without the need to discharge bulk vessels or containers unless the integrity of the consignment has not been maintained.

## **Part 4 – Treatment of rejected prescribed goods**

### **Clause 13**

This clause requires prescribed goods which have an insect infestation to be treated with an insecticide or fumigation.

### **Clause 14**

Subclause 14.1 sets out the requirements for using insecticides or fumigants on prescribed goods. The clause requires that the insecticide or fumigant meet all of the following requirements:

- be registered for particular use
- be used in accordance with its registered label
- be acceptable to the importing country
- be approved by the exporter.

Subclause 14.2 requires that goods treated with an insecticide or fumigant must not be presented, or re-presented for inspection until after the exposure, airing periods and safety precautions specified on the registered label, or approved by the Secretary have been observed.

### **Clause 15**

Subclause 15.1 provides contaminants for which a nil tolerance applies, cleaning of the prescribed goods must be carried out to remove the contaminating material if the goods are to be re-presented for export.

Subclause 15.2 allows cleaning or blending below the permitted tolerance level for contaminants with a numerical tolerance.

Subclause 15.3 provides that where contamination has occurred on the outside of bags or other packages it may be removed by brushing or other mechanical means if approved by the Secretary.

## **Schedule 3 – Requirements for registered establishments**

This Schedule sets out requirements for registered establishments and should be read in conjunction with Part 4 of the General Order which sets out the application and approval process, the fit and proper person test, conditions and length of registration as well as the process for renewing or changing a registration. This Schedule sets out additional requirements that apply to registered establishments exporting plants and plant products and must be complied with under section 10.

### **Clause 1**

This clause provides that applications for registration under the General Order must be completed and returned together with the plans and specifications of the establishment to an authorised officer in the State or Territory in which the establishment is located.

### **Clause 2**

Subclause 2.1 specifies that for the purposes of registration, plans and specifications giving the general structural and operational layout of the establishment must be provided.

Subclause 2.2 sets out the requirements of the required plans.

### **Clause 3**

This clause provides that notice of changes to a registered establishment that may result in residual infestation problems or may affect sampling and inspection of prescribed goods must be submitted to an authorised officer in the State or Territory in which the establishment is located.

### **Clause 4**

This clause imposes an obligation on an occupier of a registered establishment to maintain records of cleaning and pest control measures, as well as receipts and loadings to enable an authorised officer to monitor the effectiveness of pest control and other measures. By keeping records of cleaning and pest control measures, the occupier of the registered establishment can demonstrate that prescribed goods are being kept in clean and hygienic conditions.

This clause imposes a general requirement on occupiers to maintain records for at least two years.

### **Clause 5**

Subclause 5.1 provides that an establishment in which prescribed goods are prepared or inspected for export must be designed and constructed to allow operations to be carried out efficiently, effectively and hygienically.

Subclause 5.2 sets out without limiting the operation of subclause 5.1 additional requirements in relation to the design and construction of the establishment.

Subclause 5.3 sets out that applicable local government, State, Territory and Commonwealth regulations must be followed in relation to the construction, testing, maintenance and operation of equipment provided for the fumigation or treatment of prescribed goods.

Subclause 5.4 imposes an obligation on the occupier of the establishment to provide suitable facilities for the safe and effective inspection of prescribed goods in accordance with any requirements set by the Secretary.

### **Clause 6**

Subclause 6.1 provides that the operator of a registered establishment must maintain the establishment in a hygienic condition in order to control pests and prevent cross-contamination of prescribed goods and have a defined program of hygiene and pest control.

Subclause 6.2 provides that any material likely to provide a source of contamination or infestation and rodenticides, fumigants, fungicides, insecticides or other toxic substances are

stored and handled in a way that ensures that they do not in any way contaminate, infest or provide a source of infestation of prescribed goods or of an area used for their preparation or storage, or of anything that may come into contact with them.

Subclause 6.3 provides that animals including birds and rodents must not be present in the establishment where preparation of prescribed goods takes place.

Subclause 6.4 provides that hand washing and toilet facilities must be kept in a clean and sanitary condition at all times.

Subclause 6.5 provides that State and Territory laws relating to food handling must be complied with in establishments which handle edible products.

#### **Schedule 4 – Container inspection for issue of container approval**

The Schedule imposes requirements for inspections of containers that must be complied with pursuant to section 27.

##### **Clause 1**

This clause provides for two different levels of inspection for empty containers. For empty containers to be used to export prescribed grain and prescribed goods for consumption an authorised officer must inspect the container for pests, infestible residues, contaminants and other conditions that could affect the goods. For empty containers intended to be used for the export of any other prescribed goods an authorised officer must inspect the container system unit to ensure that there are no pests or residues that could harbor pest or conditions which could permit cross-infestation.

