



Export Control (Plants and Plant Products) Rules 2021

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

Dated 19 March 2021

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

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Chapter 1—Preliminary

Part 1—Preliminary

1-1 Name

This instrument is the *Export Control (Plants and Plant Products) Rules 2021*.

1-2 Commencement

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

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

Note: This table relates only to the provisions of this instrument as originally made.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

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

1-3 Authority

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

1-4 Extension of the Act to Norfolk Island

- (1) For the purposes of subsection 8(2) of the *Export Control Act 2020*, that Act and this instrument, and the *Regulatory Powers (Standard Provisions) Act 2014* as it applies in relation to the *Export Control Act 2020* and this instrument, extend to:
 - (a) Norfolk Island; and
 - (b) the exclusive economic zone adjacent to Norfolk Island; and
 - (c) the area that is on or in the continental shelf adjacent to Norfolk Island and is not within the exclusive economic zone adjacent to Norfolk Island.

Note: A reference to *Australian territory* in a provision of the *Export Control Act 2020* or this instrument includes a reference to Norfolk Island, the area referred to in paragraph (b) of this subsection, and the waters above the area referred to in paragraph (c) of this subsection (see paragraphs 14(d) to (f) of the Act).

- (2) To avoid doubt, the reference in subsection (1) to the *Export Control Act 2020* does not include a reference to legislative instruments made under that Act.

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1-5 Simplified outline of this instrument

General

This instrument prescribes matters and makes other provision in relation to certain plants and plant products (prescribed plants and plant products) for the purposes of the *Export Control Act 2020* (the Act).

Prescribed plants or plant products must not be exported from Australian territory unless the conditions prescribed by this instrument (prescribed export conditions) are complied with. A person may commit an offence or be liable to a civil penalty if prescribed plants or plant products are exported in contravention of prescribed export conditions (see Division 4 of Part 1 of Chapter 2 of the Act).

This instrument prescribes other matters and makes other provision in relation to the export of plants and plant products, including in relation to the following:

- (a) exemptions;
- (b) government certificates;
- (c) accredited properties;
- (d) registered establishments;
- (e) export permits;
- (f) notices of intention to export;
- (g) trade descriptions;
- (h) official marks and official marking devices;
- (i) audits;
- (j) assessments;
- (k) bulk vessel approvals and container approvals;
- (l) records;
- (m) samples;
- (n) damaged or destroyed plants or plant products.

Extension to Norfolk Island

The *Export Control Act 2020* and this instrument, and the *Regulatory Powers (Standard Provisions) Act 2014* as it applies in relation to the *Export Control Act 2020* and this instrument, extend to Norfolk Island and certain areas adjacent to Norfolk Island.

Structure of this instrument and Chapter numbering

This instrument is arranged in Chapters that have the same number and name as the corresponding Chapters in the Act. For example, the provisions of this instrument that are made for the purposes of Chapter 3—Accredited properties of the Act are included in Chapter 3—Accredited properties of this instrument. This means there are gaps in the Chapter numbering because there are no provisions for the purposes of some Chapters of the Act.

Part 2—Interpretation

1-6 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Australian territory;
- (b) authorised officer;
- (c) export;
- (d) export operations;
- (e) integrity;
- (f) plant;
- (g) prepare;
- (h) produce;
- (i) Regulatory Powers Act;
- (j) third party authorised officer.

In this instrument:

accredited, in relation to a property, means accredited under Chapter 3 of the Act.

Accredited Properties (Prescribed Plants and Plant Products) List means the List with that name, as existing from time to time, that is:

- (a) prepared by:
 - (i) the Secretary; or
 - (ii) an SES employee in the Department authorised by the Secretary; or
 - (iii) an acting SES employee in the Department authorised by the Secretary; and
- (b) published on the Department's website.

accredited property means a property that is accredited for a kind of export operations in relation to a kind of prescribed plants or plant products.

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

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

applicable tolerance level, for a kind of pest or contaminant in relation to a kind of plant or plant product for export to an importing country, means the tolerance level for that kind of pest or contaminant in relation to that kind of plant or plant product and importing country under section 9-15.

applied, in relation to an official mark, has the meaning given by subsections 8-21(1) and (2).

Note: For **applied**, in relation to a trade description, see section 247 of the Act.

assessment of plants or plant products means an assessment of plants or plant products under Part 2 of Chapter 9 of the Act.

Note: See also Part 2 of Chapter 9 of this instrument.

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bulk vessel means a vessel that is designed to be used to transport prescribed plants or plant products in bulk from Australian territory to a final overseas destination.

bulk vessel approval means an approval of the bulk vessel that is in force under Part 5 of Chapter 9.

cargo space of a bulk vessel means any area (including a hold or on a deck) of the vessel into or onto which it is intended to load plants or plant products that are to be exported.

container means a container (including a shipping container) that is:

- (a) designed for use as a unit of cargo handling equipment in the transport of plants or plant products by a conveyance; and
- (b) intended to be used for plants or plant products that require protection because they are not in small quantities in protective packaging.

container approval means an approval of the container that is in force under Part 6 of Chapter 9.

contaminant, in relation to plants or plant products, means any foreign matter (whether organic or inorganic, but not including a pest) that:

- (a) is in, on or with the plants or plant products; or
- (b) could come into contact with the plants or plant products while export operations are being carried out in relation to the plants or plant products.

Note 1: Examples of contaminants are carcasses of vermin (including animal carcasses), animal waste, seeds of plants, and residues (including soil, leaves and stems) of plants or plant products.

Note 2: **Pest** is defined in this section.

cut flowers includes processed cut flowers.

flowpath for plants or plant products includes the places, and any bins or other receptacles or elements of a transport system, at an establishment that are used to store or carry the plants or plant products.

fresh, in relation to fruits or vegetables, means fruits or vegetables that have not been canned, frozen, dried, or processed in any other way that changes their basic characteristics.

Note: Onions that have been cured to preserve their storage life are considered to be fresh as the curing does not change their basic characteristics.

fresh vegetables includes the following:

- (a) herbs;
- (b) mushrooms;
- (c) cured onions;
- (d) sprouts.

fumigation means:

- (a) treatment with poisonous gas (but not including the use of contact insecticides propelled by carbon dioxide); or
- (b) treatment by smoke generators, fogging or spraying.

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hay and straw means a pasture or cereal plant (whether whole or after harvesting seed) that is cut and dried.

horticultural products means any of the following:

- (a) fresh fruit;
- (b) fresh vegetables;
- (c) plant nursery stock;
- (d) cut flowers;
- (e) plant tissue culture.

imported plants or plant products means plants or plant products that were imported into Australian territory.

infest includes infect.

installed: a resources industry structure is **installed** in an area at a time if, assuming that the structure were a sea installation within the meaning of the *Sea Installations Act 1987* and the area were part of an adjacent area within the meaning of that Act, the structure would be taken under section 6 of that Act to be installed in an adjacent area at the time.

marine surveyor's certificate for a bulk vessel means a certificate for the vessel issued by a qualified marine surveyor that states the matters referred to in subparagraphs 11-16(2)(b)(i) and (ii).

Note: A marine surveyor's certificate is not a government certificate for the purposes of the Act.

MICoR means the *Manual of Importing Country Requirements* published by the Department.

Note: MICoR could in 2021 be viewed on the Department's website (<http://www.awe.gov.au>), but access to some parts of the manual requires a password.

non-prescribed plants or plant products means plants or plant products that are not prescribed goods under Division 1 of Part 1 of Chapter 2.

Note: Plants or plant products that are not prescribed goods under Division 1 of Part 1 of Chapter 2 may be prescribed goods under other rules made under section 432 of the Act (for example, rules relating to organic goods or wood).

package means any covering in which plants or plant products are packed.

package for export for plants or plant products means the package in which the plants or plant products are intended to be, or have been, exported.

person responsible means:

- (a) for a bulk vessel:
 - (i) the owner of the bulk vessel or a person who is in possession or control of the bulk vessel; or
 - (ii) the exporter of plants or plant products that are intended to be, or that have been, loaded into or onto the bulk vessel; or
- (b) for a container:
 - (i) the owner of the container or a person who is in possession or control of the container; or

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- (ii) the exporter of plants or plant products that are intended to be, or that have been, loaded into the container.

pest means:

- (a) a live or viable species, strain or biotype of a plant or animal; or
(b) a pathogenic agent;

that has the potential to cause (either directly or indirectly) harm to human health, animal or plant health, the health of plant products, or the environment, but does not include a seed of a plant.

Note: Examples of pests are live animals and live insects.

phytosanitary certificate means a government certificate (other than a phytosanitary certificate for re-export) in relation to plants or plant products issued under Division 3 of Part 3 of Chapter 2 of the Act in accordance with Article V of the International Plant Protection Convention.

Note: For *International Plant Protection Convention*, see section 12 of the Act.

phytosanitary certificate for re-export means a government certificate in relation to imported plants or plant products issued under Division 3 of Part 3 of Chapter 2 of the Act in accordance with Article V of the International Plant Protection Convention for the purpose of re-export of the plants or plant products.

Note: For *International Plant Protection Convention*, see section 12 of the Act.

prescribed grain has the meaning given by section 1-7.

prescribed plant products means plant products that are prescribed goods under Division 1 of Part 1 of Chapter 2.

prescribed plants means plants that are prescribed goods under Division 1 of Part 1 of Chapter 2.

prescribed plants and plant products means plants and plant products that are prescribed goods under Division 1 of Part 1 of Chapter 2.

prescribed plants or plant products means plants or plant products that are prescribed goods under Division 1 of Part 1 of Chapter 2.

prescribed plants or plant products for consumption means prescribed plants or plant products that may be consumed by human beings or live animals with or without further processing.

qualified marine surveyor means a person who is qualified, under subsection 11-16(1), to carry out a bulk vessel survey at a time for the purpose of deciding whether the vessel is suitable to transport prescribed plants or plant products to which subsection 9-23(2) applies.

registered, in relation to an establishment, means registered under Chapter 4 of the Act.

registered establishment means an establishment that is registered for a kind of export operations in relation to a kind of prescribed plants or plant products.

relevant importing country authority means the authority or body that is responsible for regulating the importation of plants or plant products into that country from Australian territory.

resources industry structure means:

- (a) a resources industry fixed structure (within the meaning of the *Sea Installations Act 1987*); or
- (b) a resources industry mobile unit (within the meaning of that Act) that is not a vessel.

small horticultural products registered establishment for a financial year has the meaning given by section 1-8.

Timor Sea Maritime Boundaries Treaty means the Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea done at New York on 6 March 2018, as in force at the commencement of this instrument.

Note: The Treaty is in Australian Treaty Series 2019 No. 16 ([2019] ATS 16) and could in 2021 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

treatment means any treatment that is useful or necessary to control or eradicate pests or remove contaminants.

Examples: The following are examples of treatment:

- (a) dismantling, repairing, cleaning or deodorising;
- (b) applying a substance;
- (c) fumigating;
- (d) controlling the atmosphere or temperature;
- (e) repacking.

validity period has the meaning given by subsection 9-12(2).

1-7 Meaning of *prescribed grain*

(1) **Prescribed grain** means any of the following:

- (a) barley (being whole grain of *Hordeum vulgare* (whether 2-row or 6-row), but not including hulled, milled or malted grain of that kind);
- (b) canola (being whole seed of *Brassica napus* var; *napus* cv; “Canola”);
- (c) chickpeas (being seed (whole or split) of *Cicer arietinum*);
- (d) dried field peas (being dried seeds of the species *Pisum sativum* that are angular or spherical in shape, and not of the varieties known as processing peas, vegetable peas, garden peas or peas in pod);
- (e) faba beans (being seed (whole or split) of *Vicia faba*);
- (f) lentils (being seed (whole or split) of *Lens culinaris*);
- (g) lupins (being seed (whole or split) of *Lupinus angustifolius* or *Lupinus albus*);
- (h) mung beans (being whole seeds of the species *Vigna radiata* or *Vigna mungo*, including varieties and synonyms);
- (i) oats (being grain (whole or clipped) of *Avena sativa* or *Avena strigosa*, but not including rolled, crushed, milled, hulled or kiln-dried grain of that kind);

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- (j) sorghum (being whole unmilled seed of *Sorghum bicolor*);
- (k) soybeans (being whole unmilled seed of *Glycine max*);
- (l) wheat (being whole unmilled grain of *Triticum aestivum*, *Triticum durum* or *Triticum tauschii*);
- (m) whole vetch (being seed (whole or broken) of *Vicia sativa*, but not including split seed of *Vicia sativa*).

Note: For the purposes of paragraph (m), split vetch that is split seed of *Vicia sativa* is prohibited from export absolutely (see section 23 of the Act).

- (2) A reference to a species of plant in a paragraph of subsection (1) includes every cultivated subspecies, variety and cultivar of the species and every cross of which a plant of the species is a parent, unless the paragraph limits the reference to a particular subspecies, cultivar or cross.

1-8 Meaning of *small horticultural products registered establishment*

- (1) A registered establishment is a ***small horticultural products registered establishment*** for a financial year if the requirements in this section are met in relation to the establishment in the financial year.
- (2) The registered establishment must be used in the financial year only for carrying out export operations in relation to one or more kinds of horticultural products (the ***relevant horticultural products***) referred to in column 1 of the table in subsection (8).
- (3) The occupier of the registered establishment in the financial year must be the grower of the relevant horticultural products.

Note: The relevant horticultural products may be grown at the registered establishment or at another establishment or property.

- (4) For the purposes of subsection (3), a person is a grower of relevant horticultural products if the person:
 - (a) has a right to, or interest in, the horticultural products; and
 - (b) contributes labour and capital to the production and preparation of the horticultural products.
- (5) The occupier of the registered establishment must not be the occupier of another registered establishment in the financial year.
- (6) The total amount of a kind of horticultural product referred to in column 1 of any of items 1 to 13 of the table in subsection (8) in relation to which export operations are to be carried out at the registered establishment in the financial year must not exceed the total amount referred to in column 2 of the item relating to that kind of horticultural product.
- (7) The total amount of all horticultural products referred to in column 1 of item 14 of the table in subsection (8) in relation to which export operations are to be carried out at the registered establishment in the financial year must not exceed the total amount referred to in column 2 of that item.
- (8) The following table sets out:
 - (a) for the purposes of subsection (2)—kinds of horticultural products; and

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- (b) for the purposes of subsections (6) and (7)—the total amounts (in tonnes) of those kinds of horticultural products in relation to which export operations may be carried out in the financial year.

Horticultural products and total amounts in relation to which export operations may be carried out in financial year

Item	Column 1 Horticultural products	Column 2 Total amount (in tonnes)
1	Apples or pears (or both)	400
2	Citrus	400
3	Stone fruit (except cherries)	400
4	Table grapes	400
5	Mangoes	100
6	Cherries	30
7	Melons	10
8	Avocados	5
9	Kiwifruit	5
10	Either, or both, of the following: (a) strawberries; (b) berries that are fruit of plants of the genus <i>Rubus</i> (for example, raspberries and blackberries)	5
11	Leafy vegetables	10
12	Vegetables other than leafy vegetables	100
13	Cut flowers	5
14	All other kinds of horticultural products	5

- (9) In the table in subsection (8):

apple means a fruit of any species of the genus *Malus*.

avocado means a fruit of the species *Persea americana*.

cherry means a fruit of the species *Prunus avium*.

citrus:

- (a) means fruit of any species of the genus *Citrus*, the genus *Fortunella* or any plant originating as a result of hybridisation between, or within, either of these genera; and
- (b) includes the fruit of plants commonly known as calamondin, citrons, cumquats, grapefruit, lemons, limes, mandarins, oranges, pummellos (pomelos), sevilles, tangelos, tangerines and tangors.

cut flowers includes processed cut flowers.

kiwifruit means a fruit of the species *Actinidia deliciosa*.

melon means fruit of any of the following species or varieties:

- (a) *Citrullus lanatus*, commonly called watermelon;
- (b) *Cucumis melo*, commonly called rockmelon;

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- (c) *Cucumis melo* var. *cantalupensis*, commonly called charentais melon;
- (d) *Cucumis melo* var. *inodorus*, commonly called honeydew or piel de sapo;
- (e) *Cucumis melo* var. *makuwa*, commonly called Korean melon;
- (f) *Cucumis melo* var. *reticulatus*, commonly called galia melon or hami melon;
- (g) *Cucumis metuliferus*, commonly called horned melon.

pear means a fruit of any species of the genus *Pyrus*, other than fruits of the species *Pyrus pyrifolia* (nashi).

stone fruit means a fruit:

- (a) of the species *Prunus domestica*, *Prunus salicina*, *Prunus besseyi*, *Prunus americana*, *Prunus nigra*, *Prunus munsoniana*, *Prunus insititia*, *Prunus cerasifera* or *Prunus spinosa*, commonly called plum; or
- (b) of the species *Prunus armeniaca*, commonly called apricot; or
- (c) of the species *Prunus persica*, commonly called nectarine or peach.

strawberry means a fruit of the species *Fragaria X Ananassa*.

table grapes means fresh grapes other than fresh grapes that are prescribed goods on which levy is imposed under Schedule 13 or 26 to the *Primary Industries (Excise) Levies Act 1999*.

Chapter 2—Exporting goods

Part 1—Goods

Division 1—Prescribed goods

2-1 Plants and plant products that are prescribed goods

- (1) For the purposes of subsection 28(1) of the Act, the following goods (other than narcotic goods within the meaning of the *Customs Act 1901*) are prescribed for the purposes of the Act:
- (a) prescribed grain;
 - (b) hay and straw;
 - (c) fresh fruit;
 - (d) fresh vegetables.

Note 1: Plants and plant products covered by this subsection are taken not to be prescribed goods for the purposes of the Act in the circumstances prescribed by section 2-2 of this instrument (see the definition of *prescribed goods* in section 12 of the Act).

Note 2: For *prescribed grain*, see section 1-7 of this instrument.

- (2) If:
- (a) plants or plant products (other than plants or plant products referred to in subsection (1) or plants or plant products that are narcotic goods within the meaning of the *Customs Act 1901*), are intended to be exported to a country (the *importing country*); and
 - (b) a phytosanitary certificate, or a phytosanitary certificate for re-export, in relation to the plants or plant products is required to meet an importing country requirement;

then, for the purposes of subsection 28(1) of the Act, the plants or plant products that are intended to be exported to the importing country are prescribed for the purposes of the Act.

Note: Plants or plant products that are narcotic goods within the meaning of the *Customs Act 1901* are non-prescribed plants or plant products for the purposes of this instrument (see the definition of *non-prescribed plants or plant products* in section 1-6 of this instrument). The goods may be prescribed for the purposes of subsection 28(1) of the Act by other rules made under section 432 of the Act (for example, rules relating to organic goods or wood).

