



## Export Control (Milk and Milk Products) Orders 2005

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I, PETER McGAURAN, Minister for Agriculture, Fisheries and Forestry, make the following orders under Regulation 3 of the *Export Control (Orders) Regulations 1982*.

Dated 14th September 2005

Signed by Peter McGauran

PETER McGAURAN  
Minister for Agriculture, Fisheries and Forestry

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## Export Control (Milk and Milk Products) Orders 2005

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*Export Control (Milk and Milk Products) Orders 2005*

## Part 1      Preliminary

### Division I      General

#### 1      **Citation** [see Note 1]

These Orders are the *Export Control (Milk and Milk Products) Orders 2005*.

#### 2      **Commencement**

These Orders commence on 1 October 2005.

#### 3      **Objectives of these Orders**

3.1 The objectives of these Orders are to facilitate trade by ensuring the following:

- (a) that milk and milk products for export as food are fit for human consumption or are manufacturing grade milk and milk products and are identified as manufacturing grade for export for further processing;
- (b) that milk and milk products for export as food have a complete and accurate trade description and their integrity is assured;
- (c) that milk and milk products for export as food meet importing country requirements;
- (d) that milk and milk products for export as food are accurately identified and there can be effective traceability and recall if required.

*Note 1* For the meaning of **fit for human consumption, importing country requirement, manufacturing grade milk and milk products, milk and milk products** see order 7. For the meaning of **these Orders** see order 11. For the meaning of **food** see section 3 of the Act.

*Note 2* For manufacturing grade milk and milk products see suborders 34.2 and 43.3 and see further clause 25 of Schedule 5 and clause 24 of Schedule 9.

3.2 The objectives of these Orders are also to ensure:

- (a) the accuracy of any statement made in relation to the condition and preparation of milk and milk products for export as food; and
  - (b) that an accurate assessment can be made as to whether the objectives specified in suborder 3.1 and paragraph 3.2(a) are met; and
  - (c) that an accurate assessment can be made as to whether the requirements of the Act and these Orders are met.
- 3.3 These Orders also make provision for other matters generally necessary or convenient to be prescribed for carrying out or giving effect to the Act including:
- (a) audit and other functions of authorized officers; and
  - (b) the approval of approved arrangements, the giving of export permits, the approval of persons to issue export permits, the issue of government certificates, the approval of auditors and the performance of other functions by the Secretary; and
  - (c) official marks, specifications for electronic transmissions and other miscellaneous matters.

## **4 Outline of these Orders**

- 4.1 The following is an outline of these Orders.
- 4.2 Part 1 of these Orders:
- (a) defines the interrelationship of these Orders and the *Export Control (Prescribed Goods—General) Order 2005*; and
  - (b) gives the meaning of key words and expressions used in these Orders; and
  - (c) declares that milk and milk products to which these Orders apply are prescribed goods for the purposes of the application of the *Export Control Act 1982*.
- Note* The *Export Control Act 1982* regulates the export of prescribed goods.
- 4.3 Part 2 of these Orders:
- (a) describes the kinds of milk and milk products for export as food to which these Orders apply; and
  - (b) describes the small export consignments and the exports to New Zealand to which these Orders do not apply; and

- (c) provides a mechanism to expand the operation of these Orders to cover the milk and milk products, the small consignments and the exports to New Zealand that are otherwise outside the operation of these Orders but that require a government certificate; and
- (d) explains that these Orders apply to and in relation to milk and milk products that are for export as food; and
- (e) provides when these Orders do not apply to specified low risk methods of preparation of milk and milk products at certain establishments; and
- (f) explains when these Orders apply to ships' stores, imported milk and milk products held under bond, milk and milk products consigned to offshore installations and the like; and
- (g) provides that the Secretary may exempt a person from complying with these Orders in certain special circumstances.

4.4 Part 3 of these Orders identifies the obligations applying to a person who prepares milk and milk products for export as food. Failure to comply with these obligations results in an offence under these Orders.

4.5 Part 4 of these Orders identifies the conditions and restrictions on the export of milk and milk products. A failure to comply with these conditions and restrictions will for example attract the high penalty provisions of the Act and preclude the giving of an export permit and the issue of a government certificate.

*Note* For the high penalty provisions see for example section 7A and subsection 8(3) of the Act.

4.6 Part 5 of these Orders identifies the additional obligations that apply to an exporter of milk and milk products for export as food and to a person who issues export permits. These obligations are not conditions and restrictions on export.

4.7 Part 6 of these Orders provides for audit.

4.8 Part 7 of these Orders provides for official marks.

4.9 Part 8 of these Orders provides for directions that must be complied with.

4.10 Part 9 of these Orders provides for regulatory arrangements, reconsideration and review of decisions and miscellaneous matters.

4.11 Part 10 of these Orders provides for transitional arrangements.

## **5 Incorporation with *Export Control (Prescribed Goods—General) Order 2005***

5.1 The following provisions of the *Export Control (Prescribed Goods—General) Order 2005* apply to milk and milk products declared under these Orders to be prescribed goods:

- (a) Part 1;
- (b) Part 4 (other than section 4.02, subparagraph 4.09(b)(iii) and Division 4.3);
- (c) Part 13 (other than sections 13.19 to 13.21);
- (d) Part 14 (other than section 14.01);
- (e) Part 16 (subject to suborder 5.2 of these Orders);
- (f) Part 17 (other than section 17.04).

*Note* For when milk and milk products are declared to be prescribed goods see order 8.

5.2 Part 16 of the *Export Control (Prescribed Goods—General) Order 2005* applies to the extent specified in orders 90 and 91 of these Orders.

## **6 Contravention for purposes of the Regulations**

If in these Orders the words ‘*Penal provision*’ are set out at the foot of:

- (a) a provision of an order; or
  - (b) a provision of a clause made under these Orders;
- the provision is taken to provide that it is a penal provision for the purposes of subregulation 4(1) of the *Export Control (Orders) Regulations 1982*.

*Note* A person who fails to comply with the provision is guilty of a strict liability offence, see regulation 4 of the *Export Control (Orders) Regulations 1982*. For strict liability see section 6.1 of the *Criminal Code Act 1995*.

## **Division II                      Meaning of words and expressions**

## 7 Interpretation

In these Orders unless the contrary intention appears:

**amenities** include toilets, showers, locker rooms, change rooms, canteens and kitchens.

**amount payable to the Department** means an amount payable to the Department in respect of:

- (a) a fee for a service performed at, or in respect of an establishment; and
- (b) a fee in respect to the approval of a person as an auditor; and
- (c) a charge or levy the liability for which was ascertained in relation to an establishment or in relation to approval of a person as an auditor by reference to a matter prescribed by a law of the Commonwealth; and
- (d) a penalty in relation to a failure to discharge the liability to pay that fee, charge or levy.

*Note* For the meaning of **Department** see the *Acts Interpretation Act 1901* subsection 19A(3). (See also section 13 of the *Legislative Instruments Act 2003*.)

**animal food** means milk and milk products for use as feed for animals.

**approved** means approved by the Secretary by instrument in writing.

**approved arrangement** means an arrangement approved under clause 14 of Schedule 2 and includes a variation of an arrangement in the circumstances specified in suborder 78.5 and clause 20 of Schedule 2.

**approved auditor** means an auditor approved under subclause 5.1 of Schedule 10.

**approved export permit issuer** means a person given approval to issue permits under subclause 16.5 of Schedule 9.

**assistance animal** means an animal referred to in section 9 of the *Disability Discrimination Act 1992*.

**auditor** means a person who under order 55 may conduct an audit.

**can** means an immediate container made of metal, glass or other material suitable as a hermetically sealed container.

**canned** means thermally processed and enclosed in a hermetically sealed can.

***cheese*** means a ripened or unripened solid or semi-solid product, which may be coated, and in which the whey protein/casein ratio does not exceed that of milk obtained by one or both of the following processes:

- (a) coagulating wholly or partly the protein of milk, skimmed milk, cream, whey cream or butter milk, or any combination of these materials, through the action of rennet and other suitable coagulating agents and by partially draining the whey resulting from such coagulation;
- (b) processing techniques involving coagulation of the protein of milk and/or product with similar physical, chemical and organoleptic characteristics as the product defined in accordance with paragraph (a).

***Codex*** means the *Codex Alimentarius* issued by the body known as the Codex Alimentarius Commission of the Food and Agriculture Organization of the United Nations and the World Health Organization.

***commercially sterile*** when used in relation to milk and milk products, means free of pathogens which are capable of growing under the conditions the milk and milk products are likely to encounter during storage and distribution at ambient temperature.

***condemned*** means not suitable for use as food or for animal food and requiring destruction.

***condition*** when used to refer to a person having a condition means a condition that could affect the fitness for human consumption of milk and milk products and includes an injury, infected skin lesion or discharge from the ear, nose or eye.

***construction*** when used in relation to premises or equipment includes design, installation, assembly, lay out and the materials of which the premises and equipment are made.

***container*** when used in relation to a milk and milk products, means the principal covering in which the milk and milk products are packed.

***container system unit*** means a container (but not including a vehicle) designed for use as a unit of cargo handling equipment in the transport of milk and milk products by aircraft or ship.

***corporation*** means a legal person who is not an individual.

***critical control point*** means a factor, practice, procedure, process, or location which can be controlled in order to prevent, control,

eliminate or reduce a hazard, or minimise the likelihood of its occurrence.

**critical limit** means the limit to which a hazard must be controlled to prevent, control, eliminate or reduce to an acceptable level the occurrence of the hazard.

**disability** has the meaning given by section 4 of the *Disability Discrimination Act 1992*.

**diseased** when used in relation to an animal means the animal suffers from or is a carrier of a disease that is likely to be transmitted through milk and milk products.

**equipment** includes an implement but does not include a vehicle used to transport milk and milk products.

**essential services** include but are not limited to:

- (a) the supply of water, gas and electricity; and
- (b) sewerage, draining and waste disposal systems.

**export permit** means a permit:

- (a) issued under clauses 11 or 12 of Schedule 9; or
- (b) given by the Secretary under clauses 13 or 14 of Schedule 9.

**fit for human consumption** means safe and suitable.

*Note* See further orders 9 and 10.

**food carrying compartment** means the part or area of a vehicle, ship, aircraft or other means of transport in which milk and milk products are carried.

**food contact surface** means a surface that is likely to come into contact with exposed milk, milk products or ingredients.

**food handler** means a person who directly engages in the handling of milk, milk products or ingredients or who handles surfaces likely to come into contact with milk, milk products or ingredients, for the occupier.

**food handling area** means an area (including a refrigeration chamber or storage area) in which milk, milk products or ingredients are prepared or in which packaging materials are stored.

**Food Standards Code** means the *Australia New Zealand Food Standards Code* as defined in section 3 of the *Food Standards Australia New Zealand Act 1991*.

**government certificate** means an instrument in writing issued by the Secretary under clause 23 of Schedule 9.

**HACCP** means Hazard Analysis and Critical Control Point.

**hazard** means a biological, chemical or physical agent in, or a condition of, food that has the potential to cause an adverse health effect.

**immediate container** means the container (or covering) for milk and milk products that is not separated from the milk and milk products by any intervening covering except packaging material such as carton liners, wraps or sheets within blocks to separate the milk and milk products.

**implied described characteristic** includes a pictorial representation.

**importing country authority** for milk and milk products imported or to be imported into a country means the authority or body in that country responsible for regulating the import of milk and milk products of that kind into that country.

**importing country requirement** means a requirement relating to milk and milk products that an importing country authority requires to be complied with before the milk and milk products may be imported into that country from Australia.

**IANZ** means International Accreditation New Zealand.

**ingredient** means any substance (including a food additive) that is:

- (a) a constituent of milk and milk products (including raw materials); or
- (b) a processing aid for milk and milk products.

**initial decision** has the same meaning as in the *Export Control (Prescribed Goods—General) Order 2005*.

*Note* See section 16.01 of the *Export Control (Prescribed Goods—General) Order 2005*.

**installed** has the same meaning as in the *Sea Installations Act 1987* (disregarding any reference to an adjacent area).

**integrity** when used in relation to milk and milk products means that the identity of the milk and milk products in regard to any condition or restriction specified in Part 4 that may apply to them:

- (a) is readily ascertainable; and
- (b) is not lost or confused with that of any other food.

**Joint Petroleum Development Area** has the same meaning as in the *Petroleum (Timor Sea Treaty) Act 2003*.

**loaded for export** means:

- (a) placed for export into a container system unit at an establishment; or
- (b) if milk and milk products are to be stowed direct on board a ship or aircraft without first being placed into a container system unit—loaded onto the ship or aircraft for export.

**lot** means a quantity of milk or milk products of the same type processed or packed under essentially the same conditions during a particular time interval generally not exceeding 24 hours, and usually from a particular processing or packing line or other identifiable processing or packing unit.

**major component** means the ingredient in a milk product which:

- (a) comprises the largest proportion of the milk product by weight or volume; or
- (b) is in such a proportion by weight or volume that if the ingredient is withdrawn from the milk product, the milk product would no longer have the stated or implied described characteristics.

**manufacturing grade milk and milk products** means milk and milk products that are:

- (a) not fully processed; or
- (b) not fit for human consumption;

but are suitable for further processing to make the milk and milk products fit for human consumption.

**milk** means the lacteal secretion obtained from an animal.

**milk and milk products** means:

- (a) milk and milk products; and
- (b) milk or milk products.

**milk product** means a product containing milk.

**monitor** when used in relation to the monitoring of a critical control point means conduct a planned sequence of observations or measurements to assess whether the critical control point is under control.

**NATA** means the National Association of Testing Authorities.

**notifiable disease** means a disease the presence or suspected presence of which must be notified or reported (however this is expressed) under a law of the State or Territory in which the disease is present or suspected of being present.

**occupier**

- (a) means the individual, corporation or other legal entity (or any combination of these) in whose name a registered establishment preparing milk and milk products for export as food is registered; and
- (b) in relation to an unregistered establishment means the individual, corporation or other legal entity (or any combination of these) who:
  - (i) is the operator of a business preparing milk and milk products for export as food; or
  - (ii) if that person cannot be ascertained—the person in charge of the operations for the preparation of milk and milk products for export as food.

**pest** includes an insect, arachnid, rodent, bird or other vermin.

**potable water** means water of a quality that is acceptable for human consumption.

**processing aid** means a substance used in the processing of milk and milk products (or their ingredients) to fulfil a technological purpose relating to treatment or processing, but that does not perform a technological function in the final food.

**refrigeration chamber** includes a chiller, freezer and a cool room.

**registered establishment** means an establishment that is registered under section 4.04 of the *Export Control (Prescribed Goods—General) Order 2005*.

**registration number** means the registration number allotted to a registered establishment under paragraph 4.09(a) of the *Export Control (Prescribed Goods—General) Order 2005* and the number assigned to an unregistered establishment under paragraph 7.3(c) of Schedule 1.

**resources industry structure** means:

- (a) a resources industry fixed structure (within the meaning given by the *Sea Installation Act 1987*); and
- (b) a resources industry mobile unit (within the meaning given by that Act) that is not a vessel.

**sanitise** means to apply a process (including heat or chemicals) to a surface so that the number of pathogens on the surface is reduced to a level that:

- (a) does not compromise the safety of milk and milk products that may come in contact with the surface; and
- (b) does not permit the transmission of infectious disease.

**senior authorized officer** means an authorized officer who is formally appointed under section 20 of the Act to a position within the Department of ‘DPIE Band 2 work Level 6’ or more senior.

**shelf stable** means will not deteriorate when stored and handled at ambient temperature.

**single-use item** means an instrument, apparatus, utensil or other thing intended to be used only once in connection with food handling and includes disposable gloves.

**site of microbiological concern** means:

- (a) if the sites for milk or milk products where pathogens are likely to be located are known—those sites; and
- (b) in any other case—the thermal centre of milk or milk products.

**storage area** means an area used for the storage of milk, milk products, ingredients and packaging materials.

**substance** includes an organism or any other matter.

**the Act** means the *Export Control Act 1982*.

**thermal centre** when used in relation to milk or milk products (or a receptacle containing milk or milk products) means the last point in the milk or milk products (or receptacle) at which a change in temperature occurs.

**thermal process** means the heat sterilisation process in which a container of milk and milk products is exposed to a defined heating medium at a specified temperature for a specified time for the purpose of making the milk and milk products commercially sterile.

**validate** means provide evidence to demonstrate the effectiveness of a system of controls.

**vehicle** includes a ship, aircraft or other means of transport of food.

**verify** means apply methods, procedures, tests and other evaluations in addition to monitoring to determine whether a requirement is complied with.

**working day** means a day that is not a Saturday, a Sunday or a public holiday in the relevant State or Territory.

*Note* Section 3 of the Act provides the meaning (unless the contrary intention appears) of a number of words and expressions used in these Orders. See for example the meaning given to the following in section 3: *animal, apply, authorized officer, document, enter for export, enter for export to a specified place, establishment, examine, food, occupier, official mark, official marking device, order, prescribed goods, premises, preparation, regulations, Secretary, ship, trade description.*

## **8 Prescribed goods**

- 8.1 Milk and milk products for export as food are declared to be prescribed goods for the purposes of the Act.

*Note 1* For the meaning of **milk** and for the meaning of **milk products** see order 7. For the meaning of the expression **milk and milk products** see order 7.

*Note 2* For the meaning of **food** and **prescribed goods** see section 3 of the Act.

*Note 3* This provision is necessary so that the relevant provisions of the Act (see for example Part II and Part IV of the Act) apply to milk and milk products.

*Note 4* For milk and milk products for export as animal food prepared at establishments where milk and milk products for export as food are prepared see for example order 33, clause 28 of Schedule 5, subclause 6.2 of Schedule 8 and clause 24 of Schedule 9.

- 8.2 Despite suborder 8.1, the milk and milk products referred to in that suborder are not declared to be prescribed goods if, in accordance with Part 2, these Orders do not apply to them.

*Note* Suborder 8.2 prevents milk and milk products to which these Orders do not apply (for example ships' stores) becoming prescribed goods.

## **9 Meaning of unsafe**

- 9.1 Milk and milk products are not safe if they would be likely to cause physical harm to a person who might consume them, assuming the milk and milk products are:

- (a) subjected to the preparation (if any) that is relevant to their reasonable intended use; and

- (b) consumed by the person according to their reasonable intended use.

9.2 However milk and milk products are not unsafe merely because their inherent nutritional or chemical properties or their inherent nature causes an adverse reaction only in persons with allergies or sensitivities that are not common to the majority of persons.

## **10 Meaning of unsuitable**

10.1 Milk and milk products are not suitable if they:

- (a) are damaged, deteriorated, perished or contaminated to an extent that affects their reasonable intended use; or
- (b) contain any damaged, deteriorated, perished or contaminated substance that affects their reasonable intended use; or
- (c) are derived from an animal that is diseased or dead at the time of milking and are not declared by or under another Act to be safe for human consumption; or
- (d) contain a biological or chemical agent or other substance that is foreign to the nature of milk and milk products of that kind; or
- (e) are produced using, or is subjected to a process contrary to the Food Standards Code; or
- (f) are treated with a substance contrary to a law of the Commonwealth or a law of the State or Territory in which the treatment takes place; or
- (g) are produced under controls (including hygiene, temperature and other processing controls) that are inadequate to ensure that they are safe and not unsuitable (as defined in paragraphs 10.1(a) to 10.1(f)).

*Note* An example of paragraph 10.1(e) is a milk product produced using gene technology or irradiation contrary to the requirements for using these processes that are specified in the Food Standards Code.

10.2 However milk and milk products are not unsuitable merely because they:

- (a) contain a chemical in an amount that does not contravene the Food Standards Code; or
- (b) contain contaminant or natural toxicant in an amount that does not contravene the permitted level for the contaminant or toxicant in the Food Standards Code; or

- (c) contain any substance that is permitted by the Food Standards Code; or
- (d) are produced using, or are subjected to, a process permitted by the Food Standards Code.

*Note* For the meaning of **substance** see order 7.

## **11 These Orders**

Unless the contrary intention appears a reference in these Orders to **these Orders** means the *Export Control (Milk and Milk Products) Orders 2005* and its Schedules.

## **12 Notes**

In these Orders, a note is not to be taken as part of these Orders. Notes are intended as guidance only.

# **Part 2 Application of these Orders**

## **Division I These Orders apply to milk and milk products**

### **13 Application of these Orders to milk and milk products**

Subject to Division II of this Part, these Orders apply only to:

- (a) milk (other than colostrum) obtained from an animal of the bovine species; and
- (b) the following milk products derived from milk (other than colostrum) obtained from an animal of the bovine species:
  - (i) flavoured milk and modified milk;
  - (ii) cream and thickened cream;
  - (iii) butter, butter concentrate, buttermilk, concentrated buttermilk, dairy blend, ghee (clarified butter) and anhydrous milk fat (butter oil);
  - (iv) casein, caseinate and cheese;
  - (v) whey, whey cream and concentrated whey cream;
  - (vi) cultured milk and yoghurt;

- (vii) butter milk powder, lactose powder, milk sugar, powdered milk, skim milk powder, whey powder, milk protein powder, condensed milk, milk minerals and other milk concentrates;
- (viii) dips containing yoghurt, cream cheese or other dairy base;
- (ix) any other like milk product a major component of which is milk.

*Note* For the meaning of **major component**, **milk** and **milk product** see order 7.

#### **14 Orders do not apply to small consignments**

Subject to Division II of this Part, these Orders do not apply to the following:

- (a) liquid milk and milk products exported in a consignment of no more than 10 litres; and
- (b) milk and milk products of any other kind exported in a consignment of no more than 10 kilograms.

*Note* The expression **prescribed goods** does not include milk and milk products to which these Orders do not apply, see order 8.

#### **15 Milk and milk products for export to New Zealand**

Subject to Division II of this Part, these Orders do not apply to milk and milk products for export to New Zealand.

### **Division II                      Expanded application of these Orders**

#### **16 Explanation of this Division**

16.1 This Division provides the mechanism for bringing within the application of these Orders milk and milk products that are not otherwise covered under these Orders because:

- (a) they are of a kind that fall outside the scope of order 13; or
- (b) they are for export in small consignments or for export to New Zealand.

16.2 The aim of this Division is to facilitate the issue of government certificates by the Secretary for these kinds of milk and milk products, these small consignments and these exports to New Zealand.

16.3 This aim is achieved by enabling the exporter to obtain a notice from the Secretary specifying the orders that are to apply to the preparation and export of the milk and milk products by persons identified in the notice.

## **17 Milk and milk products to which this Division applies**

17.1 This Division applies to the following:

- (a) milk that is, and milk products that are, derived from, the lacteal secretion obtained from an animal of a species other than bovine;
- (b) colostrum (including colostrum obtained from an animal of a species other than bovine);
- (c) a product (not being a product referred to in paragraph 13(b)) a component of which is milk.

17.2 In paragraph 17.1(c):

**milk** includes:

- (a) the lacteal secretion obtained from animal of a species other than bovines; and
- (b) colostrum referred to in paragraph 17.1(b).

17.3 This Division applies to milk and milk products for export in consignments less than the amounts specified in order 14.

17.4 This Division applies to milk and milk products for export to New Zealand.

## **18 Expanded application if government certificate required**

18.1 A person who intends to apply to the Secretary for the issue of a government certificate in respect of milk and milk products to which this Division applies must make a written application to the Secretary for a notice stating that these Orders apply to the milk and milk products.

*Note* For the issue of a government certificate see order 74 and Part 2 of Schedule 9 of these Orders.

18.2 The application must:

- (a) describe the milk and milk products to be exported; and
- (b) identify the exporter of the milk and milk products; and
- (c) identify each establishment at which they are to be prepared; and
- (d) be signed by the exporter and the occupier of each such establishment; and
- (e) identify the country to which they are to be exported.

## **19 Notice specifying that these Orders apply**

19.1 If an application is given to the Secretary the Secretary must give each of the persons concerned a written notice stating that these Orders apply to, and in relation to, the milk and milk products.

19.2 The Secretary need not give the notice if the Secretary is not satisfied that:

- (a) the application complies with the requirements of suborder 18.2; or
- (b) the information given to the Secretary in, or in connection with the application for the certificate is accurate and complete; or
- (c) there is a sound basis for the information.

