

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture

Export Control Act 1982
Export Control (Fish and Fish Products) Orders 2005

Export Control (Fish and Fish Products) Amendment (2014 Measures No. 1) Order 2014

Legislative Authority

The *Export Control Act 1982* (Act) provides for control of the export of certain goods and for related purposes carried out or provided under the Act. This includes the requirements for preparation of prescribed goods in Australia that are to be exported.

Section 3 of the Act defines ‘prescribed goods’ to mean goods, or goods included in a class of goods, that are declared by the *Export Control (Orders) Regulations 1982* to be prescribed goods for the purposes of the Act.

Regulation 3 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 made under the Act.

The *Export Control (Fish and Fish Products) Orders 2005* (Principal Orders) are made under the Regulations and regulate the export of fish and fish products and, in particular, the conditions and restrictions on their export.

Purpose

The purpose of the *Export Control (Fish and Fish Products) Amendment (2014 Measures No. 1) Order 2014* (Amendment Order) is to remove registration requirements for producers of some fish and fish products who only minimally process (i.e. freeze or salt) their products and who are not the final processors. The Amendment Order will also correct typographical and referencing errors in the Principal Orders.

Impact and Effect

The Amendment Order will remove the requirement for producers of some fish and fish products who only minimally process (i.e. freeze or salt) their products to be registered or to document these procedures and undergo audits by the Department of Agriculture (department). These processes are low risk and their products are further prepared at registered processing establishments.

These amendments will remove the unnecessary regulatory burden on some fishing boats and land-based facilities as they will no longer need to meet registration requirements, document their procedures or be audited by the department.

Consultation

The seafood industry has been consulted through the Seafood Export Consultative Committee and supports the proposed amendments to the Principal Orders.

The Office of Best Practice Regulation (OBPR) has determined that the amendments are minor in nature and that a regulation impact statement is not required (OBPR Reference Number 17068).

The Amendment Order is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in the Attachment.

Details of the Amendment Order

Section 1 – Name of order

This section provides that the name of the Amendment Order is the *Export Control (Fish and Fish Products) Amendment (2014 Measures No. 1) Order 2014*.

Section 2 – Commencement

This section provides for the Amendment Order to commence on 1 October 2014.

Section 3 – Authority

This section provides that the Amendment Order is made under regulation 3 of the *Export Control (Orders) Regulations 1982*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Amendment Order is amended or repealed as set out in the applicable items in the Schedule, and any other item in a Schedule to the Amendment Order has effect according to its terms.

Schedule 1 – Amendments

Item 1 repeals suborder 4.11 of the Principal Orders which refers to Part 10 (being repealed by item 24).

Item 2 repeals the definition of the *Australian Shellfish Quality Assurance Program - Export Standards* (and its note) in order 8 of the Principal Orders and substitutes them with a new definition and note. The amended definition and note substitute the references to AQIS with references to the department and its website.

The purpose of the amendments is to reflect retirement of the Australian Quarantine and Inspection Service (AQIS) brand.

Item 3 substitutes the words ‘icing for transport’ in paragraph (b) of the definition of ‘catcher boat’ in order 8 of the Principal Orders, with ‘freezing, icing for transport, salting,’.

A catcher boat is a ship on which one or more limited processes on fish or fish products are performed, these being: killing (other than shucking shellfish), bleeding, gilling, heading, gutting, chilling, icing for transport, sorting, grading and washing.

Catcher boats performing these activities are not required to be registered as their products are further prepared at export-registered establishments. Freezing and salting are limited processing activities which may be performed on catcher boats.

The purpose of the amendment is to expand the definition of ‘catcher boat’ to include the processes of freezing and salting in the list of activities applied to fish on a ship used to catch fish.

The effect of the amendment is that producers who freeze and salt (minimally process) some fish and fish products are not required to be registered, to document their procedures or to

undergo audits by the government, as their processes are low risk and their products are further prepared at registered establishments.

Item 4 substitutes the reference to the *Sea Installation Act 1987* in paragraph (a) of the definition of ‘resources industry structure’ in order 8 of the Principal Orders, with *Sea Installations Act 1987*.

The purpose of the amendment is to correct a typographical error.

Items 5 and 6 substitute the definition of ‘senior authorized officer’ in order 8 of the Principal Orders with a new definition meaning a person appointed to be an authorised officer under section 20 of the *Export Control Act 1982* and whose classification level appears in Group 6 or higher of Schedule 1 to the Classification Rules under the *Public Service Act 1999*.

The purpose of the amendment is to correct a typographical error in the spelling of ‘authorized’, and to correct the terminology referring to the classification level of appointment of the officer under the *Public Service Act 1999*.

Item 7 substitutes the word ‘complete’ in paragraph 20.7(a) of the Principal Orders with the word ‘incomplete’.

The purpose of the amendment is to correct a typographical error.

Item 8 substitutes the words ‘sorting, grading and icing for transport’ in paragraph 23(c) of the Principal Orders with the words ‘chilling, freezing, icing for transport, salting, sorting and grading’.

The purpose of the amendment is to expand the list of activities undertaken by establishments for supply of fish and fish products to registered establishments for further processing to include chilling, freezing and salting.

The effect of the amendment is that producers who minimally process some fish and fish products through chilling, freezing and salting are not required to be registered, to document their procedures or to undergo audits by the government, as their processes are low risk and their products are further prepared at registered establishments. This is consistent with the provisions for activities conducted on catcher boats.

