



Export Control (Organic Goods) 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 (Organic Goods) 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Note: This table relates only to the provisions of this instrument as originally made.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

- (1) Subject to subsection (2), this instrument is made under the *Export Control Act 2020*.
- (2) Chapter 12 is made under the following:
 - (a) the *Export Control Act 2020*;
 - (b) item 92 of Schedule 3 to the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*.

1-4 Application of this instrument

This instrument does not limit the operation of, and applies in addition to, any other rules made under section 432 of the Act that apply in relation to goods that are prescribed goods under subsection 2-1(1) of this instrument.

Example: Milk products described as organic or biodynamic may be prescribed milk products under the *Export Control (Milk and Milk Products) Rules 2021*. The export for food of the milk products would also be subject to the prescribed export conditions for prescribed milk products under that instrument.

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1-5 Simplified outline of this instrument

General

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

Prescribed organic goods 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 organic goods 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 prescribed organic goods, including in relation to the following:

- (a) exemptions;
- (b) organic goods certificates;
- (c) approved arrangements;
- (d) trade descriptions;
- (e) audits;
- (f) records;
- (g) samples;
- (h) damaged or destroyed organic goods.

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 5—Approved arrangements of the Act are included in Chapter 5—Approved arrangements 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) prepare;
- (g) produce;
- (h) Regulatory Powers Act.

In this instrument:

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*.

approved certifying body means the holder of an approved arrangement for organic goods certification operations.

cosmetic product:

- (a) means a substance, or a mixture of substances, intended to be placed in contact with an external part or parts of the body (for example, the epidermis, hair, nails, lips or external genital organs) or with the teeth or the mucous membranes of the oral cavity, with the exclusive or principal purpose of cleaning, perfuming, changing the appearance of, protecting or keeping in good condition those parts of the body, or correcting body odours; and
- (b) includes a substance, or a mixture of substances, referred to in paragraph (a) intended for use on domestic animals.

Examples: Soaps, shampoos and fragrances (including for pet grooming), skin moisturisers, colour cosmetics and deodorants.

exporter, of prescribed organic goods, means a person who exports, or intends to export, the prescribed organic goods.

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.

National Organic Standard means the *National Standard for Organic and Bio-Dynamic Produce* published by the Department, as that document exists at the commencement of this instrument.

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Note: The document could in 2021 be viewed on the Department's website (<http://www.awe.gov.au>).

organic goods means goods that are described as, or described as including ingredients that are, organic, biodynamic, biological, ecological or any other similar description, and includes goods that are described as in-conversion to organic or biodynamic.

organic goods certificate means a government certificate that:

- (a) is issued in relation to prescribed organic goods; and
- (b) states that all relevant importing country requirements relating to the prescribed organic goods and the operations to produce or prepare them for export are met.

Note: The issuing body for an organic goods certificate is an approved certifying body or the Secretary (see section 2-14).

organic goods certification operations means operations to certify that relevant importing country requirements relating to prescribed organic goods and the operations to produce or prepare them for export are met for the purpose of issuing an organic goods certificate in relation to the organic goods.

organic operator, in relation to prescribed organic goods, means a person who carries out operations to produce or prepare the organic goods for export.

Note: For *prepare* and *produce*, see section 12 of the Act.

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

relevant importing country authority means the authority or body that is responsible for regulating the importation of prescribed organic goods 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.

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>).

Chapter 2—Exporting goods

Part 1—Goods

Division 1—Prescribed goods

2-1 Organic goods that are prescribed goods

- (1) For the purposes of subsection 28(1) of the Act and subject to subsections (2) and (3) of this section, organic goods are prescribed for the purposes of the Act.

Note: Organic goods 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).

- (2) Organic goods that are cosmetic products are not prescribed for the purposes of subsection 28(1) of the Act unless:
- (a) the goods are intended to be exported to a country (the *importing country*); and
 - (b) for the purpose of meeting an importing country requirement of that country, an organic goods certificate is required in relation to the organic goods.

Note: Examples of cosmetic products are soaps, shampoos and fragrances (including for pet grooming), skin moisturisers, colour cosmetics and deodorants.

- (3) Organic goods for export to New Zealand are not prescribed for the purposes of subsection 28(1) of the Act unless, for the purpose of meeting an importing country requirement of New Zealand, an organic goods certificate is required in relation to the organic goods.

2-2 Organic goods that are taken not to be prescribed goods

For the purposes of subsection 28(4) of the Act, organic goods covered by subsection 2-1(1) of this instrument are taken not to be prescribed goods for the purposes of the Act if the organic goods:

- (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*;

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- (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.

Note: 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 organic goods.
 - Note 1: See Division 1 of this Part in relation to goods that are prescribed organic goods.
 - Note 2: Organic goods 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 organic goods if:
 - (a) the organic goods 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 organic goods under Part 2 of Chapter 2 of the Act.

2-4 Export of prescribed organic goods is prohibited unless prescribed conditions are complied with

The export from Australian territory of prescribed organic goods is prohibited unless the exporter of the organic goods holds an organic goods certificate in relation to the organic goods and the organic goods certificate is in force at the time the organic goods are exported.