19.3 The Secretary need not give the notice if:

- (a) an application is given to the Secretary in respect of milk and milk products of kind referred to in suborder 17.1; and
- (b) there are reasonable grounds to believe that the issue of a government certificate for milk and milk products of the kind to which the application relates could result in trade in the export from Australia of goods being adversely affected.

19.4 If a notice given under suborder 19.1 has effect the provisions of these Orders specified in the notice as applying, apply to and in relation to:

- (a) the preparation of the milk and milk products by each occupier referred to in suborder 18.2 who signs the application; and
- (b) the export of the milk and milk products by an exporter who signs the application.

- 19.5 If the Secretary decides not to give a notice under suborder 19.1, the Secretary must give each of the persons concerned written notice of that decision.
- 19.6 The Secretary may amend the notice as it specifies the provisions of these Orders that apply by giving a further written notice to each of the persons concerned.
- 19.7 The Secretary may revoke the notice by giving a further written notice to each of the persons concerned if the Secretary has reasonable grounds to believe that:
- (a) the information given to the Secretary in, or in connection with the application for the certificate is inaccurate or complete or does not have a sound basis; or
  - (b) if the notice relates to milk and milk products of kind referred to in suborder 17.1—the issue of a government certificate for milk and milk products of the kind to which the application relates could result in trade in the export from Australia of goods being adversely affected.
- 19.8 The amendment or revocation takes effect:
- (a) on the day specified in the written notice of the amendment or revocation given as being the day it takes effect; or
  - (b) if no such day is specified—when the written notice of the amendment or revocation is given.
- 19.9 The Secretary must give each of the persons concerned written notification of:
- (a) the reasons for a decision not to give a notice or to revoke a notice given under suborder 19.1; and
  - (b) the right of the persons concerned to apply for reconsideration of the decision.
- Note* For reconsideration and review of the Secretary's decision see Part 16 of the *Export Control (Prescribed Goods—General) Order 2005* and see orders 90 and 91 of these Orders.
- 19.10 A notice given under suborder 19.1:
- (a) takes effect:
    - (i) on the day specified in the notice as being the day it takes effect; or
    - (ii) if no such day is specified—when the notice is given; and
  - (b) ceases to have effect on the earlier of:

- (i) the day specified in the notice as the day the notice ceases to have effect; or
- (ii) when it is revoked.

19.11 In this order:

***person concerned*** means a person referred to in paragraph 18.2(d) who signs the application.

### **Division III                      Application to milk and milk products for export as food**

#### **20                      Orders apply to milk and milk products for export as food**

These Orders apply to, and in relation to, milk and milk products that are for export from Australia as food.

*Note* For the meaning of ***food*** see section 3 of the Act.

### **Division IV                      Orders do not apply to certain establishments**

#### **21                      Explanation**

- 21.1 This Division describes the establishments to which these Orders do not apply because of the limited processing activity that takes place at these establishments.
- 21.2 Order 39 prohibits the export of milk from these establishments unless, before it is exported, it is subsequently prepared at a registered establishment (or at an unregistered establishment in relation to which an approval referred to in order 30 has effect).
- 21.3 These Orders also set out requirements for sourcing milk from establishments to which, under this Division, these Orders do not apply. See further clause 2 of Schedule 5.
- 21.4 For evaluating the fitness for human consumption of milk sourced from these establishments see clause 23 of Schedule 5.

#### **22                      Establishments that store or chill milk**

26

These Orders do not apply to establishments engaged in storing or chilling liquid milk provided no part of the establishment is used for any preparation of milk and milk products other than storing or chilling liquid milk.

*Note* Preparation includes processing, packing, storage, treatment, handling or loading, see the meaning of **preparation** in section 3 of the Act.

## **Division V                      Ships' stores, imported milk held under bond etc**

### **23                      When these Orders do not apply**

- 23.1 These Orders do not apply to milk and milk products that are:
- (a) ships' stores for the use of passengers and crew or for the service of the ship on a voyage from Australia; or
  - (b) aircraft stores for the use of passengers and crew or for the service of the aircraft on a flight from Australia; or
  - (c) imported into Australia and not prepared in Australia and held in bond at all times prior to export; or
  - (d) imported into Australia and then exported in the same covering and under the same trade description as the covering and trade description in and under which they were imported; or
  - (e) are consigned to an external territory for consumption within the Territory; or
  - (f) are consigned to a resource industry structure that is installed within the Joint Petroleum Development Area, for consumption on the structure.

*Note* For the meaning of **installed**, **Joint Petroleum Development Area** and **resources industry structure** see order 7.

- 23.2 For paragraphs 23.1(a) and 23.1(f), a resource industry mobile unit (within the meaning given by the *Sea Installation Act 1987*) that is not installed is taken to be a ship.

## **Division VI                      Exemptions**

### **24                      When the Secretary may specify orders do not apply**

- 24.1 A person who is or is to be:

- (a) the occupier of an establishment at which milk and milk products for export as food are prepared; or
- (b) the exporter of milk and milk products exported as food; may make a written application to the Secretary for an instrument of exemption for the milk and milk products to be exported to a country specified in the application:
- (c) as a commercial sample that does not exceed:
  - (i) in the case of liquid—50 litres; and
  - (ii) in any other case—60 kilograms; or
- (d) for experimental purposes; or
- (e) in special circumstances.

24.2 The application must:

- (a) be given to the Secretary at least 10 clear working days, or such shorter period as the Secretary allows, before the proposed date of export or preparation of the milk and milk products concerned; and
- (b) specify the provisions of these Orders from which the exemption is sought; and
- (c) give the reasons for seeking the exemption; and
- (d) provide enough information to enable the Secretary to identify the milk and milk products concerned (including if possible the information specified in clause 2 of Schedule 9).

24.3 If an application is made under suborder 24.1 the Secretary may give the applicant an instrument of exemption.

24.4 The instrument of exemption must specify which of the provisions of these Orders do not apply to milk and milk products of the kind described in the instrument that are prepared for export, or are for export (as the case may be) by the applicant, specified in the instrument to a country specified in the instrument.

## **25 Exemption may be subject to conditions**

25.1 The Secretary may:

- (a) give the applicant an exemption subject to conditions specified in the instrument of exemption; and
- (b) impose new conditions or vary or revoke the conditions by giving the applicant a further written notice.

- 25.2 The conditions must be for the purpose of ensuring that, in relation to the milk and milk products to which the exemption applies, there is compliance with one or more of the objectives in suborders 3.1 and 3.2.

**26 Orders specified in the instrument do not apply**

The provisions of these Orders specified in the instrument of exemption do not apply to, or in relation to, milk and milk products of the kind described in the instrument of exemption that are prepared for export or exported (as the case may be) by the applicant specified in the instrument to a country specified in the instrument.

**27 When the instrument ceases to have effect**

- 27.1 The Secretary may by written notice given to the applicant revoke the instrument.
- 27.2 The revocation takes effect:
- (a) on the day specified in the written notice given as being the day the revocation takes effect; or
  - (b) if no such day is specified—when the written notice is given.
- 27.3 The instrument ceases to have effect:
- (a) on the day specified in the instrument as being the day it ceases to have effect; or
  - (b) if such day is specified in the instrument—the end of 12 months after the day the instrument is issued;
- unless it is earlier revoked.

*Note* For revocation of an instrument see section 33(3A) of the *Acts Interpretation Act 1901*. (See also section 13 of the *Legislative Instruments Act 2003*.)

**28 If instrument ceases to have effect the orders apply**

If the instrument of exemption ceases to have effect the provisions of these Orders that are specified in the instrument as not applying apply.

## **Part 3                      The preparation of milk and milk products for export as food**

### **Division I                      Registration**

#### **29                      Requirement for registration**

- 29.1 Milk and milk products for export as food must be prepared at an establishment that is registered in respect of the operations for the preparation of the milk and milk products undertaken.

*Note 1* For the meaning of **registered establishment** see order 7.

*Note 2* Establishment includes premises, see the meaning of **establishment** and **registered premises** in section 3 of the Act. Premises includes a building, ship, aircraft or vehicle, see section 3 of the Act.

*Note 3* Preparation includes processing, packing, storage, treatment, handling or loading. See the meaning of **preparation** in section 3 of the Act.

*Note 4* For the requirements for applications for registration see Part 1 of Schedule 1 and see section 4.03 of the *Export Control (Prescribed Goods—General) Order 2005*.

- 29.2 If milk and milk products for export as food are prepared at an establishment that is not registered the occupier of the establishment is guilty of an offence.

#### *Level 5 penal provision*

*Note* A level 5 penal provision means a person who is guilty of the relevant offence is punishable by a fine of 50 penalty units, see Regulation 4 of the *Export Control (Orders) Regulations 1982*. See further order 6.

#### **30                      Approval to prepare milk and milk products in an unregistered establishment**

Despite order 29 milk and milk products for export as food need not be prepared in a registered establishment if:

- (a) in accordance with clause 7 of Schedule 1 the Secretary gives the occupier of the establishment written approval to prepare the milk and milk products concerned at the establishment; and
- (b) the approval has effect.

*Note 1* For when the approval has effect see subclause 7.2 and clause 12 of Schedule 1.

*Note 2* For when requirements of Schedule 2 of these Orders that are specified in the approval to prepare milk and milk products in an unregistered establishment do not apply, see clause 8 of Schedule 1.

## **Division II                      Management practices**

### **31                      Requirement for an approved arrangement**

31.1 The occupier of:

- (a) a registered establishment; and
- (b) an unregistered establishment in relation to which an approval referred to in order 30 has effect;

must have an approved arrangement that complies with the requirements of the Schedule 2 (Management of food safety and suitability).

*Note 1* For the meaning of **approved arrangement** see order 7.

*Note 2* If there is a failure to comply with the arrangement or its conditions the Secretary may suspend or revoke the arrangement, see paragraph 21.1(a) of Schedule 2. For audit of compliance with an approved arrangement see Part 6 of these Orders. For directions to take action to correct or prevent the recurrence of a failure to comply see Part 8 of these Orders.

31.2 If milk and milk products for export as food are prepared at an establishment referred to in subclause 31.1 and the occupier does not have an approved arrangement that covers the preparation concerned, the occupier is guilty of an offence.

#### *Level 5 penal provision*

*Note* A level 5 penal provision means a person who is guilty of the relevant offence is punishable by a fine of 50 penalty units, see Regulation 4 of the *Export Control (Orders) Regulations 1982*.

### **32                      Management practices**

The occupier of:

- (a) a registered establishment; and
- (b) an unregistered establishment in relation to which an approval referred to in order 30 has effect;

must ensure that the requirements of Part I and Division II of Part 2 of Schedule 2 (Management of food safety and suitability) are complied with.

*Note* For when requirements of Schedule 2 of these Orders that are specified in the approval to prepare milk and milk products in an unregistered establishment do not apply, see clause 8 of Schedule 1.

### **33 When other food operations may take place at export establishments**

33.1 Milk and milk products for export as food must not be prepared at an establishment that prepares food (including milk and milk products) for:

- (a) domestic consumption; or
- (b) animal food; or
- (c) any other purposes other than for milk and milk products for export as food;

unless:

- (d) the establishment's approved arrangement allows for the preparation for the purpose specified in paragraphs 33.1(a), 33.1(b) or 33.1(c) that takes place; and
- (e) the establishment has controls in place that ensure that the fitness for human consumption of the milk and milk products for export as food is not put at risk by the preparation for a purpose specified in paragraphs 33.1(a), 33.1(b) or 33.1(c) that takes place; and
- (f) the establishment has controls in place that ensure that:
  - (i) the separate identity of the milk and milk products for export as food is maintained; or
  - (ii) milk and milk products prepared for a purpose specified in paragraphs 33.1(a), 33.1(b) or 33.1(c) that takes place comply with the requirements of the Act and these Orders that apply to and in relation to milk and milk products of the same kind for export as food.

33.2 If:

- (a) milk and milk products for export as food are prepared at an establishment where the preparation of food (including milk and milk products) for a purpose specified in paragraphs 33.1(a), 33.1(b) or 33.1(c) takes place; and

- (b) a requirement of paragraphs 33.1(d), 33.1(e) and 33.1(f) is not met;  
the occupier of the establishment is guilty of an offence.

*Level 5 penal provision*

*Note* A level 5 penal provision means a person who is guilty of the relevant offence is punishable by a fine of 50 penalty units, see Regulation 4 of the *Export Control (Orders) Regulations 1982*.

## **Division III                      Export standards**

### **34                      Export standards for milk and milk products**

- 34.1 The occupier must ensure that the applicable requirements of the following Schedules are met:
- (a) Schedule 3 (Structural requirements);
  - (b) Schedule 4 (Operational hygiene);
  - (c) Schedule 5 (Preparation and transport);
  - (d) Schedule 6 (Product standards);
  - (e) Schedule 7 (Trade description);
  - (f) Schedule 8 (Identification, tracing systems, integrity and transfer).

*Level 5 penal provision*

*Note* A level 5 penal provision means a person who is guilty of the relevant offence is punishable by a fine of 50 penalty units, see Regulation 4 of the *Export Control (Orders) Regulations 1982*.

- 34.2 Paragraph 34.1(d) does not apply to milk and milk products that are manufacturing grade milk and milk products and are identified as manufacturing grade for export for further processing.

*Note* For the meaning of **manufacturing grade milk and milk products** see order 7. See further suborder 43.3, clause 25 of Schedule 5 and clause 24 of Schedule 9.

## **Part 4**                      **Conditions and restrictions on export of milk and milk products**

### **Division I**                **General requirement**

#### **35**            **Prohibition on export of milk and milk products**

Milk and milk products must not be exported from Australia as food unless the requirements specified in this Part are complied with.

*Note 1* For the meaning of **food** see section 3 of the Act.

*Note 2* For requirements applying to milk and milk products for animal food at establishments engaged in the preparation of milk and milk products for export as food see order 33 and see also clause 28 of Schedule 5, subclause 6.2 of Schedule 8 and clause 24 of Schedule 9.

#### **36**            **Conditions and restrictions on export**

For the purposes of section 7 of the Act the requirements specified for milk and milk products in this Part are specified conditions and restrictions applicable to the export of milk and milk products that are exported as food.

*Note* A failure to comply with these conditions and restrictions attracts for example the high penalty provisions of the Act, see section 7A and subsections 8(3) of the Act. A failure to comply with these conditions and restrictions preclude the giving of an export permit and can also lead to revocation of an export permit, see Division IV of Part 1 of Schedule 9. A failure to comply with these conditions and restrictions also precludes the issue of a government certificate, see Part 2 of Schedule 9.

### **Division II**                **Registration and approved arrangement**

#### **37**            **Requirement for registration**

Milk and milk products for export as food must be prepared at:

- (a) an establishment that is registered in respect of the operations for the preparation of the milk and milk products undertaken;  
or
- (b) an unregistered establishment in relation to which an approval referred to in order 30 has effect.

*Note 1* Establishment includes premises, see the meaning of **establishment** and **registered premises** in section 3 of the Act.

*Note 2* Premises includes a building, ship, aircraft or vehicle, see section 3 of the Act.

*Note 3* For when requirements of Schedule 2 of these Orders that are specified in the approval to prepare milk and milk products in an unregistered establishment do not apply, see clause 8 of Schedule 1.

### **38 Requirement for an approved arrangement**

- 38.1 Milk and milk products for export as food must be prepared in an establishment where the occupier has an approved arrangement that covers the preparation undertaken.

*Note 1* For the meaning of **approved arrangement** see order 7. See further Schedule 2.

*Note 2* If there is a failure to comply with the arrangement or its conditions the Secretary may suspend or revoke the arrangement, see clause 21 of Schedule 2. For when a failure to comply with the approved arrangement (including importing country requirements identified in the arrangement) may preclude the giving of an export permit or the issue of a government certificate see Division IV of Part 1 of Schedule 9 and Part 2 of Schedule 9. For audit of compliance with an approved arrangement see Part 6 of these Orders.

- 38.2 Suborder 38.1 applies to the preparation of milk and milk products at:

- (a) a registered establishment; and
- (b) an unregistered establishment in relation to which an approval referred to in order 30 has effect.

*Note* For when requirements of Schedule 2 of these Orders that are specified in the approval to prepare milk and milk products in an unregistered establishment do not apply, see clause 8 of Schedule 1.

### **39 Prohibition on export from certain establishments**

Milk that is prepared at an establishment to which, under order 22, these Orders do not apply must not be exported as food unless before it is exported it is further prepared at:

- (a) a registered establishment; or
- (b) an unregistered establishment in relation to which an approval referred to in order 30 has effect.

*Note* For requirements for sourcing from establishments to which, under order 22, these Orders do not apply see clause 2 of Schedule 5.

## **Division III                      Export standards**

### **40                      Premises, equipment and vehicles**

Milk and milk products for export as food must:

- (a) be prepared in an establishment where there is compliance with the applicable requirements of Schedule 3 (Structural requirements); and
- (b) be transported to and from establishments engaged in the preparation of the milk and milk products using vehicles and equipment that comply with the applicable requirements of Schedule 3 (Structural requirements).

*Note 1* Premises includes a building, ship, aircraft or vehicle, see section 3 of the Act.

*Note 2* Preparation includes processing, packing, storage, treatment, handling or loading. See the meaning of **preparation** in section 3 of the Act.

### **41                      Operational hygiene**

Milk and milk products for export as food must:

- (a) be prepared at an establishment where there is compliance with the applicable requirements of Schedule 4 (Operational hygiene); and
- (b) be transported to and from establishments engaged in the preparation of the milk and milk products using vehicles and equipment that comply with the applicable requirements of Schedule 4 (Operational hygiene).

### **42                      Preparation and transport**

Milk and milk products for export as food must:

- (a) be prepared; and
- (b) be transported to and from establishments engaged in the preparation of the milk and milk products;

in accordance with the applicable requirements of Schedule 5 (Preparation and transport).

#### **43 Compliance with product standards**

- 43.1 Milk and milk products for export as food and their ingredients must comply with the applicable requirements of Schedule 6 (Product standards).

*Note* For the meaning of **ingredient** see order 7.

- 43.2 Milk and milk products must not be exported as food unless they are fit for human consumption.

*Note* For the meaning of **food** see order 7.

- 43.3 Suborders 43.1 and 43.2 do not apply to milk and milk products that are manufacturing grade milk and milk products and are identified as manufacturing grade for export for further processing.

*Note* For the meaning of **manufacturing grade milk and milk products** see order 7 and see further suborder 34.2, clause 25 of Schedule 5 and clause 24 of Schedule 9.

#### **44 Trade descriptions**

Milk and milk products for export as food must comply with the applicable requirements of Schedule 7 (Trade description).

#### **45 Identification, tracing systems, integrity and transfer**

Milk and milk products for export as food must be prepared in an establishment that complies with the applicable requirements of Schedule 8 (Identification, tracing systems, integrity and transfer).

#### **46 Export permits**

- 46.1 Before milk and milk products for export as food are exported, an export permit must have been issued or given for their export.

*Note 1* For the meaning of **export permit** see order 7.

*Note 2* For the issue or giving of export permits see Division IV of Part 1 of Schedule 9. For giving an export permit electronically see further Part 3 of Schedule 9.

- 46.2 At the time of the export of the milk and milk products, the export permit must have effect.

*Note* For when an export permit has effect see clauses 20 and 21 of Schedule 9.

## **Part 5**                      **Exporters and other issuers of export documentation**

### **Division I**                      **General requirement**

#### **47**                      **Application**

Unless the contrary intention appears this Part applies to the following persons:

- (a) if an export permit is issued by a person designated in an approved arrangement for an establishment—the occupier of the establishment; and
- (b) if an export permit is issued by an approved export permit issuer—the approved export permit issuer; and
- (c) in any other case—the person identified as the exporter in an application for an export permit.

*Note 1* For the meaning of **approved export permit issuer** see order 7.

*Note 2* For permits issued by a person designated in an approved arrangement see clause 11, subclause 13.2 and clause 15 of Schedule 9. For permits issued by an approved permit issuer see clause 12, subclause 13.3 and clause 16 of Schedule 9.

### **Division II**                      **Information and documentary requirements**

#### **48**                      **Security of export permits and government certificates**

A person to whom this Part applies must ensure that export permits and government certificates are held under conditions of security when not in use.

*Level 5 penal provision*

*Note 1* A level 5 penal provision means a person who is guilty of the relevant offence is punishable by a fine of 50 penalty units, see Regulation 4 of the *Export Control (Orders) Regulations 1982*.

*Note 2* Failure to comply with the requirements of this Part may preclude the giving of an export permit or could result in the revocation of an export permit or could preclude the issuing of a government certificate, see paragraphs 17.2(c), 19.3(h) and 24.2(b) of Schedule 9.

*Note 3* Failure to comply may also preclude the approval of approved arrangements as they relate to the issue of permits and the approval of persons as approved export permit issuers or result in the revocation of these approvals, see clauses 15.1, 15.3, 16.5 and 16.10 of Schedule 9.

#### **49 Return of export permits and government certificates**

If:

- (a) an export permit for milk and milk products is revoked; or
  - (b) a government certificate for milk and milk products is cancelled; or
  - (c) the intention to export milk and milk products is abandoned;
- a person to whom this Part applies must return:
- (d) any export permit for the milk and milk products issued by the person or given to the person by the Secretary; and
  - (e) any government certificate for the milk and milk products given to the person by the Secretary;

before the end of three working days after the day on which the revocation, cancellation or abandonment concerned occurred.

##### *Level 2 penal provision*

*Note* A level 2 penal provision means a person who is guilty of the relevant offence is punishable by a fine of 20 penalty units, see Regulation 4 of the *Export Control (Orders) Regulations 1982*.

#### **50 Requirement to notify**

If before the export of milk and milk products for which an export permit is issued or given, a person to whom this Part applies suspects that:

- (a) the fitness for human consumption of the milk and milk products is jeopardised or their security or integrity is compromised; or

- (b) an importing country requirement applying to the milk and milk products is not complied with;

the person must notify an authorized officer immediately on forming the suspicion.

*Note* For example security may be compromised if an official mark applied to milk and milk products is altered or interfered with. See further order 66 and see also sections 13.01 to 13.18 of the *Export Control (Prescribed Goods—General) Order 2005* and paragraph 5.1(c) of these Orders.

## **51 Effective measures to ensure accuracy and completeness**

A person to whom this Part applies must have effective measures in place to ensure that:

- (a) information given to the Secretary in, or in connection with, an application for an export permit or a government certificate is accurate and complete; and
- (b) there is a sound basis for the information.

*Note* For criminal penalties applying to persons who make false or misleading statements to a Commonwealth entity see the *Criminal Code Act 1995* Part 7.4 (False or misleading statements).

## **52 Exporter to document compliance measures**

A person whom this Part applies must document the measures the person will take to comply with the applicable requirements of:

- (a) this Part; and
- (b) subclauses 11.5, 11.6, 12.4 and 12.5 of Schedule 9; and
- (c) the conditions of an approval of an approved export permit issuer referred to in subclause 16.8 of Schedule 9.

*Note 1* If export permits are issued by a person designated in the occupier's approved arrangement, the approved arrangement will need to contain the these measures, see paragraph 15.1(c) of Schedule 9.

*Note 2* For audit of the exporter's operations see Part 6 of these Orders.

## **53 Record keeping requirements**

A person:

- (a) to whom under paragraph 47(a) this Part applies must retain a copy of each export permit issued by the person designated under the approved arrangement; and

- (b) to whom under paragraph 47(b) this Part applies must retain a copy of each export permit issued by the person; and
- (c) to whom under paragraph 47(c) this Part applies must retain a copy of each application for an export permit for all milk and milk products to be exported by the person; and
- (d) to whom this Part applies must retain the following:
  - (i) each declaration of compliance referred to in subclause 3.1 of Schedule 9 that relates to milk and milk products exported by the person;
  - (ii) each permit given by the Secretary to the person;
  - (iii) each application for a government certificate made by the person other than an application made using the computer operating system (EXDOC) specified in subclause 25 of Schedule 9;
  - (iv) each government certificate issued to the person;
- (e) to whom this Part applies must retain all other documents that:
  - (i) are made by the person or come into the person's possession; and
  - (ii) are relevant to whether the person complies with the requirements of the Act and the Orders applying to the person;

for a minimum period of three years after the day the document is made by the person or comes into the person's possession (as the case may be).