##### **Clause 2**

This clause provides that containers can be inspected at any place where there are adequate facilities for the inspection.

##### **Clause 3**

This clause provides that the person responsible for a container must provide reasonable assistance to an authorised officer when inspecting the containers.

##### **Clause 4**

This clause sets out the inspection procedures for empty containers and requires that when containers are inspected prior to transport, the units must be sealed and identified in accordance with section 31. All parts of the containers may be inspected and if an authorised officer suspects the presence of pests or residues the authorised officer may order treatment in accordance with clause 6.

##### **Clause 5**

This clause sets out the procedures to be followed if live insects, *Trogoderma* spp., are found. If the live insects are found, the container must be rejected and, if re-presented for loading the person responsible for the container must provide, a fumigation certificate and/or quarantine clearance to an authorised officer before re-inspection is commenced.

## **Clause 6**

This clause provides that in inspecting the empty containers the authorised officer must be satisfied that there are no live pests in the container; and any infestible residues have been removed, including those behind any lining or panels; and any non-infestible residues will not contaminate the prescribed goods.

## **Schedule 5 – Bulk vessel inspection for issue of vessel approval**

This Schedule sets out the requirements for the inspection of parts of bulk vessels that must be complied with pursuant to section 37.

### **Clause 1**

This clause sets out that authorised officers must inspect the parts of a bulk vessel which:

- (a) holds or areas where the prescribed goods will be stored
- (b) other areas from which it is possible that cross-infestation or contamination of the goods could occur, and
- (c) other cargo from which it is possible that cross-infestation or contamination of the goods could occur.

### **Clause 2**

This clause requires an authorised officer to inspect bulk vessels for the presence of pests, contaminants and other matter required by the Secretary.

### **Clause 3**

This clause allows an authorised officer to inspect a bulk vessel away from a wharf if they are satisfied that it is suitable to do so. An authorised officer may however decline to leave shore or to start or continue inspections if they consider it unsafe to do so. Authorised officers may decline to leave shore or to start or continue inspections if they are satisfied that they do not have sufficient training or expertise to inspect a bulk vessel away from a wharf. An authorised officer may discontinue an inspection away from the wharf when findings indicate that the bulk vessel will have to be brought to shore for cleaning or treatment and recommence inspection after berthing.

### **Clause 4**

This clause requires authorised officers, on boarding the bulk vessel, to obtain information from the master of the vessel in order to assess the suitability of the vessel to enable the loading of prescribed goods. An authorised officer must require a ship's officer to accompany them during the inspection to ensure the provision of all assistance necessary.

### **Clause 5**

This clause provides that upon entering a hold, an authorised officer may examine all sites that may harbor infestible residues, insects or rodents. The Master of the vessel must make available any necessary assistance and where it is not possible to gain access to an area and the authorised officer suspects that there are insects or residues in the area, the authorised officer may order cleaning of the area. An authorised officer must be satisfied that all residues have been removed.

### **Clause 6**

This clause provides that wet stores and refrigerated or chilled stores do not need to be inspected unless there is reason to believe that these areas have become infested with pests.



**Clause 7**

This clause provides that where a pest or infestible residue has been found on a bulk vessel the authorised officer must, in the approved form, notify the responsible person of the detection of the pest or infestible residue and require that the level of the pest or infestible residue be reduced to the level specified by the authorised officer. The responsible person must complete the approved form with details of the treatment and return it to the authorised officer.

**Clause 8**

This clause requires reporting on the results of the inspection of a bulk vessel on the approved form.

**Clause 9**

This clause provides that an authorised officer must indicate on a vessel approval the time at which the officer determines that the holds comply with the requirements of the Order. This time must be when the inspection was completed and the responsible ship's officer was informed. The time must not be altered.

**Schedule 6 – Requirements relating to issuing of phytosanitary certificate**

This Schedule imposes requirements on an authorised officer which relate to the issuing of phytosanitary certificates pursuant to section 43. Under the United Nations Food and Agriculture Organisation International Plant Protection Convention each country has a Plant Protection Authority responsible for issuing government-to-government certificates that attest to the phytosanitary health and cleanliness of each export consignment containing plants and plant products. In Australia DAFF is the Plant Protection Authority responsible for issuing phytosanitary certificates.

**Clause 1**

This clause requires that for the purposes of issuing a phytosanitary certificate inspections must be carried out by an authorised officer.

**Clause 2**

This clause sets out the requirements for altering a manually issued phytosanitary certificate by an authorised officer.

**Clause 3**

This clause requires the exporter to request the necessary inspections and certification to comply with the requirements of the importing country authority.

**Clause 4**

This clause specifies the conditions applicable to issuing a certificate.