- Note 1: Other conditions will apply in addition to the condition in this section if the prescribed organic goods are prescribed under other rules made for the purposes of section 432 of the Act. For example, if the goods are prescribed meat products under the *Export Control (Meat and Meat Products) Rules 2021*, the export for food of the meat products would also be subject to the prescribed export conditions for prescribed meat products under that instrument.
- Note 2: A person may commit an offence or be liable to a civil penalty if prescribed goods are exported in contravention of a prescribed export condition (see Division 4 of Part 1 of Chapter 2 of the Act).

Part 2—Exemptions

2-5 Application of this Part

This Part applies in relation to prescribed organic goods (in this Part called *relevant goods*).

Note 1: See Division 1 of Part 1 of this Chapter in relation to goods that are prescribed organic goods.

Note 2: Organic goods 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).

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 10 business days before the following:

- (a) if operations to prepare the relevant goods for export have started—the date it is proposed to export the relevant goods;
- (b) in any other case—the date it is proposed to start carrying out operations to prepare the relevant goods for export.

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 subsections 55(2) of the Act, a matter to which the Secretary must have regard is whether 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.

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 period is specified 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.

2-10 Revocation of exemption—matters to which Secretary must have regard

For the purposes of subsection 59(2) of the Act, a matter to which the Secretary must have regard in considering whether to revoke an exemption in relation to relevant goods is whether the conditions of the exemption have been, or are being, complied with.

Part 3—Organic goods certificates

2-11 When organic goods certificate may be issued

For the purposes of subsections 62(1) and (2) of the Act, an organic goods certificate may be issued in relation to prescribed organic goods that are to be, or that have been, exported.

- Note 1: An organic goods certificate must be in force in relation to prescribed organic goods at the time the organic goods are exported (see section 2-4 of this instrument).
- Note 2: An organic goods certificate may be issued for prescribed organic goods that have been exported if the organic goods certificate for the goods that was in force at the time the goods were exported has been revoked. An organic goods certificate may be revoked in certain circumstances (see subsection 75(1) of the Act and section 2-18 of this instrument).
- Note 3: A person may apply to an issuing body for an organic goods certificate (see section 65 of the Act and the definition of *organic goods certificate* in section 1-6 of this instrument).
- Note 4: If the Secretary has approved a manner for making an application, the application must be made in the approved manner and, if the Secretary has approved a form for making the application, it must include the information required by the form (see paragraphs 65(2)(a) and (b) of the Act).
- Note 5: An organic goods certificate (other than a certificate issued by electronic means) must be retained in a secure place when it is not being used (see section 11-3 of this instrument).

2-12 Information to be included in organic goods certificate

For the purposes of subsection 62(1) of the Act, an organic goods certificate in relation to prescribed organic goods must state the following:

- (a) the kind and quantity of the organic goods;
- (b) the name and address of each organic operator in relation to the organic goods;
- (c) the importing country for the organic goods;
- (d) the date the organic goods are proposed to be exported;
- (e) the issuing body for the organic goods certificate;
- (f) if the issuing body is an approved certifying body—that the approved certifying body reasonably believes that:
 - (i) export operations in relation to the organic goods have been carried out in accordance with the National Organic Standard; and
 - (ii) all importing country requirements relating to the export operations and the organic goods have been met.

Note: An organic goods certificate must be in a form approved by the Secretary (see section 5-5).

2-13 Requirements before organic goods certificate may be issued

For the purposes of subparagraph 62(2)(b)(iii) of the Act, the following requirements must be complied with before an organic goods certificate in relation to prescribed organic goods may be issued:

- (a) export operations in relation to the organic goods have been carried out in accordance with the National Organic Standard;
- (b) the applicable requirements of the Act in relation to the export operations and the organic goods have been complied with;
- (c) all importing country requirements relating to the export operations and the organic goods have been met.

Note: A reference to the Act includes a reference to these rules (see section 1-6 and subsection 432(1) of the Act).

2-14 Issuing bodies for organic goods certificates

For the purposes of section 63 of the Act, each of the following is an issuing body for an organic goods certificate:

- (a) an approved certifying body;
- (b) the Secretary.

2-15 Changes that require applicant to give additional or corrected information to issuing body

For the purposes of paragraph 66(1)(b) of the Act, each of the following changes is prescribed in relation to prescribed organic goods in relation to which an application for an organic goods certificate has been made:

- (a) there are reasonable grounds to suspect that the integrity of the organic goods cannot be ensured;
- (b) there are reasonable grounds to suspect that operations to produce or prepare the organic goods for export have not been carried out in accordance with the National Organic Standard;
- (c) there are reasonable grounds to suspect that an importing country requirement relating to the export operations or the organic goods has not been met.

Note: If a change prescribed by this section 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).

2-16 Circumstances for refusing to issue organic goods 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 an organic goods certificate in relation to prescribed organic goods:

- (a) the applicant failed to provide sufficient evidence that operations to produce or prepare the organic goods for export were carried out in accordance with the National Organic Standard;
- (b) compliance with the National Organic Standard in relation to the organic goods is not sufficient to ensure that all relevant importing country requirements relating to the organic goods and the operations to produce or prepare them for export are met;
- (c) the export of the organic goods could result in trade in the export of goods from Australian territory being adversely affected.