Item 9 substitutes the reference to the *Sea Installation Act 1987* in suborder 25.2 of the Principal Orders with *Sea Installations Act 1987*.

The purpose of the amendment is to correct a typographical error.

Item 10 substitutes the word ‘or’ in subparagraph 26.1(c)(i) of the Principal Orders with ‘of’.

The purpose of the amendment is to correct a typographical error.

Item 11 removes the word ‘clear’ from paragraph 26.2(a) of the Principal Orders.

The purpose of the amendment is to simplify the text of this paragraph.

Item 12 inserts the word ‘no’ between ‘if’ and ‘such’ in paragraph 29.3(b) of the Principal Orders.

The purpose of the amendment is to correct a typographical error.

Item 13 substitutes the words ‘section 33 (3A)’ in the note to suborder 29.3 of the Principal Orders with ‘section 33(3)’.

The purpose of the amendment is to update the reference relating to revocation of an instrument in the *Acts Interpretation Act 1901*.

Item 14 substitutes the words ‘order 8. See further’ in the note to suborder 37.2 of the Principal Orders with ‘order 8,’.

The purpose of the amendment is to correct a grammatical error.

Item 15 substitutes the words ‘order 8 and see further’ in the note to suborder 48.3 of the Principal Orders with ‘order 8,’.

The purpose of the amendment is to correct a grammatical error.

Item 16 substitutes the words ‘person whom’ in order 57 of the Principal Orders with ‘person to whom’.

The purpose of the amendment is to correct a typographical error.

Item 17 substitutes the words ‘the these’ in note 1 to order 57 in the Principal Orders with ‘these’.

The purpose of the amendment is to correct a typographical error.

Item 18 inserts the number ‘63.1’ before the words ‘An audit’ in order 63 of the Principal Orders.

The purpose of the amendment is to correct a typographical error.

Item 19 substitutes suborder 63.2 of the Principal Orders with a new suborder which provides that ‘If the audit is unannounced, the auditor must produce his or her identity card for inspection before starting the audit’. The amendment provides grammatical consistency between the suborders in order 63 with no change in the meaning of the order.

Item 20 substitutes the words ‘AQIS Guidelines for’ in the note to order 64 of the Principal Orders with ‘guidelines published by the department in relation to’.

The purpose of the amendment is to reflect retirement of the AQIS brand.

Item 21 inserts the words ‘that are’ between ‘operations’ and ‘the’ in order 66A of the Principal Orders.

The purpose of the amendment is to correct a typographical error.

Item 22 removes the words ‘clause 6 and’ from note 1 to suborder 77 of the Principal Orders.

The purpose of the amendment is to remove an incorrect reference.

Item 23 substitutes the word ‘must,’ in order 95 of the Principal Orders, with ‘must’.

The purpose of the amendment is to correct a typographical error.

Item 24 repeals Part 10 of the Principal Orders as the repeal and transitional arrangements provided for in the Part are no longer required.

Item 25 substitutes the words ‘non hand’ in paragraph 13.3(d) of Schedule 3 to the Principal Orders with ‘non-hand’.

The purpose of the amendment is to correct a typographical error.

Item 26 substitutes note 3 to subclause 15.1 of Schedule 4 to the Principal Orders with a new note, which inserts an updated publication date (2011) for the *Australian Drinking Water Guidelines* and updated internet reference to the publication at the time of commencement of the Amendment Order.

The purpose of the amendment is to update the reference to the *Australian Drinking Water Guidelines*.

Item 27 repeals notes 3 and 4 to subclause 4.1 of Schedule 7 to the Principal Orders and substitutes them with new notes 3 and 4.

The purpose of the amendment is to substitute references to the *Trade Practices Act 1974* (and relevant provisions of that Act) in notes 3 and 4 with the *Competition and Consumer Act 2010* (and relevant provisions).

The purpose of the amendment is to update references to current legislation.

Item 28 substitutes the words ‘for use for giving’ in paragraphs 25.1(a), 25.1(b) and 25.1(c) in Schedule 9 to the Principal Orders, with ‘for giving’.

The purpose of the amendment is to correct a grammatical error.

Item 29 repeals the note to subclause 25.1 of Schedule 9 to the Principal Orders and substitutes it with a new note to reference the department’s EXDOC Operating System which provides documents and information relating to the export of fish and fish products.

The purpose of the amendment is to update the website reference and to reflect retirement of the Australian Quarantine and Inspection Service (AQIS) brand.

Item 30 removes a number of uses of the words ‘further’ or ‘see further’ throughout the Principal Orders (as appropriate). The amendments are made as per the table which lists the provisions to be amended and the references to be removed.

The purpose of the amendments is to correct a grammatical error.

Item 31 substitutes a number of uses of the word ‘authorized’ throughout the Principal Orders with ‘authorised’. The amendments are made as per the table which lists the provisions to be amended and the references to be substituted.

The purpose of the amendments is to correct a typographical error.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Export Control (Fish and Fish Products) Amendment (2014 Measures No.1) Order 2014

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This Legislative Instrument amends the *Export Control (Fish and Fish Products) Orders 2005* to:

- remove registration requirements for some seafood producers who only minimally process (i.e. freeze or salt) their products before supplying them into Australia's seafood export chain and do not directly export; and
- rectify typographical and referencing errors.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon. Barnaby Joyce MP
Minister for Agriculture**