**Clause 5**

This clause specifies the form that a certificate should take in relation to new exports and re-export to meet importing country authority requirements.

## **Clause 6**

Subclause 6.1 provides that where a phytosanitary certificate is required but the importing country authority has not prescribed specific conditions for the goods the tolerances specified under clause 2 of Schedule 2 apply.

Subclause 6.2 provides that the Secretary must determine whether certificates should be issued in cases where information on the requirements of an importing country authority is not known.

## **Clause 7**

This clause requires that the name of the authorised officer who inspected the consignment must be provided on the certificate.

## **Clause 8**

This clause provides that treatments not supervised by an authorised officer may be added to the certificate if the exporter submits a written declaration certifying the details of the treatment carried out. Where no treatment was required the relevant section on the certificate must be struck out.

## **Clause 9**

Subclause 9.1 provides that an additional declaration may be included in relation to matters such as freedom from weed seeds; specific pests; or pest or fumigation treatment applied when such declarations are specified by an importing country authority, or are included in import permits.

Subclause 9.2 provides that where no requirements for an additional declaration appears in the requirements of an importing country authority, evidence from that authority must be produced before consideration can be given to its endorsement.

Subclause 9.3 provides that if no additional declarations are given the space must state 'no additional declaration' and any spaces not used for such declarations on a paper certificate must be struck out.

## **Clause 10**

This clause requires an authorised officer's signature and the Departmental seal to be on all paper certificates issued, including copies. Where the complete paper certificate is generated from a computer system that stores the authoritative records, the signature and official mark may be facsimiles. Where the authorised officer signing the certificate did not inspect the goods, records must exist to confirm the inspection of the goods and provide that the matters attested to in the certificate are correct.

## **Clause 11**

This clause provides that adequate time must be allowed for inspection prior to shipment of goods where an importing country authority requires endorsement of phytosanitary certificates by its representatives in Australia. Phytosanitary certificates must not be submitted to a commercial body for endorsement.

**Clause 12**

This clause outlines the details which must be provided in the certificate to allow the consignment to be readily identified and the required steps that must be taken in completing the certificate.

**Clause 13**

This clause requires that both the common and botanical name of the goods appear on the certificate except for in the case of miscellaneous goods of complex composition where a botanical name is not appropriate a general term or description appearing on the packages may be used.

**Clause 14**

This clause requires that the consignee's name and address must be specified on the certificate.

**Clause 15**

This clause provides that the point of entry must be specific to the country of import and where possible be the actual place of importation.

**Clause 16**

This clause excludes quality statements from a certificate unless required by the importing country authority.

**Clause 17**

This clause provides that where a paper version of the phytosanitary certificate is used for the goods, the original certificate must be used, with certified copies being provided at the discretion of the Secretary.

**Clause 18**

This clause provides that a copy of each paper phytosanitary certificate must be forwarded to the Secretary accompanied by a copy of an import permit issued by an importing country authority.

**Clause 19**

Subclause 19.1 provides circumstances when re-export phytosanitary certificates must be issued for prescribed goods re-exported from Australia if phytosanitary certification is required by an importing country authority.

Subclause 19.2 provides that re-export certificates must not be issued for products rejected under the *Quarantine Act 1908* unless the products meet the requirements of the importing country.

Subclause 19.3 provides that imported goods in transit or in bond through Australian ports en route to other destinations which have not undergone formal import clearance will not be issued with a re-export phytosanitary certificate.

Subclause 19.4 provides that if imported goods subsequently exported as part of a larger consignment containing Australian prescribed goods may be covered under the general phytosanitary certificate for the consignment under certain circumstances.

Subclause 19.5 provides that a certificate must not be provided where an additional declaration requires endorsements relating to growing conditions or treatments in the original exporting country.

Subclause 19.6 sets out the conditions for issuing a re-export phytosanitary certificate in circumstances where imported goods are to be exported and have not been accompanied by a certificate.

## **Clause 20**

Subclause 20.1 provides that re-inspection of prescribed goods is necessary if the time between inspection and export exceeds 28 days or the maximum time between inspection and export permitted by the importing country is exceeded.

Subclause 20.2 provides that if the period exceeds 28 days, re-inspection must be carried out to assess whether the originally issued certificate remains valid.

Subclause 20.3 provides that appropriate measures must be put in place by the exporter to ensure that if delays are likely to occur in the shipment of consignments after phytosanitary inspection has taken place the goods are not subject to infestation or infection or contamination before shipment.

Subclause 20.4 provides that if an original phytosanitary certificate is found to be invalid under subclause 20.2, the exporter must surrender all copies of the certificate to an authorised officer.

Subclause 20.5 provides that a consignment must be re-inspected if requested by the exporter and all paper copies of the original phytosanitary certificate are surrendered to an authorised officer.