Section 2-17

Note: Other grounds for the issuing body to refuse to issue an organic goods certificate in relation to prescribed organic goods are set out in paragraphs 67(3)(a) to (f) of the Act.

2-17 Changes that require holder of organic goods certificate to give additional or corrected information to issuing body

For the purposes of paragraph 74(1)(b) of the Act, each of the following changes is prescribed in relation to prescribed organic goods in relation to which an organic goods certificate is in force:

- (a) there are reasonable grounds to suspect that the integrity of the organic goods cannot be ensured;
- (b) there are reasonable grounds to suspect that an importing country requirement relating to the organic goods has not been met and will not be, or is not likely to be, met before the organic goods are imported into the importing country;
- (c) there are reasonable grounds to suspect that operations to produce or prepare the organic goods for export were not carried out in accordance with the National Organic Standard.

Note: If a change prescribed by this section occurs, the holder of the organic goods 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).

2-18 Circumstances for revoking organic goods certificate

For the purposes of paragraph 75(1)(h) of the Act, the following circumstances are prescribed in relation to an organic goods certificate for prescribed organic goods:

- (a) operations to produce or prepare the organic goods for export have not been carried out in accordance with the National Organic Standard;
- (b) compliance with the National Organic Standard in relation to the organic goods has not ensured, or is ineffective in ensuring, that all relevant importing country requirements relating to the organic goods and the operations to produce or prepare them for export are met.

2-19 Return of organic goods certificate

- (1) For the purposes of paragraph 76(1)(a) of the Act, each of the following is a circumstance in which an organic goods certificate in relation to prescribed organic goods must be returned to an issuing body:
 - (a) the organic goods are no longer intended to be exported to the country in relation to which the certificate was issued;
 - (b) the certificate has been revoked under section 75 of the Act.
- (2) For the purposes of paragraph 76(1)(b) of the Act, the period within which an organic goods certificate must be returned to an issuing body is 10 business days starting on the day the event referred to in paragraph (1)(a) or (b) of this section (as applicable) occurs.
- (3) This section does not apply in relation to an organic goods certificate that was issued by electronic means.

Chapter 5—Approved arrangements

Part 1—Requirements for approval

5-1 Proposed arrangement for organic goods certification operations

- (1) For the purposes of paragraph 151(2)(d) of the Act, this section prescribes other requirements that must be met for approval of a proposed arrangement for organic goods certification operations.

Note: It is also a requirement for the approval of proposed arrangements for organic goods certification operations that the applicant is a fit and proper person (see paragraph 151(2)(a) of the Act and section 5-16 of this instrument).

- (2) The proposed arrangement must record that the applicant for approval of the arrangement is committed:
 - (a) to meeting the objects referred to in section 3 of the Act that are applicable to the operations and the prescribed organic goods covered by the arrangement; and
 - (b) to complying with the requirements of the Act in relation to those operations.
- (3) The proposed arrangement must cover all aspects of the organic goods certification operations that are to be carried out.
- (4) The proposed arrangement must record details of the following matters:
 - (a) the organisational structure of the applicant;
 - (b) the system of controls to be implemented to ensure that the conditions prescribed by Part 2 of this Chapter will be complied with in relation to the operations covered by the arrangement;
 - (c) any other system of controls to be implemented to ensure that there will be reasonable grounds for issuing an organic goods certificate in relation to the prescribed organic goods covered by the arrangement.
- (5) Organic goods certification operations carried out in accordance with the proposed arrangement must be objective, fair, accurate and complete.
- (6) The matters required to be recorded in the proposed arrangement by paragraphs (4)(a) and (b) must be appropriate to ensure compliance with the requirements of the Act in relation to the operations covered by the arrangement.

Part 2—Conditions of approved arrangement

Division 1—Purpose of this Part

5-2 Purpose of this Part

For the purposes of paragraph 152(1)(b) of the Act, this Part prescribes conditions of an approved arrangement for organic goods certification operations.

Note 1: If an approved arrangement is renewed, the conditions also apply in relation to the renewed approved arrangement (see paragraph 157(1)(b) of the Act).

Note 2: The holder of an approved arrangement may commit an offence or be liable to a civil penalty if a condition of the approved arrangement is contravened (see section 184 of the Act).

Division 2—General

5-3 Requirements of National Organic Standard must be met

An approved arrangement must ensure that the requirements of the National Organic Standard are met in relation to the following:

- (a) export operations carried out in relation to prescribed organic goods in relation to which an organic goods certificate is to be issued in accordance with the arrangement;
- (b) the prescribed organic goods in relation to which those export operations are carried out.

5-4 Importing country requirements must be met

An approved arrangement must ensure that all importing country requirements relating to the following are met:

- (a) export operations carried out in relation to prescribed organic goods in relation to which an organic goods certificate is to be issued in accordance with the arrangement;
- (b) the prescribed organic goods in relation to which those export operations are carried out.

5-5 Organic goods certificates must be in approved form

An approved arrangement must ensure that organic goods certificates issued in accordance with the approved arrangement are in a form approved by the Secretary.

Section 5-6

Division 3—Management practices

5-6 Operations must be objective, fair etc.