#### *Level 5 penal provision*

*Note 1* A level 5 penal provision means a person who is guilty of the relevant offence is punishable by a fine of 50 penalty units, see Regulation 4 of the *Export Control (Orders) Regulations 1982*.

*Note 2* The *Criminal Code Act 1995* Part 7.7 (Forgery and related offences) contains offences relating to forgery and the falsification of documents.

*Note 3* For the requirement for the exporter to make documents available during an audit see order 60. For penal provisions applying to failures to give information or documents to an authorized officer or the Secretary see Part III, Division 7 of the Act.

## **Part 6                      Audit**

### **Division I                      Performance of the audit**

#### **54                      Secretary may require audits**

54.1 The Secretary may require the following to be audited:

- (a) operations for the preparation of milk and milk products for export as food;
- (b) operations for the export of milk and milk products as food;
- (c) operations for the issue of export permits for milk and milk products.

*Note* For the issue of export permits see Division IV of Part 1 of Schedule 9.

54.2 The Secretary may require the audit to be for:

- (a) the audit of compliance with all of:
  - (i) the applicable requirements of the Act and these Orders; and
  - (ii) the requirements of any applicable approval (including an approval of an approved arrangement, an approval under clause 7 of Schedule 1 and an approval under clause 16.5 of Schedule 9) and its conditions; and
  - (iii) the applicable importing country requirements;for all aspects of the operations in relation to all milk and milk products for export as food covered under operations; or
- (b) the audit of one or more of the following:
  - (i) the aspects of operations specified by the Secretary;
  - (ii) the milk and milk products of the kind specified by the Secretary;
  - (iii) compliance with one or more of the applicable requirements referred to in paragraph 54.2(a).

#### **55                      Who may conduct the audit**

An audit of operations may be performed:

- (a) by an authorized officer; or

- (b) if so specified by the Secretary in writing, by an auditor approved by the Secretary under clause 5 of Schedule 10 to perform an audit of that kind.

**56      Purpose of audit**

The purpose of an audit of operations is to establish whether there is compliance with one or more of the applicable requirements referred to in paragraph 54.2(a) for which the audit is required by the Secretary.

**57      Additional audits on request**

- 57.1 The Secretary may, at the request of the occupier or exporter, provide audits of the occupier's or exporter's operations by an authorized officer that are in addition to those required by the Secretary under these Orders.
- 57.2 The Secretary may at any time withdraw the provision of additional audits.

**58      Notice of audit**

An audit may be unannounced.

**59      Audit frequency and intensity**

- 59.1 The Secretary may by giving a written notice to the occupier, exporter or approved export permit issuer specify the frequency and intensity of the audits of their operations.
- 59.2 The Secretary may by giving a further written notice to the person to whom the first notice is given vary or revoke the earlier notice.
- 59.3 Suborders 59.1 and 59.2 do not preclude the Secretary from specifying in the conditions of any applicable approved arrangement or approval of a person as an export permit issuer the frequency and intensity of audits required.

*Note* See the AQIS guidelines for audit frequency which varies as to level of risk for the establishment or the exporter (ie the level of risk being the likelihood of there being a failure to comply with the requirements of the Act or these Orders and the harm that may result from the failure).

## **60           Assistance to be provided**

- 60.1 The occupier, exporter and approved export permit issuer must provide such assistance to an auditor as is reasonably necessary to enable the auditor to perform the audit of their operations.

*Note* For the meaning of **auditor** see order 7.

- 60.2 Without limiting the generality of suborder 60.1 the occupier, exporter and approved export permit issuer must:

- (a) provide information to the auditor on request (including provide explanations and make documents and translations available) and operate any equipment at their premises; and
- (b) allow an auditor to:
  - (i) observe and interview their employees, agents or contractors of the occupier, exporter or permit issuer; and
  - (ii) observe any of their procedures; and
  - (iii) use their equipment for the purpose of accessing, examining, testing, sampling, recording or reproducing any documents or other thing at their premises; and
  - (iv) bring onto the premises at which the audit is conducted equipment for the purposes referred to in subparagraph 60.2(b)(iii).

*Note 1* Failure to provide assistance is a ground of suspension or revocation of an approved arrangement (see paragraph 21.1(d) of Schedule 2 and subclause 15.3 of Schedule 9) or of an approval of a person to issue permits (see subclause 16.10 of Schedule 9). Failure by the exporter to provide assistance may preclude the giving of an export permit or government certification see paragraphs 17.2(b) and 19.3(h) of Schedule 9.

*Note 2* Contrast the enforcement powers in Part III of the Act.

## **Division II                      Failures to comply and audit reports**

### **61           Notification and assessment of failures to comply**

- 61.1 If as the result of an audit of operations, in the auditor's opinion, there is a failure (or a combination of failures) to comply with a requirement referred to in paragraph 54.2(a) the auditor must:
- (a) notify the occupier, exporter and approved export permit issuer immediately on ending the audit of their operations; and

- (b) assess whether the failure (or a combination of failures) is a critical non-compliance.

*Note* A failure to comply with the requirements of this Division may preclude the approval of an approved auditor or result in the revocation of an approval of an approved auditor, see paragraphs 5.1(c) and 11.1(d) of Schedule 10.

- 61.2 If in the auditor's opinion the failure (or a combination of the failures) amounts to a critical non-compliance, the auditor must notify the Secretary immediately on forming the opinion.
- 61.3 A **critical non-compliance** when used in relation to the audit of an establishment, exporter or approved export permit issuer means a failure (or a combination of failures) to comply with a requirement referred to in paragraph 54.2(a) that:
  - (a) results in, or is likely to result in, the preparation or export of milk and milk products for export as food that:
    - (i) are not fit for human consumption or their integrity is compromised; or
    - (ii) do not comply with an importing country requirement; or
  - (b) prevents an accurate assessment being made as to whether milk and milk products:
    - (i) are fit for human consumption and their integrity is assured; or
    - (ii) comply with an importing country requirement; or
  - (c) results in, or is likely to result in the issue or giving of an export permit or government certificate that is inaccurate or incomplete; or
  - (d) prevents an accurate assessment being made as to whether an export permit or government certificate that is issued or given is accurate or complete.

## **62      Audit reports**

- 62.1 The auditor must make a report of the audit.
- 62.2 The audit report must include the following information:
  - (a) the name of the auditor;
  - (b) the date of the audit;
  - (c) the identity of the operations audited;

- (d) the nature and scope of the audit, including the activities audited.

62.3 The audit report must state:

- (a) whether in the auditor's opinion the audit was satisfactorily completed or was terminated prior to completion; and
- (b) whether in the auditor's opinion the requirements referred to in paragraph 54.2(a) for which the audit is required by the Secretary are complied with; and
- (c) the reasons for the auditor's opinion.

62.4 The audit report must:

- (a) describe each failure to comply with the requirements referred to in paragraph 54.2(a) identified by the auditor; and
- (b) state whether in the auditor's opinion the failure (or a combination of the failures) is a critical non-compliance or has contributed to a critical non-compliance.

### **63 Audit report must be given to Secretary, occupier etc**

- 63.1 Within 14 working days after the day an approved auditor ends an audit the approved auditor must give the audit report to the Secretary.
- 63.2 Within 14 working days after the day an auditor (including an approved auditor) ends an audit the auditor must give the occupier, exporter or approved export permit issuer concerned a copy of the audit report for their operations.

## **Part 7 Official marks**

### **Division I General**

#### **64 Manufacture etc of official marks and official marking devices**

- 64.1 Despite subsection 13.18(2) of the *Export Control (Prescribed Goods—General) Order 2005* a person:
  - (a) may manufacture an official marking device for use for milk and milk products if the person is an authorized officer or is

acting in accordance with a direction of an authorized officer;  
and

- (b) may manufacture an official mark for use for milk and milk products or have in his or her possession an official marking device for use for milk and milk products if:
  - (i) the person is an authorized officer or is acting in accordance with a direction of an authorized officer; or
  - (ii) the person is designated in an approved arrangement as a person who may do the relevant act and the act is done in accordance with the approved arrangement.

*Note 1* For the meaning of **official marking device** see section 3 of the Act and see also section 13.17 of the *Export Control (Prescribed Goods—General) Order 2005*.

*Note 2* Part 13 (other than sections 13.19 to 13.21) of the *Export Control (Prescribed Goods—General) Order 2005* applies, see paragraph 5.1(c) of these Orders.

*Note 3* Contravention of subsection 13.18(2) of the *Export Control (Prescribed Goods—General) Order 2005* is an offence, see section 14 of the Act.

64.2 A person must not alter or interfere with an official mark applied:

- (a) to milk and milk products for export, their packaging or to anything containing the milk and milk products; or
  - (b) to any thing that is attached to:
    - (i) milk and milk products for export; or
    - (ii) their packaging; or
    - (iii) any thing containing milk and milk products for export;
- unless:
- (c) the person is an authorized officer, or is acting in accordance with a direction of an authorized officer; or
  - (d) the person is designated in an applicable approved arrangement as a person who may do the relevant act and the act is done in accordance with the approved arrangement.

*Note 1* For the meaning of **apply** see section 3 of the Act.

*Note 2* For the meaning of **official mark** see section 3 of the Act and see also sections 13.02 to 13.16 of the *Export Control (Prescribed Goods—General) Order 2005*.

*Note 3* Contravention of suborder 64.2 is an offence, see section 14 of the Act.

*Note 4* For a requirement to retain during transport an official mark during transport see clause 22 of Schedule 5.

## **65 Resemblances**

- 65.1 A person must not apply:
- (a) to milk and milk products for export, their packaging or to any thing containing the milk and milk products; or
  - (b) to any thing that is attached to:
    - (i) milk and milk products for export; or
    - (ii) their packaging; or
    - (iii) anything containing milk and milk products for export;
- a mark resembling an official mark (including a resemblance of an official mark) or any thing apparently intended to resemble or pass for an official mark unless the following circumstances exist:
- (c) the person is designated in an applicable approved arrangement as a person who may do the relevant act; and
  - (d) the act is done in accordance with the provisions of the approved arrangement.

*Note 1* Contravention of suborder 65.1 is an offence. See section 14 of the Act.

*Note 2* For when importing country requirements for applying the resemblance need to be set out in the applicable approved arrangement, see clause 2 of Schedule 2.

- 65.2 In this order:

***resemblance of an official mark*** means a design that:

- (a) is similar to the design of an official mark specified in the *Export Control (Prescribed Goods—General) Order 2005*; and
- (b) differs materially from the design so specified only in respect of its dimensions.

## **66 Action to be taken if an official mark is altered**

- 66.1 If:

- (a) milk and milk products for export are located at an establishment; and
- (b) the occupier suspects that an official mark applied to the milk and milk products is altered or interfered with other than in accordance with these Orders;

the occupier must:

- (c) notify an authorized officer without delay on forming the suspicion; and
- (d) not deal further with the milk and milk products concerned without the written approval of an authorized officer.

66.2 For the purposes of suborder 66.1 an official mark is applied to milk and milk products if it is applied:

- (a) to the milk and milk products, their packaging or to any thing containing the milk and milk products; or
- (b) to any thing that is attached to:
  - (i) the milk and milk products; or
  - (ii) their packaging; or
  - (iii) anything containing the milk and milk products.

#### **67 Official marking device that is damaged**

The occupier must give an authorized officer each official marking device that:

- (a) is in the occupier's possession; and
- (b) is damaged, worn or otherwise not fit for applying an official mark;

as soon as practicable after becoming aware that it is damaged, worn or otherwise unfit.

#### **68 Security of official marks and marking devices**

68.1 The occupier must keep official marks and marking devices under conditions of security when not in use.

68.2 The occupier must make a record of the occupier's:

- (a) receipt, use and return of official marking devices; and
- (b) receipt or manufacture of official marks; and
- (c) use and defacement of official marks.

## **Part 8 Directions to take action**

### **Division I When a direction may be given**

#### **69 Direction given to the occupier**

If an authorized officer has reasonable grounds to believe that:

- (a) the occupier has not, or is not likely to, comply with a requirement of the Act, these Orders, the occupier's approved arrangement or a condition of the occupier's approved arrangement; or
- (b) the fitness for human consumption of milk or milk products for export as food is or is likely to be jeopardised or their integrity is, or is likely to be compromised; or
- (c) milk and milk products for export as food do not or are not likely to comply with an importing country requirement;

the officer may give:

- (d) the occupier of the establishment at which the milk and milk products are located; or
  - (e) the occupier of the establishment at which they are prepared;
- a direction requiring action to be taken.

## **70 Direction given to an exporter**

70.1 If an authorized officer has reasonable grounds to believe that:

- (a) a requirement of the Act or these Orders applying to or in relation to milk and milk products for export is not complied with or is not likely to be complied with; or
- (b) a circumstance referred to in paragraphs 69(b) or 69(c) exists in relation to milk and milk products for export by the exporter;

the officer may give the exporter a direction requiring action to be taken.

70.2 An authorized officer may not give a direction under suborder 70.1 if the milk and milk products are located at an establishment engaged in the preparation of milk and milk products for export as food.

*Note* For directions that may be given if the milk and milk products are located at an establishment engaged in the preparation of milk and milk products for export as food see order 69.

70.3 In this order:

**exporter** means a person identified as the exporter in the application for an export permit for the milk and milk products concerned.

## **71 Direction that may be given**

- 71.1 The direction must be a direction to take action that is necessary to ensure that there is compliance with one of more of the objectives specified in suborders 3.1 and 3.2.
- 71.2 If the authorized officer has reasonable grounds to believe that a matter specified in paragraph 69(a) or 70.1(a) exists the direction must also be a direction to take one or more of the following actions:
- (a) action to address the fact a requirement is not complied with or is not likely to be complied with; or
  - (b) action to ensure that the failure to comply with the requirement or the likelihood it is not complied with does not recur; or
  - (c) action to assess the effectiveness of the action referred to in paragraphs 71.2(a) and 71.2(b).
- 71.3 The direction provided it is for the purposes specified in suborders 71.1 and 71.2 (if applicable), may require the following action:
- (a) the movement of milk and milk products (including movement to premises identified in the notice);
  - (b) the retention, securing, identification, segregation, treatment, inspection, examination, sampling, condemnation, destruction, denaturing or other disposal of milk and milk products;
  - (c) the cessation of the preparation of milk and milk products or that milk and milk products not be exported or not be exported to a specified country;
  - (d) that action is taken in relation to premises, equipment and vehicles used for milk and milk products.

*Note 1* An occupier's failure to take corrective action if a requirement of these Orders is not being met may result in the suspension or revocation of an approved arrangement, see clause 6 and paragraph 21.1(a) of Schedule 2.

*Note 2* For reconsideration of an authorized officer's decision to give a direction see Division III of Part 9.

## **72 Directions requiring that preparation cease**

- 72.1 An authorized officer may not give a direction requiring that the preparation of milk and milk products cease unless the authorized officer has reasonable grounds to believe that the purposes

specified in suborder 71.1 and 71.2 (if applicable) cannot be achieved without the cessation of the preparation.

- 72.2 An authorized officer may not give a direction requiring that the preparation of milk and milk products cease for a period of longer than 5 days.

*Note* For cessation periods longer than 5 days see suspension or revocation of an approved arrangement in Division III of Part 2 of Schedule 2.

## **Division II      Compliance with a direction**

### **73      Obligation to comply with direction**

- 73.1 An occupier or exporter who is given written notice of a direction under this Part must take the action specified in the notice within the period specified in the notice.

#### *Level 5 penal provision*

*Note* A level 5 penal provision means a person who is guilty of the relevant offence is punishable by a fine of 50 penalty units, see Regulation 4 of the *Export Control (Orders) Regulations 1982*.

- 73.2 The notice must state that a failure to take the action specified within the time specified is an offence under suborder 73.1.
- 73.3 An authorized officer may amend or revoke the notice by giving a further written notice to the person to whom the notice is given.

*Note* For giving notices to the occupier or exporter see order 94.

## **Part 9      Miscellaneous**

### **Division I      General**

#### **74      Government certificates**

The Secretary may, in accordance with the requirements of Part 2 of Schedule 9, issue a government certificate for milk and milk products for export.

*Note* This government certificate is for the purpose of facilitating the importation of milk and milk products into a country.

## **75 Accuracy, legibility etc of records**

Records required to be made under these Orders must:

- (a) be accurate, legible, auditable, dated and in English; and
- (b) be signed by the maker of the record.

*Note* For electronic records (including electronic signatures) see sections 9 and 10 of the *Electronic Transactions Act 1999*.

## **76 Requirement to provide translations**

76.1 If any part of a trade description applied to milk or milk products for export appears in a language other than English an authorized officer may give any of the following persons a written notice requesting a translation:

- (a) the occupier of the establishment at which the information is applied;
- (b) the occupier of the establishment in possession of the milk and milk products concerned;
- (c) the exporter of the milk and milk products concerned.

*Note* For the meaning of **trade description** see section 3 of the Act.

76.2 The translation must be prepared by a person who:

- (a) has appropriate qualifications to make the translation; and
- (b) is independent of and not employed in operations to prepare or export milk and milk products by a person referred to in paragraphs 76.1(a) to 76.1(c).

76.3 For the purpose of this clause a trade description is taken to be applied to the milk and milk products if any of the circumstances specified in paragraphs 15(2)(a) to 15(2)(c) of the Act exist.

## **77 Assistance to authorized officers**

The occupier must, if requested by an authorized officer, provide reasonable assistance to the authorized officer for the purpose of the exercise of a function by the authorized officer.

*Note 1* Contrast the requirement to provide assistance to an authorized officer when exercising powers under Part III of the Act see section 13 of the Act.

*Note 2* For prohibitions on obstruction etc of Commonwealth public officials see Part 7.8 of the *Criminal Code Act 1995*.

## **Division II                      Regulatory arrangements**

### **78                      Alternative regulatory arrangements**

- 78.1 The occupier may make a written application to the Secretary for a notice stating that an alternative procedure, standard or other requirement specified in the application achieves the purpose of a requirement of these Orders specified in the application.
- 78.2 If the Secretary is satisfied that the specified alternative procedure, standard or other requirement achieves the purpose of the specified requirement, the Secretary may give the occupier a written notice to this effect.
- 78.3 The Secretary may amend or revoke the notice by giving the occupier of the establishment a further written notice.
- 78.4 If the notice has effect then compliance with the procedure, standard or other requirement specified in the notice given by the Secretary is taken to be compliance by the occupier with the requirement of these Orders that is specified in the notice in the circumstances specified in the notice.
- 78.5 Suborder 78.4 applies only if a variation is made to the occupier's approved arrangement to include the specified procedure, standard or other requirement.
- 78.6 In this order:  
***a requirement of these Orders*** means a requirement of a provision of these Orders that must under Division III of Part 3 of these Orders be complied with by the occupier.

### **79                      Importing country does not require compliance with a requirement**

- 79.1 The occupier may make a written application to the Secretary for a notice stating that a requirement of these Orders that is specified in the application does not apply to, or in relation to, milk and milk products prepared at the occupier's establishment to be exported to an importing country identified in the application.

- 79.2 If the Secretary is satisfied that the relevant importing country authority does not require the requirement of these Orders to be complied with, the Secretary may, at the Secretary's discretion, give the occupier a written notice.
- 79.3 If the Secretary is satisfied that all of the following circumstances exist:
- (a) a relevant importing country requirement differs from the requirement of these Orders specified in the application;
  - (b) compliance with the importing country requirement would not result in compliance with the requirement of these Orders specified in the application;
  - (c) an establishment's approved arrangement contains controls to achieve the importing country requirement;
- the Secretary may at the Secretary's discretion give the occupier a written notice.
- 79.4 A notice referred to in suborders 79.2 and 79.3 may specify that the requirement of these Orders specified in the notice does not apply to or in relation to milk and milk products prepared at the establishment.
- 79.5 If a notice given by the Secretary has effect, the requirement of these Orders specified in the notice as not applying does not apply.
- 79.6 Suborder 79.5 applies to a notice given under suborder 79.3 only while the establishment's approved arrangement contains controls to achieve the importing country requirement.
- 79.7 The Secretary may amend or revoke the notice by giving the occupier a further written notice.
- 79.8 In this order:
- a requirement of these Orders*** means a requirement of a provision of these Orders that must under Division III of Part 3 of these Orders be complied with by the occupier.

*Note* For the requirement to specify importing country requirements in the approved arrangement see clause 2 of Schedule 2. Clause 2 of Schedule 2 applies to those importing country requirements where compliance with these Orders would not be sufficient to result in compliance with the importing country requirements.

## **Division III                      Reconsideration of decisions of authorized officers**

### **80                      Application for reconsideration by senior authorized officer**

A person whose interests are affected by a decision to give a direction made under Part 8 of these Orders may make a written application for a reconsideration of that decision by a senior authorized officer at the office of the Department in the State or Territory where the direction is given.

*Note 1* For the meaning of **senior authorized officer** see order 7.

*Note 2* For the meaning of **Department** see the *Acts Interpretation Act 1901* subsection 19A(3). (See also section 13 of the *Legislative Instruments Act 2003*.)

### **81                      The application**

The application must:

- (a) set out the reasons for the application; and
- (b) be given to the senior authorized officer within 7 days after the day on which the decision to give the direction first comes to the notice of the applicant or within such further period as the senior authorized officer allows.

### **82                      Senior authorized officer to reconsider decision**

On receiving an application made in accordance with order 81, the senior authorized officer must reconsider the decision to give the direction and may make any decision to give a direction under Part 8 that may have been made in the first instance.

### **83                      Authorized officer's decision to give direction ceases to have effect**

When the senior authorized officer makes a decision under order 82, the decision to give the direction that was reconsidered by the senior authorized officer ceases to have effect.

**84 Senior authorized officer to advise of decision**

Within 14 days after the day on which the senior authorized officer receives the application the senior authorized officer must give the applicant written notice of:

- (a) the senior authorized officer's decision; and
- (b) the reasons for the decision.

**85 Application to the Secretary**

A person whose interests are affected by a decision made by the senior authorized officer under order 82 may make a written application to the Secretary for review of that decision.

**86 The application**

The application must:

- (a) set out the reasons for the application; and
- (b) be given to the Secretary within 7 days after the day on which the decision made by the senior authorized officer first comes to the notice of the applicant or within such further period as the Secretary allows.

**87 Secretary to reconsider decision**

On receiving an application made in accordance with order 86, the Secretary must reconsider the decision made by the senior authorized officer and may make any decision to give a direction under Part 8 that may have been made by an authorized officer in the first instance.

**88 Senior authorized officer's decision ceases to have effect**

When the Secretary makes a decision under order 87, the senior authorized officer's decision that the Secretary reconsidered ceases to have effect.

**89 Secretary to advise of decision**

Within 28 days after the day on which Secretary receives the application made in accordance with order 86, the Secretary must, give the applicant written notice of:

- (a) the Secretary's decision; and
- (b) the reasons for the decision.

**Division IV Review of decisions made by the Secretary**

**90 Part 16 of Export Control (Prescribed Goods—General) Order 2005**

Subject to order 91, Part 16 of the *Export Control (Prescribed Goods—General) Order 2005* applies to an initial decision made under these Orders.

*Note 1* For the meaning of **initial decision** see order 7.

*Note 2* Part 16 of the *Export Control (Prescribed Goods—General) Order 2005* deals with reconsideration of an initial decision made by the Secretary and the availability of Administrative Appeals Tribunal Review of the Secretary's reconsideration.

**91 When Part 16 does not apply**

Part 16 of the *Export Control (Prescribed Goods—General) Order 2005* does not apply to an initial decision made under the following provisions of these Orders:

- (a) Division VI of Part 2;
- (b) orders 78 and 79;
- (c) order 87;
- (d) Part 2 of Schedule 1;
- (e) clauses 13, 14, 17 and 19 of Schedule 9;
- (f) Part 2 of Schedule 9.

