EXPLANATORY STATEMENT

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

Export Control (Orders) Regulations 1982

Export Control (Fees) Amendment Orders 2007 (No. 3)

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)(a) of the Act allows regulations to be made for the imposition of fees in relation to the registration of an establishment. 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) (daaa) of the Act allows regulations to be made for the imposition of fees in connection with the performance of a service by the Secretary or a delegate of the Secretary.

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 the Secretary, delegates of the Secretary and authorised officers.

The purpose of the Export Control (Fees) Amendment Orders 2007 (No. 3) (the Amendment Orders) is to insert fees for a range of services including for inspection services, processing of applications for registration, registration of establishments and the issue of export documentation in relation to milk and milk products. The Principal Orders along with three other sets of legislation are affected by the decision of the Export Dairy Program (the Program) of the Australian Quarantine and Inspection Service (AQIS) to remove dairy charges from the Regulations and place them in the Principal Orders. The other sets of legislation amended are the Export Inspection (Establishment Registration) Regulations 1985, the Export Inspection (Service Charge) Regulations 1985 and the Export Inspection and Meat Charges Collection Regulations 1985. The effect of this decision is that all fees relating to the milk and milk products are located in one set of legislation thereby making it easier for industry to access fees information.

The Amendment Orders also increase the registration fees for establishments and increase fees for other services in relation to milk and milk products. In addition, the Amendment Orders make some minor and technical amendments to update references in the Principal Orders.

The fees imposed by the Amendment Orders commence on 1 October 2007 except for the fees relating to an application for registration and registration. These fees will apply on and after 1 July 2008 and are set out in Schedule 2 of the Amending Orders.
Fees for the Program have not changed since the introduction of the Government Contribution in November 2001 when a 40% reduction of all charges recovered from industry was implemented. Since that time, the Program has had to respond to the increased expectations of importing countries concerning the performance of Australia’s dairy export industry. In response to these expectations, there has been an increased demand for the Program’s scrutiny of the industry’s performance against the requirements of the Act, including importing country requirements, has intensified. This increased demand has resulted in an increase in the costs associated with the delivery of the Program’s regulatory activities.

The Program has consulted with the Dairy Export Industry Consultative Committee (DEICCC) about these changes. DEICCC consists of representatives of registered establishments, exporters, State Regulatory Authorities, Dairy Australia and AQIS. DEICCC has no objections to these amendments.

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 2007 (No .3).

Order 2 provides that orders 1 to 3 and Schedule 1 commence on 1 October 2007 and that Schedule 2 commences on 1 July 2008.

Order 3 provides that Schedules 1 and 2 amend the Principal Orders.

Schedule 1 – Amendments commencing on 1 October 2007

Items 1 to 6 excluding item 5 make minor and technical changes to update definitions in the Amendment Orders.

Item 5 inserts a definition for ‘Secretary’ as a consequence of the insertion of fees relating to the granting of exemptions by the Secretary in the Principal Orders.

Item 7 inserts a new Part 1A. Part 1A imposes fees for export inspection services and the granting of exemptions formerly imposed under the Export Inspection (Service Charge) Regulations 1985. The item also inserts definitions that are required as a consequence of the imposition of these fees under the Principal Orders.

In relation to the granting of exemptions, the fees for which increase depending on the number of exemptions granted in a year, provision is made in suborders 4E(4) and (5) of Part 1A for exemptions given before the commencement of the Amending Order to be exemptions for the purposes of counting the number of exemptions under the Principal Orders. The Amending Orders apply the same structure for charging for exemptions as applied under the Export Inspection (Service Charge) Regulations 1985.

The rates set by Part 1A represent an increase in the rates applicable under the Export Inspection (Service Charge) Regulations 1985. Part 1A applies the rates applicable under the Regulations in relation to inspection services requested but not delivered before the commencement of the Amendment Orders. This arrangement is in recognition of the fact that these services are usually requested well in advance and it would be unfair to require the industry to pay at the increased rate just because AQIS has not delivered the service to them before the new rates take effect.
Item 8 makes a minor and technical change to update the reference to legislation in order 36 of the Principal Orders.

Item 9 amends the heading for order 41 to clarify that the order applies to services generally. Order 41 sets out when fees become due for payment.

Item 10 amends Schedule 5 of the Principal Orders in relation to documentation fees for milk and milk products. The item descriptions remain the same except for a clarifying amendment which replaces “certificate of condition” with “government certificate” to ensure consistency with normal usage under the Principal Orders. All the fees are increased to reflect the costs of delivering export documentation for dairy exporters. The different fees for electronic and manual issue of export documentation reflect the differences in costs of providing these services. The system of issue of dairy export documentation has been enhanced to meet the increasing rigour of requirements of importing countries.

Schedule 2 – Amendments commencing on 1 July 2008

Items 1 and 2 amend paragraph 4A inserted by Schedule 1 of the Amendment Order to extend the application of new Part 1A to the making of an application for registration and to registration of milk products establishments on or after 1 July 2008. New Part 1A imposes a range of fees relating to milk and milk products.

Item 3 inserts new orders 4F and 4G in new Part 1A. These new orders impose fees for an application for registration of an establishment and for the registration of a milk products establishment respectively. These fees which increase the amounts currently payable under the Export Inspection (Establishment Registration) Regulations 1985 are not applicable until 1 July 2008. The increase in fees is necessary because the Program is required to apply more rigour in dealing with applications and registration of establishments in response to increased scrutiny from importing countries. Consequently the costs of providing these services have increased. The differential in fees registration fees between establishment types reflects the level of servicing required to maintain the registration for these different types of establishment.

Item 4 inserts a new order 42AA regarding due date for payment of fees relating to an application for registration and registration of an establishment imposed under Part 1A and gives the Secretary a discretion, subject to specified grounds, to extend the time for payment of unpaid fees; or allow an unpaid fee to be paid by instalments. Order 53 of the Principal Orders provides that Part 16 of the Export Control (Prescribed Goods – General) Order 2005 applies to decisions made by the Secretary under the Principal Orders. The effect of order 53 is to make a decision of the Secretary under new order 42AA subject to internal merits review and to make the decision on internal review subject to review by the Administrative Appeals Tribunal.

Item 5 inserts a new Schedule 1A which mentions the fees applicable to establishments registered on or after 1 July in a financial year for the purposes of new suborder 4G(2).