- (1) Organic goods certification operations carried out in accordance with an approved arrangement must be objective, fair, accurate and complete.
- (2) The holder of an approved arrangement must ensure that organic goods certification operations carried out in accordance with the approved arrangement meet importing country requirements relating to organic goods certification.

5-7 Management practices, organisational structure, resources and personnel

- (1) The holder of an approved arrangement must ensure that:
 - (a) the holder's management practices and organisational structure; and
 - (b) the resources provided to carry out the organic goods certification operations; and
 - (c) the personnel who carry out the organic goods certification operations and the training those personnel receive;are appropriate to ensure:
 - (d) compliance with the requirements of the Act in relation to the organic goods certification operations and prescribed organic goods covered by the approved arrangement; and
 - (e) that importing country requirements relating to the organic goods certification operations and prescribed organic goods covered by the approved arrangement are met.
- (2) The holder must make a written record of the matters referred to in paragraphs (1)(a) to (c).

Note 1: The holder of the approved arrangement must retain each record made under this subsection for at least 5 years (see section 11-6).

Note 2: For making electronic records, see subsection 12(1) of the *Electronic Transactions Act 1999*.

5-8 Verification of compliance with the Act and other matters

Matters that must be verified

- (1) The holder of an approved arrangement must verify that carrying out organic goods certification operations in accordance with the approved arrangement will ensure compliance with the following:
 - (a) the applicable requirements of the Act;
 - (b) section 5-4 of this instrument (importing country requirements);
 - (c) section 5-7 of this instrument (management practices, organisational structure, resources and personnel).

Record of verification

- (2) A written record must be made of:

- (a) the methods, procedures, tests, monitoring and other evaluations used to verify compliance with the matters referred to in subsection (1); and
- (b) the results of the verification.

Note: The holder of the approved arrangement must retain each record made under this subsection for at least 5 years (see section 11-6).

5-9 Action must be taken to address non-compliance

- (1) If a matter referred to in subsection 5-8(1) has not been complied with, or is not likely to be complied with, in carrying out organic goods certification operations in accordance with an approved arrangement:

- (a) action must be taken:
 - (i) to address the non-compliance; and
 - (ii) to ensure that the non-compliance does not recur or does not occur; and
- (b) the effectiveness of the action must be assessed.

- (2) A written record must be made of action taken under paragraph (1)(a) and the assessment of the effectiveness of the action.

Note: The holder of the approved arrangement must retain each record made under this subsection for at least 5 years (see section 11-6).

5-10 Internal audit and management review

- (1) Subject to subsection (2), internal audits and management reviews must be conducted of the effectiveness of the management practices of the holder of an approved arrangement in ensuring compliance with the matters referred to in subsection 5-8(1).

Note: An internal audit under this section is not an audit under Part 1 of Chapter 9 of the Act.

- (2) A record must be made of the following:
 - (a) each internal audit and management review conducted under subsection (1);
 - (b) the results of each internal audit or management review;
 - (c) each decision (if any) to take action as a result of an internal audit or management review;
 - (d) each action taken as a result of an internal audit or management review.

Note: The holder of the approved arrangement must retain each record made under this subsection for at least 5 years (see section 11-6).

5-11 Secretary must be notified of critical non-compliance

- (1) The holder of an approved arrangement must notify the Secretary immediately if any of the following persons becomes aware of a critical non-compliance in carrying out organic goods certification operations in accordance with the approved arrangement:

- (a) the holder of the approved arrangement;
- (b) a person who manages or controls the operations;
- (c) a person who carries out the operations in accordance with the approved arrangement;

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- (d) a person who conducts internal audits in relation to the operations as required by section 5-10.
- (2) For the purposes of subsection (1), a ***critical non-compliance*** is a failure (or a combination of failures):
 - (a) to comply with a requirement for prescribed organic goods provided by the approved arrangement or the conditions of the approved arrangement; or
 - (b) to meet applicable importing country requirements for prescribed organic goods; or
 - (c) that prevents an accurate assessment being made as to whether the requirements referred to in paragraphs (a) and (b) are being complied with or met.
- (3) If the holder of an approved arrangement gives a notification under subsection (1) orally, the holder must, as soon as practicable after giving the notification, also give the notification in writing.

Part 3—Renewal of approved arrangement

5-12 Period within which application to renew approved arrangement must be made

For the purposes of paragraph 155(4)(a) of the Act, the period within which an application to renew an approved arrangement for organic goods certification operations must be made is the period of 60 days starting on the day that is 180 days before the expiry date for the approved arrangement.

Note 1: For example, if an approved arrangement 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 an approved arrangement will only need to be made if there is an expiry date for the approved arrangement (see subsection 155(1) of the Act).

Part 4—Variation of approved arrangement

Division 1—Variations by holder

5-13 Significant variations

For the purposes of subparagraph 164(2)(c)(ii) of the Act, the following kinds of variations are prescribed for an approved arrangement for organic goods certification operations:

- (a) a variation of a person who manages or controls the organic goods certification operations (including a person who may sign organic goods certificates in accordance with the approved arrangement);
- (b) a variation that may adversely affect the accuracy and completeness of any organic goods certificates issued in accordance with the approved arrangement;
- (c) a variation that may adversely affect the Secretary's ability to accurately assess whether organic goods certificates issued in accordance with the approved arrangement are accurate and complete.