2-2 Plants and plant products that are taken not to be prescribed goods

- (1) For the purposes of subsection 28(4) of the Act, this section prescribes circumstances in which plants and plant products covered by subsection 2-1(1) or (2) of this instrument are taken not to be prescribed goods for the purposes of the Act.

Note: Plants and plant products that are taken not to be prescribed goods for the purposes of the Act under this section are non-prescribed goods (see the definitions of *prescribed goods* and *non-prescribed goods* in section 12 of the Act). If a phytosanitary certificate, or a phytosanitary certificate for re-export, in relation to plants or plant products that are non-prescribed goods is required to meet an importing country requirement relating to the plants or plant products, a person may apply for the

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certificate under Division 3 of Part 3 of Chapter 2 of the Act. See also Division 2 of Part 3 of this Chapter.

- (2) Plants and plant products that are intended to be exported from Norfolk Island, or an area prescribed by paragraph 1-4(1)(b) or (c) of this instrument, are taken not to be prescribed goods for the purposes of the Act.
- (3) The following plants and plant products:
(a) hay and straw;
(b) fresh fruit;
(c) fresh vegetables;
are taken not to be prescribed goods for the purposes of the Act if:
(d) the plants or plant products are intended to be exported to New Zealand;
and
(e) a phytosanitary certificate, or a phytosanitary certificate for re-export, in relation to the plants or plant products is not required to meet importing country requirements.
- (4) Plants and plant products are taken not to be prescribed goods for the purposes of the Act if the plants or plant products:
(a) are stores for the use of passengers and crew on an aircraft or a vessel on a flight or voyage from Australian territory; or
(b) are for the service of an aircraft or a vessel on a flight or voyage from Australian territory; or
(c) are imported into Australian territory and held in bond at all times before being exported; or
(d) are imported into Australian territory and then exported in the same covering in which, and with the same trade description with which, they were imported; or
(e) are consigned to an external Territory for consumption in that Territory; or
(f) are consigned to a resources industry structure that is installed in any of the following areas, for consumption on the structure:
(i) the Greater Sunrise special regime area within the meaning of the *Seas and Submerged Lands Act 1973*;
(ii) the Greater Sunrise pipeline international offshore area within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*;
(iii) the area in or above the Bayu-Undan Gas Field within the meaning of the Timor Sea Maritime Boundaries Treaty;
(iv) the Bayu-Undan pipeline international offshore area within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*;
(v) the area in or above the Kitan Oil Field within the meaning of the Timor Sea Maritime Boundaries Treaty;
(g) are exported in a consignment of not more than:
(i) if the plants or plant products are in liquid form—10 litres; or
(ii) in any other case—10 kilograms.

Note 1: Plants and plant products covered by subsection (2) or (4) are taken not to be prescribed goods for the purposes of the Act (and therefore to be non-prescribed goods)

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even if a phytosanitary certificate, or a phytosanitary certificate for re-export, is required to meet importing country requirements relating to the plants or plant products.

Note 2: For the purposes of paragraph (4)(f), a resources industry structure that is not installed is taken to be a vessel (see the *Sea Installations Act 1987*).

Division 2—Prohibited export and prescribed export conditions

2-3 Purpose and application of this Division

- (1) This Division is made for the purposes of section 29 of the Act.
- (2) This Division applies in relation to prescribed plants and plant products.
 - Note 1: See Division 1 of this Part in relation to goods that are prescribed plants and plant products.
 - Note 2: Plants and plant products are taken not to be prescribed goods in the circumstances prescribed by section 2-2 of this instrument (see the definition of *prescribed goods* in section 12 of the Act).
- (3) However, a provision of this Division (the *relevant provision*) does not apply in relation to prescribed plants or plant products if:
 - (a) the plants or plant products are to be exported in a circumstance referred to in subsection 52(1) or (3) of the Act; and
 - (b) an exemption from the relevant provision is in force in relation to the plants or plant products under Part 2 of Chapter 2 of the Act.

2-4 Export of prescribed plants or plant products is prohibited unless prescribed conditions are complied with

- (1) The export from Australian territory of prescribed plants or plant products is prohibited unless the conditions specified in the items in the following table are complied with.

Prescribed export conditions for prescribed plants or plant products

Item	Prescribed export conditions
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1	<p>Accredited property</p> <p>If:</p> <ol style="list-style-type: none">(a) the plants or plant products are covered by the Accredited Properties (Prescribed Plants and Plant Products) List in relation to an importing country and a kind of export operations; and(b) the plants or plant products are intended to be exported to that importing country; and(c) the plants or plant products are not imported plants or plant products; <p>then:</p> <ol style="list-style-type: none">(d) export operations of that kind in relation to the plants or plant products must be carried out at a property that is accredited for export operations of that kind in relation to the plants or plant products and that importing country; and(e) at the time the export operations of that kind are carried out, the accreditation of the property must not be suspended in relation to those operations.
2	<p>Registered establishment</p> <p>Operations to prepare the plants or plant products for export (other than operations to which subsection (3) applies) must be carried out at an establishment that is registered for those operations in relation to the plants or plant products. At the time the operations are carried out, the registration of the establishment must not be suspended in relation to those operations.</p>

Prescribed export conditions for prescribed plants or plant products

Item Prescribed export conditions

3 Bulk vessel approval

If the plants or plant products are intended to be transported in or on a bulk vessel, a bulk vessel approval, covering the cargo spaces of the vessel into or onto which it is intended to load the plants or plant products, must be in force for the bulk vessel, and not suspended, when the plants or plant products are loaded into or onto the vessel.

4 Notice of intention to export

A person prescribed by section 8-1 must, at the time prescribed by section 8-3, give the Secretary a notice of intention to export a consignment of, or including, the plants or plant products.

5 Export permit

The exporter of the plants or plant products must hold an export permit for the plants or plant products and the export permit must be in force, and not suspended, at the time the plants or plant products are exported.

Note 1: A trade description must be applied to prescribed plants or plant products that are intended to be exported from Australian territory (see section 8-6).

Note 2: A person may commit an offence or be liable to a civil penalty if prescribed goods are exported in contravention of prescribed export conditions (see Division 4 of Part 1 of Chapter 2 of the Act).

When plants or plant products are covered by the Accredited Properties (Prescribed Plants and Plant Products) List

- (2) For the purposes of item 1 of the table in subsection (1), plants or plant products are covered by the Accredited Properties (Prescribed Plants and Plant Products) List in relation to an importing country and a kind of export operations if:
- (a) the plants or plant products are listed in that List in relation to that importing country and export operations of that kind; and
 - (b) the plants or plant products are not covered by an exception in that List in relation to that importing country and export operations of that kind.

Exceptions from condition requiring preparation at registered establishment

- (3) This subsection applies in relation to the following operations to prepare prescribed plants or plant products for export:
- (a) operations to prepare the plants or plant products for export that were carried out at an accredited property;
 - (b) if the plants or plant products are imported plants or plant products—operations to prepare the plants or plant products for export that were carried out outside Australian territory before the plants or plant products were imported into Australian territory.

Part 2—Exemptions

2-5 Application of this Part

This Part applies in relation to prescribed plants or plant products (in this Part called *relevant goods*).

Note 1: See Division 1 of Part 1 of this Chapter in relation to goods that are prescribed plants or plant products.

Note 2: Plants and plant products are taken not to be prescribed goods in the circumstances prescribed by section 2-2 (see the definition of *prescribed goods* in section 12 of the Act).

2-6 Period for making application for exemption

For the purposes of subparagraph 53(3)(f)(i) of the Act, the period within which an application for an exemption in relation to relevant goods must be made is:

- (a) for an exemption in relation to operations to produce or prepare the relevant goods for export—the period of 120 days ending on the day that is 10 business days before:
 - (i) if the operations have started—the date it is proposed to export the relevant goods; or
 - (ii) in any other case—the date it is proposed to start carrying out those operations; or
- (b) for an exemption in relation to any other kind of export operations in relation to the relevant goods—the period of 120 days ending on the day that is 10 business days before the date it is proposed to start carrying out those export operations.

Note 1: The Secretary may allow a different period (see subparagraph 53(3)(f)(ii) of the Act).

Note 2: An application for an exemption must comply with the requirements in subsection 53(3) of the Act.

2-7 Conditions of exemption—matters to which Secretary must have regard

For the purposes of subsection 55(2) of the Act, a matter to which the Secretary must have regard is whether imposing a condition on an exemption in relation to relevant goods will ensure that one or more objects of the Act will be met in relation to the goods.

2-8 Period of effect of exemption

For the purposes of paragraph 57(b) of the Act, an exemption granted under paragraph 54(1)(a) of the Act remains in force (unless it is revoked under section 59 of the Act):

- (a) indefinitely; or
- (b) if a specified period is stated in the instrument of exemption—for the specified period.

Note: The exemption takes effect on the date stated in the instrument of exemption under paragraph 56(1)(e) of the Act (see paragraph 57(a) of the Act).

2-9 Variation of conditions of exemption—matters to which Secretary must have regard

For the purposes of subsection 58(3) of the Act, a matter to which the Secretary must have regard is whether varying a condition of an exemption in relation to relevant goods will ensure that one or more objects of the Act will be met in relation to the goods.

Part 3—Government certificates

Division 1—General

2-10 Government certificate may be issued in relation to prescribed plants or plant products

For the purposes of subsections 62(1) and (2) of the Act, a government certificate may be issued in relation to prescribed plants or plant products that are to be, or that have been, exported.

Note 1: The issuing body for the certificate is the Secretary (see paragraph 63(1)(b) of the Act).

Note 2: An exporter who applies for a government certificate in relation to prescribed plants or plant products must retain certain records for at least 2 years (see subsections 11-5(1) and (2) of this instrument).

2-11 Phytosanitary certificate, or phytosanitary certificate for re-export, may be issued in relation to non-prescribed plants or plant products

For the purposes of subsections 62(1) and (2) of the Act, a phytosanitary certificate, or a phytosanitary certificate for re-export, may be issued in relation to non-prescribed plants or plant products that are to be, or that have been, exported.

Note 1: The issuing body for the certificate is the Secretary (see paragraph 63(1)(b) of the Act).

Note 2: A person to whom a phytosanitary certificate, or a phytosanitary certificate for re-export, in relation to non-prescribed plants or plant products is issued must retain certain records for at least 2 years (see subsections 11-5(3) and (4) of this instrument).

Division 2—Phytosanitary certificates and phytosanitary certificates for re-export

2-12 When phytosanitary certificate, or phytosanitary certificate for re-export, in relation to prescribed plants or plant products may be issued

Phytosanitary certificates—plants or plant products that are to be exported

- (1) For the purposes of subsections 62(1) and (2) of the Act, a phytosanitary certificate may be issued in relation to prescribed plants or plant products that are to be exported if:
 - (a) an export permit for the plants or plant products is in force and is not suspended; and
 - (b) subject to subsection (4), an assessment of the plants or plant products has been carried out.

Phytosanitary certificates—plants or plant products that have been exported

- (2) For the purposes of subsections 62(1) and (2) of the Act, a phytosanitary certificate may be issued in relation to prescribed plants or plant products that have been exported if:
 - (a) an export permit for the plants or plant products was in force, and was not suspended, at the time the plants or plant products were exported; and
 - (b) subject to subsection (4), an assessment of the plants or plant products had been carried out before the plants or plant products were exported.

Note: Section 20 of the Act provides for when goods are exported for the purposes of the Act.

Phytosanitary certificates for re-export in relation to imported plants or plant products

- (3) For the purposes of subsections 62(1) and (2) of the Act, a phytosanitary certificate for re-export may be issued in relation to prescribed plants or plant products that are to be, or that have been, exported if:
 - (a) the plants or plant products consist of imported plants or plant products only; and
 - (b) an export permit for the plants or plant products is in force and is not suspended; and
 - (c) subject to subsection (4), an assessment of the plants or plant products has been carried out; and
 - (d) a phytosanitary certificate, or a phytosanitary certificate for re-export, in relation to the plants or plant products is required to meet importing country requirements relating to the plants or plant products; and
 - (e) the plants or plant products are accompanied by:
 - (i) a phytosanitary certificate (the ***original phytosanitary certificate***) in relation to the plants or plant products that was issued by the country of origin of the plants or plant products, that meets importing country requirements and that has not expired; or
 - (ii) a certified copy of the original phytosanitary certificate; and

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(f) the plants or plant products have not been exposed to infestation by pests or contamination that could result in any of the matters stated in the original phytosanitary certificate being incorrect.

Note: Plants or plant products that have been imported into Australian territory are taken not to be prescribed goods for the purposes of the Act in certain circumstances (see paragraphs 2-2(4)(c) and (d)).

(4) Paragraphs (1)(b), (2)(b) and (3)(c) do not apply in relation to plant-based oils.

Note: Examples of plant-based oils include olive oil and canola oil.

2-13 When phytosanitary certificate, or phytosanitary certificate for re-export, in relation to non-prescribed plants or plant products ceases to be in force

For the purposes of paragraph 72(4)(c) of the Act, a phytosanitary certificate, or a phytosanitary certificate for re-export, in relation to non-prescribed plants or plant products that have not been exported ceases to be in force if the validity period for the plants or plant products has ended.

Division 3—Issue of government certificates

2-14 Changes that require applicant to give additional or corrected information to issuing body

- (1) This section applies in relation to an application to an issuing body under section 65 of the Act for a government certificate in relation to plants or plant products.
- (2) For the purposes of paragraph 66(1)(b) of the Act, each of the following changes is prescribed:
 - (a) there are reasonable grounds to suspect that the integrity of the plants or plant products cannot be ensured;
 - (b) there are reasonable grounds to suspect that an importing country requirement relating to the plants or plant products will not be, or is not likely to be, met before the plants or plant products are imported into the importing country;
 - (c) in relation to prescribed plants or plant products—there are reasonable grounds to suspect that a prescribed export condition relating to the plants or plant products has not been complied with in circumstances where the condition should have been complied with.

Note: If a change prescribed by this subsection occurs, the applicant must, as soon as practicable, give the issuing body additional or corrected information, to the extent that it is relevant to the issuing body's consideration of the application (see subsection 66(2) of the Act). The issuing body is the Secretary (see paragraph 63(1)(b) of the Act).

2-15 Circumstances for refusing to issue government certificate

For the purposes of paragraph 67(3)(g) of the Act, each of the following circumstances is prescribed in relation to an application for a government certificate in relation to plants or plant products:

- (a) the integrity of the plants or plant products cannot be ensured;
- (b) a condition, pest or contaminant that is likely to affect the acceptability of the plants or plant products to the importing country is present in Australian territory.

Note: Other grounds for the issuing body to refuse to issue a government certificate in relation to plants or plant products are provided by paragraphs 67(3)(a) to (f) of the Act.

Division 4—Other matters

2-16 Changes that require holder of government certificate to give additional or corrected information to issuing body

- (1) This section applies in relation to plants or plant products in relation to which a government certificate is in force.
- (2) For the purposes of paragraph 74(1)(b) of the Act, each of the following changes is prescribed:
 - (a) there are reasonable grounds to suspect that the integrity of the plants or plant products cannot be ensured;
 - (b) there are reasonable grounds to suspect that an importing country requirement relating to the plants or plant products will not be, or is not likely to be, met before the plants or plant products are imported into the importing country;
 - (c) in relation to prescribed plants or plant products—there are reasonable grounds to suspect that a prescribed export condition relating to the plants or plant products has not been complied with in circumstances where the condition should have been complied with.

Note: If a change prescribed by this subsection occurs, the holder of the government certificate must, as soon as practicable, give the issuing body additional or corrected information, to the extent that it is relevant to assessing the matters referred to in paragraph 74(2)(a) to (c) of the Act (see subsection 74(2) of the Act). The issuing body is the Secretary (see paragraph 63(1)(b) of the Act).

Chapter 3—Accredited properties

Part 1—Requirements for accreditation

3-1 Other requirements for accreditation

- (1) For the purposes of paragraph 79(2)(b) of the Act, this section prescribes other requirements that must be met for a property to be accredited for a kind of export operations in relation to a kind of prescribed plants or plant products.

Note: The requirements in this section also apply in relation to an application to renew the accreditation of the property (see paragraph 84(2)(a) of the Act).

- (2) There must be a management system in place in relation to the export operations and the plants or plant products. The management system must ensure the following:
- (a) importing country requirements relating to the export operations and the plants or plant products are met;
 - (b) pest and contaminant control measures that are appropriate for the export operations and the plants or plant products, and that meet importing country requirements relating to the export operations and the plants or plant products, are in place;
 - (c) personnel who carry out the export operations undertake training that:
 - (i) is appropriate for the export operations and the plants or plant products; and
 - (ii) meets importing country requirements relating to the export operations and the plants or plant products;
 - (d) the property is kept in a hygienic condition appropriate for the export operations and the plants or plant products;
 - (e) the plants and plant products in relation to which the export operations are carried out at the property (the **relevant property**) can be tracked:
 - (i) from the property (if any) from which the plants or plant products were transferred to the relevant property; and
 - (ii) while they are at the relevant property; and
 - (iii) to the accredited property or registered establishment to which the plants or plant products are transferred from the relevant property.

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Part 2—Conditions of accreditation

3-2 Purpose of this Part

For the purposes of paragraph 80(1)(b) of the Act, this Part prescribes conditions of the accreditation of a property for a kind of export operations in relation to a kind of prescribed plants or plant products.

Note 1: If the accreditation of the property is renewed, these conditions also apply in relation to the renewed accreditation of the property (see section 3-8 of this instrument).

Note 2: The manager of an accredited property may commit an offence or be liable to a civil penalty if a condition of the accreditation of the property is contravened (see section 106 of the Act).

Note 3: The manager of an accredited property must retain certain records for at least 2 years (see section 11-6 of this instrument).

3-3 Management system must be implemented

- (1) The management system required by section 3-1 must be implemented.
- (2) A variation of the management system must not be implemented unless:
 - (a) the variation has been approved under subsection 87(2) of the Act and notice of the approval has been given to the manager under section 88 of the Act; or
 - (b) the variation was made by the Secretary under subsection 90(1) of the Act and notice of the variation has been given to the manager under section 91 of the Act.

3-4 Integrity

The integrity of prescribed plants or plant products in relation to which export operations are carried out at an accredited property must be ensured while the plants or plant products are at the property.

3-5 Application of trade description

If a trade description is applied to prescribed plants or plant products produced or prepared at an accredited property, the trade description must include at least the information referred to in paragraph 8-6(1)(d).

Note: The trade description must also comply with section 8-7 and subsection 8-8(2).

3-6 Requirements for packages for export

- (1) This section applies in relation to an accredited property where prescribed plants or plant products are packed into packages for export.
- (2) If the packages are intended to be used more than once and they have been used previously, the packages must be cleaned and reconditioned before each subsequent use. In any other case, the packages must be unused and clean.
- (3) The packages must:

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- (a) be appropriate for the plants or plant products to be packed in them; and
 - (b) be used in a manner that will ensure the integrity of the plants or plant products packed in them.
- (4) The packages must be sufficiently strong to withstand handling ordinarily occurring before and during transport, including transport to their final overseas destination.