*Note 1* Division VI of Part 2 deals with exemptions from compliance with these Orders. Orders 78 and 79 deal with regulatory arrangements for alternative compliance. Order 87 deals with reconsideration decisions of an authorized officer's decision to give a notice requiring action to be taken. Part 2 of Schedule 1 deals with exemptions from the need to be registered. Clauses 13, 14, 17 and 19 of Schedule 9 deal with export permits and Part 2 of Schedule 9 deals with government certificates.

*Note 2* Section 16.05 of the *Export Control (Prescribed Goods—General) Order 2005* provides for application to the Administrative Appeals Tribunal for review of the Secretary's reconsideration (made by the Secretary under section 16.03 of the *Export Control (Prescribed Goods—General) Order 2005*) of initial decisions. Accordingly reconsideration of initial decisions (other than those referred to in order 91) may (subject to the *Administrative Appeals Tribunal Act 1975*) be reviewable by the Administrative Appeals Tribunal.

## **Division V                      Sampling and analysis**

### **92                      Certificates of analysis**

The following persons must if given a written notice by the Secretary provide at their expense to the Secretary a certificate of analysis of the kind specified in the notice within the period specified:

- (a) an occupier;
- (b) an exporter of milk and milk products.

### **93                      Analysis of samples for certification as to a particular condition**

If a statement as to a particular condition of milk and milk products is made on a government certificate, the analysis, inspection or examination required for the certificate must be carried out in a laboratory accredited by NATA or IANZ to perform the analysis, inspection or examination.

*Note 1* For the meaning of **government certificate**, **IANZ** and **NATA** see order 7.

*Note 2* The sampling and analysis provisions in Part 14 (other than section 14.01) of the *Export Control (Prescribed Goods —General) Order 2005* apply, see paragraph 5.1(d) of these Orders.

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## **Division VI                      Giving notices**

### **94                      Notices given to the occupier or exporter**

A notice is taken to be given to the occupier or an exporter if it is given to:

- (a) the occupier or exporter concerned; or

- (b) a person who is in charge or apparently in charge at the occupier's premises at which the preparation of milk and milk products for export takes place or at the exporter's business premises (as the case may be).

*Note* For when requirements to give written notices can be complied with by an electronic communication see section 9 of the *Electronic Transactions Act 1999*.

## Part 10      Transitional

### Division I      General

#### **95      Transitional arrangements**

95.1      Subject to suborder 95.2 if:

- (a) an administrative action taken or an instrument in writing made, given or issued in relation to milk and milk products by the Secretary or an authorized officer under the Orders (the **old Orders**) repealed by order 101 of the *Export Control (Fish and Fish Products) Orders 2005* has effect immediately prior to the commencement of these Orders; and
- (b) a corresponding action or instrument may be made, given or issued under these Orders;

the action or instrument:

- (c) continues to have effect; and
  - (d) may be amended, varied, suspended or revoked;
- as if it had been taken, made, given or issued under these Orders.

95.2      An administrative action or instrument referred to in suborder 95.1 that has effect immediately prior to the commencement of these Orders because of the operation of order 106 of the old Orders, ceases to have effect on which ever first occurs:

- (a) 1 July 2007; or
- (b) the day it ceases to have effect under these Orders.

95.3      Suborder 95.1 does not apply to the following administrative actions and instrument in writing:

- (a) an instrument of exemption given under Division VI of Part 2 of the old Orders;

- (b) a written notice given under Division II of Part 9 of the old Orders.

*Note* Division VI of Part 2 of the old Orders provides for exemptions from compliance for commercial samples, experimental purposes and in special circumstances. Division II of Part 9 of the old Orders provides for alternative compliance including where an importing country authority does not require a requirement of the old Orders to be met or has a different requirement.

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## Part 1 Plans and specifications

### Division I Application for registration

#### Plans and specifications for application for registration

**1.1** Plans and specifications of an establishment and equipment for use in operations to prepare milk and milk products at an establishment must:

- (a) accompany the application for registration of the establishment; or
- (b) be made available to the Secretary on request.

*Note* For applications for registration see section 4.03 of the *Export Control (Prescribed Goods—General) Order 2005*.

**1.2** The plans and specifications must be sufficiently detailed to show whether the establishment and equipment would, if constructed in accordance with the plans and specifications, be suitable for the preparation (in accordance with the requirements of these Orders) of the milk and milk products to be undertaken at the establishment.

#### Plans for establishments

**2.1** The plans must include:

- (a) a locality map showing the site; and
- (b) a site plan showing:
  - (i) the layout of the entire premises; and
  - (ii) access roads and roads at the establishment; and
  - (iii) the water supply; and
  - (iv) stormwater and waste water drainage; and
  - (v) on site waste disposal (if any); and
  - (vi) the amenities; and
  - (vii) all features of the site and its location that are relevant to whether the premises would comply with the applicable requirements of these Orders; and
  - (viii) adjoining sites including location of adjacent establishments; and

- (ix) the north compass point; and
- (x) the scale used in the plan; and
- (c) a floor plan of all milk and milk product handling areas (including laboratories) showing all permanent fixtures and the layout of equipment (other than implements and utensils); and
- (d) a description of all equipment (other than implements and utensils) for use in the preparation of milk and milk products at the premises.

*Note* For the meaning of **equipment** and **food handling area** see order 7.

### Details to be shown in specifications

**3.1** The specifications must show details of:

- (a) construction materials of the premises including fixtures; and
- (b) construction materials of the equipment (other than implements and utensils) used in food handling areas; and
- (c) surface finishes; and
- (d) surfaces in contact with milk, milk products or ingredients; and
- (e) essential services.

*Note* For the meaning of **essential services** see order 7.

## Division II Alterations and additions

### Proposals for alterations or additions

**4.1** For the purposes of section 4.20 of the *Export Control (Prescribed Goods—General) Orders 2005* plans and specifications relevant to an alteration or addition to an establishment and equipment for use in operations to prepare milk and milk products at the establishment must:

- (a) accompany the proposal for the alteration or addition; or
- (b) be made available to the Secretary on request.

**4.2** The plans and specifications must be sufficiently detailed to show whether the establishment and equipment would if altered or extended in accordance with the plans and specifications, be suitable for the preparation (in accordance with the requirements of these Orders) of milk and milk products to be undertaken at the establishment.

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**Requirements for plans and specifications**

- 5.1 The plans and specifications for an alteration or addition must contain such information specified in clauses 2 and 3 of this Schedule as is relevant to the alteration or addition.

**Part 2 Approval to prepare milk and milk products in an unregistered establishment**

*Note* The intention of this Part is to facilitate the export of small volumes of milk and milk products from unregistered establishments for the purpose of testing the markets for new products while ensuring that fitness for human consumption is maintained. See further order 30.

**Application for approval for limited number of exports**

- 6.1 A person who is or is to be the occupier may apply to the Secretary for approval to prepare milk and milk products of the kind specified in the application for export as food in an unregistered establishment.

*Note* For other grounds of exemptions, see Division VI of Part 2 of these Orders.

- 6.2 The application must:
- (a) describe each process to be used in preparing the milk and milk products; and
  - (b) identify the country to which it is intended to export the milk and milk products.

**Approval**

- 7.1 If the Secretary is satisfied that the applicant will comply with:
- (a) the requirements of Divisions II and III of Part 3 of these Orders; and
  - (b) the applicable importing country requirements;
- the Secretary may give the applicant approval to prepare at the unregistered establishment milk and milk products of the kind specified in the approval for export as food to the country specified.
- 7.2 The approval takes effect:

- (a) on the day specified in the approval as being the day it takes effect; or
- (b) if no such day is specified—when written notice of the approval is given to the applicant.

**7.3** The notice must specify:

- (a) the period within which the milk and milk products must be exported, being a period of not more than 12 months after the day on which the approval is granted; and
- (b) the number of export consignments (being not more than five) of the milk and milk products that may be prepared at the establishment; and
- (c) the identification number assigned by the Secretary to the establishment.

*Note* A reference in these Orders to a registration number includes the registration number referred to in paragraph 7.3(c), see the meaning of **registration number** in order 7.

**7.4** No more than one approval may be given under subclause 7.1 for milk and milk products prepared in the unregistered establishment being milk and milk products of the kind specified in the application that are for export to the country specified in the application.

**7.5** If the Secretary decides not to give approval under subclause 7.1 the Secretary must give the applicant written notice of:

- (a) the decision; and
- (b) the reasons for the decision.

### **Exemption from compliance with orders**

**8.1** The Secretary may:

- (a) specify in the approval given under subclause 7.1 of this Schedule that one or more of the requirements of the provisions of Schedule 2 specified in the approval do not apply in relation to the establishment; and
- (b) by written notice vary or revoke the specification made under paragraph 8.1(a).

**8.2** If the approval has effect the requirements specified in the notice do not apply in relation to the establishment.

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**Approval may be subject to conditions**

- 9.1** The Secretary may:
- (a) give approval under subclause 7.1 of this Schedule subject to conditions specified in the notice of approval; and
  - (b) by written notice given to the person whom the approval is given impose new conditions or vary or revoke the conditions.
- 9.2** The conditions must be for the purpose of ensuring that, in relation to the milk and milk products to which the approval relates, there is compliance with one or more of the objectives specified in suborders 3.1 and 3.2.

**Revocation of approval**

- 10.1** The Secretary may, by written notice given to the person to whom the notice of the approval was given under subclause 7.2 of this Schedule, revoke the approval if the Secretary has reasonable grounds to believe:
- (a) a circumstance specified in paragraphs 21.1(a) to 21.1(f) of Schedule 2 exists; or
  - (b) the person to whom the approval is given ceases to be the occupier of the establishment.
- 10.2** The revocation takes effect:
- (a) on the day specified in the written notice of the revocation given as being the day it takes effect; or
  - (b) if no such day is specified—when the written notice of the revocation is given.

**Termination of approval**

- 11.1** The occupier may terminate the approval by giving the Secretary written notice of the termination.
- 11.2** The termination takes effect:
- (a) on the day specified in the written notice of the termination given as being the day it takes effect; or
  - (b) if no such day is specified—7 days after the notice is given to the Secretary.

**Effect of revocation or termination**

- 12.1** On revocation or termination:
- (a) the approval ceases to have effect; and
  - (b) the requirements, that under subclause 8.2 do not apply in relation to the establishment, apply.

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## **Part 1 Management of food safety and suitability**

### **Division I General requirements**

#### **Occupier's commitment**

- 1.1** The commitment of the occupier to:
- (a) the objectives specified in suborders 3.1 and 3.2; and
  - (b) compliance with the requirements of these Orders and applicable importing country requirements;
- must be documented.

*Note 1* For the meaning of **occupier** see order 7.

*Note 2* The occupier of a registered establishment and of an unregistered establishment with approval to prepare milk and milk products given under Part 2 of Schedule 1 must comply with the applicable requirements of this Schedule, see order 32. For when the Secretary may specify that requirements of this Schedule do not apply to an occupier who has approval to prepare milk and milk products in an unregistered establishment see clause 8 of Schedule 1.

### **Division II Approved arrangements**

#### **Minimum requirements for approved arrangements**

- 2.1** An arrangement for the preparation of milk and milk products at an establishment that is required for the purposes of order 31 of these Orders must cover each step of the preparation of milk and milk products for export undertaken at the establishment and must:
- (a) contain a HACCP plan that complies with clause 3 of this Schedule; and
  - (b) document the controls used to ensure that the applicable requirements of these Orders (other than a requirement of Schedule 3) are complied with; and
  - (c) identify the applicable importing country requirements and document the controls used to ensure compliance with these requirements; and
  - (d) document any other measures necessary to ensure there is a sound basis for giving any export permit or issuing any government certificate for milk and milk products prepared at the establishment.

*Note 1* For the requirement for the occupier to have an approved arrangement see order 31.

*Note 2* For the meaning of **export permit**, **government certificate**, **HACCP** and **importing country requirement** see order 7.

*Note 3* For requirements for ascertaining export eligibility to identified markets see clause 29 of Schedule 5. For the issue of a government certificate required by an importing country authority see Part 2 of Schedule 9.

- 2.2** Paragraph 2.1(c) applies only to each importing country requirement for which compliance with these Orders would not be sufficient to result in compliance with the importing country requirement.

*Note 1* For example subclause 2.2 refers to importing country requirements that are in addition to or more stringent than the requirements of these Orders.

*Note 2* For regulatory arrangements where compliance with an importing country requirement would not result in compliance with these Orders see order 79.

## **HACCP plan**

- 3.1** The HACCP plan must identify each of the steps in the preparation of the milk and milk products.

*Note* For guidance see the Codex requirements for a HACCP plan. A flow chart may be used.

- 3.2** For each step the HACCP plan must identify the potential hazards that may reasonably be expected to occur.

*Note* For the meaning of **hazard** see order 7.

- 3.3** The HACCP plan must identify the means of control of each potential hazard.

- 3.4** Despite subclause 3.3 hazards controlled by meeting the operational hygiene requirements of these Orders need not be identified as part of the HACCP plan.

*Note* For examples of operational hygiene requirements referred to in subclause 3.4 see the requirements in Schedule 4 for cleaning, pest controls, hazardous substances and the like which must be included as part of the approved arrangement, see paragraph 2.1(b) of this Schedule.

- 3.5** For each significant hazard that is identified the HACCP plan must identify:

- (a) the critical control points; and
- (b) the critical limits; and

- (c) the procedures to be used to monitor the potential hazards to ensure compliance with each critical limit including:
  - (i) the frequency with which these procedures are to be performed; and
  - (ii) the person, or persons included in a class of persons, who are to carry out these procedures; and
- (d) the corrective action to be taken if a critical limit is exceeded.

*Note* For the meaning of **critical control point**, **critical limit** and **monitor** see order 7.

- 3.6** The action that referred to in paragraph 3.5(d) includes:
- (a) action to address the fact the critical limit is exceeded; and
  - (b) action to ensure that the exceeding of the critical limit does not recur; and
  - (c) an assessment of the effectiveness of the action taken.
- 3.7** The HACCP plan must identify procedures used to verify compliance with the HACCP plan and the frequency with which these procedures are to be performed.
- 3.8** The HACCP plan must provide for records to be made and documents to be kept to demonstrate compliance with the HACCP plan and its effectiveness.
- Note* For requirements for validation see for example clause 12 of Schedule 4 and clauses 4 to 10 and 16 and 17 of Schedule 5.
- 3.9** In this clause:
- a significant hazard** means a hazard (or a hazard in combination with other hazards) that is of such a nature that its elimination, control or reduction to an acceptable level is essential to the production of safe food.

## Division III Management practices

### Management practices, organisational structure, resources and competence

- 4.1** The management practices, organisational structure, provision of resources and the provision of personnel and their competence (including knowledge, training, skills and experience) must:
- (a) be documented; and

- (b) be appropriate to ensure each of the following are met:
  - (i) the applicable requirements of these Orders;
  - (ii) the applicable importing country requirements.

## **Verification**

- 5.1** Whether the following are complied with must be verified:
- (a) the applicable requirements of Division III of Part 3 of these Orders; and
  - (b) the importing county requirements identified in the approved arrangement.

*Note* For the meaning of **verify** see order 7. Verification could for example include sampling procedures.

- 5.2** A written record must be made of:
- (a) the methods, procedures, tests, monitoring and other evaluations used to verify compliance; and
  - (b) the results of the verification.

## **Corrective and preventative action**

- 6.1** If a requirement of Division III of Part 3 of these Orders or an importing country requirement identified in the approved arrangement is not complied with or is not likely to be complied with:
- (a) action must be taken:
    - (i) to address the fact the requirement is not complied with or is not likely to be complied with; and
    - (ii) to ensure that the failure to comply with the requirement, or the likelihood that it is not complied with, does not recur; and
  - (b) the effectiveness of the action taken must be assessed.

*Note* For directions to take action to correct or prevent the recurrence of a failure to comply see Part 8 of these Orders.

- 6.2** A written record must be made of the action referred to in paragraph 6.1(a) that is taken and the assessment of its effectiveness.

## **Internal audit and management review**

- 7.1** Internal audits and management reviews of the effectiveness of the management practices at the establishment in meeting:

- (a) the requirements of Division III of Part 3 of these Orders; and
- (b) the importing country requirements identified in the approved arrangement;

must be conducted at least once every twelve months.

*Note* For external audits see Part 6 of these Orders.

**7.2** A written record must be made of:

- (a) the internal audits and managements reviews conducted; and
- (b) the results of the audits and reviews.

*Note 1* For other examples of requirements to make records see subclause 3.8 and clause 17 of this Schedule, clause 1 of Schedule 4 and clause 4 of Schedule 8. See also order 75.

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

**7.3** For an establishment employing less than three people subclause 7.1 is taken to be satisfied if a management review is conducted.

## **Sampling and analysis**

**8.1** Sampling and the analysis of a sample made for the purposes of these Orders must be made in accordance with the method for sampling and analysis specified in these Orders.

*Note* For an example of methods of sampling and analysis specified in these Orders see clause 4 of Schedule 6.

**8.2** If a method of sampling and analysis is not specified in these Orders the sampling and analysis must be made in accordance with:

- (a) an applicable method specified in the Food Standards Code; or
- (b) an applicable method specified in a relevant standard published by Standards Australia; or
- (c) any other validated science based method that is appropriate for the sample to be tested and that ensures the accuracy of the results obtained.

*Note* For sampling and analysis see further sections 14.02 to 14.04 of the *Export Control (Prescribed Goods—General) Order 2005* and see paragraph 5.1(d) of these Orders.

## **Notifiable diseases**

**9.1** If:

- (a) milk and milk products are at an establishment engaged in the preparation of milk and milk products for export as food; and
- (b) the occupier is aware that the milk and milk products are derived from a cow that is affected by or is suspected of being affected by a notifiable disease;

the occupier must notify an authorized officer without delay.

*Note* For the meaning of **notifiable disease** see order 7.

### Requirement to retain documents

#### 10.1 Each document that:

- (a) is made by the occupier or that comes into the possession of the occupier; and
- (b) is relevant to whether the occupier complies with:
  - (i) the requirements of the Act, these Orders or the occupier's approved arrangement or a condition of that arrangement; and
  - (ii) the importing country requirements identified in the approved arrangement;

must be retained for a period of not less than three years from the time the document is made by the occupier or comes into the occupier's possession (as the case may be).

*Note 1* For retaining records electronically see subsection 12(2) of the *Electronic Transactions Act 1999*.

*Note 2* For suspension or revocation of an approved arrangement if the occupier fails to make available to an authorized officer documents the occupier is required to retain see paragraph 21.1(e) of this Schedule.

*Note 3* For audit of these documents see Part 6 of these Orders.

#### 10.2 If an occupier, who must under order 32 ensure the requirements of this Schedule are complied with, fails to comply with subclause 10.1 the occupier is guilty of an offence.

##### *Level 5 penal provision*

*Note* A level 5 penal provision means a person who is guilty of the relevant offence is punishable by a fine of 50 penalty units, see Regulation 4 of the *Export Control (Orders) Regulations 1982*.

## **Part 2        Approved arrangements**

### **Division I        Approval of arrangements**

#### **Application for approval**

- 11.1**        A person who is or is to be the occupier may apply to the Secretary for approval of an arrangement for the preparation of milk and milk products for export.

*Note* A person includes a body politic as well as a natural person, see paragraph 22(1)(a) of the *Acts Interpretation Act 1901*. (See also section 13 of the *Legislative Instruments Act 2003*.)

- 11.2**        The arrangement for which approval is sought must:
- (a) accompany the application; or
  - (b) be made available for evaluation by the Secretary.

#### **Assessment of application and Secretary's decision**

- 12.1**        For the purposes of assessing the application the Secretary must:
- (a) evaluate the arrangement in a desk audit; and
  - (b) conduct an inspection of the establishment, facilities, equipment and services to be used in the operations.

- 13.2**        The Secretary may in order to consider the application request any of the following that the Secretary reasonably requires:
- (a) further information or documents of the kind specified by the Secretary;
  - (b) a demonstration of the operations and procedures to be followed;
  - (c) the applicant's consent to the use (at the applicant's expense) of an appropriately qualified person nominated by the Secretary in any inspection, evaluation or demonstration.

#### **When the Secretary is taken to have refused the application**

- 13.1**        If the Secretary has not made a decision on whether to approve the arrangement within 60 days after the day the application is received (not including any period between the Secretary making a written request under subclause 12.2 and the applicant meeting the request) the Secretary is taken to have refused the application.

## When the Secretary may approve the arrangement

- 14.1** The Secretary may by written notice given to the applicant approve the arrangement if the Secretary is satisfied that:
- (a) the arrangement complies with subclause 2.1 of this Schedule; and
  - (b) compliance with the controls specified in the arrangement will ensure that:
    - (i) the requirements of these Orders will be complied with at the applicant's establishment; and
    - (ii) the applicable importing country requirements will be complied with at the establishment; and
    - (iii) there is a sound basis for giving any export permit and issuing any government certification for milk and milk products prepared at the establishment; and
  - (c) the applicant will comply with the arrangement; and
  - (d) the persons designated in the approved arrangement as persons who may make a declaration referred to in paragraph 6.1(g) or 6.1(h) of Schedule 8 or paragraph 3.1(a) of Schedule 9 are fit and proper persons having regard to the matters specified in section 4.05 of the *Export Control (Prescribed Goods—General) Order 2005*.

*Note* For further grounds where the approved arrangement covers the issue of an export permit see subclause 15.1 of Schedule 9.

- 14.2** The approval takes effect:
- (a) on the day specified in the approval as being the day it takes effect; or
  - (b) if no such day is specified—when written notice of the approval is given to the applicant.

## Notice of decision not to approve an arrangement

- 15.1** If the Secretary decides not to approve an arrangement, the Secretary must give the applicant written notice of the decision.
- 15.2** The notice must set out:
- (a) the reasons for the decision; and
  - (b) the applicant's right to apply for reconsideration of the decision.

*Note* For reconsideration and review of the Secretary's decision, see Part 16 of the *Export Control (Prescribed Goods—General) Order 2005* and see orders 90 and 91 of these Orders.

### **Approved arrangement may be subject to conditions**

- 16.1** The Secretary may:
- (a) approve an arrangement subject to conditions specified in the notice of approval; and
  - (b) by written notice given to the occupier impose new conditions or vary or revoke the conditions.
- 16.2** The conditions must be for the purpose of ensuring the matters specified in subparagraphs 14.1(b)(i), 14.1(b)(ii) and 14.1(b)(iii) of this Schedule are met.

*Note* If there is a failure to comply with the arrangement or its conditions (including with an importing country requirement specified in the approved arrangement) the Secretary may suspend or revoke the arrangement, see paragraph 21.1(a) of this Schedule. A failure to comply may preclude the issue of an export permit, see Division IV of Part 1 of Schedule 9, or the issue of a government certificate, see Part 2 of Schedule 9. For audit of compliance with an approved arrangement see Part 6 of these Orders. For directions to take action to correct or prevent the recurrence of a failure to comply see Part 8 of these Orders.

## **Division II Variation of approved arrangement**

### **Variations to be recorded**

- 17.1** A record must be made of each variation of an approved arrangement.
- 17.2** If an occupier, who must under order 32 ensure the applicable requirements of this Schedule are complied with, fails to comply with subclause 17.1 the occupier is guilty of an offence.

#### *Level 2 penal provision*

*Note* A level 2 penal provision means a person who is guilty of the relevant offence is punishable by a fine of 20 penalty units, see Regulation 4 of the *Export Control (Orders) Regulations 1982*.

## Variations requiring notification and approval before implementation

**18.1** A proposed variation (or a proposed variation in combination with other variations) to an arrangement that has the potential to adversely affect:

- (a) the likelihood of compliance with the requirements of these Orders or an applicable importing country requirement; or
- (b) the fitness for human consumption or integrity of milk and milk products at the establishment; or
- (c) an accurate assessment being made as to whether:
  - (i) there is compliance with requirements of these Orders or an applicable importing country requirement; or
  - (ii) milk and milk products at the establishment are fit for human consumption and their integrity is assured;

must not be implemented unless:

- (d) the occupier makes a written application to the Secretary for approval to vary the arrangement; and
- (e) the Secretary gives the occupier a written notice approving the variation.

*Note* Variations (including variations not covered by clause 18) need to be recorded (see clause 17 of this Schedule). Variations not covered by clause 18 are to be considered for approval by the auditor at the time of audit.