Note: For a person who is taken to be a person who manages or controls export operations, see section 21 of the Act.

Division 2—Variations required by Secretary

5-14 Other reasons for requiring holder to vary approved arrangement

For the purposes of paragraph 165(2)(h) of the Act, a reason why the Secretary may require the holder of an approved arrangement for organic goods certification operations to vary an aspect of the arrangement under paragraph 165(1)(a) of the Act is that the Secretary is no longer satisfied that compliance with the approved arrangement will ensure that there will be reasonable grounds for organic goods certificates to be issued.

Part 5—Obligations of holders of approved arrangements etc.

5-15 Other events of which Secretary must be notified

For the purposes of paragraph 186(1)(e) of the Act, the following events are prescribed in relation to an approved arrangement for organic goods certification operations:

- (a) a person who was permitted to sign organic goods certificates in accordance with the approved arrangement ceases to do so;
- (b) if the holder of the approved arrangement is a partnership—the partnership has been or is to be dissolved;
- (c) if the holder of the approved arrangement is an unincorporated association—the association has been or is to be dissolved;
- (d) if the holder of the approved arrangement is a trust—the trust has been or is to be terminated;
- (e) there is any other change in the persons who manage or control the organic goods certification operations.

Part 6—Fit and proper persons

5-16 Kinds of persons who are required to be fit and proper persons

- (1) For the purposes of subsection 373(1) of the Act, this section prescribes kinds of persons who are required, for the purposes of Chapter 5 of the Act (approved arrangements), to be fit and proper persons (having regard to the matters referred to in section 372 of the Act).

Proposed arrangement—organic goods certification operations

- (2) In relation to a proposed arrangement for organic goods certification operations, the kinds of persons are:
- (a) the applicant for approval of the arrangement; and
 - (b) a person who would manage or control the organic goods certification operations (including a person who would be signing organic goods certificates in accordance with the approved arrangement).

Note: For a person who is taken to be a person who would manage or control export operations, see section 21 of the Act.

Approved arrangement—organic goods certification operations

- (3) In relation to an approved arrangement for organic goods certification operations, the kinds of persons are:
- (a) the holder of the approved arrangement; and
 - (b) a person who manages or controls the organic goods certification operations (including a person who signs organic goods certificates in accordance with the approved arrangement).

Note: For a person who is taken to be a person who manages or controls export operations, see section 21 of the Act.

Part 7—Matters relating to applications

5-17 Application of this Part

This Part applies in relation to the following applications:

- (a) an application under section 150 of the Act to approve a proposed arrangement for organic goods certification operations;
- (b) an application under section 155 of the Act to renew an approved arrangement for organic goods certification operations;
- (c) an application under section 161 of the Act:
 - (i) to approve a variation of an approved arrangement for organic goods certification operations; or
 - (ii) to vary the conditions of an approved arrangement for organic goods certification operations;
- (d) an application that is taken to have been made under subsection 166(2) of the Act to approve a varied approved arrangement for organic goods certification operations.

Note 1: If the Secretary has approved a manner for making an application, the application must be made in the approved manner and, if the Secretary has approved a form for making the application, it must include the information required by the form (see paragraphs 377(1)(a) and (b) of the Act).

Note 2: The Secretary may accept any information previously given to the Secretary in connection with an application made under the Act as satisfying any requirement to give that information under subsection 377(1) of the Act (see subsection 377(3) of the Act).

5-18 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).

5-19 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 8—Other matters relating to export

Part 1—Trade descriptions

8-1 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 organic goods 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).

8-2 Trade description must be applied to prescribed organic goods that are intended to be exported

- (1) The exporter of prescribed organic goods must ensure that a trade description including the information referred to in subsection (2) is applied to the organic goods before they are exported.

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: A requirement under another instrument made for the purposes of section 432 of the Act for a trade description to be applied may also apply in relation to prescribed organic goods (see section 1-4 of this instrument).

- (2) For the purposes of subsection (1), the information in relation to the prescribed organic goods is as follows:
- (a) the kind of organic goods;
 - (b) the net weight or number of units of the organic goods;
 - (c) if the organic goods did not originate in Australian territory—the country of origin of the organic goods;
 - (d) the name and address of the producer, manufacturer or exporter of the organic goods;
 - (e) any other information necessary to meet relevant importing country requirements relating to the organic goods.

Note 1: The trade description must be accurate (see section 8-3). See also Division 3 of Part 2 of Chapter 8 of the Act for offences and civil penalty provisions in relation to false trade descriptions.

Note 2: The Australian Consumer Law (within the meaning of the *Competition and Consumer Act 2010*) contains prohibitions on engaging in conduct that is misleading or deceptive or is likely to mislead or deceive (see, for example, section 18 of that Law) and prohibitions on making false or misleading representations, including about the country of origin of goods (see, for example, sections 29 and 151 of that Law). Part 5-3 of that Law provides defences that certain country of origin representations made about goods do not contravene section 18 (misleading or deceptive conduct) or paragraph 29(1)(a) or (k) or 151(1)(a) or (k) (false or misleading representations) of that Law. For further guidance on correctly describing the country of origin, see the ACCC website (<https://www.accc.gov.au>).