Part 3—Renewal of accreditation

3-7 Period within which application to renew accreditation must be made

For the purposes of paragraph 83(4)(a) of the Act, the period within which an application to renew the accreditation of an accredited property must be made is the period of 60 days starting on the day that is 180 days before the expiry date for the accreditation.

Note 1: For example, if the accreditation of a property expires on 8 July in a year (other than a leap year), an application for renewal can be made at any time between 9 January and 10 March in that year.

Note 2: An application to renew the accreditation of a property will only need to be made if there is an expiry date for the accreditation (see subsection 83(1) of the Act).

Note 3: The Secretary may decide not to renew the accreditation of a property if the requirements prescribed by Part 1 of this Chapter are not continuing to be met in relation to the property (see paragraph 84(2)(a) of the Act).

3-8 Conditions of renewed accreditation

For the purposes of paragraph 85(b) of the Act, the conditions prescribed by Part 2 of this Chapter are prescribed.

Part 4—Variation of accreditation

3-9 Alterations of property that must be approved

Alterations other than minor alterations

- (1) For the purposes of subparagraph 87(1)(b)(i) of the Act, an alteration of an accredited property, other than an alteration that does not, or is not likely to, make the property unhygienic, or result in a contravention of a condition of the accreditation of the property, is prescribed.

Carrying out export operations on additional part of property or on another property

- (2) For the purposes of subparagraph 87(1)(b)(ii) of the Act, a circumstance is that the manager of the accredited property wishes to carry out export operations in relation to prescribed plants or plant products on an additional part of the property, or on another property, that is not covered by the accreditation of the property.

3-10 Other reasons for Secretary to make variation in relation to accreditation

For the purposes of paragraph 90(2)(d) of the Act, the following reasons for making a variation in relation to the accreditation of a property, or setting an earlier expiry date for the accreditation of a property, are prescribed:

- (a) importing country requirements relating to the export operations or prescribed plants or plant products covered by the accreditation are not being met or are not likely to be met;
- (b) the manager of the property has contravened a requirement of the Act in relation to the accreditation;
- (c) a different person has become, or is to become, the manager of the property;
- (d) the variation is necessary to take account of an event or other matter notified under section 109 of the Act;
- (e) the management system required by section 3-1 of this instrument is no longer appropriate in relation to the kind of export operations or the kind of prescribed plants or plant products covered by the accreditation;
- (f) the property is, or becomes, a registered establishment.

Part 5—Suspension of accreditation

Division 1—Suspension requested by manager

3-11 Circumstances in which manager may request suspension of accreditation

For the purposes of subsection 92(2) of the Act, the circumstances in which the manager of an accredited property may make a request under subsection 92(1) of the Act are as follows:

- (a) a circumstance has arisen that prevents, or will prevent, a kind of export operations being carried out at the property;
- (b) the manager considers that it will not be possible or practicable for a kind of export operations to be carried out at the property for any other reason.

Division 2—Suspension by Secretary

3-12 Other grounds for suspension of accreditation

For the purposes of paragraph 94(1)(h) of the Act, the following grounds for suspending the accreditation of an accredited property are prescribed:

- (a) importing country requirements relating to the export operations or prescribed plants or plant products covered by the accreditation are not being met or are not likely to be met;
- (b) the Secretary receives a notice under subsection 109(1) of the Act (person ceasing to be manager of the property), or otherwise becomes aware that the person in whose name the property is accredited has ceased to be the manager of the property, and another person has become the manager of the property.

Part 6—Revocation of accreditation

Division 1—Revocation requested by manager

3-13 Information to be included in request to revoke accreditation

For the purposes of paragraph 101(2)(b) of the Act, a request under subsection 101(1) of the Act must include the reason for the request.

Division 2—Revocation by Secretary

3-14 Other grounds for revocation of accreditation

For the purposes of paragraph 102(1)(h) of the Act, the following grounds for revoking the accreditation of an accredited property are prescribed:

- (a) importing country requirements relating to the export operations or prescribed plants or plant products covered by the accreditation are not being met or are not likely to be met;
- (b) the Secretary:
 - (i) receives a notice under subsection 109(1) of the Act (person ceasing to be manager of the property); or
 - (ii) otherwise becomes aware that the person in whose name the property is accredited has ceased to be the manager of the property;
whether or not another person has become the manager of the property;
- (c) the property is, or becomes, a registered establishment.

Part 7—Obligations of managers of accredited properties etc.

3-15 Events of which Secretary must be notified

For the purposes of subsection 108(1) of the Act, the following events are prescribed in relation to an accredited property:

- (a) there is a change in the manager's business structure;
- (b) if the manager is an individual—the individual enters into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*;
- (c) if the manager is a corporation—the corporation:
 - (i) enters into administration (within the meaning of section 435C of the *Corporations Act 2001*); or
 - (ii) is to be wound up (whether by a court or voluntarily);
- (d) there is a change in the trading name, business address or contact details of the manager;
- (e) a condition of the accreditation is contravened.

Example: For the purposes of paragraph (a), each of the following would be a change in the manager's business structure:

- (a) a change in a person who manages or controls export operations carried out at the accredited property;
- (b) if the manager is a partnership—a change in the membership of the partnership.

Note: If a person ceases to be the manager of an accredited property, the person must notify the Secretary in accordance with section 109 of the Act.

Part 8—Matters relating to applications

3-16 Application of this Part

This Part applies in relation to the following applications:

- (a) an application under section 78 of the Act to accredit a property for a kind of export operations in relation to a kind of prescribed plants or plant products;
- (b) an application under section 83 of the Act to renew the accreditation of a property for a kind of export operations in relation to a kind of prescribed plants or plant products;
- (c) an application under section 87 of the Act to do any of the following in relation to the accreditation of a property:
 - (i) vary any aspect of the accreditation or the particulars relating to the accreditation;
 - (ii) approve a variation of the accreditation;
 - (iii) vary the conditions of the accreditation.

3-17 Initial consideration period

For the purposes of subsection 379(3) of the Act, the initial consideration period for an application is 120 days.

Note: The consideration period for an application starts on the day after the day the Secretary receives the application (see subsection 379(4) of the Act).

3-18 Period within which request relating to application must be complied with

For the purposes of paragraph 379(10)(b) of the Act, the period of 6 months is prescribed.

Chapter 4—Registered establishments

Part 1—Requirements for registration

Division 1—Requirements relating to construction, equipment and facilities

4-1 Purpose of this Division

For the purposes of paragraphs 112(2)(c) and (f) of the Act, this Division prescribes requirements relating to construction, equipment and facilities that must be met for the establishment to be registered for a kind of export operations in relation to a kind of prescribed plants or plant products.

Note 1: The requirements in this Division also apply in relation to an application to renew the registration of the establishment (see section 4-15).

Note 2: Other requirements that must be met are provided by paragraphs 112(2)(a), (b), (c) and (e) of the Act and Division 2 of this Part.

4-2 General requirements

Application of this section

- (1) The requirements prescribed by this section apply in relation to all establishments.

Buildings, equipment, facilities and services

- (2) An establishment must have the buildings, equipment, facilities and services that are necessary to ensure that export operations in relation to prescribed plants or plant products can be carried out in a way that will ensure that the requirements of the Act are complied with.
- (3) An establishment must have handwashing and toilet facilities.

Design and construction—general

- (4) An establishment and its equipment and facilities must be designed and constructed:
 - (a) to provide:
 - (i) areas that are suitable for assessments of prescribed plants or plant products to be carried out; and
 - (ii) adequate lighting and ventilation; and
 - (b) to facilitate effective cleaning; and
 - (c) to minimise the possibility of infestation or contamination of prescribed plants or plant products during export operations; and
 - (d) to provide for the disposal of all waste material (including liquids and solids) in an appropriate and hygienic manner; and
 - (e) to facilitate safe and effective treatments of prescribed plants and plant products; and

(f) to allow samples of prescribed plants and plant products to be taken.

Note: See Division 2 of Part 6 of Chapter 11 of the Act and Part 2 of Chapter 11 of this instrument in relation to samples.

Design and construction—establishments where testing and analysis of samples is to be carried out

- (5) If testing and analysis of samples of prescribed plants or plant products or other things is to be carried out at an establishment, the establishment and its equipment and facilities must be designed and constructed to allow the testing and analysis to be carried out.

Design and construction—establishments where screening of prescribed grain etc. is to be carried out

- (6) If screening of prescribed plants or plant products described in paragraph 4-9(1)(a) or (b) is to be carried out at an establishment, the establishment and its equipment and facilities must be designed and constructed to allow the screening to be carried out.

Section 4-3

Division 2—Other requirements

4-3 Purpose of this Division

For the purposes of paragraph 112(2)(f) of the Act, this Division prescribes other requirements that must be met for an establishment to be registered for a kind of export operations in relation to a kind of prescribed plants or plant products.

Note 1: The requirements in this Division also apply in relation to an application to renew the registration of the establishment (see section 4-15).

Note 2: Other requirements that must be met are provided by paragraphs 112(2)(a), (b), (c) and (e) of the Act and Division 1 of this Part.

Note 3: Section 1-8 of this instrument sets out requirements that must be met for a registered establishment to be a small horticultural products registered establishment for a financial year.

4-4 Management system

Application of this section

- (1) The requirements prescribed by this section apply in relation to all establishments.

Note: Other provisions of this Division may also apply in relation to an establishment.

Management system must be in place

- (2) There must be a management system in place in relation to the export operations and the plants or plant products for which the establishment is to be registered.

General requirements for management system

- (3) The management system must ensure the following:
 - (a) importing country requirements relating to the export operations and the plants or plant products are met;
 - (b) the establishment is kept clean and in a hygienic condition appropriate for the export operations and the plants or plant products;
 - (c) pest and contaminant control measures that are appropriate for the export operations and the plants or plant products, and that meet importing country requirements relating to the export operations and the plants or plant products, are in place;
 - (d) toxic substances (including fumigants, rodenticides and insecticides) are stored appropriately so that:
 - (i) the plants or plant products at the establishment will not become contaminated; and
 - (ii) areas of the establishment where the export operations are carried out will not become contaminated;
 - (e) waste is appropriately treated and disposed of so that the plants or plant products at the establishment will not become infested by pests or contaminated;
 - (f) personnel who carry out the export operations undertake training that:

- (i) is appropriate for the export operations and the plants or plant products; and
- (ii) meets importing country requirements relating to the export operations and the plants or plant products;
- (g) the plants and plant products can be tracked:
 - (i) from the premises from which they were transferred to the establishment; and
 - (ii) while they are at the establishment; and
 - (iii) to the premises to which they are transferred from the establishment;
- (h) if the export operations are, or include, operations to treat the plants or plant products:
 - (i) the treatment is safe and effective for the plants and plant products; and
 - (ii) the treatment meets importing country requirements relating to the export operations and the plants or plant products; and
 - (iii) if the treatment involves the application of a chemical such as an insecticide or a fumigant—the use of the chemical is lawful.

Section 4-5

Part 2—Conditions of registration

4-5 Purpose of this Part

For the purposes of paragraph 113(1)(b) of the Act, this Part prescribes conditions of the registration of an establishment for a kind of export operations in relation to a kind of prescribed plants or plant products.

Note 1: If the registration of the establishment is renewed, these conditions also apply in relation to the renewed registration of the establishment (see paragraph 118(b) of the Act).

Note 2: The occupier of a registered establishment may commit an offence or be liable to a civil penalty if a condition of the registration of the establishment is contravened (see section 144 of the Act).

Note 3: The occupier of a registered establishment must retain certain records for at least 2 years (see section 11-7 of this instrument).

4-6 Construction, equipment and facilities

The requirements for registration of an establishment prescribed by Division 1 of Part 1 of this Chapter must continue to be met in relation to a registered establishment after it is registered.

Note: Alterations of a registered establishment (including additions to the establishment, but not including alterations prescribed by section 4-16) must not be made unless the alterations have been approved under subsection 120(2) of the Act and the occupier of the establishment has been given notice of the approval under section 121 of the Act.

4-7 Management system must be implemented

- (1) The management system required by section 4-4 must be implemented.
- (2) A variation of the management system must not be implemented unless:
 - (a) the variation has been approved under subsection 120(2) of the Act and notice of the approval has been given to the occupier under section 121 of the Act; or
 - (b) the variation was made by the Secretary under subsection 123(1) of the Act and notice of the variation has been given to the occupier under section 124 of the Act.

4-8 Integrity

The integrity of prescribed plants or plant products prepared at a registered establishment must be ensured while the plants or plant products are at the establishment.

4-9 Conditions relating to prescribed grain etc.

- (1) This section applies in relation to an establishment that is registered to prepare for export any of the following prescribed plants and plant products:
 - (a) prescribed grain;

- (b) cereal grains, pulses, oil seeds or nuts:
 - (i) that are not prescribed grain; and
 - (ii) in relation to which the importing country requires a phytosanitary certificate or a phytosanitary certificate for re-export.

Note: For *prescribed grain*, see section 1-7.

Screening

- (2) If screening of the plants or plant products is carried out at the establishment, it must be carried out in a way that is appropriate:
 - (a) to manage the risk of contamination by large contaminants; and
 - (b) to ensure that any large contaminants are removed from the plants or plant products.

Blending

- (3) If the plants or plant products fail an assessment because of:
 - (a) infestation by pests; or
 - (b) the presence of an animal carcass; or
 - (c) in the case of mung beans referred to in paragraph 1-7(1)(h)—the presence of animal waste;the plants or plant products must not be blended with other plants or plant products at the establishment.
- (4) Subsection (3) does not prevent blending of prescribed plants or plant products that contain contaminants other than those referred to in paragraph (3)(b) or (c).

4-10 Application of trade description

If a trade description is applied at a registered establishment to prescribed plants or plant products that have been prepared for export at the establishment, the trade description must include the information referred to in subsection 8-6(1) (other than any information referred to in that subsection that is included in a trade description already applied to the plants or plant products).

Note: The trade description must also comply with section 8-7 and subsection 8-8(2).

4-11 Requirements for packages for export

- (1) This section applies in relation to a registered establishment where prescribed plants or plant products are packed into packages for export.
- (2) If the packages are intended to be used more than once and they have been used previously, the packages must be cleaned and reconditioned before each subsequent use. In any other case, the packages must be unused and clean.
- (3) The packages must:
 - (a) be appropriate for the plants or plant products to be packed in them; and
 - (b) be used in a manner that will ensure the integrity of the plants or plant products packed in them.

Section 4-12

- (4) The packages must be sufficiently strong to withstand handling ordinarily occurring before and during transport, including transport to their final overseas destination.
- (5) The packages must meet relevant importing country requirements.

4-12 Prescribed plants or plant products to be exported in bulk vessel

- (1) Prescribed plants or plant products at a registered establishment that are to be exported in a bulk vessel must not be loaded into or onto the bulk vessel unless a bulk vessel approval, covering the cargo spaces of the vessel into or onto which the prescribed plants or plant products are to be loaded, is in force for the bulk vessel.

Note: See Part 5 of Chapter 9 in relation to bulk vessel approvals.

- (2) If a bulk vessel approval for a bulk vessel is suspended under subsection 9-27(1), prescribed plants or plant products must not be loaded, or must not continue to be loaded, into or onto the bulk vessel.

4-13 Prescribed plants or plant products to be exported in containers

- (1) Prescribed plants or plant products at a registered establishment that are to be exported in a container must not be loaded into the container unless a container approval is in force for the container.

Note: See Part 6 of Chapter 9 in relation to container approvals.

- (2) If a tamper evident seal is applied to the container, the seal must remain intact until immediately before the plants or plant products are loaded into the container.

Part 3—Renewal of registration

4-14 Period within which application to renew registration must be made

For the purposes of paragraph 116(4)(a) of the Act, the period within which an application to renew the registration of a registered establishment must be made is the period of 60 days starting on the day that is 180 days before the expiry date for the registration.

Note 1: For example, if the registration of an establishment expires on 8 July in a year (other than a leap year), an application for renewal can be made at any time between 9 January and 10 March in that year.

Note 2: An application to renew the registration of an establishment will only need to be made if there is an expiry date for the registration (see subsection 116(1) of the Act).

4-15 Requirements for renewal of registration

Requirements relating to construction, equipment and facilities

- (1) For the purposes of paragraph 117(2)(g) of the Act, the requirements prescribed by Division 1 of Part 1 of this Chapter are prescribed in relation to an establishment that is registered to prepare prescribed plants or plant products for export.

Other requirements

- (2) For the purposes of paragraph 117(2)(g) of the Act, the requirements prescribed by section 4-4 of this instrument are prescribed in relation to an establishment that is registered to prepare prescribed plants or plant products for export.

Note: Other requirements are provided by paragraphs 117(2)(a) to (e) of the Act.

Part 4—Variation of registration

4-16 Alterations for which approval is not required

For the purposes of subsection 122(2) of the Act, an alteration of a registered establishment is prescribed if it does not affect:

- (a) the implementation of the management system at the establishment; or
- (b) compliance with the other conditions of registration of the establishment.

4-17 Other reasons for the Secretary to vary registration

For the purposes of paragraph 123(2)(h) of the Act, the following reasons for making a variation in relation to the registration of a registered establishment, or setting an earlier expiry date for the registration of a registered establishment, are prescribed:

- (a) in relation to any registered establishment:
 - (i) the management system required by section 4-4 is no longer appropriate in relation to the kind of export operations or the kind of prescribed plants or plant products covered by the registration; or
 - (ii) the occupier of the establishment, or a person who manages or controls export operations at the establishment, failed to provide facilities and assistance to an assessor for the purpose of enabling an assessment of prescribed plants or plant products to be carried out at the establishment; or
 - (iii) the occupier of the establishment, or a person who manages or controls export operations at the establishment, failed to comply with a request made by an assessor for the purpose of enabling an assessment of prescribed plants or plant products to be carried out at the establishment; or
 - (iv) the occupier of the establishment, or a person who manages or controls export operations at the establishment, failed to comply with section 410 of the Act when taking, testing or analysing samples at the establishment;
- (b) if the establishment is registered for export operations in relation to prescribed plants or plant products for human consumption—the occupier of the establishment failed to comply with applicable State and Territory laws relating to food handling in carrying out the export operations.

Part 5—Suspension of registration

Division 1—Suspension requested by occupier

4-18 Circumstances in which occupier may request suspension of registration

For the purposes of subsection 125(2) of the Act, the circumstances in which the occupier of a registered establishment may make a request under subsection 125(1) of the Act are as follows:

- (a) a circumstance has arisen that prevents, or will prevent, a kind of export operations being carried out at the establishment;
- (b) the occupier considers that it will not be possible or practicable for a kind of export operations to be carried out at the establishment for any other reason.