**18.2** A proposed variation of a provision of an approved arrangement (or a proposed variation in combination with other variations) that:

- (a) identifies a person who may:
  - (i) make a declaration referred to in paragraph 6.1(g) or 6.1(h) of Schedule 8 or paragraph 3.1(a) of Schedule 9; or
  - (ii) issue an export permit; or
  - (iii) manufacture or possess an official marking device or manufacture, possess, apply, alter or interfere with an official mark or apply a resemblance; or
- (b) relates to any of the following:
  - (i) an alternative, procedure, standard or other requirement referred to in suborder 78.5 of these Orders;
  - (ii) a control referred to in suborder 79.6 of these Orders;
  - (iii) an alternative requirement or control referred to in these Orders;

- (iv) export issuing procedures referred to in paragraph 11.2(b) of Schedule 9;

must not be implemented unless:

- (c) the occupier makes a written application to the Secretary for approval to vary the arrangement; and
- (d) the Secretary gives the occupier a written notice approving the variation.

*Note* For an example of an alternative requirement or control referred to in subparagraph 18.2(b)(iii) see the alternative temperature controls in Part 2 of Schedule 5 and the alternative standards in Schedule 6.

- 18.3** If an occupier, who must under order 32 ensure the applicable requirements of this Schedule are complied with, fails to comply with subclause 18.1 or 18.2 the occupier is guilty of an offence.

*Level 5 penal provision*

*Note* A level 5 penal provision means a person who is guilty of the relevant offence is punishable by a fine of 50 penalty units, see Regulation 4 of the *Export Control (Orders) Regulations 1982*.

### Variations required by the Secretary

- 19.1** The Secretary may give the occupier a written notice requiring the occupier to submit a variation of an approved arrangement if:

- (a) circumstances relating to the preparation of milk and milk products at the establishment change; or
- (b) the Secretary is not satisfied that compliance with the controls specified in the approved arrangement for the preparation of milk and milk products ensures that the matters specified in subparagraphs 14.1(b)(i), 14.1(b)(ii) and 14.1(b)(iii) of this Schedule are complied with; or
- (c) an applicable importing country authority requirement changes.

*Note 1* For the requirement to notify the Secretary of changes in persons who manage or control see Division 4.4 of Part 4 of the *Export Control (Prescribed Goods—General) Order 2005*.

*Note 2* For further circumstances for when the Secretary may require a variation where the approved arrangement covers the issue of an export permit see subclauses 15.2 and 15.5 of Schedule 9.

- 19.2** The notice must:

- (a) specify the variation required; and

- (b) specify the period within which the variation must be submitted to the Secretary.

**19.3** The Secretary may give the occupier a notice approving the variation submitted.

**19.4** An occupier who is given a notice under subclause 19.1 must not fail to submit the variation specified in the notice within the period specified.

### **When an arrangement includes a variation**

**20.1** An approved arrangement includes a variation to the arrangement.

**20.2** If a variation is of a kind referred to in subclauses 18.1, 18.2 or 19.1 of this Schedule, then the approved arrangement includes the variation only when the Secretary gives a notice approving the variation in accordance with paragraphs 18.1(e) or 18.2(d) or subclause 19.3 (as the case may be).

## **Division III Suspension and revocation**

### **Grounds for suspension or revocation**

**21.1** The Secretary may give the occupier written notice suspending or revoking the approval of an arrangement if the registration of the establishment is revoked or the Secretary has reasonable grounds to believe that:

- (a) a requirement of any of the following is not complied with by the occupier:
  - (i) these Orders;
  - (ii) the occupier's approved arrangement or a condition of that arrangement (including an importing country requirement identified in that arrangement); or
- (b) compliance with the controls specified in the approved arrangement is unreliable or not effective in ensuring that the matters specified in subparagraphs 14.1(b)(i), 14.1(b)(ii) or 14.1(b)(iii) of this Schedule are met; or
- (c) the occupier has, in an application or other document given to the Secretary or in a document or information that must under a requirement these Orders or the occupier's approved arrangement or a condition of that arrangement be made or given, made a statement:

- (i) that is false, misleading, or incomplete; or
- (ii) for which there is no sound basis for making the statement;  
or
- (d) the occupier fails to provide the assistance referred to in order 60; or
- (e) the occupier fails to make available to an authorized officer a document that, under a requirement of these Orders or the occupier's approved arrangement or a condition of that arrangement, the occupier is required to retain; or
- (f) a person designated in the approved arrangement as a person who may make a declaration referred to in paragraph 6.1(g) or 6.1(h) of Schedule 8 or paragraph 3.1(a) of Schedule 9 is not, or ceases to be, a fit and proper person having regard to the matters specified in section 4.05 of the Export Control (Prescribed Goods—General) Order 2005.

*Note 1* For penal provisions relating to requirements to give information or documents to an authorized officer or the Secretary see Part III, Division 7 of the Act.

*Note 2* For requirements to retain documents see clause 10 of this Schedule.

*Note 3* For the requirement to notify the Secretary of changes to persons who manage or control etc see Division 4.4 of Part 4 of the *Export Control (Prescribed Goods—General) Order 2005*.

*Note 4* For further grounds where the approved arrangement covers the issue of an export permit see subclauses 15.3 and 15.5 of Schedule 9.

**21.2** The suspension or revocation of the approval of the arrangement may be:

- (a) in full; or
- (b) in part, in respect of:
  - (i) one or more of the kinds of milk and milk products prepared at the establishment; or
  - (ii) one or more of the stages of preparation of the milk and milk products.

**21.3** The suspension or revocation takes effect:

- (a) on the day specified in the written notice given under subclause 21.1 as being the day it takes effect; or
- (b) if no such day is specified—when the written notice is given to the applicant.

## Notice of suspension or revocation

- 22.1** If the Secretary suspends or revokes the approval of an arrangement, the Secretary must give the occupier written notice of:
- (a) the reason for the suspension or revocation; and
  - (b) the occupier's right to apply for reconsideration of the decision to suspend or revoke; and
  - (c) if the approval is suspended—the period of the suspension.

*Note* For reconsideration and review of the Secretary's decision see Part 16 of the *Export Control (Prescribed Goods—General) Order 2005*. See further orders 90 and 91 of these Orders.

- 22.2** A period of suspension must not exceed 12 months and may be extended only if the total period does not exceed 12 months.

## Revocation of suspended arrangement

- 23.1** The Secretary may revoke an approval of an arrangement that is suspended despite the fact that the period of suspension has not expired.
- 23.2** The Secretary may revoke an arrangement that is suspended on grounds that are the same as or similar to the grounds for the suspension.

## Termination

- 24.1** An occupier may terminate the occupier's approved arrangement:
- (a) in full; or
  - (b) in part, in respect of:
    - (i) one or more of the milk and milk products prepared at the establishment; or
    - (ii) one or more of the stages of preparation of the milk and milk products;
- by giving the Secretary written notice of the termination.
- 24.2** The termination takes effect:
- (a) on the day specified in the written notice of the termination given as being the day it takes effect; or
  - (b) if no such day is specified—7 days after the notice is given to the Secretary.

### **Secretary may require the occupier to take action**

- 25.1** If the approval of an arrangement (or part of an arrangement) at an establishment:
- (a) is suspended or revoked; or
  - (b) is terminated;
- the Secretary may, by giving the occupier a notice, require the occupier to take action within the period specified in the notice in respect of any of the following:
- (c) any official marks held by the occupier;
  - (d) any export permits or government certificates issued or given for milk and milk products prepared by the occupier; and
  - (e) any milk and milk products at the occupier's establishment.
- 25.2** The action referred to in subclause 25.1 must be action to ensure compliance with one of more of the objectives specified in suborders 3.1 and 3.2 as they apply in relation to the occupier.
- 25.3** The notice must state that a failure to take the action specified within the time specified is an offence under clause 26 of this Schedule.
- 25.4** An authorized officer may amend or revoke the notice by giving a further written notice to the person to whom the notice is given.

### **Occupier must comply with notice**

- 26.1** An occupier who is given a notice under subclause 25.1 of this Schedule must take the action specified in the notice within the period specified.

#### *Level 5 penal provision*

*Note* A level 5 penal provision means a person who is guilty of the relevant offence is punishable by a fine of 50 penalty units, see Regulation 4 of the *Export Control (Orders) Regulations 1982*.

### **When an approved arrangement ceases to have effect**

- 27.1** An approval of an arrangement (or a part of an arrangement) ceases to have effect if the approval of the arrangement (or that part of the arrangement) is revoked or terminated.

*Note* For revocation or termination in part see subclauses 21.2 and 24.1 of this Schedule.

- 27.2**      An approval of an arrangement ceases to have effect if the person to whom the Secretary, under clause 14 of this Schedule, gave the approval of the arrangement ceases to be the occupier.
- 27.3**      An approval of an arrangement (or a part of an arrangement) ceases to have effect for the period of its suspension.

## **Schedule 3      Structural requirements**

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## Part 1 General requirements

### Division I Premises, equipment and vehicles

#### Provision of facilities and equipment

- 1.1** Establishments must have the premises, facilities, equipment and vehicles that are necessary to ensure the preparation of milk and milk products for export as food is conducted in accordance with the requirements of these Orders.

*Note 1* Premises includes for example a ship, a building and any part of a building (eg fittings and fixtures) see section 3 of the Act.

*Note 2* For the meaning of **equipment** and **vehicle** see order 7.

#### Construction of premises

- 2.1** The premises and their construction must:
- (a) facilitate the preparation of milk and milk products for export as food that are fit for human consumption; and
  - (b) be fit for the purpose for which they are used; and
  - (c) have sufficient capacity for the maximum quantity of milk and milk products prepared at the premises at any one time; and
  - (d) permit the premises to be effectively cleaned and, if necessary, sanitised if there is a risk they may cause contamination of milk and milk products; and
  - (e) permit the premises to be effectively accessed, inspected and monitored; and
  - (f) not permit the harbourage of pests; and
  - (g) to the extent that is practicable:
    - (i) exclude dirt, dust, fumes, smoke and other contaminants; and
    - (ii) not permit the entry of pests; and
    - (iii) minimise the accumulation of contaminating substances.

*Note* For the meaning of **construction**, **pest**, **sanitise** and **substance** see order 7.

#### Construction must comply with plans and specifications

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- 3.1** The construction of the premises and equipment must, in the case of registered establishments, comply with the plans and specifications in relation to which the Secretary registers the establishment.

*Note* For plans and specifications see Part 1 of Schedule 1.

- 3.2** Alterations or additions for which a proposal is required under section 4.20 of the *Export Control (Prescribed Goods—General) Order 2005* must comply with the plans and specifications in relation to which approval for the proposal is given.

### **Immediate surrounds**

- 4.1** Areas immediately surrounding buildings, roads and other areas serving premises used to prepare milk and milk products for export as food must:
- (a) be paved, graded, landscaped or otherwise treated so as to minimise the risk of dust, pests or contaminants entering food handling areas; and
  - (b) be adequately drained.

### **Floors**

- 5.1** Floors must be constructed in a way that is appropriate for the preparation of milk and milk products for export as food at the premises.
- 5.2** Floors (including stairs, platforms and the like) in food handling areas, areas used for cleaning and sanitising and areas for personal hygiene must:
- (a) be able to be effectively cleaned and, if necessary, sanitised if there is a risk they may cause contamination of milk and milk products; and
  - (b) be smooth and impervious; and
  - (c) allow for adequate drainage; and
  - (d) not permit the harbourage of pests; and
  - (e) to the extent that is practicable:
    - (i) exclude dirt, dust, fumes, smoke and other contaminants; and
    - (ii) not permit the entry of pests; and
    - (iii) minimise the accumulation of contaminating substances.

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*Note* For the meaning of **food handling area** see order 7.

**5.3** Subclause 5.2 does not apply to areas for cleaning vehicles.

**5.4** The floors of areas for cleaning vehicles must:

- (a) be able to be effectively cleaned; and
- (b) have impervious surfaces; and
- (c) be drained.

### **Walls and ceilings**

**6.1** Walls and ceilings must:

- (a) be provided where they are necessary to protect milk and milk products for export as food and their ingredients from contamination; and
- (b) be constructed in a way that is appropriate for the activities conducted at the premises.

**6.2** Walls and ceilings in food handling areas and in areas used for cleaning and sanitising and for personal hygiene must:

- (a) be able to be effectively cleaned and, if necessary, sanitised if there is a risk they may cause contamination of milk and milk products; and
- (b) be smooth and impervious; and
- (c) to the extent that is practicable:
  - (i) exclude dirt, dust, fumes, smoke and other contaminants; and
  - (ii) not permit the entry of pests; and
  - (iii) minimise the accumulation of contaminating substances (including condensation).

**6.3** Subclause 6.2 does not apply to areas for cleaning vehicles.

**6.4** The walls and ceilings of areas for cleaning vehicles must:

- (a) be able to be effectively cleaned; and
- (b) have impervious surfaces.

### **Fixtures, fittings and equipment—general requirement**

**7.1** The fixtures, fittings and equipment (including in refrigeration chambers and storage areas) must:

- (a) facilitate the preparation of milk and milk products for export as food that are fit for human consumption; and
- (b) be fit for the purpose for which they are used; and
- (c) have sufficient capacity for the maximum quantity of milk and milk products prepared at any one time using the fixtures, fittings and equipment concerned.

*Note 1* For the meaning of **refrigeration chamber** and **storage area** see order 7.

*Note 2* For example refrigeration chambers need to have adequate capacity. For validation of refrigeration chambers see clause 12 of Schedule 4.

## Construction of fixtures, fittings and equipment

- 8.1** The fixtures, fittings and equipment must be constructed so that:
- (a) they do not cause contamination of milk and milk products; and
  - (b) they are able to be easily and effectively cleaned and, if necessary, sanitised if there is a risk they may cause contamination of milk and milk products; and
  - (c) adjacent floors, walls, ceilings and other surfaces are able to be easily and effectively cleaned; and
  - (d) they can be effectively accessed, inspected and monitored; and
  - (e) to the extent practicable they:
    - (i) exclude dirt, dust, fumes, smoke and other contaminants; and
    - (ii) do not permit the entry or harbourage of pests; and
    - (iii) minimise the accumulation of contaminating substances.
- 8.2** Food contact surfaces of fixtures, fittings and equipment must:
- (a) be able to be easily and effectively cleaned and, if necessary sanitised, if there is a risk they may cause contamination of milk and milk products; and
  - (b) be smooth and impervious; and
  - (c) be constructed of materials that do not contaminate milk and milk products.

*Note 1* Equipment includes implements but does not include vehicles used to transport milk and milk products, see order 7. However equipment does include things used to handle and load milk and milk products during transport. For requirements for vehicles used to transport milk and milk products see clause 9 of this Schedule.

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*Note 2* For the meaning of **food contact surface** see order 7.

### **Food carrying compartments, container system units and vehicles**

- 9.1** Container system units and the food carrying compartments of vehicles used to transport milk and milk products for export as food must be designed and constructed:
- (a) to protect the milk and milk products if there is a likelihood of their being contaminated during transport; and
  - (b) so that they are able to be effectively cleaned.
- 9.2** Food contact surfaces of:
- (a) the container system units; and
  - (b) the food carrying compartments;
- must be constructed so that they are able to be effectively cleaned and, if necessary, sanitised.
- 9.3** The container system units and the food carrying compartments must be effectively insulated, constructed and equipped to maintain the milk and milk products at the temperatures required in clause 7 of Schedule 5.
- 9.4** The food carrying compartment need not comply with subclauses 9.1 or 9.3 if the milk and milk products are transported in a container system unit that meets the requirements of subclause 9.1 or 9.3 (as the case may be).

*Note 1* For the meaning of **container system unit**, **food carrying compartment** and **vehicle** see order 7.

*Note 2* For transport see further clause 4 of Schedule 4, Parts 5 and 6 of Schedule 5 and clause 12 of Schedule 8.

### **Measuring devices**

- 10.1** Measuring instruments that are relevant to whether the requirements of these Orders are complied with must:
- (a) enable measurements to be accurately calculated using standard units of measurement; and
  - (b) meet levels of tolerance that are appropriate to the measurements taken; and
  - (c) be able to be easily read.

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*Note* For the calibration of measuring devices see clause 11 of Schedule 4.

- 10.2** Temperature measuring devices must be able to measure the temperature of milk and milk products to an accuracy of  $\pm 1^{\circ}\text{C}$ .
- 10.3** Refrigeration chambers and other equipment used for controlling the temperature of milk and milk products for export as food must have a readily accessible temperature measuring device.

*Note 1* For guidance on Australian legal units of measurements and tolerances, reference may be had to the *National Measurement Act 1960*. For the application of the *National Measurement Act 1960* in relation to contracts, dealings or transactions made or entered into in connection with the exportation of goods, see section 13 of that Act.

*Note 2* For validation of refrigeration chambers see clause 12 of Schedule 4.

### **Storage facilities for items other than milk and milk products**

- 11.1** The premises must have adequate facilities for the storage of items that could contaminate milk and milk products, including chemicals, clothing and personal belongings.
- 11.2** The facilities must be located where there is no risk of stored items contaminating milk and milk products.

## **Division II            Cleaning and sanitising facilities**

### **Cleaning and sanitising premises and equipment**

- 12.1** The premises must have appropriate facilities for cleaning and sanitising premises and equipment.
- 12.2** Facilities for cleaning and sanitising equipment in contact with milk and milk products must be located where they can be readily accessed by food handlers engaged in activities that require the cleaning and sanitising of the equipment.

*Note 1* For the meaning of **food handler** see order 7.

*Note 2* For floors, walls and ceilings in areas used for cleaning see clauses 5 and 6 of this Schedule.

*Note 3* See further clauses 8 and 9 of Schedule 4 for requirements for the use and storage etc of chemicals and other hazardous substances.

### **Hand washing facilities**

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- 13.1** The premises must have hand washing facilities.
- 13.2** The hand washing facilities must be located in or adjacent to areas where food handlers work if there is a risk that their hands could be a source of contamination of milk, milk products or ingredients.
- 13.3** The hand washing facilities must:
- (a) have an adequate supply of warm, or hot and cold potable water over a sink; and
  - (b) have a suitable hand sanitising preparation; and
  - (c) have suitable and sufficient hygienic means of drying hands; and
  - (d) be clearly designated for the sole purpose of washing hands, arms and face.

### **Division III Amenities**

#### **Amenities**

- 14.1** The premises must have adequate and conveniently located amenities for the use of food handlers.
- Note* For the meaning of **amenities** see order 7.
- 14.2** The amenities must:
- (a) be physically separated from food handling areas and must not open directly onto these areas; and
  - (b) be well lit and ventilated; and
  - (c) not be a source of contamination of milk and milk products.
- Note* For the removal and storage of waste see clauses 16 and 17 of this Schedule.
- 14.3** Hand washing facilities must be provided in or adjacent to toilets.
- 14.4** The hand washing facilities must have:
- (a) an adequate supply of warm, or hot and cold potable water over a sink; and
  - (b) a suitable hand sanitising preparation; and
  - (c) suitable and sufficient hygienic means of drying hands.
- Note* Contrast requirements in clause 13 of this Schedule for hand washing facilities.

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**Division IV      Essential services****General requirement**

- 15.1**      The premises must have the essential services that are necessary to ensure the preparation of milk and milk products for export as food that are fit for human consumption.

*Note*      For the meaning of **essential services** see order 7.

**Effluent and waste**

- 16.1**      The premises must have a sewerage and waste system that:
- (a)      effectively disposes of and, if necessary, treats all sewage and waste, including during peak load; and
  - (b)      prevents the sewage or waste polluting the establishment's water supply or contaminating milk and milk products; and
  - (c)      ensures that discharge:
    - (i)      is contained; and
    - (ii)      is directed to the drainage system.

*Note*      Subparagraph 16.1(c)(ii) would require for example that discharge from refrigeration be directed to the drainage system.

**Facilities for storage of waste and inedible material**

- 17.1**      The premises must have facilities for the separation and storage of waste and inedible material prior to its removal from the premises that adequately contain the volume and type of waste and inedible material on the premises.
- 17.2**      The facilities and containers used for the waste and inedible material must:
- (a)      prevent access to waste or inedible material by pests; and
  - (b)      prevent the waste or inedible material polluting the water supply or contaminating milk and milk products; and
  - (c)      be clearly identified as for use for storage of waste and inedible material.

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## Lighting

- 18.1** The premises must have a lighting system that provides sufficient natural or artificial light for the activities conducted for and in relation to the preparation of milk and milk products at the premises.

*Note* See for example AS 1680 Part 1-1990 *Interior lighting: General principles and recommendations* and AS/NZ 1680.2.4 1997 *Industrial tasks and Processes*.

- 18.2** The lighting system must not be a source of contamination.

*Note* Subclause 18.2 would require for example that light bulbs and lighting fixtures suspended over milk and milk products be protected.

## Ventilation

- 19.1** The premises must have adequate ventilation (natural or mechanical):

- (a) to effectively minimise the risk of airborne contamination (such as steam, smoke and condensation) of milk and milk products; and
- (b) where appropriate, to control ambient temperature.

## Water supply

- 20.1** The premises must have a supply of potable water that is available for use at a volume, pressure and temperature that is adequate for the purposes for which the water is used.

*Note 1* For the meaning of **potable** see order 7.

*Note 2* For operational requirements for the use of water see clause 14 to 17 of Schedule 4.

- 20.2** Potable and non potable water must be supplied in separate lines (including outlets) that are readily identifiable as being for use for potable or non potable water (as the case may be).

- 20.3** Re-circulated water must have a separate distribution system which can be readily identified.

## **Schedule 4      Operational hygiene**

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## **Part 1 General requirements**

### **Division I Hygiene controls for premises and equipment**

#### **Hygiene control program**

- 1.1** A program of operational controls for the hygienic preparation of milk and milk products must be documented and in place at premises used to prepare milk and milk products for export as food.

*Note* See the requirements in clause 2 of Schedule 2 for how the approved arrangement must document the controls used to ensure that the requirements of these Orders are met. Contrast HACCP plan requirements in subclause 3.4 of Schedule 2.

#### **Standard of cleanliness**

- 2.1** The premises must be maintained to a standard of cleanliness where there is no accumulation of:
- (a) garbage, except in garbage containers; or
  - (b) recycled matter, except in recycling containers; or
  - (c) food waste; or
  - (d) dirt; or
  - (e) grease; or
  - (f) other visible matter that could contaminate milk and milk products.
- 2.2** Equipment used for the preparation of milk and milk products must be maintained to a standard of cleanliness where there is no accumulation of:
- (a) food waste; or
  - (b) dirt; or
  - (c) grease; or
  - (d) other visible matter that could contaminate milk and milk products.

*Note* Equipment includes implements but does not include vehicles used to transport milk and milk products, see order 7. For requirements for vehicles used to transport milk and milk products see clause 4 of this Schedule.

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### Requirement to clean and maintain

- 3.1** The following must be cleaned and sanitised whenever it is necessary to do so to prevent the contamination of milk and milk products:
- (a) floors, walls, ceilings, other fixtures and fittings in the following areas:
    - (i) food handling areas;
    - (ii) areas used for cleaning and sanitising equipment, vehicles and protective clothing;
    - (iii) personal hygiene amenities; and
  - (b) equipment and food contact surfaces.
- 3.2** Subclause 3.1 does not apply to a single-use item that is disposed of after use or when contaminated.
- Note* For the meaning of **single-use item** see order 7.
- 3.3** The surrounds of premises used to prepare milk and milk products for export as food must be cleaned to the extent necessary to ensure the surrounds are not a source of contamination of milk and milk products.
- 3.4** The premises and equipment must be maintained in a good state of repair and working order to the extent necessary to facilitate the hygienic preparation of milk and milk products for export as food.

### Vehicles, container system units etc

- 4.1** The following must be cleaned and sanitised whenever it is necessary to do so to prevent the contamination of milk and milk products:
- (a) container system units, food carrying compartments and vehicles used to transport milk and milk products for export as food; and
  - (b) equipment used to handle milk and milk products for export as food during loading and transport.
- Note* For the meaning of **container system unit**, **food carrying compartment**, and **vehicle** see order 7.
- 4.2** The following must be maintained in a good state of repair and working order to the extent necessary to ensure the fitness for

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human consumption of milk and milk products for export as food is not adversely affected during transport:

- (a) container system units, food carrying compartments and vehicles used to transport the milk and milk products; and
- (b) equipment used to handle the milk and milk products during loading and transport.