Section 8-3

8-3 General requirements for trade descriptions

- (1) A trade description applied to prescribed organic goods must:
 - (a) be accurate and unambiguous; and
 - (b) to the extent practicable, be securely attached (unless the trade description is stated in any document relating to the organic goods); and
 - (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 organic goods in addition to the trade description must not be inconsistent with the information required to be included in the trade description under subsection 8-2(2).

8-4 Trade descriptions in language other than English

- (1) This section applies in relation to a trade description that is applied to prescribed organic goods 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 an authorised officer to one of the following persons, the person must make available to an authorised officer a translation in English of the part of the trade description that is in the foreign language:
 - (a) an organic operator in relation to the prescribed organic goods;
 - (b) the exporter of the prescribed organic goods;
 - (c) the holder of an approved arrangement in accordance with which organic goods certification operations were carried out in relation to the prescribed organic goods.
- (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 an authorised officer.

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 prescribed organic goods; or
- (b) in relation to the performance of functions or the exercise of powers under the Act in relation to prescribed organic goods 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 prescribed organic goods.

Section 9-2

Division 2—Conduct of audit etc.

9-2 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 failures in relation to matters to which an audit relates;
- (c) audit reports.

9-3 Manner in which audit must be conducted

An audit must be conducted:

- (a) as expeditiously as reasonably practicable; and
- (b) in a way that results in minimal interference to the export operations, or the performance of functions or the exercise of powers under the Act, to which the audit relates.

9-4 Audit reports

- (1) After an auditor completes an audit, or the audit ends, the auditor must make a written report of the audit.
- (2) Within 14 business days after the audit is completed or ends, the auditor must:
 - (a) give the audit report to the Secretary in a manner approved by the Secretary; and
 - (b) give a copy of the audit report to the relevant person for the audit.

Note 1: For **auditor**, see section 12 of the Act. For an audit covered by section 9-1 of this Part, an auditor is an authorised officer.

Note 2: For the person who is the **relevant person** for an audit, see section 269 of the Act.

Part 2—Authorised officers

9-5 Other grounds for giving direction to relevant person

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

- (a) the following persons (each of which is a *relevant person*) are prescribed for the purposes of column 1 of that item:
 - (i) the applicant for an organic goods certificate for prescribed organic goods (the *relevant organic goods*);
 - (ii) the holder of an organic goods certificate for prescribed organic goods (the *relevant organic goods*); and
- (b) the following grounds are prescribed for the purposes of column 2 of that item in relation to each relevant person:
 - (i) some or all of the relevant organic goods do not comply, or are not likely to comply, with a requirement of the Act that applies in relation to the organic goods;
 - (ii) some or all of the relevant organic goods do not meet, or are not likely to meet, an importing country requirement relating to the organic goods;
 - (iii) a matter stated in, or to be stated in, the organic goods certificate for the relevant organic goods is not true and correct.

Chapter 10—Compliance and enforcement

10-1 Samples taken in exercising monitoring or investigation powers

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), the sample 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 sample is destroyed during testing or analysis in accordance with section 412 of the Act;
 - (ii) the sample is given to an analyst appointed under section 413 of the Act;
 - (iii) the sample is otherwise disposed of.

10-2 Dealing with things seized in exercising investigation powers

- (1) This section applies if:
 - (a) a place where operations are carried out to produce, prepare or transport prescribed organic goods for export, or where organic goods certification operations are carried out, has been entered under an investigation warrant; and
 - (b) a thing was seized under the warrant.
- (2) 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 returned in accordance with subsection 66(4) of the Regulatory Powers Act;
 - (ii) the thing is disposed of in accordance with section 68 of that Act.

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 prescribed organic goods.

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 prescribed organic goods 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 Organic goods certificates

- (1) A person to whom an organic goods certificate is issued under the Act must retain the certificate in a secure place when it is not being used.
- (2) Subsection (1) does not apply in relation to an organic goods certificate that was issued by electronic means.

11-4 Records to be retained by exporter

- (1) An exporter of prescribed organic goods must retain each document:
 - (a) that is made by the exporter or that comes into the exporter's possession; and
 - (b) that is relevant to showing whether the exporter has complied, or is complying, with the applicable requirements of the Act and whether importing country requirements have been, or are being, met in relation to the export of prescribed organic goods.

Section 11-5

Note: A reference to the Act includes a reference to this instrument (see section 1-6 and subsection 432(1) of the Act).

- (2) The exporter must retain each record referred to in subsection (1) for at least 5 years starting on the day the record is made by the exporter or comes into the exporter's possession (as the case may be).

11-5 Records to be retained by organic operator

- (1) An organic operator in relation to prescribed organic goods must retain each document:
 - (a) that is made by the operator or that comes into the operator's possession; and
 - (b) that is relevant to showing whether the operator has complied, or is complying, with the applicable requirements of the Act and whether importing country requirements have been, or are being, met in relation to the export of prescribed organic goods.

Note: A reference to the Act includes a reference to this instrument (see section 1-6 and subsection 432(1) of the Act).

- (2) The organic operator must retain each record referred to in subsection (1) for at least 5 years starting on the day the record is made by the operator or comes into the operator's possession (as the case may be).