Division 2—Suspension by Secretary

4-19 Other grounds for suspension of registration

For the purposes of paragraph 127(1)(k) of the Act, the following grounds for suspending the registration of a registered establishment are prescribed:

- (a) the occupier of the establishment, or a person who manages or controls export operations at the establishment, failed to provide facilities and assistance to an assessor for the purpose of enabling an assessment of prescribed plants or plant products to be carried out at the establishment;
- (b) the occupier of the establishment, or a person who manages or controls export operations at the establishment, failed to comply with a request made by an assessor for the purpose of enabling an assessment of prescribed plants or plant products to be carried out at the establishment;
- (c) if the registration of the establishment covers export operations in relation to prescribed plants or plant products for human consumption—the occupier of the establishment failed to comply with applicable State and Territory laws relating to food handling in carrying out those export operations;
- (d) the occupier of the establishment, or a person who manages or controls export operations at the establishment, failed to comply with section 410 of the Act when taking, testing or analysing samples at the establishment.

Part 6—Revocation of registration

Division 1—Revocation requested by occupier

4-20 Information to be included in request to revoke registration

For the purposes of paragraph 137(2)(b) of the Act, a request under subsection 137(1) of the Act must include the reason for the request.

Division 2—Revocation by Secretary

4-21 Other grounds for revocation of registration

For the purposes of paragraph 138(1)(k) of the Act, the following grounds for revoking the registration of a registered establishment are prescribed:

- (a) the occupier of the establishment, or a person who manages or controls export operations at the establishment, failed to provide facilities and assistance to an assessor for the purpose of enabling an assessment of prescribed plants or plant products to be carried out at the establishment;
- (b) the occupier of the establishment, or a person who manages or controls export operations at the establishment, failed to comply with a request made by an assessor for the purpose of enabling an assessment of prescribed plants or plant products to be carried out at the establishment;
- (c) if the registration of the establishment covers export operations in relation to prescribed plants or plant products for human consumption—the occupier of the establishment failed to comply with applicable State and Territory laws relating to food handling in carrying out those export operations;
- (d) the occupier of the establishment, or a person who manages or controls export operations at the establishment, failed to comply with section 410 of the Act when taking, testing or analysing samples at the establishment.

Part 7—Obligations of occupiers of registered establishments

4-22 Changes in relation to registered establishment that was being treated as small horticultural products registered establishment for a financial year

For the purposes of paragraph 145(1)(b) of the Act, the following changes are prescribed in relation to a registered establishment that, before the change, was being treated as a small horticultural products registered establishment for a financial year:

- (a) in the financial year, the occupier of the establishment ceases to be the grower of the relevant horticultural products covered by the registration;
- (b) in the financial year, the occupier of the establishment becomes the occupier of another registered establishment;
- (c) in the financial year, the occupier of the establishment starts to carry out operations to prepare goods for export other than horticultural products referred to in column 1 of the table in subsection 1-8(8).

Note: If a change prescribed by this section occurs, the occupier must give the Secretary information in relation to the change (see subsection 145(2) of the Act). The occupier may be liable to a civil penalty if the occupier does not give the information to the Secretary (see subsection 145(3) of the Act).

Part 8—Matters relating to applications

4-23 Application of this Part

This Part applies in relation to the following applications:

- (a) an application under section 111 of the Act to register an establishment for a kind of export operations in relation to a kind of prescribed plants or plant products;
- (b) an application under section 116 of the Act to renew the registration of an establishment for a kind of export operations in relation to a kind of prescribed plants or plant products;
- (c) an application under section 120 of the Act to do any of the following in relation to an establishment that is registered for a kind of export operations in relation to a kind of prescribed plants or plant products:
 - (i) vary the registration, or the particulars relating to the registration, of the establishment;
 - (ii) approve an alteration of the establishment;
 - (iii) vary the conditions of the registration of the establishment.

4-24 Initial consideration period

For the purposes of subsection 379(3) of the Act, the initial consideration period for an application is 120 days.

Note: The consideration period for an application starts on the day after the day the Secretary receives the application (see subsection 379(4) of the Act).

4-25 Period within which request relating to application must be complied with

For the purposes of paragraph 379(10)(b) of the Act, the period of 6 months is prescribed.

Chapter 7—Export permits

Part 1—Issue of export permit

7-1 Conditions of export permit

- (1) For the purposes of paragraph 227(1)(a) and subsection 227(2) of the Act, this section prescribes conditions of an export permit for prescribed plants or plant products.

Note 1: An export permit is also subject to any additional conditions specified in a written notice given to the holder of the permit under paragraph 227(1)(b) of the Act.

Note 2: The holder of an export permit that is in force may commit an offence or be liable to a civil penalty if a condition of the export permit is contravened (see subsections 227(4) and (5) of the Act).

- (2) The holder of the export permit must ensure that:
- (a) the integrity of the plants or plant products is ensured; and
 - (b) the plants or plant products meet relevant importing country requirements; until the plants or plant products are exported.

Note: Section 20 of the Act provides for when goods are exported for the purposes of the Act.

- (3) If the holder of the export permit wishes to export the plants or plant products to an importing country that is not covered by the export permit, the holder must notify the Secretary, in writing, of the new importing country.

7-2 Period of effect of export permit

For the purposes of paragraph 228(b) of the Act, an export permit for prescribed plants or plant products remains in force (unless it is revoked under section 233 of the Act):

- (a) if a validity period for the plants or plant products applies—until the end of the validity period; or
- (b) in any other case—for 28 days starting on the day the permit is issued.

Note 1: An export permit takes effect when it is issued (see paragraph 228(a) of the Act).

Note 2: See section 9-12 in relation to the application of validity periods.

Note 3: An export permit (other than an export permit that was issued by electronic means) must be retained in a secure place when it is not being used (see section 11-4).

Part 2—Variation, suspension and revocation of export permit

7-3 Circumstances for varying export permit or conditions of export permit

For the purposes of paragraph 229(1)(a) of the Act, the following circumstances are prescribed for varying an export permit for prescribed plants or plant products or conditions of an export permit for prescribed plants or plant products:

- (a) the integrity of the plants or plant products cannot be ensured;
- (b) information specified in the export permit has changed since the permit was issued;
- (c) it is no longer intended to export the plants or plant products to an importing country covered by the export permit;
- (d) importing country requirements relating to the plants or plant products have changed since the export permit was issued;
- (e) the requirements of the Act in relation to the export of the plants or plant products have not been complied with, or are not likely to be complied with before the plants or plant products are imported into the importing country covered by, or to be covered by, the export permit;
- (f) an importing country requirement relating to the plants or plant products has not been met, or is not likely to be met before the plants or plant products are imported into the importing country covered by, or to be covered by, the export permit;
- (g) a condition, pest or contaminant that is likely to affect the acceptability of the plants or plant products to the importing country covered by, or to be covered by, the export permit is present in Australian territory.

7-4 Period of effect of varied export permit

For the purposes of paragraph 230(b) of the Act, a varied export permit for prescribed plants or plant products remains in force (unless it is revoked under section 233 of the Act):

- (a) if a validity period for the plants or plant products applies—until the end of the validity period; or
- (b) in any other case—for the remainder of the period for which the export permit as originally issued was in force under paragraph 7-2(b).

Note 1: A varied export permit takes effect when it is issued (see paragraph 230(a) of the Act).

Note 2: See section 9-12 in relation to the application of validity periods.

Note 3: An export permit (other than an export permit that was issued by electronic means) must be retained in a secure place when it is not being used (see section 11-4).

7-5 Circumstances in which export permit may be suspended

For the purposes of subsection 231(1) of the Act, the following circumstances are prescribed in relation to an export permit for prescribed plants or plant products:

- (a) a circumstance referred to in any of paragraphs 233(1)(a) to (f) of the Act;

- (b) a circumstance prescribed by section 7-6 of this instrument.

7-6 Other circumstances in which export permit may be revoked

For the purposes of paragraph 233(1)(g) of the Act, the following circumstances are prescribed in relation to an export permit for prescribed plants or plant products:

- (a) the plants or plant products are no longer intended to be exported using that export permit;
- (b) a person, other than the holder of the export permit, has given the Secretary, or another person performing functions or exercising powers under the Act, information or a document in relation to the plants or plant products that is false, misleading or incomplete;
- (c) a condition, pest or contaminant that is likely to affect the acceptability of the plants or plant products to the importing country is present in Australian territory.

Section 7-7

Part 3—Other matters

7-7 Other circumstances in which the Secretary may require assessment of prescribed plants or plant products

- (1) This section applies in relation to prescribed plants or plant products for which an export permit is in force.
- (2) For the purposes of paragraph 234(2)(e) of the Act, the Secretary may require an assessment of the plants or plant products to be carried out if the holder of the export permit, or another person, gave false or misleading information in relation to the plants or plant products to the Secretary or another person performing functions or exercising powers under the Act.

7-8 Changes that require additional or corrected information to be given to the Secretary

For the purposes of paragraph 235(1)(b) of the Act, each of the following changes is prescribed in relation to prescribed plants or plant products for which an export permit is in force:

- (a) there are reasonable grounds to suspect that the integrity of the plants or plant products cannot be ensured;
- (b) there are reasonable grounds to suspect that an importing country requirement relating to the plants or plant products will not be, or is not likely to be, met before the plants or plant products are imported into the importing country;
- (c) there are reasonable grounds to suspect that a prescribed export condition relating to the plants or plant products has not been complied with in circumstances where the condition should have been complied with.

Part 4—Applications for export permits

7-9 Changes that require additional or corrected information to be given to the Secretary

For the purposes of paragraph 240(1)(b) of the Act, each of the following changes is prescribed in relation to prescribed plants or plant products for which an application under section 224 of the Act for an export permit has been made:

- (a) there are reasonable grounds to suspect that the integrity of the plants or plant products cannot be ensured;
- (b) there are reasonable grounds to suspect that an importing country requirement relating to the plants or plant products will not be, or is not likely to be, met before the plants or plant products are imported into the importing country;
- (c) there are reasonable grounds to suspect that a prescribed export condition relating to the plants or plant products has not been complied with in circumstances where the condition should have been complied with.

7-10 Other powers of the Secretary in considering applications

- (1) This section applies in relation to prescribed plants or plant products that are to be transported in a bulk vessel or a container.
- (2) For the purposes of paragraph 241(g) of the Act, the Secretary may:
 - (a) request the applicant for an export permit for the plants or plant products to arrange for an authorised officer to carry out an additional inspection of a bulk vessel or container; or
 - (b) arrange for an authorised officer to carry out an additional inspection of a bulk vessel or container.

Section 8-1

Chapter 8—Other matters relating to export

Part 1—Notices of intention to export

8-1 Person who must give notice of intention to export

For the purposes of paragraph 243(1)(e) of the Act, a notice of intention to export a consignment of, or including, prescribed plants or plant products must be given by the exporter of the consignment.

8-2 Persons to whom notice of intention to export must be given

For the purposes of paragraph 243(1)(f) of the Act, a notice of intention to export a consignment of, or including, prescribed plants or plant products must be given to:

- (a) the Secretary; and
- (b) on request by an assessor—the assessor.

8-3 When notice of intention to export must be given

- (1) For the purposes of paragraph 243(1)(g) of the Act, a notice of intention to export a consignment of, or including, prescribed plants or plant products must be given as soon as reasonably practicable before the date the consignment is proposed to be exported.
- (2) If an assessment of the plants or plant products in the consignment is required to be carried out, the notice of intention to export the consignment must be given at a time that will ensure there will be sufficient time for the assessment to be carried out.

Note: It is a prescribed export condition in relation to the export of prescribed plants or plant products that a person prescribed by section 8-1 must have given the Secretary, at the time prescribed by this section, a notice of intention to export a consignment of, or including, the prescribed plants or plant products (see item 4 of the table in section 2-4).

8-4 Additional or corrected information

For the purposes of paragraph 244(1)(b) of the Act, a person who has given a notice of intention to export a consignment of prescribed plants or plant products must comply with subsection 244(2) of the Act if there are reasonable grounds to suspect that the integrity of the plants or plant products cannot be ensured.

Part 2—Trade descriptions

8-5 Purpose of this Part

For the purposes of section 248 of the Act, this Part makes provision for and in relation to trade descriptions for prescribed plants or plant products that are intended to be exported.

Note: A person may commit an offence or be liable to a civil penalty if the person engages in conduct that contravenes a provision in this Part (see section 249 of the Act).

8-6 Trade description must be applied to prescribed plants or plant products that are intended to be exported

- (1) The exporter of prescribed plants or plant products must ensure that a trade description is applied to the plants and plant products before they are exported. The trade description must include the following information:
 - (a) the kind of plants or plant products in the consignment to be exported;
 - (b) the net weight or number of units of the plants or plant products in the consignment to be exported;
 - (c) the registration number of the registered establishment where:
 - (i) operations to prepare the plants or plant products for export were carried out; or
 - (ii) an assessment of the plants or plant products was carried out;
 - (d) the name and address, or the identification number, of the exporter, manufacturer or producer of the plants or plant products;
 - (e) if the plants or plant products are imported plants or plant products—the country of origin of the plants or plant products;
 - (f) any other information necessary to meet relevant importing country requirements relating to the plants or plant products.

Note 1: For *trade description*, see section 246 of the Act.

Note 2: For *applied*, in relation to a trade description, see section 247 of the Act.

Note 3: The trade description must also comply with section 8-7 and subsection 8-8(2) of this instrument. See also section 3-5 of this instrument (application of trade description at accredited property) and section 4-10 of this instrument (application of trade description at registered establishment).

- (2) For the purposes of paragraph (1)(e), if export operations that changed the nature of the prescribed plants or plant products were carried out in a country outside Australian territory, that other country is taken to be the country of origin of the plants or plant products.

8-7 General requirements for trade descriptions

- (1) A trade description applied to prescribed plants or plant products must:
 - (a) be accurate and unambiguous; and
 - (b) be securely attached (unless the trade description is stated in any document relating to the plants or plant products); and

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- (c) be legible; and
 - (d) be prominent, conspicuous and not obscured in any way; and
 - (e) to the extent practicable, be tamper evident.
- (2) Information or pictures that are applied to prescribed plants or plant products in addition to the trade description must not be inconsistent with the information required to be included in the trade description under section 8-6.

8-8 Trade descriptions in language other than English

- (1) This section applies in relation to a trade description applied to prescribed plants or plant products if any part of the trade description is in a language (the *foreign language*) other than English.
- (2) The part of the trade description that is in the foreign language must not be inconsistent with the part of the trade description that is in English.
- (3) On request, in writing, by the Secretary to one of the following persons, the person must make available to the Secretary a translation in English of the part of the trade description that is in the foreign language:
- (a) if a part of the trade description that is in the foreign language was applied at an accredited property—the manager of the accredited property;
 - (b) if a part of the trade description that is in the foreign language was applied at a registered establishment—the occupier of the registered establishment;
 - (c) the exporter of the prescribed plants or plant products.
- (4) The translation into English required by subsection (3) must be done by a person who:
- (a) has appropriate qualifications for doing the translation; and
 - (b) is not employed by, and is independent of, the person referred to in subsection (3) who is required to make the translation available to the Secretary.

Part 3—Official marks

Division 1—Marks that are official marks

8-9 Purpose of this Division

For the purposes of subsection 255(1) of the Act, this Division provides that specified marks are official marks for the purposes of the Act for plants or plant products that are intended to be exported.

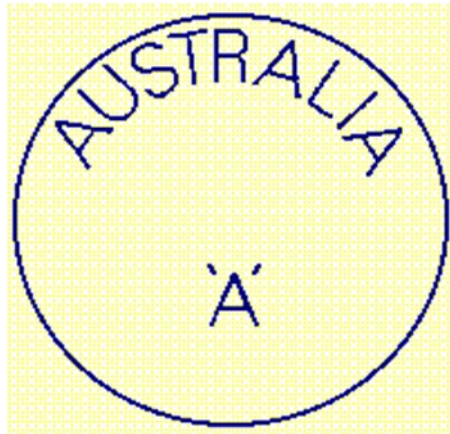
8-10 Tolerances for dimensions of official marks

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

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

8-11 Official mark—foreign country identification

- (1) A mark of the following design (with the relevant foreign country identification mark substituted for ‘A’), and of the dimensions provided by subsection (3), is an official mark for the purposes of the Act.



- (2) For the purposes of this section, a **foreign country identification mark** is a mark that is required to be applied to plants or plant products that are to be imported into that country, as determined by the relevant importing country authority.

Note: For guidance on foreign country identification marks, see MICoR.

- (3) The dimensions are as follows:
- (a) the diameter of the circle—50 mm;
 - (b) the minimum height of the letters in the word “Australia”—6 mm;
 - (c) the dimensions of the foreign country identification mark—as specified for the mark by the relevant importing country authority.

Note: For guidance on the requirements for the dimensions of a foreign country identification mark, see MICoR.

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8-12 Official mark—tamper-indicative metal strap seal

A seal that:

- (a) is a tamper-indicative metal strap seal that can be secured in a loop by inserting one end of the seal into or through a protected locking mechanism on the other end; and
- (b) complies with ISO 17712:2013 *Freight containers—Mechanical seals*, published by the International Organization for Standardization, as that document exists at the commencement of this instrument; and
- (c) bears the words “Australian Government”; and
- (d) bears a unique number, or a unique combination of letters and numbers, provided to the manufacturer of the seal by the Department;

is an official mark for the purposes of the Act.

8-13 Official mark—bolt seal

A seal that:

- (a) is a high security bolt seal; and
- (b) complies with ISO 17712:2013 *Freight containers—Mechanical seals*, published by the International Organization for Standardization, as that document exists at the commencement of this instrument; and
- (c) bears the words “Australian Government”; and
- (d) bears a unique number, or a unique combination of letters and numbers, provided to the manufacturer of the seal by the Department; and
- (e) is coated with green or blue plastic;

is an official mark for the purposes of the Act.

8-14 Official mark—Australia approved

- (1) A mark of the following design (with the registration number of the registered establishment where operations to prepare the relevant plants or plant products for export were carried out inserted in the space marked ‘A’), and of the dimensions provided by subsection (2), is an official mark for the purposes of the Act.



- (2) The dimensions are as specified in column 2 of the following table. However, the dimensions may be as specified in column 3 of the table for a mark to be applied to a small plant or plant product.

Dimensions—Australia Approved official mark

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

8-15 Official mark—approved for export

- (1) A mark of the following design, and of the dimensions provided by subsection (2), is an official mark for the purposes of the Act.



- (2) The dimensions are as specified in column 2 of the following table. However, the dimensions may be as specified in column 3 of the table for a mark to be applied to a small package or a small tag.