### **Environmental contamination**

- 5.1** Effective measures must be taken to ensure milk and milk products are not contaminated by environmental contamination (including air borne or water borne contamination).

### **Exclusion of animals**

- 6.1** Live animals must not be permitted to enter premises used for the preparation of milk and milk products for export as food.

- 6.2** Subclause 6.1 does not apply to:

- (a) the entry of a guard dog in the perimeter area; and
- (b) the entry of an assistance animal in any area; provided the area is not used as a food handling area or for cleaning and sanitising equipment or for personal hygiene.

*Note* For the meaning of **assistance animal** see order 7.

### **Pests**

- 7.1** To the extent practicable, the entry of pests into premises and equipment used for the preparation of milk and milk products for export as food must be prevented.

- 7.2** The harbourage of pests in the premises and equipment must be prevented.

### **Hazardous substances**

- 8.1** Hazardous substances must:

- (a) not contaminate milk and milk products; and
- (b) be stored in containers that:
  - (i) are labelled with the name of the substance and a warning about its toxicity and use; and

- (ii) are not used for any purpose other than the storage of hazardous substances.

### **Use and storage of substances which could cause contamination**

- 9.1** Except when necessary for hygienic or preparation purposes, substances which could contaminate milk and milk products must not be used or stored in food handling areas.

## **Division II                      Hygiene controls for processing**

### **Measures to prevent contamination**

- 10.1** Effective measures must be taken to:
- (a) prevent the contamination of milk and milk products and their ingredients by any thing or activity; and
  - (b) minimise the growth in milk and milk products and their ingredients of pathogens that could adversely affect the fitness for human consumption of the milk and milk products for export as food given the conditions under which they are to be stored, handled and transported; and
  - (c) ensure that the fitness for human consumption of milk and milk products for export as food and their ingredients is not otherwise adversely affected.

*Note 1* For the meaning of **ingredient** see order 7.

*Note 2* Paragraph 10.1(a) requires for example that milk, milk products and ingredients not be contaminated by:

- (a) procedures for the preparation of milk and milk products; or
- (b) cleaning, sanitising or maintenance activities; or
- (c) handling or use etc of equipment, ingredients or packaging materials.

*Note 3* Paragraph 10.1(a) also requires for example that milk, milk products and ingredients not be cross contaminated by animal food or by milk and milk products that are unfit for human consumption. See further Part 7 of Schedule 5.

- 10.2** Without limiting the generality of subclause 10.1 effective measures must be taken to prevent milk and milk products that are not ready for human consumption contaminating milk and milk products that are ready for human consumption.

## Calibration of measuring instruments

- 11.1** Measuring instruments that are relevant to whether the requirements of these Orders are complied with must be accurately calibrated.

## Refrigeration chambers

- 12.1** The approved arrangement must validate that refrigeration chambers achieve the applicable temperature controls required under these Orders for chilling, freezing, maintaining, thawing and tempering milk and milk products, taking account of the maximum quantity of milk and milk products to be chilled, frozen, maintained, thawed or tempered at any one time using the chamber.

*Note 1* For the meaning of **validate** see order 7.

*Note 2* For verification requirements see clause 5 of Schedule 2.

## Ingredients

- 13.1** Ingredients for milk and milk products for export as food must:
- (a) be fit for the purpose for which they are used; and
  - (b) be labelled, stored and handled in a way that ensures their identity can be ascertained.

*Note* For requirements for ingredients to comply with product standards see Schedule 6.

## Water must be potable

- 14.1** All water (including reused water, recirculated water and ice) used at premises used to prepare milk and milk products for export as food must be potable unless:
- (a) the water is only used in circumstances where there is no risk of the water coming into contact with or contaminating milk and milk products; and
  - (b) the approved arrangement expressly provides for the use of the non-potable water in the circumstances in which it is used.

*Note 1* For the meaning of **potable water** see order 7.

*Note 2* For requirements for potable water for hand washing facilities and amenities see subclauses 13.3 and 14.4 of Schedule 3.

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**Microbial limits**

**15.1** Water required under these Orders to be potable must not contain any *Escherichia coli* per 100 millilitres.

**15.2** The analysis of water for the purpose of verifying whether the subclause 15.1 is complied with must be performed by a laboratory accredited by NATA to perform the analysis.

*Note 1* For verification see clause 5 of Schedule 2.

*Note 2* For when the approved arrangement must identify any applicable importing country requirements for the examination of water, see paragraph 2.1(c) and subclause 2.2 of Schedule 2.

*Note 3* For guidance see the *Australian Drinking Water Guidelines 1996* jointly published by the National Health and Medical Research Council and the Agriculture and Resource Management Council of Australia and New Zealand. For these guidelines see the NHMRC website <http://www.health.gov.au/nhmrc>.

*Note 4* For when the Secretary may give the occupier a notice enabling the use of another laboratory to perform the examination, see orders 78 and 79.

*Note 5* For requirements for water used to cool canned product see clause 14 of Schedule 5.

**The supply of potable and non potable water**

**16.1** The reticulation system must prevent the back siphonage of used or contaminated water.

**16.2** Non potable water reticulation systems for an establishment must not contaminate the establishment's potable and water reticulation systems.

**Steam**

**17.1** Steam used in contact with milk and milk products or food contact surfaces must be free from substances which may:

- (a) be hazardous to health; or
- (b) contaminate milk and milk products.

*Note* See Standard 1.3.3 of the Food Standards Code for requirements for processing aids and see further Schedule 6.

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### Compressed air and other processing gas

**18.1** Compressed air and other processing gas that come into contact with milk and milk products or food contact surfaces must be free from substances which may:

- (a) be hazardous to health; or
- (b) contaminate milk and milk products.

*Note* See Standard 1.3.3 of the Food Standards Code for requirements for processing aids and see further Schedule 6.

### Division III Personal hygiene and health requirements

#### Meaning of food handling area

**19.1** In this Division *food handling area* means an area (including a refrigeration chamber or storage area) used for exposed milk and milk products for export as food or their ingredients.

*Note* Contrast the meaning of *food handling area* in order 7.

#### Food borne diseases

**20.1** A person known or suspected to be suffering from, or to be a carrier of a disease likely to be transmitted through food must not work in any food handling area in any capacity in which there is any risk of such a person directly or indirectly contaminating milk and milk products with pathogens.

**20.2** If a person:

- (a) is known or suspected to be suffering from, or to be a carrier of a disease likely to be transmitted through food; and
- (b) is at, or suspects that the disease may have resulted in the contamination of milk and milk products at, an establishment engaged in the preparation of milk and milk products for export as food;

the person must immediately report their disease to a person who is in charge of the operations at the establishment.

*Note* For the occupier's liability if the requirements of this Division are not complied with see order 34.

#### Conditions

- 21.1** A person who has a condition and who handles milk and milk products must take all practical measures to prevent the condition resulting in contamination of milk and milk products.

*Note* For the meaning of **condition** see order 7.

- 21.2** Coverings used for conditions must:
- (a) be effective in preventing contamination of milk and milk products; and
  - (b) be waterproof, firmly secured and conspicuous in colour.

### **Personal cleanliness**

- 22.1** A person in a food handling area must:
- (a) take all practicable measures to ensure his or her body, anything from his or her body and anything he or she is wearing does not contaminate milk, milk products or food contact surfaces; and
  - (b) take all practicable measures to prevent unnecessary contact with milk and milk products; and
  - (c) ensure his or her outer clothing is of a level of cleanliness that is appropriate for the handling of milk and milk products that is being conducted.

- 22.2** A person in a food handling area must not engage in:
- (a) behaviour which could result in contamination of milk and milk products, such as eating, smoking, chewing, spitting, sneezing or coughing over unprotected milk and milk products or food contact surfaces; or
  - (b) any other behaviour likely to adversely affect the fitness for human consumption of milk and milk products.

*Note 1* For guidance see Standard 3.2.2 of the Food Standards Code.

*Note 2* A person in a food handling area includes a visitor to the area, see the meaning of **food handling area** in clause 19 of this Schedule.

- 22.3** A person handling milk and milk products must wash (using a sanitising agent) and dry thoroughly his or her hands:
- (a) on entering the food handling area; and
  - (b) immediately after using the toilet; and
  - (c) after touching the nose or mouth; and
  - (d) after handling contaminated material; and

- (e) whenever necessary to avoid contaminating the milk and milk products.

*Note* The wearing of gloves does not remove the obligation to wash hands.

### **Personal effects and clothing**

- 23.1**      Personal effects and clothing must not be stored in food handling areas.

*Note* For storage facilities for personal effects and clothing see clause 11 of Schedule 3.

### **Protective clothing**

- 24.1**      A person in a food handling area must at all times wear protective clothing (including a hair covering) and footwear.
- 24.2**      The protective clothing and footwear must:
- (a) be suitable (including appropriately designed) to prevent anything from the person's body contaminating milk and milk products; and
  - (b) be maintained in good repair and in a clean and sanitary condition so as not to present a risk of contamination of milk, milk products or food contact surfaces.

## **Schedule 5      Preparation and transport**

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## Part 1 Sourcing

### Presence of potentially harmful substances

- 1.1** Milk and milk products for export as food must not be sourced from areas where there are reasonable grounds to believe that any of the following are present and could result in unacceptable levels in the milk and milk products:
- (a) potentially harmful pathogens; or
  - (b) potentially harmful substances such as pesticides, fungicides, heavy metals, natural toxicants or other contaminants.

### Sourcing milk and milk products

- 2.1** Milk and milk products for use in preparing milk and milk products for export as food must be sourced only from:
- (a) a registered establishment; or
  - (b) an unregistered establishment in relation to which an approval given by the Secretary under clause 7 of Schedule 1 has effect; or
  - (c) an establishment to which, under order 22, these Orders do not apply .
- 2.2** Subclause 2.1 applies only to milk and milk products sourced from establishments in Australia.
- 2.3** Milk sourced directly from an establishment engaged in milking and storing and chilling milk (including from an establishment to which these Orders do not apply) must be sourced only from an establishment with:
- (a) disease management controls in place to ensure only healthy animals are used for milking; and
  - (b) effective measures in place to ensure:
    - (i) animals for milking are not given feed or treated with a substance that could adversely affect the fitness for human consumption of milk and milk products; and
    - (ii) the collection, storing and chilling of milk is done under conditions that ensure the fitness for human consumption of milk and milk products is not adversely affected; and

- (iii) as soon as practicable after milking, the milk is placed under temperature controls that minimise the growth of pathogens that could adversely affect the fitness for human consumption of milk and milk products.

## Part 2 Temperature controls

### Milk must be placed under temperature controls

- 3.1 Milk for export as food must be placed under temperature controls as soon as practicable after milking.

### Chilling

- 4.1 Milk and milk products that are to be chilled must
- (a) be cooled to a temperature of 5°C or cooler (but not cooler than minus 1°C); or
  - (b) be cooled in accordance with the alternative temperature controls specified for chilling the milk and milk products in the applicable approved arrangement.
- 4.2 If paragraph 4.1(b) applies, the applicable approved arrangement must validate that:
- (a) achieving the alternative temperature controls; and
  - (b) the way in which the chilling is to be done;
- minimises the growth of pathogens that could adversely affect the fitness for human consumption of the milk and milk products given the conditions under which they are to be stored, handled, loaded and transported.

*Note 1* For the meaning of **validate** see order 7.

*Note 2* For verification requirements see subclause 3.7 and clause 5 of Schedule 2.

### Rate of chilling

- 5.1 The chilling of the milk and milk products must be performed with sufficient rapidity so as to minimise the growth of pathogens that could adversely affect the fitness for human consumption of the milk and milk products given the conditions under which they are to be stored, handled, loaded and transported.

- 5.2 The applicable approved arrangement must validate that the rate of chilling achieves the outcome specified in subclause 5.1.

### **Freezing**

- 6.1 Milk and milk products for export as food that are to be frozen must achieve:
- (a) a temperature at the site of microbiological concern of minus 18°C or cooler; or
  - (b) the alternative temperature specified for freezing the milk and milk products concerned in the applicable approved arrangement.
- 6.2 If paragraph 6.1(b) applies, the applicable approved arrangement must validate that:
- (a) achieving the alternative temperature controls; and
  - (b) the way in which the freezing is to be done;
- minimises the growth of pathogens that could adversely affect the fitness for human consumption of the milk and milk products given the conditions under which they are to be stored, handled, loaded and transported.
- 6.3 The freezing of the milk and milk products must be performed with sufficient rapidity to minimise the growth of pathogens that could adversely affect the fitness for human consumption of the milk and milk products concerned given the conditions under which they are to be stored, handled, loaded and transported.
- 6.4 The applicable approved arrangement must validate that the rate of freezing achieves the outcome specified in subclause 6.3.

### **Storage, handling, loading and transport**

- 7.1 Milk and milk products (other than shelf stable milk and milk products) for export as food must be maintained during storage, handling, loading and transport at:
- (a) temperatures specified for chilling or freezing the milk and milk products concerned in paragraph 4.1(a) or paragraph 6.1(a) (as the case may be) of this Schedule; or
  - (b) the alternative temperature specified for maintaining the milk and milk products concerned in the applicable approved arrangement.

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*Note* For the meaning of **shelf stable** see order 7.

- 7.2** Shelf stable milk and milk products for export as food must be maintained during storage, handling, loading and transport at the temperature specified for maintaining the milk and milk products concerned in the applicable approved arrangement.
- 7.3** If paragraph 7.1(b) or subclause 7.2 applies the applicable approved arrangement must validate that:
- (a) maintaining the milk and milk products concerned at the alternative temperature; and
  - (b) the way in which this is to be done;  
minimises the growth of pathogens that could adversely affect the fitness for human consumption of the milk and milk products given the conditions under which they are to be stored, handled, loaded and transported.

*Note 1* For the meaning of **validate** see order 7.

*Note 2* For verification requirements see subclause 3.7 and clause 5 of Schedule 2.

### **Thawing and tempering**

- 8.1** Milk and milk products for export as food must be thawed and tempered under temperature controls that minimise the growth of pathogens that could adversely affect the fitness for human consumption of the milk and milk products.
- 8.2** The applicable approved arrangement must validate that the temperature controls for the thawing and tempering achieve the objective specified in subclause 8.1.

*Note 1* For the meaning of **validate** see order 7.

*Note 2* For verification requirements see subclause 3.7 and clause 5 of Schedule 2.

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## Part 3 Preserving milk and milk products

### Division I General

#### Outcome for preservation processes

- 9.1** Unless otherwise specified in this Part a process applied to milk and milk products for export as food for the purpose of extending their shelf life must ensure the safety of the milk and milk products concerned by:
- (a) destroying or preventing the growth of pathogens; or
  - (b) reducing their growth to a level that ensures the microbiological safety of the milk and milk products is not adversely affected.

*Note* For microbiological limits for milk and milk products see Schedule 6.

- 9.2** The applicable approved arrangement must validate that process controls for extending the shelf life of the milk and milk products ensures that the objective specified in subclause 9.1 is met.

*Note* For guidance in validation see the microbial limits specified in Standard 1.6.1 of the Food Standards Code. For further guidance see the *User Guide to Standard 1.6.1* available at <http://www.foodstandards.gov.au>.

### Division II Thermal processing of canned milk and milk products

#### Commercial sterility

- 10.1** Unless the approved arrangement specifies otherwise the canning of milk and milk products for export as food must result in milk and milk products that are commercially sterile.
- 10.2** An establishment must validate in its approved arrangement that its process controls for canning low acid canned milk and milk products achieve the objective specified in subclause 10.1.

*Note 1* For the meaning of **canned**, **commercially sterile** and **validate** see order 7.

*Note 2* For verification requirements see subclause 3.7 and clause 5 of Schedule 2.

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**Thermal process designed from simulated conditions**

- 11.1** Before a thermal process designed from simulated manufacturing conditions is used for canning milk and milk products for export as food, the results of the process must first be verified in the actual production of canned milk and milk products (as the case may be) that takes place:
- (a) using the thermal processing equipment; and
  - (b) under the commercial operating conditions;
- to be used for canning milk and milk products for export as food.

**Canning must protect contents from contamination**

- 12.1** The canning process and canning materials used must prevent contamination affecting the contents of the can.
- 12.2** Cans must be inspected and evaluated in accordance with Section 7.4.8 (*‘Inspection of closures’*) of Volume 1B of Codex entitled *‘Recommended International Code of Practice for Low-Acid and Acidified Low-Acid Canned Foods’* CAC/RCP 23-1979, Rev 2 (1993).

*Note* For requirements applying to all packaging materials including cans see Part 4 of this Schedule.

**Cooling and handling cans**

- 13.1** After thermal processing, the cans must be cooled and handled in a manner that prevents the introduction of pathogens that could affect the commercial sterility of the contents of the can.

**Water used for cooling**

- 14.1** Water used for cooling canned milk and milk products for export for food must be potable.
- 14.2** The method used to make the water potable must be specified in the approved arrangement.
- 14.3** If water is made potable by chlorination the water must show a measurable free residual chlorine level after contact with the cans.

**Post-processing controls**

- 15.1** Cans that have undergone thermal processing must be identified and held separately from cans that have not undergone thermal processing.

### **Division III            Pasteurisation and other treatments**

#### **Pasteurisation etc of milk and liquid milk products**

- 16.1** Milk for export as food must:
- (a) be pasteurised by being heated to a temperature of not less than 72°C for not less than 15 seconds and immediately shock cooled to a temperature of 4.5°C or less; or
  - (b) be heated and cooled using any time and temperature combination that:
    - (i) is specified in the applicable approved arrangement; and
    - (ii) is of equal or greater lethal effect on the bacteria in the milk than would be achieved by the time and temperature controls specified in paragraph 16.1(a); or
  - (c) be subjected to any other treatment that:
    - (i) is specified in the applicable approved arrangement; and
    - (ii) meets the objective specified in subparagraph 16.1(b)(ii) or the objective specified in subclause 9.1 of this Schedule.
- 16.2** Liquid milk products for export as food must:
- (a) be heated and cooled using any time and temperature combination that:
    - (i) is specified in the applicable approved arrangement; and
    - (ii) is of equal or greater lethal effect on the bacteria in the milk product than would be achieved by the time and temperature controls specified in paragraph 16.1(a); or
  - (b) be subjected to any other treatment that:
    - (i) is specified in the applicable approved arrangement; and
    - (ii) meets the objective specified in subparagraph 16.2(a)(ii) or the objective specified in subclause 9.1 of this Schedule.

*Note* For information relating to pasteuriser standards and verification see AS 3993-2003 *Equipment for the pasteurization of milk and other liquid dairy products-Continuous flow systems*.

- 16.3** If paragraph 16.1(b) or paragraph 16.1(c) or subclause 16.2 applies the applicable approved arrangement must validate that the time and temperature combination or other treatment achieves the objectives specified for subparagraphs 16.1(b)(ii), 16.1(c)(ii), 16.2(a)(ii) or 16.2(b)(ii) (as the case may be).
- 16.4** This clause does not apply to milk and liquid milk products used in the manufacture of cheese.

## Cheese

- 17.1** Milk and liquid milk products used in the manufacture of cheese for export as food must:
- (a) be heat treated by being held at a temperature of not less than 72°C for a period of not less than 15 seconds; or
  - (b) be heat treated using a time and temperature combination that is of equal or greater lethal effect on the bacteria in the milk and milk products than would be achieved by the time and temperature controls specified in paragraph 17.1(a); or
  - (c) be heat treated by being held at a temperature of not less than 62°C for a period of not less than 15 seconds, and the cheese stored at a temperature of not less than 2°C at the site of microbiological concern for a period of not less than 90 days after the day the cheese is manufactured; or
  - (d) subjected to such other treatment that:
    - (i) is specified in the approved arrangement applying to the treatment of the cheese; and
    - (ii) ensures the cheese produced achieves a level of food safety equivalent to that achieved for cheese prepared from milk or liquid milk products that are treated in accordance with paragraph 17.1 (a).

*Note 1* For the meaning of **cheese** and **site of microbiological concern** see order 7.

*Note 2* For information relating to pasteuriser standards and verification see AS 3993-2003 *Equipment for the pasteurization of milk and other liquid dairy products-Continuous flow systems*.

- 17.2** If paragraph 17.1(b) or paragraph 17.1(d) applies, the applicable approved arrangement must validate that the treatment achieves the objective specified in paragraph 17.1(b) or subparagraph 17.1(d)(ii) (as the case may be).

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## **Part 4 Packaging and identification**

### **Materials and manner of packaging and identification**

- 18.1** Packaging, tags, labels and other materials used to package or identify milk and milk products for export as food must be fit for their intended use.
- 18.2** The manner in which milk and milk products for export as food are packaged, tagged, labelled and identified and the packaging, tags, labels, other materials used:
- (a) must not adversely affect the fitness for human consumption of the milk and milk products concerned; and
  - (b) in the case of packaging—must effectively protect the milk and milk products concerned from contamination in the conditions under which they are to be stored, handled, loaded and transported.

## **Part 5 Storage, handling and loading**

### **Storage, handling and loading**

- 19.1** Milk and milk products for export as food must be stored, handled and loaded in such a way that:
- (a) they are protected from the likelihood of contamination; and
  - (b) the conditions (including humidity and atmosphere) under which they are stored, handled and loaded do not adversely affect their fitness for human consumption.

*Note* For temperature controls applying to storage, handling and loading see clause 7 of this Schedule.

### **Loading for transport**

- 20.1** Milk and milk products for export as food must not be loaded (included loaded for export) onto a vehicle, ship, aircraft or other means of transport unless:
- (a) the vehicle (including the food carrying compartment) and the container system unit; and
  - (b) the equipment to be used in the food carrying compartment and the container system unit; and
  - (c) the equipment to be used for the loading;

comply with the applicable requirements of these Orders.

*Note 1* For the meaning of **container system unit, loaded for export** and **vehicle** see order 7.

*Note 2* The **food carrying compartment** is the part or area of the vehicle, ship, aircraft or other means of transport in which milk and milk products are carried, see the meaning of **food carrying compartment** in order 7.

*Note 3* For examples of the requirements of these Orders applying to the vehicle, food carrying compartment, container system unit and equipment referred to in this provision see clause 9 of Schedule 3 and clause 4 of Schedule 4.

## Part 6 Transport

### Milk and milk products must be protected during transport

**21.1** Milk and milk products for export as food must be transported under temperature controls that ensure that they are maintained during transportation in accordance with the requirements of clause 7 of this Schedule.

**21.2** Milk and milk products for export as food must be transported under such other conditions as are necessary to ensure that their fitness for human consumption is not adversely affected during transport.

*Note* For example in order to meet subclause 21.2 milk and milk products would need to be protected from pests and the likelihood of contamination during transport and should not be transported with live animals or any other thing that could contaminate the milk and milk products.

### Official mark must be retained during transport

**22.1** During the transport of milk and milk products for export as food any official mark applied:

- (a) to the milk and milk products, their packaging or to anything containing the milk and milk products; or
  - (b) to any thing that is attached to:
    - (i) the milk and milk products; or
    - (ii) their packaging; or
    - (iii) any thing containing the milk and milk products;
- must be retained intact.

*Note 1* For the meaning of **apply** see section 3 of the Act.

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*Note 2* See further clause 12 of Schedule 8.

## **Part 7 Fitness for human consumption**

### **Evaluation of fitness for human consumption**

- 23.1** Establishments preparing milk and milk products for export as food must have procedures in place for evaluating the fitness for human consumption of:
- (a) all milk and milk products (including returned product) received at the establishment; and
  - (b) all ingredients received at the establishment; and
  - (c) all milk and milk products prepared for export as food at the establishment.

*Note* This clause applies to all milk, milk products and ingredients received including those sourced from unregistered establishments and establishments to which these Orders do not apply and those that are imported.