11-6 Records to be retained by holder of approved arrangement

- (1) The holder of an approved arrangement for organic goods certification operations must retain each document:
 - (a) that is made by the holder or that comes into the holder's possession; and
 - (b) that is relevant to showing whether the holder has complied, or is complying, with:
 - (i) the applicable requirements of the Act; and
 - (ii) the approved arrangement; and
 - (iii) the conditions of the approved arrangement.

Note: For example, an approved certifying body must retain each record made under subsections 5-8(2) (verification of compliance), 5-9(2) (action to address non-compliance) and 5-10(2) (internal audits and management reviews) of this instrument.

- (2) The holder of the approved arrangement must retain each record referred to in subsection (1) for at least 5 years starting on the day the record is made by the holder or comes into the holder's possession (as the case may be).

11-7 Records must not be altered or defaced during retention period

- (1) A record that is retained as required under 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.

Section 11-7

- (3) If the record (the *original record*) is altered or defaced during the retention period, 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 altered or defaced.

Part 2—Samples

11-8 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 prescribed organic goods

11-9 Division of compensation between owners

For the purposes of paragraph 420(2)(b) of the Act, compensation in respect of prescribed organic goods 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 organic goods at the time the organic goods were damaged or destroyed.

11-10 Amount of compensation

Damaged prescribed organic goods

- (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 prescribed organic goods 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 organic goods 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) as permitted by subsection 327(2) or 330(2) of the Act.

Destroyed prescribed organic goods

- (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 prescribed organic goods that are destroyed under the Act is the amount that the Secretary determines was the market value of the organic goods immediately before they were destroyed.

Part 4—Relevant Commonwealth liabilities

11-11 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 151(2)(b) (approval of proposed arrangement);
 - (b) paragraph 156(2)(b) (renewal of approved arrangement);
 - (c) paragraph 161(3)(a) (variation of approved arrangement).

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 (so far as it is known to the Secretary);
 - (ii) the nature and likely cost of the export operations to which a decision under the relevant provision relates (so far as they are known to the Secretary);
 - (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) (so far as they are known to the Secretary);
 - (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:
- (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.

Chapter 12—Transitional provisions

Part 1—Preliminary

12-1 Definitions

In this Chapter:

approved certifying organisation means an organisation that was the holder of a QM certificate in force under order 3.04 of the old Export Control (Organic Produce) Orders immediately before the commencement time.

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

old Export Control Law means any of the following:

- (a) the *Export Control Act 1982*, as in force immediately before the commencement time (the ***old Export Control Act***);
- (b) regulations made under the old Export Control Act, as those regulations were in force immediately before the commencement time;
- (c) an order made by the Minister under regulation 3 of the *Export Control (Orders) Regulations 1982*, as the order was in force immediately before the commencement time.

old Export Control (Organic Produce) Orders means the *Export Control (Organic Produce Certification) Orders*, as in force immediately before the commencement time.

organic produce certification operations means operations carried out by an approved certifying organisation in relation to the issue or revocation of organic produce certificates under Part 2 of the old Export Control (Organic Produce) Orders.

transition period means the 3 years beginning at the commencement time.

Part 2—Approved arrangements

12-2 QM certificate in force immediately before commencement time

- (1) This section applies in relation to a QM certificate (an *old QM certificate*) that was in force under the old Export Control (Organic Produce) Orders immediately before the commencement time.

QM system and QM manual continue in force as approved arrangement

- (2) The QM system and the QM manual to which the old QM certificate related, as they existed immediately before the commencement time, continue in force after the commencement time:
- (a) as if, read as one, they were an approved arrangement (a *continuing approved arrangement*) for organic goods certification operations under Chapter 5 of the Act; and
 - (b) subject to the conditions (if any) to which the old QM certificate was subject immediately before the commencement time.

Note 1: The continuing approved arrangement will also be subject to the conditions provided by the Act and the conditions prescribed by Part 2 of Chapter 5 of this instrument.

Note 2: The continuing approved arrangement may be renewed, varied, suspended or revoked under Chapter 5 of the Act.

Holder of continuing approved arrangement

- (3) For the purposes of the application of the Act in relation to the continuing approved arrangement, the organisation to which the old QM certificate had been issued is the holder of the continuing approved arrangement.

Expiry of continuing approved arrangement

- (4) Subject to subsection (6), if there was no expiry date for the old QM certificate, the continuing approved arrangement continues in force unless:
- (a) it is revoked under Part 6 of Chapter 5 of the Act; or
 - (b) it is taken to have been revoked under section 188 of the Act.
- (5) Subject to subsection (6), if there was an expiry date for the old QM certificate, the continuing approved arrangement continues in force until that expiry date unless:
- (a) it is renewed under Part 3 of Chapter 5 of the Act on or before that date; or
 - (b) it is revoked under Part 6 of Chapter 5 of the Act, or is taken to have been revoked under section 188 of the Act on or before that date.
- (6) Unless the continuing approved arrangement has been renewed, or has ceased to have effect, before the end of the transition period, the continuing approved arrangement ceases to have effect at the end of the transition period.