Dimensions—approved for export official mark

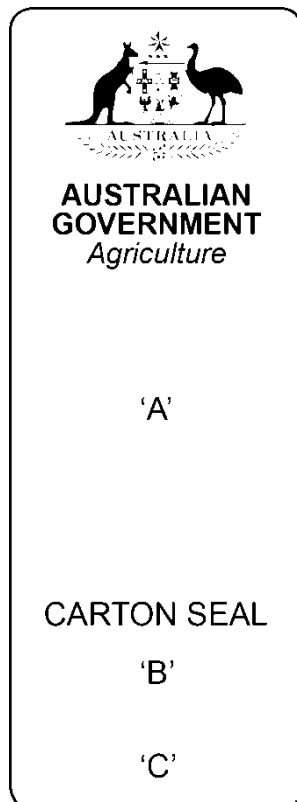
Item	Column 1 Section of mark	Column 2 Normal size mark (mm)	Column 3 Small size mark (mm)
1	Diameter of outer circle	50	28
2	Diameter of inner circle	40	21
3	Minimum height of letters between inner and outer circles	3	2
4	Minimum height of letters in inner circle	4	3

8-16 Official mark—carton seal

- (1) A mark:
 (a) of the following design (but with the substitutions provided by subsection (3)); and

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- (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 provided by subsection (2);
- is an official mark for the purposes of the Act.

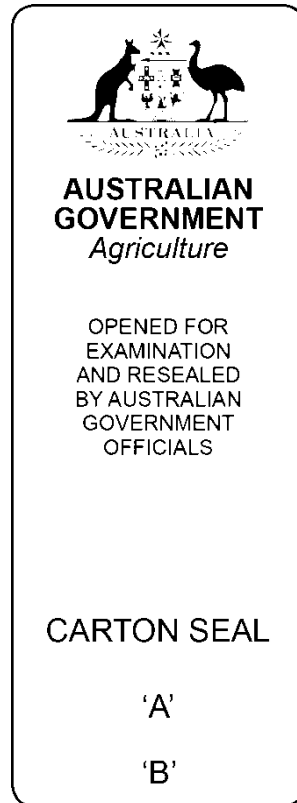


- (2) The dimensions are:
 - (a) width not less than 45 mm, and not more than 75 mm; and
 - (b) height not less than 125 mm, and not more than 160 mm.
- (3) The substitutions in the design of the mark are as follows:
 - (a) the registration number of the registered establishment where operations to prepare the relevant plants or plant products for export were carried out is to be substituted for 'A';
 - (b) a number, or a combination of letters and numbers, associated with the manufacturer of the mark is to be substituted for 'B';
 - (c) a number, or a combination of letters and numbers, that is unique to each mark is to be substituted for 'C'.

8-17 Official mark—carton seal: plants or plant products opened for assessment and resealed

- (1) A mark:
 - (a) of the following design (but with the substitutions provided by subsection (3)); and
 - (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 provided by subsection (2);
is an official mark for the purposes of the Act.



- (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 substitutions in the design of the mark are as follows:
- (a) a number, or a combination of letters and numbers, associated with the manufacturer of the mark is to be substituted for 'A';
 - (b) a number, or a combination of letters and numbers, that is unique to each mark is to be substituted for 'B'.

8-18 Official mark—Australian Government

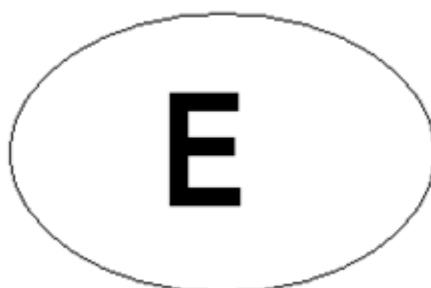
A mark of the following design (but with a number representing the user of the mark substituted for "XXXX") is an official mark for the purposes of the Act.

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8-19 Official mark—European Union

- (1) A mark of the following design, and of the dimensions provided by subsection (2), is an official mark for the purposes of the Act.



- (2) The dimensions are as specified in:
- (a) for a normal size mark—column 2 of the following table; or
 - (b) for a small size mark to be applied to a small item or the end panel of a package—column 3 of the following table; or
 - (c) for a computer-generated mark—column 4 of the following table.

Dimensions—European Union official mark				
Item	Column 1	Column 2	Column 3	Column 4
	Section of mark	Normal size mark (mm)	Small size mark (mm)	Computer-generated mark (mm)
1	Width of mark	65	32	16
2	Height of mark	45	22	11
3	Height of letter “E”	10	3	3

Division 2—General rules relating to official marks

8-20 Purpose of this Division

For the purposes of subsection 255(2) of the Act, this Division makes provision for and in relation to certain matters relating to official marks specified in Division 1 of this Part for plants or plant products that are intended to be exported.

Note: A person may commit an offence or be liable to a civil penalty if the person engages in conduct that contravenes a provision in this Division (see section 258 of the Act). Other provisions in Division 3 of Part 3 of Chapter 8 of the Act provide offences and civil penalty provisions relating to false, misleading or deceptive official marks.

8-21 Interpretation

*When an official mark is **applied** to plants or plant products*

- (1) For the purposes of this instrument, an official mark is **applied** to plants or plant products if the official mark is:
 - (a) applied directly to the plants or plant products, their packaging or any covering containing the plants or plant products; or
 - (b) applied to anything attached to the plants or plant products, their packaging or any covering containing the plants or plant products; or
 - (c) inserted into anything in which the plants or plant products are packaged or any covering containing the plants or plant products.
- (2) For the purposes of this instrument and without limiting subsection (1):
 - (a) a bolt seal is **applied** to plants or plant products if the bolt seal is applied to a unit of cargo handling equipment into which the plants or plant products have been loaded; and
 - (b) the official mark specified in section 8-18 (Australian Government) is **applied** to plants or plant products if the official mark is applied to a government certificate that has been issued in relation to the plants or plant products.

References to particular official marks

- (3) In this Division, a reference to a particular official mark is a reference to the official mark with that description specified in Division 1 of this Part.

8-22 Persons who may manufacture official marks for plants or plant products

A person may manufacture a kind of official mark for plants or plant products only if the Secretary has given the person a written approval to manufacture that kind of official mark.

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8-23 Persons who may possess official marks that have not been applied to plants or plant products

A person may possess a kind of official mark for plants or plant products that has not been applied to any plants or plant products only if:

- (a) the person is permitted by section 8-22 to manufacture official marks of that kind; or
- (b) the person is an authorised officer; or
- (c) the person is an officer or employee of the Department, and the Secretary has given the person a written approval to possess the official mark, and the possession is in accordance with that approval; or
- (d) the possession of the official mark by the person is in accordance with a direction given by an authorised officer; or
- (e) the Secretary has given the person a written approval to possess the official mark at a specified accredited property or registered establishment and in relation to specified plants or plant products, and the possession is in accordance with that approval.

8-24 Persons who may apply official marks to plants or plant products

A person may apply an official mark to plants or plant products only if:

- (a) the person is an authorised officer; or
- (b) the person is an officer or employee of the Department, and the Secretary has given the person a written approval to apply the official mark to the plants or plant products, and the application of the official mark is in accordance with that approval; or
- (c) the person is acting in accordance with a direction given by an authorised officer; or
- (d) the Secretary has given the person a written approval to apply the official mark to the plants or plant products, and the application of the official mark is in accordance with that approval.

8-25 Alteration of and interference with official marks

A person may alter, or interfere with, an official mark (whether or not it has been applied to any plants or plant products) only if the alteration or interference is required or permitted by this Part or the Secretary.

Note: A person may commit an offence or be liable to a civil penalty if the person engages in conduct and the conduct has the result that an official mark applied to certain plants or plant products or documents is altered so as to be false, misleading or deceptive (see sections 261 and 262 of the Act).

8-26 Official marks must be legible and securely applied

An official mark applied to plants or plant products must be:

- (a) legible; and
- (b) securely applied.

8-27 Security of official marks

A person who is in possession of an official mark that has not been applied to any plants or plant products, as permitted by section 8-23, must ensure that the official mark is stored securely.

8-28 Removal or defacement of official marks

Official marks (other than Australia Approved official mark)

- (1) If an official mark (other than an Australia Approved official mark) has been applied to a package in which plants or plant products are packed, the official mark must be removed or defaced if it is no longer intended:
 - (a) to export the plants or plant products; or
 - (b) to export the plants or plant products in that package.

Foreign country identification official marks and European Union official marks

- (2) If a foreign country identification official mark or a European Union official mark has been applied to plants or plant products, the official mark must be removed or defaced if the circumstances in which that mark may be applied to the plants or plant products, as specified by the relevant importing country authority, no longer exist.

Persons who may remove or deface official mark

- (3) If an official mark has been applied to plants or plant products and the official mark is required to be removed or defaced under subsection (1) or (2), the official mark must be removed or defaced by:
 - (a) an authorised officer or a person acting in accordance with a direction given by an authorised officer; or
 - (b) the exporter of the plants or plant products; or
 - (c) if the official mark was applied to the plants or plant products at an accredited property—the manager of the accredited property; or
 - (d) if the official mark was applied to the plants or plant products at a registered establishment—the occupier of the registered establishment; or
 - (e) a person to whom the Secretary has given a written approval to remove or deface the official mark, if the official mark is removed or defaced in accordance with the approval.

Note: A person may commit an offence or be liable to a civil penalty if the person engages in conduct that contravenes a provision in this Division (see section 258 of the Act).

8-29 Records of official marks manufactured

A person who is permitted by section 8-22 to manufacture official marks to be applied to plants or plant products must:

- (a) make a daily written record stating:
 - (i) each kind of official mark manufactured by the person on that day; and
 - (ii) the number of each kind of official mark manufactured by the person on that day; and

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- (b) make a written record stating:
- (i) each day the person sent a consignment of official marks to a person who is permitted by section 8-23 to possess the official marks in the consignment; and
 - (ii) each kind of official mark included in the consignment; and
 - (iii) the means used to transport the consignment.

Note: The person must retain each record made under this section for at least 2 years (see section 11-8).

8-30 Records of official marks applied, removed, defaced, destroyed or returned

- (1) Except as provided by subsection (2), a person who is permitted by section 8-23 to possess a kind of official mark must make a written record of the following:
- (a) official marks of that kind applied to plants or plant products by the person;
 - (b) official marks of that kind removed from plants or plant products, or defaced, by the person;
 - (c) official marks of that kind destroyed by the person;
 - (d) official marks of that kind returned by the person.

Note: The person must retain each record made under this section for at least 2 years (see section 11-8).

- (2) The requirement in subsection (1) does not apply in relation to the Australian Government official mark referred to in section 8-18.

Division 3—Official marking devices

8-31 Purpose of this Division

For the purposes of subsection 257(2) of the Act, this Division makes provision for and in relation to official marking devices that are capable of being used to apply an official mark specified in Division 1 of this Part to plants or plant products that are intended to be exported.

Note: A person may commit an offence or be liable to a civil penalty if the person engages in conduct that contravenes certain provisions in this Division (see section 258 of the Act).

8-32 Persons who may manufacture or possess official marking devices

A person may manufacture or possess an official marking device only if:

- (a) the person is an authorised officer or is acting in accordance with a direction given by an authorised officer; or
- (b) the Secretary has given the person a written approval to manufacture or possess the official marking device, and the manufacture or possession is in accordance with that approval.

8-33 Security of official marking devices

A person who is in possession of an official marking device, as permitted by section 8-32, must ensure that the official marking device is stored securely when it is not being used.

8-34 Damaged official marking devices

If:

- (a) a person is in possession of an official marking device as permitted by section 8-32; and
- (b) the person becomes aware that the official marking device is damaged, worn or otherwise unfit for applying an official mark to plants or plant products;

the person must notify the Secretary, in writing, as soon as practicable after becoming aware of that fact.

8-35 Records of official marking devices manufactured

A person who is permitted by section 8-32 to manufacture official marking devices must:

- (a) make a daily written record stating:
 - (i) each kind of official marking device manufactured by the person on that day; and
 - (ii) the number of each kind of official marking device manufactured by the person on that day; and
 - (iii) the serial number of each official marking device manufactured by the person on that day; and

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- (b) make a written record stating:
 - (i) each day the person sent an official marking device to a person who is permitted by section 8-32 to possess the official marking device; and
 - (ii) the means used to transport each official marking device sent by the person on that day.

Note: A person who is required to make a record under this section must retain the record for at least 2 years (see section 11-9).

8-36 Records of official marking devices used, destroyed or returned

A person who is permitted by section 8-32 to possess an official marking device must make a written record of the following:

- (a) official marking devices used by the person to apply official marks to plants or plant products;
- (b) official marking devices destroyed by the person;
- (c) official marking devices returned by the person.

Note: A person who is required to make a record under this section must retain the record for at least 2 years (see section 11-9).

Chapter 9—Powers and officials

Part 1—Audits

Division 1—General

9-1 References to audit in this Part

In this Part, a reference to an audit is a reference to an audit under Part 1 of Chapter 9 of the Act:

- (a) of export operations carried out in relation to plants or plant products; or
- (b) in relation to the performance of functions or the exercise of powers under the Act in relation to plants or plant products by a person referred to in subparagraph 267(1)(a)(i) or (v) of the Act; or
- (c) in relation to compliance by a person referred to in subparagraph 267(1)(a)(i) of the Act with the conditions applying to the performance of functions or the exercise of powers under the Act by the person in relation to plants or plant products.

9-2 Other circumstances in which audit of export operations may be required

- (1) For the purposes of paragraph 266(1)(g) of the Act, the Secretary may require an audit to be conducted of export operations carried out in relation to prescribed plants or plant products in relation to which an exemption is in force under Part 2 of Chapter 2 of the Act.
- (2) For the purposes of paragraph 266(2)(f) of the Act, an audit of export operations carried out in relation to prescribed plants or plant products in relation to which an exemption is in force under Part 2 of Chapter 2 of the Act must relate to one or more of the following:
 - (a) whether it is appropriate for the exemption to remain in force;
 - (b) whether the conditions (if any) of the exemption are being, have been, or are likely to be complied with;
 - (c) whether the conditions (if any) of the exemption need to be varied under section 58 of the Act.

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Division 2—Conduct of audit etc.

9-3 Purpose of this Division

For the purposes of subsections 270(4) and (5) of the Act, this Division makes provision for and in relation to the following matters:

- (a) the conduct of an audit;
- (b) processes for dealing with any non-compliance with a requirement to which an audit relates;
- (c) audit reports.

9-4 Audit reports

- (1) After an auditor completes an audit, or the audit ends, the auditor must make a written report (an **audit report**) of the audit.
- (2) The audit report must include the following:
 - (a) the name of the auditor;
 - (b) the day the audit commenced and the day the audit was completed or ended;
 - (c) a description of the export operations, or the matters referred to in subsection 267(1) of the Act, to which the audit relates;
 - (d) a description of the nature and scope of the audit.
- (3) The audit report must state:
 - (a) whether, in the auditor's opinion:
 - (i) the audit was satisfactorily completed or the audit was ended before it could be satisfactorily completed; and
 - (ii) the requirements to which the audit relates are being, or have been, complied with; and
 - (b) the reasons for the auditor's opinion.
- (4) If the audit identified that there is, or there has been, non-compliance with one or more requirements to which the audit relates, the audit report must:
 - (a) describe each instance of non-compliance; and
 - (b) state the reasons for the auditor's opinion.
- (5) The audit report may also:
 - (a) include recommendations that any of the following actions be taken:
 - (i) action to address any non-compliance with a requirement to which the audit relates;
 - (ii) action to ensure that any such non-compliance does not recur;
 - (iii) action to address the risk of a potential non-compliance with a requirement to which an audit may relate;
 - (iv) action to assess the effectiveness of an action referred to in subparagraph (i), (ii) or (iii); and
 - (b) identify any risk of a potential non-compliance with a requirement to which an audit may relate.

- (6) Within 10 business days after the audit is completed or ends, the auditor must give a copy of the audit report to the relevant person for the audit.

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

Part 2—Assessments

Division 1—General

9-5 Circumstances in which assessment may be required or permitted

For the purposes of subsection 277(2) of the Act, the Secretary may require or permit an assessment of plants or plant products to be carried out if:

- (a) a notice of intention to export a consignment of, or including, the plants or plant products has been given; or
- (b) a government certificate is in force in relation to the plants or plant products; or
- (c) a person informs an assessor that the person intends to export the plants or plant products and requests an assessment of the plants or plant products to be carried out.

Note 1: The Secretary may also require an assessment of plants or plant products to be carried out if:

- (a) an application has been made for a government certificate in relation to the plants or plant products (see paragraph 68(c) of the Act); or
- (b) in the case of prescribed plants or plant products—an application has been made for an export permit for the plants or plant products, or to vary an export permit for the plants or plant products (see paragraph 241(c) of the Act).

Note 2: For *assessor*, see section 12 of the Act. For an assessment of plants or plant products, an assessor is an authorised officer.

9-6 Relevant person for assessment

For the purposes of paragraph 278(e) of the Act, the *relevant person*:

- (a) for an assessment at a registered establishment of prescribed plants or plant products in relation to which an application for a government certificate or an export permit has not been made is:
 - (i) the occupier of the registered establishment; or
 - (ii) the exporter of the plants or plant products; and
- (b) for an assessment of plants or plant products that is carried out in response to a request referred to in paragraph 9-5(c) of this instrument—the person who requested the assessment.

Division 2—Carrying out assessment etc.

9-7 Purpose of this Division

For the purposes of section 279 of the Act, this Division makes provision for and in relation to the following matters:

- (a) carrying out assessments of plants or plant products;
- (b) the process to be followed after an assessment of plants or plant products has been completed;
- (c) records of assessments of plants or plant products;
- (d) other matters relating to assessments of plants or plant products.

9-8 Assessments of prescribed plants or plant products

An assessment of prescribed plants or plant products must be carried out at an establishment that is registered to carry out export operations in relation to the plants or plant products.

Note: An assessment of non-prescribed plants or plant products may be carried out at any establishment.

9-9 Circumstances when bulk vessel approval or container approval must be provided to assessor

Bulk vessel approval

(1) If:

- (a) an assessment of prescribed plants or plant products that are to be transported in or on a bulk vessel is being carried out; and
- (b) the bulk vessel is present at the assessment;

the relevant person for the assessment must give a bulk vessel approval, covering the cargo spaces of the vessel into or onto which the plants or plant products have been, are being, or are to be loaded, to the assessor.

Note 1: Prescribed plants or plant products must not be loaded into or onto a bulk vessel unless a bulk vessel approval, covering the cargo spaces of the vessel into or onto which the prescribed plants or plant products are to be loaded, is in force for the bulk vessel (see section 4-12).

Note 2: For the *relevant person* for an assessment, see section 278 of the Act and section 9-6 of this instrument.

Container approval

(2) If:

- (a) an assessment of prescribed plants or plant products that are to be transported in a container is being carried out; and
- (b) the container is present at the assessment;

the relevant person for the assessment must give a container approval for the container to the assessor.