### **Milk and milk products not fit for human consumption**

- 24.1** Milk and milk products that are not fit for human consumption must:
- (a) be clearly identified as not for export as food; and
  - (b) be segregated from and not contaminate milk and milk products for export as food; and
  - (c) not be loaded for export.
- 24.2** Milk and milk products that are not fit for human consumption must:
- (a) be disposed of so that they do not contaminate milk and milk products for export as food, their ingredients or the water supply; or
  - (b) be treated to render them fit for human consumption.
- 24.3** Subclauses 24.1 and 24.2 do not apply to manufacturing grade milk and milk products or to animal food.

### **Manufacturing grade milk and milk products**

- 25.1** Manufacturing grade milk and milk products must:

- (a) be clearly described as manufacturing grade and not fit for human consumption (or words of similar meaning); and
- (b) be segregated from and not contaminate milk and milk products for export as food.

### **Milk and milk products that must be dealt with as not for export as food**

**26.1** Milk and milk products that under these Orders must be dealt with as milk and milk products that are not for export as food must:

- (a) be clearly identified as not for export as food; and
- (b) be segregated from and not contaminate milk and milk products for export as food; and
- (c) not be loaded for export.

*Note* For milk and milk products that under these Orders must be dealt with as not for export as food see subclause 11.2 of Schedule 8.

**26.2** If:

- (a) an export permit for milk and milk products is revoked; or
- (b) the Secretary gives the occupier of the establishment at which the milk and milk products concerned are located a written notice rejecting them for export;

the milk and milk products concerned must:

- (c) be clearly identified as not for export as food; and
- (d) be segregated from and not contaminate milk and milk products for export as food; and
- (e) not be loaded for export.

### **Milk and milk products not for export as food**

**27.1** Milk and milk products that are not for export as food must:

- (a) be clearly identified as not for export as food; and
- (b) be segregated from and not contaminate milk and milk products for export as food.

### **Animal food**

**28.1** Animal food must:

- (a) be clearly identified as animal food and not for human consumption; and

- (b) be segregated from and not contaminate milk and milk products that are for food.

*Note* For example, milk and milk products for animal food cannot be used as an ingredient for milk and milk products for human consumption.

### **Milk and milk products for export to identified markets**

**29.1** If milk and milk products are not eligible for export as food to all markets the following must be readily ascertainable:

- (a) the countries to which the milk and milk products concerned are intended for export; and
- (b) whether the importing country requirements for each of those countries that are specified in the applicable approved arrangement are met.

*Note* For when the approved arrangement must document controls used to ensure compliance with importing country requirements see clause 2 of Schedule 2.

## **Schedule 6      Product standards**

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## Part 1 Product standards for milk, milk products and ingredients

### Contaminants, natural toxicants, residues and food additives

**1.1** Milk and milk products for export as food and their ingredients must not contain any of the following:

- (a) a metal or non metal contaminant or a natural toxicant in excess of the maximum level specified for the contaminant or toxicant in the Food Standards Code;
- (b) an agricultural or veterinary chemical in an amount that contravenes the requirements of the Food Standards Code;
- (c) a food additive, processing aid, vitamin, mineral, added nutrient, other matter or substance in contravention of the applicable requirements of the Food Standards Code.

*Note 1* For the meaning of **ingredient** see order 7. See further the meaning of **unsafe** in order 9 and the meaning of **unsuitable** in order 10.

*Note 2* For contaminants and natural toxicants see Standard 1.4.1 and Standard 1.4.4 of the Food Standards Code. For histamines see Standard 2.2.3 of the Food Standards Code.

*Note 3* For residues see Standard 1.4.2 of the Food Standards Code.

*Note 4* For food additives see Standards 1.3.1 to 1.3.4 of the Food Standards Code.

**1.2** Milk and milk products for export as food to a country and their ingredients need not comply with a requirement of subclause 1.1:

- (a) as it applies to a contaminant or natural toxicant—if the importing country authority specifies a maximum level for the contaminant or natural toxicant for milk, milk products or ingredients of the kind concerned and the milk, milk products or ingredients concerned do not exceed that maximum level; and
- (b) as it applies to an agricultural or veterinary chemical—if the importing country authority specifies a maximum limit for the chemical for milk, milk products or ingredients of the kind concerned and the milk, milk products or ingredients concerned do not exceed that limit; and
- (c) as it applies to a food additive, processing aid, vitamin, mineral, added nutrient, other matter or substance—if the

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importing country authority specifies an alternative requirement for the food additive, processing aid, vitamin, mineral, added nutrient, other matter or substance milk, milk products or ingredients of the kind concerned and the milk, milk products or ingredients concerned comply with the alternative requirement.

- 1.3** If paragraph 1.2(a), 1.2(b) or 1.2(c) applies the applicable approved arrangement must:
- (a) identify the maximum limit or alternative requirement concerned specified by the importing country authority; and
  - (b) document the controls used to ensure compliance with that maximum limit or alternative requirement.

*Note 1* For the meaning of **importing country authority** see order 7.

*Note 2* Contrast paragraph 2.1(c) and subclause 2.2 of Schedule 2 which apply where the importing country contaminant/residue etc maximum limits or requirements are in addition to (or more stringent than) the maximum limits or requirements specified in subclause 1.1 of this Schedule.

*Note 3* See further clause 29 of Schedule 5.

### **Microbiological limits**

- 2.1** Milk and milk products for export as food and their ingredients must meet the microbiological limits specified for milk, milk products or ingredients of that kind in the Food Standards Code.

*Note* See Standard 1.6.1 of the Food Standards Code.

- 2.2** Milk and milk products for export as food to a country and their ingredients need not comply with subclause 2.1 if:
- (a) the importing country authority specifies an alternative microbiological limit for the milk, milk product or ingredient of the kind concerned; and
  - (b) the milk, milk products or ingredients concerned comply with the alternative microbiological limit.

- 2.3** If paragraph 2.2(a) applies the applicable approved arrangement must:
- (a) identify the alternative microbiological limit specified by the importing country authority; and
  - (b) document the controls used to ensure compliance with that alternative microbiological limit.

*Note 1* For the meaning of **importing country authority** see order 7.

*Note 2* Contrast paragraph 2.1(c) and subclause 2.2 of Schedule 2 which apply where the importing country microbiological limits requirements are in addition to (or more stringent than) the microbiological limits specified in subclause 2.1 of this Schedule.

*Note 3* See further clause 29 of Schedule 5.

## Gene technology, irradiation and other processes

**3.1** Milk and milk products for export as food and their ingredients must not:

- (a) be produced using gene technology; or
- (b) be irradiated; or
- (c) be produced using, or subjected to, any other process;

in contravention of the applicable requirements of the Food Standards Code.

*Note* For gene technology see the Standard 1.5.2 of the Food Standards Code and for food irradiation see Standard 1.5.3 of the Food Standards Code.

**3.2** Milk and milk products for export as food to a country and their ingredients need not comply with subclause 3.1 if:

- (a) the importing country authority permits the gene technology, irradiation or other process for milk, milk products or ingredients of the kind concerned; and
- (b) the importing country requirements for the gene technology, irradiation or other process are complied with in relation to the milk, milk products or ingredients concerned.

**3.3** If paragraph 3.2(a) applies the applicable approved arrangement must

- (a) identify the alternative requirements specified by the importing country authority; and
- (b) document the controls used to ensure compliance with the alternative requirements.

*Note 1* For the meaning of **importing country authority** see order 7.

*Note 2* See also paragraph 2.1(c) and subclause 2.2 of Schedule 2 which apply where the importing country requirements are in addition to the requirements of these Orders.

*Note 3* See further clause 29 of Schedule 5.

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## Part 2 Methods of sampling and examination

### Microbiological sampling and examination

- 4.1** The sampling and examination of milk and milk products and their ingredients for the purposes of demonstrating compliance with the microbiological limits of the Food Standards Code must comply with:
- (a) the Australian Standards AS/NZS 1766 *Methods for the Microbiological Examination of Food* as at the day of commencement of this clause; or
  - (b) an equivalent method of examination in accordance with the Australian Standards AS/NZS 4659 *Guide to Determining the Equivalence of Food Microbiology Test Methods* as at the day of commencement of this clause.

- 4.2** The sampling and examination of milk and milk products and their ingredients for the purpose specified in subclause 4.1 must comply with any additional methods for their sampling and examination that are specified in the Food Standards Code.

- 4.3** The sampling and examination need not comply with subclause 4.1 and subclause 4.2 if:
- (a) the importing country authority specifies an alternative method of sampling and examination for milk, milk products or ingredients of the kind concerned; and
  - (b) the sampling and examination is done in accordance with the alternative method.

*Note* For general requirements for sampling and analysis see clause 8 of Schedule 2 and see also Division V of Part 9 of these Orders. See further sections 14.02 to 14.04 of the *Export Control (Prescribed Goods—General) Order 2005* and see paragraph 5.1(d) of these Orders.

- 4.4** If paragraph 4.3(a) applies the applicable approved arrangement must:
- (a) identify the alternative method of sampling and examination specified by the importing country authority; and
  - (b) document the controls used to ensure compliance with that alternative method of sampling and examination.

*Note 1* For the meaning of **importing country authority** see order 7.

*Note 2* See also paragraph 2.1(c) and subclause 2.2 of Schedule 2 which apply where the importing country sampling and examination requirements are in addition to the requirements of these Orders.

*Note 3* See further clause 29 of Schedule 5.

## **Schedule 7      Trade description**

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## Part 1 Requirement to have a trade description

### When milk and milk products must have a trade description

- 1.1** Milk and milk products for export as food must have a trade description containing the information specified in clause 4 of this Schedule applied to their immediate container.
- 1.2** The trade description must be applied before the milk and milk products leave the establishment at which they are last packed in their immediate container before being loaded for export.

*Note 1* For the meaning of **trade description** see section 3 of the Act.

*Note 2* For the meaning of **immediate container** and **loaded for export** see order 7.

*Note 3* For identification and traceability requirements applying to outer containers see clause 5 of Schedule 8.

### Unlabelled canned product and unwrapped bulk loaded product

- 2.1** Despite clause 1 of this Schedule a trade description containing the information specified in clause 4 of this Schedule need not be applied to:
- (a) milk and milk products despatched from an establishment in cans without labels provided the requirements of subclause 5.2 of this Schedule are met; and
  - (b) unwrapped milk and milk products bulk loaded into container system units.

*Note* If a trade description containing the information specified in clause 4 of this Schedule is not applied to unlabelled canned milk and canned milk products or unwrapped bulk loaded milk and milk products, additional information needs to be provided to the consignee on despatch, see clause 7 of Schedule 8.

### Milk and milk products identified as not for retail sale

- 3.1** Despite clause 1 of this Schedule a trade description containing the information specified in clause 4 of this Schedule need not be applied to milk and milk products if:
- (a) the milk and milk products are identified as not for retail sale; and

- (b) the information specified in clause 4 of this Schedule is applied to the outer container containing the milk and milk products before the outer container is loaded for export.

## Part 2 Contents of the trade description

### Division I Information requirements

#### General requirement

- 4.1** The trade description must contain:
- (a) a description of the milk and milk products; and
  - (b) for milk and milk products containing more than one ingredient—a list of ingredients in accordance with the requirements of Division II of this Part 2; and
  - (c) the net contents of the milk and milk products; and
  - (d) the country of origin of the milk and milk products; and
  - (e) the registration number of the establishment at which the milk and milk product are last prepared (other than handled, loaded or stored) before being exported; and
  - (f) the name and address of:
    - (i) the exporter; or
    - (ii) the occupier of the establishment at which the milk and milk products are last prepared (other than handled, loaded or stored) before being exported; or
    - (iii) the consignee; and
  - (g) the identity of the lot for the milk and milk products; and
  - (h) the directions for the use or storage if the milk and milk products are of a nature as to warrant such directions for reasons of food safety.

*Note 1* For the meaning of **lot** and **registration number** see order 7.

*Note 2* For accuracy of the trade description see clause 10 of this Schedule. See also section 15 of the Act for offences in relation to false trade descriptions.

*Note 3* The *Trade Practices Act 1974* contains prohibitions on engaging in conduct that is misleading or deceptive or is likely to mislead or deceive (eg see section 52) and prohibitions on making false or misleading representations, including about the country of origin of milk and milk products (for example see section 53 and section 75AZC).

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*Note 4* Part V, Division 1AA of *Trade Practices Act 1974* which provides defences that certain country of origin representations do not contravene section 52, paragraph 53(a), paragraph 53(eb) or subparagraph 75AZC(1)(a) or (i) of the *Trade Practices Act 1974*. See further sections 65AA to 65AN of the *Trade Practices Act 1974*. For further guidance on correctly describing the country of origin see the ACCC website <http://www.accc.gov.au/>.

*Note 5* For example if the importing country authority specifies that it does not require a trade description requirement of this Schedule to be complied with (or specifies a less stringent requirement), the Secretary may, at the request of the occupier, give the occupier a notice specifying that the requirement of this Schedule does not apply, see order 79.

## **Canned milk and milk products**

- 5.1 If canned milk or canned milk products are not permanently marked with the complete trade description at the time of filling the cans, the letters 'EX' followed by the registration number of the establishment at which the cans are closed must be embossed or otherwise permanently marked on the cans.
- 5.2 If canned milk or canned milk products are to be despatched from an establishment in cans without labels the cans must be embossed or otherwise permanently marked at the time of filling with:
- (a) a product cypher that can be used to identify the milk and milk products; and
  - (b) the letters 'EX' followed by the registration number of the establishment at which the can is closed; and
  - (c) the country of origin of the milk and milk products; and
  - (d) the identity of the lot for the milk and milk products.

*Note* For the additional information to be provided to the consignee on despatch, see clause 7 of Schedule 8.

## **Division II                    Ingredients**

### **List of ingredients must comply with the Food Standards Code**

- 6.1 The trade description applied to milk and milk products must meet each of the applicable requirements for the labelling and naming of ingredients and compound ingredients that are specified in Standard 1.2.4 of the Food Standards Code.

*Note* For example if the importing country authority specifies that it does not require a trade description requirement of this Schedule to be complied with (or specifies a less stringent requirement), the Secretary may, at the request of

the occupier, give the occupier a notice specifying that the requirement of this Schedule does not apply, see order 79.

**6.2** Without limiting the generality of subclause 6.1 the ingredients must be listed in the order specified in Standard 1.2.4 of the Food Standards Code.

**6.3** For the purposes of paragraph 2(d) of Standard 1.2.4 of the Food Standards Code a small package means a package with a total surface area of less than 100 cm<sup>2</sup>.

*Note* Paragraph 2(d) of Standard 1.2.4 the Food Standards Code exempts small packages from the requirement to include a statement of ingredients.

**6.4** For the purposes of complying with the requirements of Standard 1.2.4 of the Food Standards Code:

- (a) **ingredient** does not have the meaning given in clause 1 of that Standard; and
- (b) **ingredient** means any substance (including a food additive) that is a constituent of milk and milk products but does not include a processing aid.

*Note* For the meaning of **processing aid** see order 7.

### Compositional claims

**7.1** If a claim as to composition is made or implied regarding milk and milk products, a quantitative statement supporting the claim must be included in the trade description.

## Division III Identifying the establishment

### Registration number

**8.1** For the purposes of paragraph 4.1(e) of this Schedule the registration number of the establishment must be clearly distinguishable as being the registration number.

## Division IV Identifying the producer, exporter etc

### Name and address

**9.1** For the purposes of paragraph 4.1(f) of this Schedule, if:

- 
- (a) the name and address of the exporter or consignee is used; and
  - (b) the exporter or consignee is not a person who prepares the milk and milk products concerned;
- the name must be preceded by the words 'Packed for' or a statement of similar meaning.

## **Part 3        Miscellaneous**

### **Trade description must be accurate, legible, conspicuous and secure**

- 10.1** Information required under these Orders to be contained in the trade description must:
- (a) be accurate; and
  - (b) be legible; and
  - (c) be prominent, conspicuous and not obscured in any way; and
  - (d) be securely applied.

### **Additional information applied to a trade description**

- 11.1** Additional information or pictures applied to milk and milk products for export as food must not be inconsistent with information required under these Orders to be contained in the trade description.

### **Trade description applied to packaging material, liners, outer containers etc**

- 12.1** A trade description applied to:
- (a) packaging material such as carton liners, wraps or sheets within blocks to separate milk and milk products; or
  - (b) an outer container containing a number of immediate containers of milk and milk products;
- must not be inconsistent with any part of the trade description required to be applied under these Orders.

*Note* For traceability and integrity requirements that may require information to be specified on outer containers see clause 5 of Schedule 8.

### **Trade descriptions in a language other than English**

- 13.1** Any part of a trade description applied to milk and milk products that appears in a language other than English must not be inconsistent with any part of the trade description in the English language.

*Note* For requirements to provide a translation of information applied to milk and milk products or their packaging see order 76.

### **When a trade description must not be altered or interfered with**

- 14.1** The trade description required under these Orders to be applied to milk and milk products must not be altered or interfered with unless:
- (a) the alteration or interference is done by, or under the direction of, an authorized officer; or
  - (b) an authorized officer gives written approval for the alteration or interference; or
  - (c) the applicable approved arrangement provides for the alteration and interference in the circumstances in which the alteration or interference is made.

## **Schedule 8      Identification, tracing systems, integrity and transfer**

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## Part 1 General requirements

### Identification, tracing systems, integrity and recall

- 1.1** Effective measures for tracing systems, for making records and retaining documents and for the identification of milk and milk products must ensure that all milk and milk products for export prepared at the establishment can be:
- (a) identified; and
  - (b) traced; and
  - (c) if necessary, recalled.

### Integrity

- 2.1** The integrity of milk and milk products for export as food must be maintained.

*Note* For meaning of *integrity* see order 7.

## Part 2 Supply and preparation

### Sourcing milk and milk products

- 3.1** Milk and milk products for export as food and their ingredients must be sourced only from a supplier with traceability systems in place to ensure that the milk and milk products and ingredients can be identified, traced and if necessary recalled.
- 3.2** A record must be made of the name of the supplier of all milk and milk products and ingredients received at an establishment engaged in the preparation of milk and milk products for export as food.

### Production records

- 4.1** A record must be made of all information necessary to ensure:
- (a) trace-back to the individual lot of milk and milk products prepared at an establishment; and
  - (b) trace-back to the supplier of the ingredients used in each lot of the milk and milk products and the date of supply of the ingredients.

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*Note* For requirements relating to verification records and for requirements to keep documents see subclause 3.7 and clause 5 of Schedule 2. See further order 75.

- 4.2** For the purposes of complying with subclause 4.1(a) and without limiting the generality of subclause 4.1, for each lot of milk and milk products prepared at an establishment a record must be made of:
- (a) the description of the milk and milk products; and
  - (b) the quantity of milk and milk products in the lot; and
  - (c) the lot identity of the milk and milk products; and
  - (d) the date of preparation of the milk and milk products; and
  - (e) the milk and milk products and their ingredients.

### Identification of milk and milk products

- 5.1** The following information must be applied to the outer container of milk and milk products for export as food before the container leaves the establishment at which the outer container is packed:
- (a) a description of the milk and milk products;
  - (b) the registration number of the establishment at which the outer container is packed;
  - (c) the quantity of the milk and milk products in the container;
  - (d) the lot identity of the milk and milk products;
  - (e) the country of origin of the milk and milk products.

*Note* For requirements for information to be applied to the immediate container see Schedule 7.

## Part 3 Transfer

### The information to be provided on despatch

- 6.1** For each consignment of milk and milk products for export as food despatched from an establishment the following information must be given to the consignee:
- (a) the name, address and registration number of the despatching establishment;
  - (b) a full description of the milk and milk products that is sufficient to identify them;

- (c) an indication of the temperature controls under which the milk and milk products must, under these Orders, be transported;
- (d) the quantity of the milk and milk products in the consignment and the number and description of packages (if any) in which the milk and milk products are packed;
- (e) if the milk and milk products are prepared in order to meet the importing country requirements of one or more identified countries—the name of those countries;
- (f) the name and address and registration number (if any) of the establishment to which the milk and milk products are despatched;
- (g) a declaration stating that:
  - (i) the conditions and restrictions specified in orders 37 to 45 of these Orders; and
  - (ii) the importing country requirements identified in the approved arrangement;
 that apply to and in relation to the milk and milk products while they are at the establishment are complied with;
- (h) a declaration stating that all the information given to the consignee for the purposes of complying with this clause is true and complete.

**6.2** For each consignment of milk and milk products for export for animal food despatched from an establishment engaged in the preparation of milk and milk products for export as food the information specified in paragraphs 6.1(a), 6.1(b), 6.1(d), 6.1(f), 6.1(g) and 6.1(h) must be given to the consignee.

### **Unlabelled canned product and unwrapped bulk loaded product**

- 7.1** If milk and milk products:
- (a) are despatched from an establishment in cans without labels; or
  - (b) are unwrapped milk and milk products bulk loaded into container system units;
- the outstanding information (if any) required to comply with the requirements of clause 4 of Schedule 7 must also be given to the consignee.

### **Intra-company transfers**

- 8.1** This Part does not apply to the despatch of milk and milk products if both of the following apply:
- (a) the same person is the occupier of the despatching and the receiving establishment; and
  - (b) the occupier's approved arrangement documents the controls necessary to ensure that the requirements of clause 1 of this Schedule are complied with during the transfer.

### Requirements for declarations

- 9.1** A declaration referred to in paragraphs 6.1(g) and 6.1(h) of this Schedule must be signed and dated by the maker of the declaration.

*Note* For making declarations electronically see section 9 of the *Electronic Transactions Act 1999* and for electronic signatures see section 10 of the *Electronic Transactions Act 1999*.

- 9.2** A declaration referred to in paragraphs 6.1(g) and 6.1(h) of this Schedule must be made by:

- (a) the occupier; or
- (b) a person who is designated in the despatching establishment's approved arrangement as a person who may make such a declaration on behalf of the occupier.

- 9.3** A declaration referred to in this Division must not:

- (a) be false, misleading or incomplete; or
- (b) be made if there is no sound basis for making it.

*Note 1* For criminal penalties applying to false or misleading statements made by a person to a Commonwealth entity see the *Criminal Code Act 1995* Part 7.4 (False or misleading statements).

*Note 2* If a false, misleading or incomplete statement is made or there is no sound basis for the statement the establishment's approved arrangement may be suspended or revoked, see paragraph 21.1(c) of Schedule 2.

### Giving information to the consignee

- 10.1** For the purpose of clauses 6 and 7 of this Schedule the information is taken to be given to the consignee if:

- (a) it is in writing; and
- (b) it is given to the consignee at the time of despatch of the milk and milk products concerned or accompanies the milk and milk products concerned during despatch.

*Note* For when requirements to give information in writing can be complied with by an electronic communication see section 9 of the *Electronic Transactions Act 1999*.

## Receipt of milk and milk products

### 11.1 If:

- (a) milk and milk products are received by an establishment engaged in the preparation of milk and milk products for export as food; and
- (b) the establishment does not receive the relevant information referred to in clauses 6 or 7 (as the case may be) of this Schedule or the information does not accompany the milk and milk products concerned; or
- (c) the information referred to in clauses 6 or 7 received by the establishment or accompanying the milk and milk products is inaccurate or incomplete;

the occupier must notify an authorized officer as soon as practicable on becoming aware that the information was not received or is inaccurate or incomplete.

### 11.2 If:

- (a) milk and milk products are received by an establishment engaged in the preparation of milk and milk products for export as food; and
- (b) a circumstance referred to in paragraphs 11.1(b) or 11.1(c) exists;

the milk and milk products concerned must:

- (c) be held at the establishment under conditions of security and not dealt with further as milk and milk products for export as food unless an authorized officer gives written approval for the milk and milk products concerned to be dealt with further; or
- (d) be dealt with as milk and milk products that are not for export as food.

*Note* For requirements for milk and milk products that must be dealt with as not for export as food see clause 26 of Schedule 5.

## Identification during transport

- 12.1** The identification of milk and milk products for export as food must not be lost during transport.

*Note* For other transport requirements see clause 9 of Schedule 3, clause 4 of Schedule 4 and Parts 5 and 6 of Schedule 5.

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## **Part 1 Export permits**

### **Division I Application for an export permit**

#### **Making an application**

- 1.1** An application for an export permit for milk and milk products must:
- (a) be in the form approved by the Secretary for making applications for the export of milk and milk products; and
  - (b) be given to the Secretary.