Section 12-3

12-3 Secretary may direct holder to vary continuing approved arrangement

- (1) This section applies to a continuing approved arrangement within the meaning of subsection 12-2(2).
- (2) The Secretary may direct the holder of the continuing approved arrangement, in writing, to vary the text of the continuing approved arrangement by replacing a reference to an old Export Control Law, or a provision of an old Export Control Law, with a reference to the Act or this instrument or a provision of the Act or this instrument (as the case requires), or by making any other variation that the Secretary considers necessary to ensure that:
 - (a) the approved arrangement complies with subsection 150(2) of the Act and the requirements prescribed by Part 1 of Chapter 5 of this instrument; and
 - (b) carrying out export operations in relation to prescribed organic goods in accordance with the approved arrangement will ensure:
 - (i) compliance with the requirements of the Act in relation to those export operations and goods; and
 - (ii) that importing country requirements relating to those export operations and goods will be met.

Note: The holder of the continuing approved arrangement is the person to whom the old QM certificate had been issued (see subsection 12-2(3) of this instrument).

- (3) If the holder of the continuing approved arrangement is given a direction under subsection (2), the holder must comply with the direction:
 - (a) within 2 years after receiving it; or
 - (b) within any further period (not exceeding 1 year) granted by the Secretary on application, in writing, by the holder.
- (4) Subparagraphs 171(1)(h)(i) and 179(1)(h)(i) of the Act apply in relation to the approved arrangement as if the reference to a direction in those subparagraphs included a reference to a direction given to the holder of the approved arrangement under subsection (2) of this section.

Note: The continuing approved arrangement may be suspended or revoked if the holder of the approved arrangement fails to comply with the direction (see subparagraphs 171(1)(h)(i) and 179(1)(h)(i) of the Act).

12-4 Application for QM certificate made but not decided before commencement time

- (1) This section applies if:
 - (a) an application had been made under suborder 3.02(1) of the old Export Control (Organic Produce) Orders for the issue of a QM certificate for one or more kinds of organic produce; and
 - (b) no decision had been made on the application before the commencement time.
- (2) After the commencement time:
 - (a) the application is taken to be an application made under section 150 of the Act to approve a proposed arrangement for organic goods certification operations; and

Section 12-5

- (b) the QM manual for the QM system to which the application relates, read as one, are taken to be the proposed arrangement to which the application relates.

Note: Section 378 of the Act (which requires additional or corrected information in relation to an application to be given in certain circumstances) applies in relation to the application.

- (3) Section 377, paragraph 379(1)(a) and subsection 379(4) of the Act do not apply in relation to the application.

- (4) The consideration period for the application for the purposes of section 379 of the Act starts on the day the commencement time occurs.

Note: The initial consideration period for the application is 120 days (see section 5-18 of this instrument).

12-5 Application for approval of modification of QM system made but not decided before commencement time

- (1) This section applies in relation to a QM system that continues in force under subsection 12-2(2) as if it were a continuing approved arrangement if, before the commencement time:

- (a) an application had been made under suborder 3.11 of the old Export Control (Organic Produce) Orders for approval of a modification of the QM system; and
(b) no decision had been made on the application before the commencement time.

- (2) After the commencement time, the application is taken to be an application made under paragraph 161(1)(b) of the Act to approve a significant variation of the continuing approved arrangement.

Note: Section 378 of the Act (which requires additional or corrected information in relation to an application to be given in certain circumstances) applies in relation to the continuing approved arrangement.

- (3) Section 377, paragraph 379(1)(a) and subsection 379(4) of the Act do not apply in relation to the application.

- (4) The consideration period for the application for the purposes of section 379 of the Act starts on the day the commencement time occurs.

Note: The initial consideration period for the application is 120 days (see section 5-18 of this instrument).

12-6 Corrective action request given before commencement time

- (1) This section applies to an organisation that is the holder of a continuing approved arrangement under subsection 12-2(3).

- (2) If:

- (a) the holder had been given a corrective action request under suborder 3.17(1) of the old Export Control (Organic Produce) Orders in relation to the QM certificate to which the continuing approved arrangement relates; and

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- (b) before the commencement time:
- (i) the request had not been complied with; and
 - (ii) the QM certificate had not been revoked under suborder 3.17(3) of the old Export Control (Organic Produce) Orders;
- then the holder must comply with the request on or before the date mentioned in the request.
- (3) If the holder fails to comply with the request on or before the date mentioned in the request, the Secretary may revoke the continuing approved arrangement under paragraph 179(1)(h) of the Act as if the failure to comply with the request were a failure to comply with a direction given to the holder by an authorised officer or the Secretary.

12-7 Modifications of the Act relating to applications

Application for approval of approved arrangement

- (1) Paragraph 150(2)(a) of the Act has effect in relation to an application to which section 12-4 of this instrument applies as if the words “or be a record of information from which a written document or documents can be produced” were inserted after the words “in one or more documents”.

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- (2) Paragraph 377(2)(b) of the Act has effect in relation to an application to which section 12-4 or 12-5 of this instrument applies as if the words “(including by access to a computer database or data compiled electronically from a database)” were added after the words “made available to the Secretary for evaluation”.

Note: Under subitem 92(3) of the Schedule 3 to the *Export Control (Consequential Amendments and Transitional Provisions) Act 2020*, rules may provide that provisions of the Act have effect with any modifications prescribed by the rules.