Note 1: Prescribed plants or plant products must not be loaded into a container unless a container approval is in force for the container (see section 4-13).

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Note 2: For the *relevant person* for an assessment, see section 278 of the Act and section 9-6 of this instrument.

9-10 Criteria for deciding whether plants or plant products pass assessment

- (1) An assessor may decide that plants or plant products pass an assessment in relation to a matter referred to in subsection 277(3) of the Act if the assessor verifies that matter in relation to the plants or plant products.

Note: The assessor may decide that a validity period for the plants or plant products applies (see subsection 9-12(1)).

- (2) An assessor must not decide that plants or plant products pass an assessment unless:
 - (a) for an assessment of prescribed plants or plant products:
 - (i) the assessment was carried out in accordance with section 9-8; and
 - (ii) the relevant person for the assessment complied with the applicable requirements (if any) in section 9-9; and
 - (b) the flowpath for the plants or plant products has been passed (see subsection (3)); and
 - (c) the assessor reasonably believes that:
 - (i) the plants or plant products contain no pests or contaminants above the applicable tolerance level; and
 - (ii) the integrity of the plants or plant products can be ensured; and
 - (d) for an assessment of prescribed plants or plant products that are packed into packages for export, or that are intended to be packed into packages for export—the packages for export meet the requirements in subsections 4-13(2) to (5).

Flowpath

- (3) A flowpath for plants or plant products must not be passed unless an assessor reasonably believes that:
 - (a) the flowpath contains no pests or contaminants above the applicable tolerance level; and
 - (b) the integrity of the plants or plant products stored or carried on the flowpath can be ensured.

Note: See section 9-15 for applicable tolerance levels for pests and contaminants.

9-11 Reassessment after failed assessment

- (1) If plants or plant products fail an assessment (the *failed assessment*), the plants or plant products must not be presented for another assessment (a *reassessment*) unless the reason for the failed assessment has been rectified.
- (2) If the reason for the failed assessment was because pests or contaminants above the applicable tolerance level were detected on the plants or plant products or in or on the flowpath for the plants or plant products, the relevant person for the failed assessment must ensure that the plants or plant products or the flowpath (depending on where the pests or contaminants were detected) is treated using a method that:

- (a) is effective to reduce the pests or contaminants to no higher than the applicable tolerance level; and
 - (b) meets importing country requirements relating to the plants or plant products.
- (3) If the plants or plant products are required to be treated under subsection (2) and the exporter of the plants or plant products is not the relevant person for the failed assessment, the exporter of the plants or plant products must agree to the method of treatment to be used.

Note: The relevant person for the failed assessment may be the occupier of the registered establishment where operations to prepare the plants or plant products for export were carried out.

9-12 Validity period for plants or plant products

- (1) If plants or plant products pass an assessment, an assessor may, if the assessor considers it appropriate to do so, having regard to either or both of the following:
- (a) the kind of plants or plant products and the importing country;
 - (b) the export operations carried out in relation to the kind of plants or plant products;
- decide that a validity period for the plants or plant products applies.
- (2) Subject to subsection (4), the *validity period* for the plants or plant products that applies is:
- (a) 28 days starting on the day the plants or plant products passed the assessment; or
 - (b) if the Secretary has approved, under subsection (3), a different validity period for the plants or plant products—the approved period; or
 - (c) if the validity period for the plants or plant products is extended under section 9-13—the extended period.

Note: An export permit for prescribed plants or plant products for which a validity period applies remains in force until the end of the validity period (see section 7-2).

Secretary may approve validity period in particular cases

- (3) The Secretary may approve, in writing, a validity period for either or both of the following:
- (a) a kind of plants or plant products for export to an importing country;
 - (b) a kind of plants or plant products in relation to which a specified kind of export operations have been carried out.

Validity period ends if plants or plant products are required to be reassessed

- (4) The validity period for plants or plant products ends if:
- (a) the Secretary requires another assessment (a *reassessment*) of the plants or plant products to be carried out; and
 - (b) the assessor decides that a new validity period for the plants or plant products applies.

Note: If a new validity period for the plants or plant products does not apply, the previous validity period for the plants or plant products continues to apply.

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9-13 Relevant person for assessment may apply to extend validity period for plants or plant products

- (1) This section applies in relation to an assessment of plants or plant products if:
 - (a) a validity period for the plants or plant products applies; and
 - (b) the validity period has not ended.

Note: The validity period must be stated in the assessment record (see paragraph 9-14(2)(b)).

- (2) The relevant person for the assessment may apply to the Secretary to extend the validity period.

Note: For the *relevant person* for an assessment, see section 278 of the Act and section 9-6 of this instrument.

- (3) An application under subsection (2) must:
 - (a) be in writing; and
 - (b) be made no later than 1 business day before the validity period is to end.
- (4) On receiving an application under subsection (2), the Secretary may extend, or further extend, the validity period.
- (5) If the Secretary extends the validity period, the Secretary must give the relevant person for the assessment a written notice stating the new validity period.
- (6) If the Secretary decides not to extend the validity period, the Secretary must give the relevant person for the assessment written notice of the decision. The notice must include the reasons for the decision.

9-14 Record of assessment

- (1) As soon as practicable after an assessor completes an assessment of plants or plant products, the assessor must make a written record (an *assessment record*) of the assessment.
- (2) The assessment record must:
 - (a) state whether the plants or plant products passed or failed the assessment; and
 - (b) if the plants or plant products passed the assessment and a validity period for the plants or plant products applies—state the validity period; and
 - (c) if the Secretary has approved, in writing, a form for the assessment record:
 - (i) include any other information required by the form; and
 - (ii) be accompanied by any documents required by the form; and
 - (d) if the Secretary has approved, in writing, a manner for giving the assessment record—be given in the approved manner.

9-15 Applicable tolerance levels for pests and contaminants

Pests

- (1) The applicable tolerance level for a kind of pest in relation to a kind of plant or plant product for export to an importing country is:
 - (a) nil; or

- (b) if the Secretary has approved, under subsection 9-16(1), a tolerance level for that kind of pest in relation to that kind of plant or plant product and that importing country—the approved tolerance level.

Note: For *pest*, see section 1-6.

Contaminants that are animal carcasses or animal waste

- (2) The applicable tolerance level for animal carcasses or animal waste in relation to a kind of plant or plant product for export to an importing country is:
- (a) nil; or
- (b) if the Secretary has approved, under subsection 9-16(2), a tolerance level for animal carcasses or animal waste in relation to that kind of plant or plant product and that importing country—the approved tolerance level.

Contaminants other than animal carcasses or animal waste

- (3) The applicable tolerance level (if any) for a kind of contaminant (other than animal carcasses or animal waste) in relation to a kind of plant or plant product for export to an importing country is the tolerance level approved by the Secretary under subsection 9-16(3) for that kind of contaminant in relation to that kind of plant or plant product and that importing country.

Note: For *contaminant*, see section 1-6.

9-16 Approval of higher tolerance levels for pests and contaminants

Pests

- (1) The Secretary may approve, in writing, a tolerance level higher than nil for a kind of pest in relation to a kind of plant or plant product for export to an importing country if:
- (a) the pest is not injurious to that kind of plant or plant product; or
- (b) the pest is not a quarantine pest for the importing country; or
- (c) the pest is a quarantine pest for the importing country and the higher tolerance level is consistent with importing country requirements.

Note: For *pest*, see section 1-6.

Contaminants that are animal carcasses or animal waste

- (2) The Secretary may approve, in writing, a tolerance level higher than nil for animal carcasses or animal waste (or both) in relation to a kind of plant or plant product for export to an importing country if the higher tolerance level is consistent with the importing country requirements.

Contaminants other than animal carcasses or animal waste

- (3) If the Secretary is satisfied that a kind of contaminant (other than animal carcasses or animal waste) could affect the integrity of a kind of plant or plant product for export to an importing country, the Secretary may approve, in writing, the tolerance level for that kind of contaminant in relation to that kind of plant or plant product and that importing country.

Note: For *contaminant*, see section 1-6.

Part 3—Powers of the Secretary

9-17 Decisions that may be made by operation of computer program

Kinds of decisions

- (1) For the purposes of paragraph 286(2)(a) of the Act, the following decisions may be made by the operation of a computer program (an **authorised computer program**) under an arrangement made under subsection 286(1) of the Act:
 - (a) a decision under paragraph 67(1)(a) of the Act to issue a government certificate in relation to plants or plant products;
 - (b) a decision under paragraph 225(1)(a) of the Act to issue an export permit for prescribed plants or plant products.

Persons who may use computer program

- (2) For the purposes of paragraph 286(2)(b) of the Act, the following persons may use an authorised computer program for a decision referred to in subsection (1):
 - (a) the manager of an accredited property where export operations in relation to plants or plant products are carried out;
 - (b) the occupier of a registered establishment where operations to prepare plants or plant products for export are carried out;
 - (c) a person who manages or controls operations at a registered establishment referred to in paragraph (b) of this subsection;
 - (d) an exporter of plants or plant products;
 - (e) an agent of the exporter of plants or plant products;
 - (f) an authorised officer;
 - (g) an APS employee in the Department;
 - (h) a person performing services for the Department under a contract;if the Secretary has given the person a unique identifier to enable the person to access the computer program.

Conditions of use of computer program

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

9-18 Functions and powers that must not be subdelegated

For the purposes of paragraph 288(4)(b) of the Act, the following functions and powers of the Secretary must not be subdelegated under subsection 288(2) of the Act:

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- (a) the power under paragraph 9-14(2)(c) to approve a form for an assessment record;
- (b) the power under paragraph 9-14(2)(d) to approve a manner for giving an assessment record;
- (c) the power under paragraph 9-22(3)(b) to consider whether an anchorage is suitable for an inspection of a bulk vessel;
- (d) the power under paragraph 9-24(2)(b) to approve a form for a bulk vessel inspection record;
- (e) the power under subsection 9-24(5) to approve a manner for giving a bulk vessel inspection record;
- (f) the power under paragraph 9-33(2)(b) to approve a form for a container inspection record;
- (g) the power under subsection 9-33(5) to approve a manner for giving a container inspection record.

Part 4—Authorised officers

9-19 Third party authorised officers

Other requirements that must be met for person to be a third party authorised officer

- (1) For the purposes of paragraph 291(7)(c) of the Act, it is a requirement for a person to be authorised to be a third party authorised officer for the purpose of performing functions and exercising powers in relation to plants or plant products that the person be a fit and proper person (having regard to the matters referred to in section 372 of the Act).

Fit and proper person test

- (2) For the purposes of paragraph 372(1)(d) of the Act, subsection (1) of this section is prescribed.
- (3) For the purposes of subparagraph 372(2)(e)(v) of the Act, subsection 291(3) of the Act (application by a person to be a third party authorised officer for the purpose of performing functions and exercising powers in relation to plants or plant products) is prescribed.
- (4) For the purposes of paragraph 372(4)(b) of the Act, a person who is a third party authorised officer who may perform functions and exercise powers in relation to plants or plant products is prescribed.

Notification of conviction of offence or order to pay pecuniary penalty

- (5) For the purposes of subparagraph 374(1)(g) of the Act, a third party authorised officer who may perform functions and exercise powers in relation to plants or plant products is prescribed.

9-20 Functions and powers of authorised officers—bulk vessel approvals and container approvals

- (1) For the purposes of section 300 of the Act, Part 5 of this Chapter includes provisions that confer functions and powers on authorised officers in relation to bulk vessel approvals.
- (2) For the purposes of section 300 of the Act, Part 6 of this Chapter includes provisions that confer functions and powers on authorised officers in relation to container approvals.

Note: An authorised officer may only perform functions or exercise powers conferred on an authorised officer by the Act that are specified in the authorised officer's instrument of authorisation (see subsection 301(1) of the Act).

9-21 Directions to deal with non-compliance with the Act etc.

For the purposes of item 8 of the table in subsection 305(1) of the Act:

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- (a) each person (a *relevant person*) referred to in column 1 of an item in the following table is prescribed; and
- (b) each ground referred to in column 2 of that item is prescribed in relation to the relevant person prescribed by that item.

Directions to deal with non-compliance with the requirements of the Act etc.

Item	Column 1 Relevant person	Column 2 Grounds for giving direction
1	The applicant for a government certificate in relation to plants or plant products	Any of the following: <ul style="list-style-type: none"> (a) some or all of the plants or plant products do not comply, or are not likely to comply, with a requirement of the Act that applies in relation to the plants or plant products; (b) some or all of the plants or plant products do not meet, or are not likely to meet, an importing country requirement relating to the plants or plant products; (c) a matter to be stated in the government certificate in relation to the plants or plant products is not true and correct
2	The holder of a government certificate in relation to plants or plant products	Any of the following: <ul style="list-style-type: none"> (a) some or all of the plants or plant products do not comply, or are not likely to comply, with a requirement of the Act that applies in relation to the plants or plant products; (b) some or all of the plants or plant products do not meet, or are not likely to meet, an importing country requirement relating to the plants or plant products; (c) a matter to be stated in the government certificate in relation to the plants or plant products is not true and correct

Part 5—Bulk vessel approvals

9-22 Authorised officer may approve bulk vessel

- (1) An authorised officer may approve a bulk vessel.

Note 1: An authorised officer may only perform functions or exercise powers conferred on an authorised officer by the Act that are specified in the authorised officer's instrument of authorisation (see subsection 301(1) of the Act).

Note 2: An authorised officer must not approve a bulk vessel in certain circumstances (see section 9-23).

Bulk vessel inspection

- (2) For the purpose of deciding whether to approve a bulk vessel, an authorised officer must inspect:
- (a) each cargo space of the vessel into or onto which prescribed plants or plant products are to be loaded; and
 - (b) each other area of the vessel that could contain pests or contaminants that could affect the integrity of prescribed plants or plant products loaded into or onto the vessel; and
 - (c) materials and other cargo in or on the vessel, or to be loaded into or onto the vessel, that could:
 - (i) contain pests or contaminants; or
 - (ii) affect the integrity of prescribed plants or plant products loaded into or onto the vessel.
- (3) An inspection may be carried out at:
- (a) any wharf; or
 - (b) any other anchorage that the Secretary considers is suitable for the inspection.
- (4) An authorised officer need not:
- (a) inspect wet stores or refrigerated or cold stores in or on the bulk vessel unless an authorised officer reasonably believes that these areas may have become infested by pests; or
 - (b) inspect areas in or on the vessel where stores are handled or food is prepared unless substantial pest infestation, or pests suspected to be *Trogoderma* spp., were detected in the course of inspecting dry stores in or on the vessel.

Other powers that may be exercised for the purpose of deciding whether to approve bulk vessel

- (5) In addition to carrying out an inspection under subsection (2), an authorised officer may do any other thing an authorised officer considers necessary for the purpose of deciding whether to approve the bulk vessel, including:
- (a) requesting a person who an authorised officer reasonably believes has relevant information or documents to answer questions, provide information in writing or produce the documents; and

- (b) requesting a person who an authorised officer considers may be able to provide facilities or assistance to an authorised officer in carrying out an inspection, to provide those facilities or that assistance.

9-23 Requirements for approval of bulk vessel

General

- (1) An authorised officer must not approve a bulk vessel unless:
 - (a) an authorised officer is reasonably satisfied that the following requirements are met in relation to the cargo spaces of the vessel into or onto which prescribed plants or plant products are intended to be loaded:
 - (i) there are no pests in or on the cargo spaces that are likely to infest the plants or plant products;
 - (ii) there are no contaminants or other material in or on the cargo spaces that could contaminate the plants or plant products, or that are likely to harbour pests that could infest the plants or plant products;
 - (iii) the cargo spaces are not in a condition that could affect the integrity of the plants or plant products; and
 - (b) an authorised officer is reasonably satisfied that other areas of the vessel are not in a condition that:
 - (i) is likely to result in the infestation or contamination of any plants or plant products in or on the vessel; or
 - (ii) could affect the integrity of prescribed plants or plant products in or on the vessel; and
 - (c) if the bulk vessel is intended to be used to transport prescribed plants or plant products to which subsection (2) applies—a marine surveyor's certificate is in force for the vessel that covers the cargo spaces of the vessel into or onto which the plants or plant products are intended to be loaded.

Note 1: For *marine surveyor's certificate*, see section 1-6.

Note 2: Section 11-16 sets out the requirements for issuing a marine surveyor's certificate for a bulk vessel.

Note 3: Examples of conditions that could result in infestation or contamination of plants or plant products in or on a vessel include a damaged hold or damaged hatch cover for a hold.

Prescribed plants and plant products for which marine surveyor's certificate is required

- (2) This subsection applies to the following prescribed plants or plant products:
 - (a) prescribed grain;
 - (b) prescribed plants or plant products for consumption;
 - (c) cereal grains, pulses, oil seeds or nuts:
 - (i) that are not prescribed grain; and
 - (ii) in relation to which the importing country requires a phytosanitary certificate or a phytosanitary certificate for re-export.

Note: For *prescribed grain* and *prescribed plants or plant products for consumption*, see section 1-6.

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Trogoderma spp.

- (3) An authorised officer must not approve a bulk vessel if *Trogoderma spp.* is detected in or on the vessel.
- (4) If an authorised officer detects *Trogoderma spp.* in or on a bulk vessel, the authorised officer must, as soon as possible, notify:
 - (a) the Secretary; and
 - (b) a person responsible for the bulk vessel.

9-24 Bulk vessel inspection record

- (1) As soon as practicable after an authorised officer completes an inspection of a bulk vessel, the authorised officer must make a written record (an **inspection record**) of the inspection.
- (2) The inspection record must:
 - (a) state whether the bulk vessel is approved or not approved; and
 - (b) if the Secretary has approved, in writing, a form for the inspection record:
 - (i) include any other information required by the form; and
 - (ii) be accompanied by any documents required by the form.
- (3) If the bulk vessel is approved, the inspection record must also specify:
 - (a) the cargo spaces of the vessel that are covered by the approval; and
 - (b) the kinds of prescribed plants or plant products for which the bulk vessel is approved.
- (4) If the bulk vessel is not approved, the inspection record must set out the reasons for the decision not to approve the bulk vessel.
- (5) If the Secretary has approved, in writing, a manner for giving the inspection record, the inspection record must be given in the approved manner.

9-25 Period of effect of bulk vessel approval

A bulk vessel approval:

- (a) takes effect on the day the vessel is approved; and
- (b) remains in force (unless it is revoked earlier under section 9-29):
 - (i) for 28 days; or
 - (ii) if that period is extended under subsection 9-26(3)—for the extended period.

9-26 Extension of period of effect of bulk vessel approval

- (1) A person responsible for a bulk vessel for which a bulk vessel approval is in force may apply to the Secretary, in writing, to extend the period of effect of the approval for a specified period.
- (2) An application under subsection (1) must be made no later than 1 business day before the end of the period of effect of the bulk vessel approval.

