EXPLANATORY STATEMENT

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

Export Control (Orders) Regulations 1982

Export Control (Fees) Amendment Orders 2006 (No. 5)

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

Paragraph 25(2)(d) of the Act allows regulations to be made for the imposition of fees in connection with the performance of services by authorised officers and the remission of fees so imposed. Paragraph 25(2)(g) of the Act provides that the Governor-General may make regulations empowering the Minister to make orders, not inconsistent with the regulations, with respect to any matter for or in relation to which provision may be made by the regulations.

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

The Export Control (Fees) Orders 2001 (‘the Principal Orders’) impose fees in connection with the performance of services by authorised officers.

The purpose of the Export Control (Fees) Amendment Orders 2006 (No. 5) (‘the Amendment Orders’) is to:

- amend the current fees for the delivery of certification, inspection and audit services for the Horticulture Export Program;
- combine three volume charge categories into one for export related activities;
- reduce the AQIS travel charge from 65 cents per kilometre to 50 cents per kilometre; and
- increase various documentation fees.

Consultation has been undertaken through the Horticulture Exports Consultative Committee (HECC) throughout all stages of the review process. Meetings with HECC took place in October 2005 and March 2006 and sub-committees in September 2005, November 2005 and February 2006. The Horticulture Export Program also undertook nation wide consultation in April-May 2006 visiting capital cities and major centres for horticultural production.

The Amendment Orders are a legislative instrument for the purposes of the Legislative Instruments Act 2003.

Details of Amendment Orders are as follows:

Order 1 provides that the name of the Amendment Orders is the Export Control (Fees) Amendment Orders 2006 (No. 5).

Order 2 provides that the Amendment Orders commence on 1 January 2007.
Order 3 provides that Schedule 1 amends the Principal Orders.

Schedule 1 - Amendments

Item 1

Item 1 amends suborder 4(1) to insert a definition of ‘approved arrangement’. This term replaces the term ‘certification assurance arrangement’ which is removed by item 2 of the Amendment Orders. The definition of ‘approved arrangement’ inserted by this item includes a ‘certification assurance arrangement’. This definition was inserted to ensure there is greater consistency with the language used in the enabling provisions in the Export Control Act 1982.

Item 2

Item 2 removes the definition of ‘certification assurance arrangement’ from suborder 4(1). The definition of ‘approved arrangement’ inserted by Schedule 1, Item 1 of the Amendment Orders includes a ‘certification assurance arrangement’. The use of the term ‘approved arrangement’ instead of ‘certification assurance arrangement’ is to ensure there is greater consistency with the language used in the enabling provisions in the Export Control Act 1982.

Item 3

Item 3 amends suborder 21(2) to reduce the fee payable per kilometre from 65 cents per kilometre to 50 cents per kilometre. The travel charge was identified as requiring a decrease, in order to ensure that the fees charged are aligned with the cost of service provision. The travel fee is applied for all service provision which occurs away from an officers ordinary place of work, including inspection, auditing and issuance of export documentation.

Item 4

Item 4 repeals order 34 and substitutes a new order 34. The new order 34 introduces a single per tonne service fee for horticulture products. The service fee is payable by an exporter for authorised officers carrying out export-related activities for horticulture products to be exported by the exporter. The fee payable is $1.90 for each tonne, or part thereof, of horticulture products exported in a financial year by the exporter, up to 5,000 tonnes. Due to the increasing complexity of international markets it was considered that there was no longer a basis on which to differentiate charges.

Item 5

Item 5 amends Schedule 3, Item 3. The effect of this amendment is to expand the introductory words in former Schedule 3, Item 3 to clarify the categories of service that attract the fees in this part of the Schedule 3.

Schedule 3, Item 3(a)(i) applies when inspection of an establishment occurs to determine whether or not it meets the requirements of the Export Control Act 1982 to become a registered establishment.

Schedule 3, Item 3(a)(ii) applies when inspection of an establishment occurs to determine whether or not the establishment meets importing country requirements. The inspection determines whether or not the establishment has met the criteria set by importing countries and allows the establishment to be listed for export to a particular country for a particular horticultural product.

Schedule 3, Item 3(b) applies when an establishment has already been registered under the Export Control Act 1982 and an inspection occurs to determine whether or not the registered establishment meets importing country requirements. The inspection determines whether or not the registered
establishment has met the criteria set by importing countries and allows the registered establishment to be listed for export to a particular country for a particular horticultural product.

Schedule 3, Item 3(c) applies when approved arrangements are being audited as per the audit schedule set out in the approved arrangement.

Schedule 3, Item 3(d) applies when the services of an authorised officer are employed to determine whether a certificate of a kind mentioned in section 23 of the Export Control Act 1982 is to be issued. This may include inspecting horticulture products to determine whether a certificate can be issued. This item also applies when the services of an authorised officer are employed to determine whether a replacement or variation of a certificate of a kind mentioned in section 23 of the Export Control Act 1982 is to be issued.

The increased fee-for-service rates in Schedule 3, Item 3(e), (f), (g) and (h) reflects the actual cost of providing inspectors to undertake inspection, audit and certification activities.

**Item 6**

Item 6 omits the term ‘certification assurance arrangement’ in Schedule 3, item 5, paragraph (c) and replaces it with the term ‘approved arrangement’. The definition of ‘approved arrangement’ inserted by Schedule 1, Item 1 of the Amendment Orders includes a ‘certification assurance arrangement’. The use of the term ‘approved arrangement’ is to ensure there is greater consistency with the language used in the enabling provisions in the Export Control Act 1982.

**Item 7**

Item 7 omits the term ‘certification assurance arrangement’ in Schedule 3, item 7, paragraph (b) and replaces it with the term ‘approved arrangement’. The definition of ‘approved arrangement’ inserted by Schedule 1, Item 1 of the Amendment Orders includes a ‘certification assurance arrangement’. The use of the term ‘approved arrangement’ is to ensure there is greater consistency with the language used in the enabling provisions in the Export Control Act 1982.

**Item 8**

Item 8 omits the term ‘certification assurance arrangements’ in Schedule 3, item 8 and replaces it with the phrase ‘approved arrangements’. The definition of ‘approved arrangement’ inserted by Schedule 1, Item 1 of the Amendment Orders includes a ‘certification assurance arrangement’. The use of the term ‘approved arrangement’ is to ensure there is greater consistency with the language used in the enabling provisions in the Export Control Act 1982.

**Item 9**

Item 9 omits items 20 to 26 in Schedule 5 and substitutes new items 20 to 26. There is a significantly higher administration cost in the management and analysis of data from manual documentation. The increase of $13 for each document issued reflects the higher cost of manually issuing documents. The increase of $5 for each document issued electronically, reflects the increased administrative cost associated with electronic documentation. The cost for a replacement certificate in item 25 remains unchanged.