- (3) If the Secretary receives an application under subsection (1), the Secretary may extend the period of effect of the bulk vessel approval for a period of whatever length the Secretary considers appropriate.
- (4) The Secretary may extend the period of effect of a bulk vessel approval more than once.

Notice of decision

- (5) If the Secretary extends the period of effect of a bulk vessel approval, the Secretary must give the applicant for the extension a written notice stating the extended period of effect of the approval.
- (6) If the Secretary decides not to extend the period of effect of a bulk vessel approval, the Secretary must notify the applicant for the extension, in writing, of the decision. The notice must include the reasons for the decision.

9-27 Suspension of bulk vessel approval

Grounds for suspension

- (1) The Secretary may suspend a bulk vessel approval if:
 - (a) the Secretary reasonably believes that a marine surveyor's certificate for the vessel:
 - (i) was not issued by a qualified marine surveyor; or
 - (ii) was obtained fraudulently; or
 - (b) the Secretary reasonably believes that the requirements in paragraph 9-23(1)(a) or (b) are not continuing to be met in relation to the vessel; or
 - (c) *Trogoderma* spp. is detected in or on the vessel.
- (2) For the purposes of deciding whether to suspend a bulk vessel approval, the Secretary may do any of the following:
 - (a) carry out an inspection of the bulk vessel;
 - (b) request a person who the Secretary reasonably believes has information or documents that are relevant to the Secretary's decision, to answer questions, provide information in writing or produce the documents;
 - (c) request a person who the Secretary considers may be able to provide facilities or assistance to the Secretary in carrying out an inspection of the vessel, to provide those facilities or that assistance.

Notice of suspension

- (3) If the Secretary suspends a bulk vessel approval, the Secretary must, as soon as practicable after suspending the approval, notify the following persons of the suspension and the reasons for the suspension:
 - (a) a person responsible for the bulk vessel;
 - (b) if the bulk vessel is at a registered establishment and the occupier of the establishment, or another person who manages or controls export operations at the establishment, is not a person responsible for the bulk

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vessel—the occupier of the establishment or another person who manages or controls export operations at the establishment.

- (4) If the Secretary notifies a person orally under subsection (3), the Secretary must, as soon as practicable after notifying the person, also notify the person in writing.

Period of effect of suspension

- (5) A suspension of a bulk vessel approval:
- (a) takes effect when notification of the suspension is given under subsection (3); and
 - (b) remains in effect unless:
 - (i) it is revoked under section 9-28; or
 - (ii) the bulk vessel approval is revoked under section 9-29.

Suspension by authorised officer

- (6) If, as delegate of the Secretary, an authorised officer suspends a bulk vessel approval under subsection (1), the authorised officer must, as soon as practicable after suspending the approval and in addition to the requirement in subsection (3), give written notice of the suspension to the Secretary.

9-28 Revocation of suspension of bulk vessel approval

- (1) If:
- (a) a bulk vessel approval is suspended under subsection 9-27(1); and
 - (b) the Secretary is satisfied there is no reason why the suspension should not be revoked;
- the Secretary may revoke the suspension by written notice to:
- (c) a person responsible for the bulk vessel; and
 - (d) if the bulk vessel is at a registered establishment and the occupier of the establishment, or another person who manages or controls export operations at the establishment, is not a person responsible for the bulk vessel—the occupier of the establishment or another person who manages or controls export operations at the establishment.
- (2) For the purposes of deciding whether to revoke the suspension of a bulk vessel approval, the Secretary may do any of the following:
- (a) carry out an inspection of the bulk vessel;
 - (b) request a person who the Secretary reasonably believes has information or documents that are relevant to the Secretary's decision, to answer questions, provide information in writing or produce the documents;
 - (c) request a person who the Secretary considers may be able to provide facilities or assistance to the Secretary in carrying out an inspection of the vessel, to provide those facilities or that assistance.

Revocation of suspension by authorised officer

- (3) If, as delegate of the Secretary, an authorised officer revokes the suspension of a bulk vessel approval under subsection (1), the authorised officer must, as soon as

practicable after revoking the suspension and in addition to the requirement in subsection (1), give written notice of the revocation to the Secretary.

9-29 Revocation of bulk vessel approval

Grounds for revocation

- (1) The Secretary may revoke a bulk vessel approval if:
 - (a) a person responsible for the bulk vessel fails to provide facilities or assistance to the Secretary for the purposes of an inspection of the vessel; or
 - (b) the Secretary reasonably believes that a marine surveyor's certificate for the vessel:
 - (i) was not issued by a qualified marine surveyor; or
 - (ii) was obtained fraudulently; or
 - (c) the Secretary reasonably believes that the requirements in paragraph 9-23(1)(a) or (b) are not continuing to be met in relation to the vessel; or
 - (d) *Trogoderma* spp. is detected in or on the vessel.
- (2) For the purposes of deciding whether to revoke a bulk vessel approval, the Secretary may do any of the following:
 - (a) carry out an inspection of the bulk vessel;
 - (b) request a person who the Secretary reasonably believes has information or documents that are relevant to the Secretary's decision, to answer questions, provide information in writing or produce the documents;
 - (c) request a person who the Secretary considers may be able to provide facilities or assistance to the Secretary in carrying out an inspection of the vessel, to provide those facilities or that assistance.

Notice of revocation

- (3) If the Secretary revokes a bulk vessel approval, the Secretary must, as soon as practicable after revoking the approval, give written notice of the revocation to:
 - (a) a person responsible for the bulk vessel; and
 - (b) if the bulk vessel is at a registered establishment and the occupier of the establishment, or another person who manages or controls export operations at the establishment, is not a person responsible for the bulk vessel—the occupier of the establishment or another person who manages or controls export operations at the establishment.
- (4) A notice revoking a bulk vessel approval must state:
 - (a) the reasons for the revocation; and
 - (b) the date the revocation is to take effect.

Revocation by authorised officer

- (5) If, as delegate of the Secretary, an authorised officer revokes a bulk vessel approval under subsection (1), the authorised officer must, as soon as practicable after revoking the approval and in addition to the requirement in subsection (3), give written notice of the revocation to the Secretary.

Part 6—Container approvals

9-30 Authorised officer may approve container

- (1) An authorised officer may approve a container.

Note 1: An authorised officer may only perform functions or exercise powers conferred on an authorised officer by the Act that are specified in the authorised officer's instrument of authorisation (see subsection 301(1) of the Act).

Note 2: An authorised officer must not approve a container in certain circumstances (see section 9-31).

Container inspection

- (2) For the purpose of deciding whether to approve a container, an authorised officer must inspect the container.
- (3) An inspection may be carried out at any place where there are adequate facilities to carry out the inspection.

Other powers that may be exercised for the purpose of deciding whether to approve container

- (4) In addition to inspecting the container, an authorised officer may do any other thing the authorised officers considers necessary for the purpose of deciding whether to approve the container, including:
- (a) requesting a person who an authorised officer reasonably believes has relevant information or documents to answer questions, provide information in writing or produce the documents; and
 - (b) requesting a person who an authorised officer considers may be able to provide facilities or assistance to the authorised officer in carrying out an inspection to provide those facilities or that assistance.

Note: Examples of assistance include moving and lifting the container, opening and closing the container, and providing ladders or any other equipment that is necessary to carry out the inspection.

9-31 Requirements for approval of container

Containers for prescribed grain etc.

- (1) An authorised officer must not approve a container that is intended to be loaded with prescribed plants or plant products to which subsection (2) applies unless an authorised officer is reasonably satisfied that the following requirements are met:
- (a) there are no pests in or on the container that are likely to infest the plants or plant products;
 - (b) there are no contaminants or other material in or on the container that could contaminate the plants or plant products, or that are likely to harbour pests that could infest the plants or plant products;
 - (c) the container is not in a condition that could affect the integrity of the plants or plant products.

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Note: Examples of conditions that could affect the integrity of the plants or plant products include a hole in the container and damaged container seals on the container doors.

- (2) This subsection applies to the following prescribed plants or plant products:
- (a) prescribed grain;
 - (b) prescribed plants or plant products for consumption;
 - (c) cereal grains, pulses, oil seeds or nuts:
 - (i) that are not prescribed grain; and
 - (ii) in relation to which the importing country requires a phytosanitary certificate or a phytosanitary certificate for re-export.

Note: For *prescribed grain* and *prescribed plants or plant products for consumption*, see section 1-6.

Containers not for prescribed grain etc.

- (3) An authorised officer must not approve a container that is intended to be loaded with prescribed plants or plant products (other than prescribed plants or plant products to which subsection (2) applies) unless an authorised officer is reasonably satisfied that the following requirements are met:
- (a) there are no pests in or on the container that are likely to infest the plants or plant products;
 - (b) there are no residues of plants or plant products in or on the container that are likely to harbour pests that could infest the plants or plant products;
 - (c) the container is not in a condition that could result in infestation of the plants or plant products.

Note: Examples of conditions that could result in infestation of the plants or plant products include a hole in the container and damaged container seals on the container doors.

Trogoderma spp.

- (4) An authorised officer must not approve a container if *Trogoderma spp.* is detected in or on the container.
- (5) If *Trogoderma spp.* is detected in or on a container, an authorised officer must, as soon as possible, notify:
- (a) the Secretary; and
 - (b) a person responsible for the container.

9-32 Certain approved containers must be sealed with tamper evident seal

If an authorised officer approves a container and it is not intended to load the container immediately after the container has been inspected, an authorised officer must seal the container with a tamper evident seal.

9-33 Container inspection record

- (1) As soon as practicable after an authorised officer completes an inspection of a container, the authorised officer must make a written record (an *inspection record*) of the inspection.
- (2) The inspection record must:

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- (a) state whether the container is approved or not approved; and
- (b) if the Secretary has approved, in writing, a form for the inspection record:
 - (i) include any other information required by the form; and
 - (ii) be accompanied by any documents required by the form.
- (3) If the container is approved, the inspection record must also specify the kinds of plants or plant products for which the container is approved.
- (4) If the container is not approved, the inspection record must set out the reasons for the decision not to approve the container.
- (5) If the Secretary has approved, in writing, a manner for giving the inspection record, the inspection record must be given in the approved manner.

9-34 Period of effect of container approval

- (1) A container approval:
 - (a) takes effect on the day the container is approved; and
 - (b) remains in force (unless it is revoked earlier under section 9-36):
 - (i) for 90 days; or
 - (ii) if that period is extended under subsection 9-35(3)—for the extended period.
- (2) Despite paragraph (1)(b), a container approval ceases to be in force when loading of plants or plant products into the container has been completed.

9-35 Extension of period of effect of container approval

- (1) A person responsible for a container for which a container approval is in force may apply to the Secretary, in writing, to extend the period of effect of the approval for a specified period.
- (2) An application under subsection (1) must be made no later than 1 business day before the end of the period of effect of the container approval.
- (3) If the Secretary receives an application under subsection (1), the Secretary may extend the period of effect of the container approval for a period of whatever length the Secretary considers appropriate.
- (4) The Secretary may extend the period of effect of a container approval more than once.

Notice of decision

- (5) If the Secretary extends the period of effect of a container approval, the Secretary must give the applicant for the extension a written notice stating the extended period of effect of the approval.
- (6) If the Secretary decides not to extend the period of effect of a container approval, the Secretary must notify the applicant for the extension, in writing, of the decision. The notice must include the reasons for the decision.

9-36 Revocation of container approval

Grounds for revocation

- (1) The Secretary may revoke a container approval if:
 - (a) the Secretary reasonably believes that the requirements in subsection 9-31(1) or (3) (as applicable) are not continuing to be met in relation to the container; or
 - (b) *Trogoderma* spp. is detected in or on the container.
- (2) For the purposes of deciding whether to revoke a container approval, the Secretary may do any of the following:
 - (a) carry out an inspection of the container;
 - (b) request a person who the Secretary reasonably believes has information or documents that are relevant to the Secretary's decision, to answer questions, provide information in writing or produce the documents;
 - (c) request a person who the Secretary considers may be able to provide facilities or assistance to the Secretary in carrying out an inspection of the container, to provide those facilities or that assistance.

Notice of revocation

- (3) If the Secretary revokes a container approval, the Secretary must, as soon as practicable after revoking the approval, give written notice of the revocation to:
 - (a) a person responsible for the container; and
 - (b) if the container is at a registered establishment and the occupier of the establishment, or another person who manages or controls export operations at the establishment, is not a person responsible for the container—the occupier of the establishment or another person who manages or controls export operations at the establishment.
- (4) A notice revoking a container approval must state:
 - (a) the reasons for the revocation; and
 - (b) the date the revocation is to take effect.

Revocation by authorised officer

- (5) If, as delegate of the Secretary, an authorised officer revokes a container approval under subsection (1), the authorised officer must, as soon as practicable after revoking the approval and in addition to the requirement in subsection (3), give written notice of the revocation to the Secretary.

Chapter 10—Compliance and enforcement

10-1 Samples taken in exercising monitoring or investigation powers

- (1) This section applies if a sample is taken as permitted by paragraph 327(2)(a) of the Act (additional monitoring power) or subsection 330(2) of the Act (additional investigation power).
- (2) The sample must be:
 - (a) identified with a mark or a tag; and
 - (b) kept under conditions that are unlikely to affect the result of any testing or analysis of the sample; and
 - (c) kept in the custody or control of an authorised officer until whichever of the following first occurs:
 - (i) the sample is given to an analyst appointed under section 413 of the Act;
 - (ii) the sample is destroyed during testing or analysis in accordance with section 412 of the Act;
 - (iii) the sample is otherwise disposed of.

10-2 Dealing with things seized in exercising investigation powers

If a thing has been seized at premises that have been entered under an investigation warrant or under subsection 347(1) of the Act, the thing must be:

- (a) identified with a mark or a tag; and
- (b) kept in the custody or control of an authorised officer until whichever of the following first occurs:
 - (i) the thing is given to an analyst appointed under section 413 of the Act;
 - (ii) the thing is destroyed during testing or analysis in accordance with section 412 of the Act;
 - (iii) the thing is forfeited in accordance with subsection 416(1) of the Act;
 - (iv) the thing is destroyed or otherwise disposed of in accordance with section 418 of the Act;
 - (v) the thing is returned in accordance with subsection 66(4) of the Regulatory Powers Act;
 - (vi) the thing is disposed of in accordance with section 68 of the Regulatory Powers Act.

Note: Subsection 347(1) of the Act provides for entry, in certain circumstances, to premises that are, or that form part of, an accredited property or a registered establishment.

Chapter 11—Miscellaneous

Part 1—Records

11-1 Purpose of this Part

For the purposes of subsections 408(1) and (2) of the Act, this Part makes provision for and in relation to the retention of records in relation to plants or plant products.

Note: A person may commit an offence of strict liability if the person is required to retain a record in accordance with a provision of this Part and the person fails to comply with the requirement (see subsection 408(3) of the Act).

11-2 General requirements for records

- (1) A record that is required to be retained under this Part in relation to plants or plant products must be:
 - (a) in English; and
 - (b) if the record was required to be in another language to meet importing country requirements—in that other language; and
 - (c) dated; and
 - (d) accurate, legible and able to be audited.
- (2) If a person is required to retain a document under this Part, the person is taken to have complied with the requirement if:
 - (a) the person is required, under a law of the Commonwealth or a State or Territory or in accordance with ordinary commercial practice, to give the document to another person; and
 - (b) the person gives the document to the other person as required; and
 - (c) the person retains a copy of the document.

11-3 Government certificates must be retained in secure place

- (1) A person to whom a government certificate in relation to plants or plant products is issued under the Act must retain the certificate in a secure place when it is not being used.

Note: A government certificate may be a phytosanitary certificate or a phytosanitary certificate for re-export.

- (2) Subsection (1) does not apply in relation to a government certificate that was issued by electronic means.

11-4 Export permits must be retained in secure place

- (1) A person to whom an export permit for prescribed plants or plant products is issued under the Act must retain the export permit in a secure place when it is not being used.

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- (2) Subsection (1) does not apply in relation to an export permit that was issued by electronic means.

11-5 Records to be retained by exporter etc.

Records relating to prescribed plants or plant products

- (1) An exporter of prescribed plants or plant products must retain the following records:
- (a) each application by the exporter for a government certificate in relation to prescribed plants or plant products;
 - (b) each application by the exporter for an export permit for prescribed plants or plant products;
 - (c) each other document:
 - (i) that is made by the exporter or that comes into the exporter's possession; and
 - (ii) that is relevant to showing whether the exporter has complied, or is complying, with the applicable requirements of the Act in relation to the export of prescribed plants or plant products.
- (2) The exporter must retain each record referred to in subsection (1) for at least 2 years starting on the day the record is made by the exporter or comes into the exporter's possession (as the case may be).

Records relating to non-prescribed plants or plant products

- (3) A person to whom a phytosanitary certificate, or a phytosanitary certificate for re-export, has been issued in relation to non-prescribed plants or plant products must retain the following records:
- (a) the application made by the person for the phytosanitary certificate or phytosanitary certificate for re-export;
 - (b) each other document:
 - (i) that is made by the person or that comes into the person's possession; and
 - (ii) that is relevant to showing whether the person has complied, or is complying, with the applicable requirements of the Act in relation to the non-prescribed plants or plant products in relation to which the phytosanitary certificate, or a phytosanitary certificate for re-export, was issued.
- (4) The person must retain each record referred to in subsection (3) for at least 2 years starting on the day the record is made by the person or comes into the person's possession (as the case may be).

Exception for certain records

- (5) This section does not apply in relation to a record referred to in paragraph (1)(a) or (b) or (3)(a) that has been entered into an electronic system operated by the Department for the purposes of the Act.

11-6 Records to be retained by manager of accredited property

- (1) The manager of a property that is accredited for a kind of export operations in relation to a kind of prescribed plants or plant products must retain each document:
 - (a) that is made by the manager or that comes into the manager's possession;
and
 - (b) that is relevant to showing whether the manager has complied, or is complying, with the applicable requirements of the Act (including whether the conditions of the accreditation of the property have been, and are being, complied with).
- (2) The manager of the accredited property must retain each record referred to in subsection (1) for at least 2 years starting on the day the record is made by the manager or comes into the manager's possession (as the case may be).

11-7 Records to be retained by occupier of registered establishment

- (1) The occupier of an establishment that is registered for a kind of export operations in relation to a kind of prescribed plants or plant products must retain each document:
 - (a) that is made by the occupier or that comes into the occupier's possession;
and
 - (b) that is relevant to showing whether the occupier has complied, or is complying, with the applicable requirements of the Act (including whether the conditions of the registration of the establishment have been, and are being, complied with).
- (2) The occupier of the registered establishment must retain each record referred to in subsection (1) for at least 2 years starting on the day the record is made by the occupier or comes into the occupier's possession (as the case may be).

11-8 Records relating to official marks

A person who is required to make a record by section 8-29 or 8-30 must retain each record made under that section for at least 2 years after making it.

11-9 Records relating to official marking devices

A person who is required to make a record by section 8-35 or 8-36 must retain each record made under that section for at least 2 years after making it.

11-10 Records to be retained by authorised officers

Records to be retained by all authorised officers

- (1) An authorised officer who is, or was, authorised to perform functions or exercise powers under the Act in relation to plants or plant products must retain the following records:
 - (a) a record of each assessment of plants or plant products carried out by the authorised officer and each document considered in carrying out the assessment;

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- (b) each bulk vessel inspection record made by the authorised officer and each document considered in deciding whether to approve the bulk vessel or not;
- (c) each notice suspending a bulk vessel approval and each document considered in deciding to suspend the bulk vessel approval;
- (d) each notice revoking a bulk vessel approval and each document considered in deciding to revoke the bulk vessel approval;
- (e) each notice revoking the suspension of a bulk vessel approval and each document considered in deciding to revoke the suspension;
- (f) each container inspection record given by the authorised officer and each document considered in deciding whether to approve the container or not;
- (g) each notice revoking a container approval and each document considered in deciding to revoke the container approval.

Records to be retained by third party authorised officers

- (2) In addition to subsection (1), a third party authorised officer who is, or was, authorised to perform functions or exercise powers under the Act in relation to plants or plant products must retain the following records:
 - (a) each application under subsection 291(3) of the Act to be a third party authorised officer;
 - (b) each application under subsection 298A(1) of the Act for a variation in relation to the third party authorised officer's authorisation;
 - (c) each request under subsection 298C(1) of the Act to suspend the third party authorised officer's authorisation;
 - (d) each request under subsection 298C(4) of the Act to revoke a suspension of the third party authorised officer's authorisation;
 - (e) each request under subsection 298D(1) of the Act to revoke the third party authorised officer's authorisation;
 - (f) each instrument of authorisation of the third party authorised officer.

Period during which records must be retained

- (3) An authorised officer must retain each record referred to in subsection (1) or (2) for at least 2 years starting on the day the record is made by the authorised officer or comes into the authorised officer's possession (as the case may be).

Exception for certain records

- (4) Subsections (1), (2) and (3) do not apply in relation to a record that has been entered into an electronic system operated by the Department for the purposes of the Act.

11-11 Records must not be altered or defaced during retention period

- (1) A record that is retained as required by this Part must not be altered or defaced during the period (the *retention period*) in which it is required to be retained.
- (2) However, subsection (1) does not prevent notations or markings being made on the record in accordance with ordinary practice.

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- (3) If, during the retention period, notations or markings are made on the record (the *original record*) in accordance with ordinary practice, the person who is required to retain the original record must also retain, during the retention period, each document:
- (a) that the person creates or that comes into the person's possession; and
 - (b) that shows how the original record was changed.

Part 2—Samples

11-12 Storage of samples

- (1) For the purposes of section 411 of the Act, a sample that may be tested or analysed under the Act must be held under conditions that are unlikely to affect the result of any testing or analysis of the sample.
- (2) Subsection (1) does not apply in relation to a sample that may be tested or analysed in the performance of functions or duties or the exercise of powers under Chapter 10 of the Act (compliance and enforcement) or the Regulatory Powers Act.

Part 3—Damaged or destroyed plants or plant products

11-13 Division of compensation between owners

For the purposes of paragraph 420(2)(b) of the Act, compensation in respect of plants or plant products that are owned by 2 or more owners must be divided among those owners so that each owner is paid an amount of compensation that is equal to the proportion that the Secretary is satisfied represents the owner's interest in the plants or plant products at the time the plants or plant products were damaged or destroyed.

11-14 Amount of compensation

Damaged plants or plant products

- (1) For the purposes of subsection 420(5) of the Act, the amount of compensation payable under subsection 419(1) of the Act in respect of plants or plant products that are damaged by a person in the course of performing functions or duties, or exercising powers, under the Act is the lesser of the following amounts:
 - (a) the amount that the Secretary determines was the market value of the plants or plant products immediately before they were damaged;
 - (b) the cost to repair the damage.

Note: Subsection 419(2) of the Act provides that compensation is not payable in respect of goods that are damaged as a result of samples of the goods being taken:

- (a) during an audit conducted in relation to the goods under Part 1 of Chapter 9 of the Act; or
- (b) during an assessment of the goods carried out under Part 2 of that Chapter; or
- (c) as permitted by subsection 327(2) or 330(2) of the Act.

Destroyed plants or plant products

- (2) For the purposes of subsection 420(5) of the Act, the amount of compensation payable under subsection 419(1) of the Act in respect of plants or plant products that are destroyed under the Act is the amount that the Secretary determines was the market value of the plants or plant products immediately before they were destroyed.

Part 4—Relevant Commonwealth liabilities

11-15 Circumstances in which relevant Commonwealth liability of a person is taken to have been paid

Purpose of this section

- (1) For the purposes of section 431 of the Act, this section prescribes circumstances in which a relevant Commonwealth liability of a person is taken to have been paid for the purposes of any of the following provisions of the Act (a **relevant provision**):
- (a) paragraph 79(2)(a) (accreditation of property);
 - (b) paragraph 84(2)(b) (renewal of accreditation of property);
 - (c) paragraph 112(2)(b) (registration of establishment);
 - (d) paragraph 117(2)(b) (renewal of registration of establishment).

Note: For **relevant Commonwealth liability**, see section 12 of the Act.

Payment undertaking may be given

- (2) A relevant Commonwealth liability of a person is taken to have been paid for the purposes of a relevant provision if:
- (a) the person, or another person, has given a written undertaking (a **payment undertaking**) to the Secretary to pay the amount of the relevant Commonwealth liability; and
 - (b) the payment undertaking includes a term that the relevant Commonwealth liability is to be reduced by each amount paid in accordance with the undertaking; and
 - (c) the Secretary has accepted the payment undertaking, having considered the following matters:
 - (i) the financial position of the person who gave the payment undertaking;
 - (ii) the nature and likely cost of the export operations to which a decision under the relevant provision relates;
 - (iii) whether the person who gave the payment undertaking will be able to comply with the undertaking and, if applicable, meet the cost of the export operations referred to in subparagraph (ii);
 - (iv) any other relevant considerations.
- (3) A payment undertaking may be given by a person in relation to:
- (a) a relevant Commonwealth liability of the person; or
 - (b) a relevant Commonwealth liability of another person.

Payment undertaking may relate to 2 or more relevant Commonwealth liabilities

- (4) A single payment undertaking may relate to 2 or more relevant Commonwealth liabilities.
- (5) If:

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- (a) a payment undertaking relates to 2 or more relevant Commonwealth liabilities; or
 - (b) a person has given 2 or more payment undertakings in relation to different relevant Commonwealth liabilities of the person or of another person;
- the Secretary may determine the order in which payments are to be applied to reduce the outstanding relevant Commonwealth liabilities.

Variation of payment undertaking

- (6) A payment undertaking may be varied at any time by agreement between the Secretary and the person who gave the undertaking.
- (7) The Secretary may agree to a variation of a payment undertaking if:
 - (a) having considered the matters referred to in paragraph (2)(c), the Secretary considers the variation is appropriate; and
 - (b) the variation does not reduce the amount of any relevant Commonwealth liability covered by the undertaking that has not been paid.

Part 5—Miscellaneous

11-16 Qualified marine surveyors and marine surveyor's certificates

Qualified marine surveyors

- (1) For the purposes of this instrument, a person is qualified to carry out a survey of a bulk vessel (a **bulk vessel survey**) at a time (the **relevant time**) for the purpose of deciding whether the vessel is suitable to transport prescribed plants or plant products to which subsection 9-23(2) applies, if:
 - (a) at the relevant time, the person:
 - (i) satisfies the eligibility requirements for a Master grade certificate under Schedule 2 to *Marine Order 71 (Masters and deck officers) 2014* made under the *Navigation Act 2012*; or
 - (ii) holds a Diploma of Marine Surveying that includes a module on dry bulk cargoes; and
 - (b) the person has carried out at least 10 bulk vessel surveys within a period of 2 years; and
 - (c) the person carried out the bulk vessel surveys referred to in paragraph (b) accompanied by another person who was a qualified marine surveyor; and
 - (d) the person has carried out a bulk vessel survey of at least 3 bulk vessels within the period of 3 years ending immediately before the relevant time.

Requirements for issuing marine surveyor's certificate

- (2) For the purposes of this instrument, a qualified marine surveyor may issue a certificate for a bulk vessel that is to be used to transport prescribed plants or plant products to which subsection 9-23(2) applies, if:
 - (a) the qualified marine surveyor has carried out a survey of the vessel, including of the cargo spaces into or onto which prescribed plants or plant products of that kind are intended to be loaded; and
 - (b) the qualified marine surveyor is satisfied that:
 - (i) the vessel is free of conditions that could result in contaminating, wetting or imparting an odour to prescribed plants or plant products of that kind transported in or on the vessel; and
 - (ii) the vessel, including the cargo spaces of the vessel into or onto which prescribed plants or plant products of that kind are intended to be loaded, is suitable to transport prescribed plants or plant products of that kind.

Chapter 12—Transitional provisions

Part 1—Preliminary

12-1 Definitions

In this Chapter:

commencement time means the time when section 3 of the *Export Control Act 2020* commences.

old Export Control (General) Order means the *Export Control (Prescribed Goods—General) Order 2005*, as in force immediately before the commencement time.

old Export Control (Plants) Order means the *Export Control (Plants and Plant Products) Order 2011*, as in force immediately before the commencement time.

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Part 2—Registered establishments

12-2 Application for determination that establishment is a small horticultural products registered establishment for a financial year

Application for determination

- (1) This section applies if:
 - (a) an application had been made to the Secretary under subsection 13A(1) of the old Export Control (Plants) Order for a determination under subsection 13A(6) of that Order that the establishment is a small horticultural products registered establishment for a financial year; and
 - (b) no decision on the application had been made before the commencement time.
- (2) If the application was in relation to a registered establishment, the application is taken to have been withdrawn at the commencement time.
- (3) If the application was in relation to an establishment that was not a registered establishment, the application is taken to be an application made under section 111 of the Act to register the establishment for the kind of export operations in relation to the kind of prescribed plants or plant products referred to in the application.

Note: See section 1-8 of this instrument for requirements that must be met for a registered establishment to be a small horticultural products registered establishment for a financial year.

Request for further information

- (4) If:
 - (a) subsection (3) of this section applies in relation to the application; and
 - (b) the Secretary had requested, under subsection 13A(5) of the old Export Control (Plants) Order, the applicant to provide further information in relation to the application; and
 - (c) the information had not been provided before the commencement time; the request is taken, after the commencement time, to be a request made under paragraph 379(9)(a) of the Act for information relevant to the application.
- (5) If the request did not specify the period within which the request must be complied with, it must be complied with as soon as practicable.

12-3 Determination in force that establishment is a small horticultural products registered establishment for financial year ending on 30 June 2021

- (1) This section applies if a determination is in force under subsection 13A(6) of the old Export Control (Plants) Order that a registered establishment is a small horticultural products registered establishment for the financial year ending on 30 June 2021.

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- (2) After the commencement time, the registered establishment is taken to be a small horticultural products registered establishment for the financial year ending on 30 June 2021 if the requirements in section 1-8 of this instrument are met in relation to the establishment in the financial year.

Part 3—Other matters relating to export

Division 1—Official marks

12-4 Person approved before commencement time to manufacture an official mark

- (1) This section applies in relation to a person who, immediately before the commencement time, was approved by the Secretary under subsection 13.18(2) of the old Export Control (General) Order to manufacture an official mark in relation to prescribed plants or plant products.
- (2) The person is taken, at the commencement time, to have been given a written approval by the Secretary under section 8-22 of this instrument to manufacture the official mark for prescribed plants or plant products.

12-5 Persons permitted before commencement time to possess an official mark

Persons in possession of official mark in accordance with direction of authorised officer

- (1) Subsection (2) applies if, immediately before the commencement time, a direction was in force under paragraph 13.18(3)(c) of the old Export Control (General) Order permitting a person to possess an official mark for prescribed plants or plant products (other than an official mark that had been applied to goods).
- (2) The direction continues in force after the commencement time as if it were a direction of an authorised officer under paragraph 8-23(d) of this instrument permitting the person to possess an official mark for prescribed plants or plant products (other than an official mark that has been applied to goods).

Persons approved by the Secretary to possess official mark

- (3) Subsection (4) applies in relation to a person who, immediately before the commencement time, was approved by the Secretary under paragraph 13.18(3)(e) of the old Export Control (General) Order as a person who may possess an official mark (other than an official mark that has been applied to goods) in a specified registered establishment in relation to prescribed plants or plant products.
- (4) The person is taken, at the commencement time, to have been given a written approval by the Secretary under paragraph 8-23(e) of this instrument to possess the official mark at the registered establishment in relation to prescribed plants or plant products.

12-6 Persons permitted before commencement time to apply an official mark

Persons permitted to apply official mark in accordance with direction of authorised officer

- (1) Subsection (2) applies if, immediately before the commencement time, a direction was in force under paragraph 13.18(3)(c) of the old Export Control (General) Order permitting a person to apply an official mark to prescribed plants or plant products.
- (2) The direction continues in force after the commencement time as if it were a direction of an authorised officer under paragraph 8-24(c) of this instrument permitting the person to apply an official mark to prescribed plants or plant products.

Persons approved by the Secretary to apply official mark

- (3) Subsection (4) applies in relation to a person who, immediately before the commencement time, was approved by the Secretary under paragraph 13.18(3)(e) of the old Export Control (General) Order as a person who may apply an official mark in a specified registered establishment in relation to prescribed plants or plant products.
- (4) The person is taken, at the commencement time, to have been given a written approval by the Secretary under paragraph 8-24(d) of this instrument to apply the official mark at the registered establishment in relation to prescribed plants or plant products.

Division 2—Official marking devices

12-7 Person approved before commencement time to manufacture an official marking device

- (1) This section applies in relation to a person who, immediately before the commencement time, was a person approved by the Secretary under subsection 13.18(2) of the old Export Control (General) Order to manufacture an official marking device that is capable of being used to apply an official mark to prescribed plants or plant products.
- (2) The person is taken, at the commencement time, to have been given a written approval by the Secretary under paragraph 8-32(b) of this instrument to manufacture the official marking device.

12-8 Person approved before commencement time to possess an official marking device

- (1) This section applies in relation to a person who, immediately before the commencement time, was a person approved by the Secretary under subsection 13.18(2) of the old Export Control (General) Order to possess an official marking device that is capable of being used to apply an official mark to prescribed plants or plant products.
- (2) The person is taken, at the commencement time, to have been given a written approval by the Secretary under paragraph 8-32(b) of this instrument to possess the official marking device.

Part 4—Powers and officials

Division 1—Assessments

12-9 Declaration by authorised officer before commencement time that prescribed goods are passed as export compliant

- (1) This section applies if:
 - (a) an authorised officer had declared a consignment of prescribed goods to be passed as export compliant:
 - (i) under subsection 17.1 of the old Export Control (Plants) Order; or
 - (ii) under the *Export Control (Plants and Plant Products—Norfolk Island) Order 2016* (as in force immediately before the commencement time); and
 - (b) the period (the **export compliant period**) during which the prescribed goods may remain passed as export compliant specified by the authorised officer, as extended by any additional period specified by the authorised officer, had not ended before the commencement time.
- (2) The declaration has effect after the commencement time as if the authorised officer had decided, under subsection 9-10(1) of this instrument, that the prescribed goods had passed an assessment in relation to a matter referred to in subsection 277(3) of the Act.
- (3) The validity period for the prescribed goods after the commencement time is the period remaining immediately before the commencement time of the export compliant period for the prescribed goods.
- (4) If:
 - (a) before the commencement time, a person had applied to the Secretary or an authorised officer to specify an additional period during which the prescribed goods may remain passed as export compliant; and
 - (b) no decision on the application had been made before the commencement time;the application is taken, after the commencement time, to be an application to the Secretary under subsection 9-13(2) of this instrument to extend the validity period for the prescribed goods.

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Division 2—Bulk vessel approvals

12-10 Marine surveyor's certificate issued in relation to bulk vessel before commencement time

- (1) This section applies if:
 - (a) a marine surveyor had issued a certificate in relation to a bulk vessel under subsection 33.2 of the old Export Control (Plants) Order; and
 - (b) the certificate had not been revoked before the commencement time.
- (2) The certificate continues to have effect after the commencement time as if it were a marine surveyor's certificate for the bulk vessel issued under subsection 11-16(2) of this instrument.
- (3) If the certificate was issued in paper form, and the marine surveyor had not given the certificate and a copy of the certificate to the master of the bulk vessel before the commencement time, the marine surveyor must do so as soon as practicable after the commencement time.

12-11 Bulk vessel approval in force before commencement time

- (1) This section applies if:
 - (a) an authorised officer had issued a vessel approval for a bulk vessel under section 37 of the old Export Control (Plants) Order; and
 - (b) the period (the *validity period*) during which the vessel approval was valid (including any additional periods specified under section 38 of that Order) had not ended before the commencement time.
- (2) The vessel approval has effect until the end of the validity period as if the approval had been given under subsection 9-22(1) of this instrument.
- (3) If:
 - (a) before the commencement time, a person had applied to the Secretary or an authorised officer to specify an additional period during which the vessel approval was to be valid; and
 - (b) no decision on the application had been made before the commencement time;the application is taken, after the commencement time, to be an application to the Secretary under subsection 9-26(1) of this instrument to extend the period of effect of the vessel approval for an additional period.

12-12 Bulk vessel approval suspended before commencement time

- (1) This section applies if:
 - (a) an authorised officer had suspended a vessel approval under subsection 39.1 of the old Export Control (Plants) Order; and
 - (b) the suspension was in force immediately before the commencement time.
- (2) The vessel approval is taken after the commencement time to be suspended under subsection 9-27(1) of this instrument.

Division 3—Container approvals**12-13 Container approval in force before commencement time**

- (1) This section applies if:
 - (a) an authorised officer had issued a container approval for a container under section 27 of the old Export Control (Plants) Order; and
 - (b) the period (the *validity period*) during which the container approval was valid (including any additional periods specified under section 28 of that Order) had not ended before the commencement time.
- (2) The container approval has effect until the end of the validity period as if the approval had been given under subsection 9-30(1) of this instrument.
- (3) If:
 - (a) before the commencement time, a person had applied to the Secretary or an authorised officer to specify an additional period during which the container approval was to be valid; and
 - (b) no decision on the application had been made before the commencement time;the application is taken, after the commencement time, to be an application to the Secretary under subsection 9-35(1) of this instrument to extend the period of effect of the container approval for an additional period.