*Note* For the requirement for an export permit see order 46.

#### **Contents of the application**

- 2.1** An application for an export permit for milk and milk products must contain the following information for the milk and milk products concerned:
- (a) the name and address in Australia of the person who intends to export them;
  - (b) the registration number of the establishment at which they are last prepared (other than merely stored, handled or loaded);
  - (c) each of the dates on which they are prepared (other than merely stored, handled or loaded);
  - (d) if Australia is not their country of origin—their country of origin;
  - (e) the name and address of the consignee, or if a government certificate is not required—the words “to order”;
  - (f) the intended port or airport of their loading;
  - (g) the intended date of departure of the ship or aircraft onto which they are to be loaded;
  - (h) the airline flight number or the name of the ship and the voyage number;
  - (i) their intended port or airport of discharge;
  - (j) the country that is their intended final destination;
  - (k) their net contents and the number and type of packages (if any) in which they are packed;

- (l) their full description, including the type of milk and milk products concerned, the pack type and preservation (for example chilled, frozen or unrefrigerated);
- (m) any other information required by the Secretary.

*Note* For the meaning of **registration number** see order 7.

### **Exporter must have a declaration of compliance**

- 3.1** An application for an export permit for milk and milk products must contain a declaration that the exporter is in possession of:
- (a) a declaration that applies to the milk and milk products concerned and complies with the requirements of clause 6 of this Schedule; or
  - (b) a written verification for the milk and milk products concerned made by an authorized officer under clause 8 of this Schedule.
- 3.2** Paragraph 3.1 (a) applies only if the milk and milk products are prepared under an approved arrangement that provides for export inspection procedures that include the making of declarations of compliance for the milk and milk products concerned.

### **Exporter's statement that information is correct and complete**

- 4.1** An application for an export permit must contain a statement that all information given in the application is true and complete.

*Note 1* For criminal penalties applying to persons who make false or misleading statements to a Commonwealth entity see the *Criminal Code Act 1995* Part 7.4 (False or misleading statements).

*Note 2* For the exporter's obligations (including obligations in relation to making such declarations) see Part 5 of these Orders.

## **Division II Declaration of compliance made under an approved arrangement**

### **When a declaration may be made**

- 5.1** A person may make a declaration referred to in paragraph 3.1(a) of this Schedule only if the applicable approved arrangement provides for export inspection procedures that include the making of

declarations of compliance for the milk and milk products concerned.

**5.2** The declaration must be made by:

- (a) the occupier; or
- (b) a person designated in the applicable approved arrangement as a person who may make such a declaration on behalf of the occupier;

of the establishment at which the milk and milk products concerned are last prepared (other than merely stored, handled or loaded).

**Contents of the declaration**

**6.1** A declaration of compliance referred to in paragraph 3.1(a) of this Schedule must:

- (a) identify the milk and milk products concerned and state that it relates to the compliance with:
  - (i) the conditions and restrictions specified in orders 37 to 45 of these Orders; and
  - (ii) the importing country requirements identified in the approved arrangement;applicable to the milk and milk products at the time they are last prepared (other than merely stored, handled or loaded); and
- (b) declare that the conditions and restrictions and importing country requirements referred to in paragraph 6.1(a) are complied with; and
- (c) state that the information is true and complete; and
- (d) be signed by the maker of the declaration and dated.

*Note 1* For making declarations electronically see section 9 of the *Electronic Transactions Act 1999* and for electronic signatures see section 10 of the *Electronic Transactions Act 1999*.

*Note 2* This declaration may be the one that is made for the purposes of the transfer of milk and milk products (see Part 3 of Schedule 8) by the occupier of the establishment at which the milk and milk products are last prepared (other than merely stored, handled or loaded).

**Declaration must be correct and complete**

**7.1** A declaration referred to in this Division must not:

- (a) be false, misleading or incomplete; or
- (b) be made if there is no sound basis for making it.

*Note 1* For criminal penalties applying to false or misleading statements made by a person to a Commonwealth entity see the *Criminal Code Act 1995* Part 7.4 (False or misleading statements).

*Note 2* If a false, misleading or incomplete statement is made or there is no sound basis for the statement the establishment's approved arrangement may be suspended or revoked, see paragraph 21.1(c) of Schedule 2.

### **Division III            Verification and inspection by an authorized officer**

#### **Verification performed by an authorized officer**

##### **8.1    If:**

- (a) an application for an export permit for milk and milk products is given to the Secretary and there has been an opportunity to inspect the milk and milk products if required; and
- (b) an authorized officer has reasonable grounds to believe that the conditions and restrictions on export specified in orders 37 to 45 of these Orders that must be satisfied before the milk and milk products may be exported from Australia are complied with;

the officer may give a written verification of the matters referred to in paragraph 8.1(b).

*Note* For suspension or revocation of the approved arrangement if the Secretary has reasonable grounds to believe that the conditions and restrictions specified in paragraphs 8.1(b) are not complied with see paragraph 21.1(a) of Schedule 2.

#### **Inspection, examination and sampling**

- 9.1**     An authorized officer may conduct such inspections and examinations and take such samples as are necessary for the purposes of making a verification referred to in clause 8 of this Schedule.

### **Division IV            Permission to export**

#### **Explanation**

- 
- 10.1** This Division contains provisions for export permits.
- 10.2** Clause 11 describes the issuing of export permits on an ongoing basis under an approved arrangement.
- 10.3** Clause 12 describes the issue of export permits on an ongoing basis by persons approved by the Secretary to issue permits.
- 10.4** Clause 13 describes the fully automated system (EXDOC) used to give export permits. In this case the computer is programmed so that it does not result in the giving of an export permit unless certain preconditions are met. A person may access the automated system to issue permits if the person has approval to do so under an approved arrangement or if the person is given approval to do so by the Secretary.
- 10.5** Clause 14 describes the giving of permits in circumstances where clauses 11 to 13 do not apply and where the Secretary only gives an export permit where the Secretary has reasonable grounds to believe that certain preconditions are met.
- 10.6** The remaining clauses in this Division regulate the approval of arrangements for the issue of permits and the approval of persons who may issue permits.

### **Issue of export permits under an approved arrangement**

- 11.1** This clause does not apply to export permits:
- (a) generated as a result of the operation of a computer operating system specified in paragraph 25.1(a) of this Schedule; or
  - (b) given by the Secretary under clause 14 of this Schedule.
- 11.2** This clause applies if:
- (a) the occupier of the establishment is also the exporter of milk and milk products that are last prepared (other than merely stored, handled or loaded) at the establishment; and
  - (b) the occupier's approved arrangement contains export inspection procedures for the export of milk and milk products of the kind referred to in paragraph 11.2(a) that include:
    - (i) the making of declarations referred to in paragraph 3.1(a) of this Schedule; and
    - (ii) the issue of export permits by the occupier; and

- (iii) designates a person who has management responsibilities at the establishment for export inspection procedures as a person who may make the declarations and issue export permits on behalf of the occupier.

*Note* For approval, variation, suspension and revocation of the approved arrangement as it relates to these matters see clause 15 of this Schedule.

- 11.3** An export permit may be issued on behalf of the occupier by a person referred to in subparagraph 11.2(b)(iii).

*Note 1* For the making of declarations by this person see Division II of this Part.

*Note 2* For fit and proper person requirements for this person see clause 15 of this Schedule.

- 11.4** Division 1 of this Schedule does not apply.

*Note* Division 1 contains requirements for applications for an export permit.

- 11.5** An export permit issued by a person referred to in subclause 11.3 must contain:

- (a) all the information specified in clause 2 of this Schedule; and
- (b) a declaration that applies to the milk and milk products and complies with the requirements of clause 6 of this Schedule; and
- (c) a statement that all information in the permit is true and complete.

*Note 1* For the requirement for an export permit see order 46.

*Note 2* The *Criminal Code Act 1995* Part 7.4 (False or misleading statements) contains offences for false and misleading statements made to a Commonwealth entity.

*Note 3* For the obligations relating to permits (including obligations in relation to the accuracy of information) see Part 5 of these Orders.

- 11.6** The occupier must give a copy of each permit issued by a person referred to in subclause 11.3 to the Secretary within 3 working days after the day the milk and milk products identified in the permit are exported.

## **Issue of export permits by approved person**

- 12.1** This clause does not apply to export permits:

- (a) generated as a result of the operation of a computer operating system specified in paragraph 25.1(a) of this Schedule; or
- (b) issued by the Secretary under clause 14 of this Schedule.

**12.2** An approved export permit issuer may issue an export permit for milk and milk products of the kind described in the approval.

*Note* For the meaning of **approved export permit issuer** see order 7.

**12.3** Division 1 of this Schedule does not apply.

*Note* Division 1 contains requirements for applications for an export permit.

**12.4** An export permit issued by an approved export permit issuer must contain:

- (a) all of the information specified in clause 2 of this Schedule; and
- (b) a declaration that they are in possession of a declaration that:
  - (i) applies to the milk and milk products; and
  - (ii) complies with the requirements of clause 6 of this Schedule; and
- (c) a statement that all information in the permit is true and complete.

*Note 1* For the requirement for an export permit see order 46.

*Note 2* The *Criminal Code Act 1995* Part 7.4 (False or misleading statements) contains offences for false and misleading statements made to a Commonwealth entity.

*Note 3* For permit issuer's obligations (including obligations in relation to the accuracy of information) see Part 5 of these Orders.

**12.5** An approved export permit issuer must ensure a copy of each permit he or she issues is given to the Secretary within 3 working days after the day the milk and milk products identified in the permit are exported.

### **Automated export permits**

**13.1** This provision applies if the export permit is an electronic notice generated as a result of the operation of a computer operating system specified in paragraph 25.1(a) of this Schedule.

**13.2** If each of the circumstances in subclause 11.2 of this Schedule exists a person referred to in subclause 11.3 of this Schedule may

access the computer operating system for the purpose of the issue of export permits.

- 13.3** An approved export permit issuer may access the computer operating system for the purpose of the issue of export permits.

*Note* For the meaning of **approved export permit issuer** see order 7.

- 13.4** The Secretary must take all reasonable steps to ensure that the computer system does not result in the issue of an export permit for milk and milk products unless there are reasonable grounds to believe that there are systems in place to ensure:

- (a) an application for an permit for the milk and milk products concerned is given to the Secretary and an authorized officer has had an opportunity to inspect the milk and milk products if required; and
- (b) the application contains the information specified in clause 2 of this Schedule; and
- (c) a declaration referred to in clause 3 of this Schedule is made; and
- (d) the conditions and restrictions on export specified in orders 37 to 45 of these Orders that must be satisfied before the milk and milk products may be exported from Australia are complied with; and
- (e) the information given to the Secretary in, or in connection with the application for the permit is accurate and complete and that there is a sound basis for the information.

*Note 1* For the requirement for an export permit see order 46.

*Note 2* For the prohibition on granting an export permit if certain amounts required to be paid under the *Export Inspection and Meat Charges Collection Act 1985* are outstanding see section 12 of that Act.

- 13.5** An export permit issued under this clause is taken to be given by the Secretary.

*Note* For how an export permit is given electronically see Part 3 of this Schedule.

### **Permits given by the Secretary in other circumstances**

- 14.1** This clause applies to permits given by the Secretary that are not generated as described in subclause 13.1 of this Schedule.

- 14.2** The Secretary may give the person named in an application for an export permit as the exporter of milk and milk products an export permit for the export of the milk and milk products if all of the following circumstances exist:
- (a) an application for an export permit for the milk and milk products is given to the Secretary and an authorized officer has had an opportunity to inspect the milk and milk products if required; and
  - (b) the application contains the information specified in clause 2 of this Schedule; and
  - (c) a declaration referred to in clause 3 of this Schedule is made; and
  - (d) the Secretary is satisfied that the conditions and restrictions on export specified in orders 37 to 45 of these Orders that must be satisfied before the milk and milk products may be exported from Australia are complied with; and
  - (e) the Secretary is satisfied that the information given to the Secretary in, or in connection with the application for the permit is accurate and complete and that there is a sound basis for the information.

*Note 1* For the prohibition on granting an export permit if certain amounts required to be paid under the *Export Inspection and Meat Charges Collection Act 1985* are outstanding, see section 12 of that Act.

*Note 2* For how an export permit is given electronically see Part 3 of this Schedule.

### **Approval etc of approved arrangements for issuing permits**

- 15.1** The Secretary may under clause 14 of Schedule 2 approve an arrangement as it relates to the matters referred to in subclause 11.2 of this Schedule if the Secretary is satisfied that:
- (a) permits issued under the arrangement and other information given by the occupier to the Secretary in, or in connection with the export of milk and milk products will be accurate and complete and have a sound basis; and
  - (b) the conditions and restrictions on export specified orders 37 to 45 of these Orders that must be satisfied before milk and milk products to which the export permits relate may be exported from Australia will be complied with; and

- (c) the occupier's arrangement contains controls to demonstrate how the occupier will comply with the requirements of Part 5 of these Orders and subclauses 11.5 and 11.6 of this Schedule.

**15.2** The Secretary may under subclause 19.1 of Schedule 2 require the occupier to submit a variation of the approved arrangement as it relates to the matters referred to in subclause 11.2 of this Schedule if the Secretary is not satisfied that compliance with the controls specified in the approved arrangement ensures that the matters specified in Part 5 of these Orders and subclauses 11.5 and 11.6 of this Schedule are complied with.

*Note* A variation of the approved arrangement proposed by the occupier that relates to a matter referred to in subclause 11.2 requires approval before it is implemented see subclause 18.2 of Schedule 2.

**15.3** The Secretary may under subclause 21.1 of Schedule 2 suspend or revoke the approval of an approved arrangement as it relates to the matters referred to in subclause 11.2 of this Schedule if:

- (a) the Secretary is satisfied that any of the matters specified in subclause 15.1 are not met; or
- (b) a person who may under subclause 11.3 issue export permits on behalf of the occupier is not, or ceases to be, a fit and proper person having regard to the matters specified in section 4.05 of the *Export Control (Prescribed Goods—General) Order 2005*; or
- (c) the occupier has failed to comply with a requirement of Part 5 of these Orders or subclauses 11.5 or 11.6 of this Schedule; or
- (d) the occupier has failed to provide the assistance referred to in order 60.

**15.4** The preconditions specified in subclause 15.1 are in addition to those specified in subclause 14.1 of Schedule 2.

**15.5** Subclauses 15.2 and 15.3 do not operate so as to limit the ability of the Secretary to require a variation or suspend or revoke an arrangement under subclauses 19.1 and 21.1 (as the case may be) of Schedule 2.

### **Approval to issue permits**

**16.1** An individual may apply for approval to issue permits for the export of milk and milk products prepared under an approved arrangement that contains export inspection procedures that

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include the making of declarations referred to in paragraph 3.1(a) of this Schedule.

- 16.2** The application must contain:
- (a) the information specified in paragraphs 2.1(a) and 2.1(b) of this Schedule; and
  - (b) a description of the milk and milk products for export for which approval to issue export permits is required; and
  - (c) a statement by the applicant that all information given in the application is true and complete; and
  - (d) any other information required by the Secretary.
- 16.3** The Secretary may request that the applicant provide further specified information or documents that the Secretary reasonably requires in order to decide the application.
- 16.4** If the Secretary has not decided the application within 60 days after the day the application is received (not including any period between the Secretary making a written request under subclause 16.3 and the applicant meeting the request) the Secretary is taken to have refused the application.
- 16.5** The Secretary may by written notice give the applicant approval to issue export permits for milk and milk products of the kind specified in the application if the Secretary is satisfied:
- (a) the applicant will comply with the applicable requirements of Part 5; and
  - (b) export permits issued by the applicant will comply with subclause 12.4 of this Schedule; and
  - (c) the applicant will comply with subclause 12.5 of this Schedule; and
  - (d) the applicant is a fit and proper person having regard to the matters specified in section 4.05 of the *Export Control (Prescribed Goods—General) Order 2005*.
- 16.6** If the Secretary decides not to approve the applicant the Secretary must give the applicant written notice of the decision.
- 16.7** The notice must:
- (a) set out the reasons for the decision; and
  - (b) tell the applicant of his or her right to apply for reconsideration of the decision.

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- 16.8** The Secretary may:
- (a) give approval subject to conditions specified in the approval; and
  - (b) by written notice given to the approved export permit issuer impose new conditions or vary or revoke the conditions.
- 16.9** The conditions must be for the purpose of ensuring that:
- (a) the export permits will comply with subclause 12.4 of this Schedule; and
  - (b) the approved exporter permit issuer will comply with subclause 12.5 of this Schedule; and
  - (c) that an accurate assessment can be made as to whether paragraphs 16.9(a) and 16.9(b) are met.
- 16.10** The Secretary may by written notice given to an approved export permit issuer revoke the approval if the Secretary has reasonable grounds to believe that the approved export permit issuer:
- (a) has failed to comply with an applicable requirement of these Orders or a condition of the approval; or
  - (b) has in an application or other document given to the Secretary or in a document or information required to be made or given under the Act, the Orders or a condition of the approval of the person made a statement that is:
    - (i) false, misleading, or incomplete; or
    - (ii) for which there is no sound basis for making the statement; or
  - (c) has failed to provide the assistance referred to in order 60; or
  - (d) is not, or has ceased to be, a fit and proper person having regard to the matters specified in section 4.05 of the *Export Control (Prescribed Goods—General) Order 2005*.
- 16.11** The approval and a revocation take effect:
- (a) on the day specified in the written notice of the approval or revocation as the day the approval or revocation takes effect; or
  - (b) if no such day is specified—when written notice of the approval or revocation is given to the person concerned.
- 16.12** The Secretary must give the person concerned written notice of:
- (a) the reasons for the revocation; and
  - (b) the person's right to apply for reconsideration of the decision.

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*Note* For reconsideration and review of decisions made under this Schedule see Part 16 of the *Export Control (Prescribed Goods—General) Order 2005* and see also orders 90 and 91 of these Orders.

### **Restrictions on giving an export permit**

- 17.1** An export permit must not be given under this Schedule for milk and milk products if the Secretary has reasonable grounds to believe that:
- (a) a condition or disease that could affect the acceptability of milk and milk products to the importing country is present in Australia; or
  - (b) the export of the milk and milk products could result in trade in the export from Australia of goods being adversely affected.
- 17.2** An export permit need not be given under this Schedule for milk and milk products if the Secretary has reasonable grounds to believe that:
- (a) an importing country requirement for the milk and milk products is not complied with; or
  - (b) a person to whom order 47 applies in respect of the milk and milk products concerned has failed to provide the assistance referred to in order 60; or
  - (c) a person to whom order 47 applies in respect of the milk and milk products concerned has failed to comply with an applicable requirement of the Act or these Orders.

### **Allocation of permit number**

- 18.1** The Secretary must take all reasonable steps to ensure that an export permit given under this Schedule is allocated a unique identifying number at the time it is given (including generated).

### **Variation and revocation of an export permit**

- 19.1** The Secretary may, at the written request of a person to whom order 47 applies, vary an export permit to:
- (a) correct any error; or
  - (b) update the information;
- on the face of the permit.

*Note* For variation electronically see Part 3 of this Schedule.

- 19.2** The Secretary may revoke an export permit by giving a notice to a person to whom order 47 applies.
- 19.3** The notice of revocation of an export permit for milk and milk products may be given if the Secretary has reasonable grounds to believe that:
- (a) a condition or restriction on export specified in orders 37 to 45 of these Orders that must be satisfied before the milk and milk products may be exported from Australia is not complied with; or
  - (b) an importing country requirement for the milk and milk products is not complied with; or
  - (c) there is a risk the milk and milk products has deteriorated or is likely to deteriorate or is likely to be unfit for human consumption; or
  - (d) the intention to export the milk and milk products is abandoned; or
  - (e) information given to the Secretary in relation to the milk and milk products is inaccurate or incomplete or does not have a sound basis; or
  - (f) a condition or disease that could affect the acceptability of milk and milk products to the importing country is present in Australia; or
  - (g) the export of the milk and milk products could result in trade in the export from Australia of goods being adversely affected; or
  - (h) a circumstance referred to in paragraphs 17.2(b) or 17.2(c) of this Schedule exists.

*Note* For how a notice of revocation is to be given see Part 3 of this Schedule.

### **When an export permit has effect**

- 20.1** An export permit takes effect when it is issued or given (as the case may be).
- 20.2** An export permit ceases to have effect:
- (a) when it is revoked; or
  - (b) in any other case—at the end of a period of 28 days after the day it takes effect.

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**Direction given by authorized officer prevails**

- 21.1** If an export permit given under this Part is inconsistent with a written notice of a direction given by an authorized officer in accordance with Division 1 of Part 8 of these Orders then the permit is, to the extent of the inconsistency, of no effect.

**Part 2 Government certificates****Application for a government certificate**

- 22.1** A person may apply to the Secretary for the issue of a government certificate in respect of milk and milk products to be imported into a country.

*Note* The *Criminal Code Act 1995* Part 7.4 (False or misleading statements) contains offences for making false and misleading statements.

- 22.2** The Secretary may accept information given in an application for an export permit as satisfying any requirement to give the same information in an application for a government certificate.

**Issue of government certificate**

- 23.1** The Secretary may issue a government certificate for milk and milk products to be imported into a country if the Secretary is satisfied that the following are complied with:

- (a) the conditions and restrictions on export specified in orders 37 to 45 of these Orders that must be satisfied before the milk and milk products may be exported from Australia; and
- (b) the importing country requirements for the milk and milk products; and
- (c) any matters specified on the certificate concerning milk and milk products of the kind that are to be exported.

*Note 1* For the meaning of **importing country requirement** see order 7.

*Note 2* For how the certificate may be given electronically by the Secretary see Part 3 of this Schedule.

**Restrictions on issuing a government certificate**

- 24.1** A government certificate must not be issued under clause 23 of this Schedule if the Secretary is satisfied that:

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- (a) an export permit has not been issued or given for the milk and milk products or the export permit has ceased to have effect; or
  - (b) the information given to the Secretary in, or in connection with, the application for the certificate is inaccurate or incomplete or does not have a sound basis; or
  - (c) a condition or disease that is likely to affect the acceptability of milk and milk products to the importing country is present in Australia; or
  - (d) the export of the milk and milk products could result in trade in the export from Australia of goods being adversely affected.

**24.2** The Secretary need not issue a government certificate under clause 23 of this Schedule for milk and milk products if the Secretary is satisfied that:

- (a) a person to whom order 47 applies in respect of the milk and milk products concerned has failed to provide the assistance referred to in order 60; or
- (b) a person to whom order 47 applies in respect of the milk and milk products concerned has failed to comply with an applicable requirement of the Act and these Orders.

*Note* For cancellation of a government certificate by the Secretary see subsection 23(3) of the Act.

**24.3** A government certificate must not be issued under clause 23 of this Schedule for manufacturing grade milk and milk products that specifies that the manufacturing grade milk and milk products food comply with the requirements of Schedule 6 of these Orders or are fit for human consumption.

*Note* For the meaning of **manufacturing grade milk and milk products** see order 7.

**24.4** A government certificate must not be issued under clause 23 of this Schedule for milk and milk products for export for use for animal food that specifies that the animal food complies with the requirements of these Orders or is fit for human consumption.

*Note* For the meaning of **animal food** see order 7.

**24.5** The Secretary may under clause 23 of this Schedule issue a government certificate that the nature and condition of milk and milk products for use for animal food of the kind to be exported.

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## Part 3 Giving information or documents about exports

### Specifications for systems used in transmissions

**25.1** For the purposes of section 24A of the Act:

- (a) the computer operating system under the control of the Secretary and known as the EXDOC Operating System is the computer operating system for use for giving documents or information in relation to the export of milk and milk products; and
- (b) the software system known as the EXDOC Exporter Software Interface System is the software interface system for use for giving documents or information in relation to the export of milk and milk products; and
- (c) any software operating system listed in the document entitled *Approved EXDOC Interface Software Suppliers* for use for giving documents or information in relation to the export of milk and milk products is a software operating system for that purpose.

*Note* For the *Approved EXDOC Interface Software Suppliers* see <http://www.aqis.gov.au/EXDOC>.

**25.2** If the following are to be done electronically they must be done electronically by being transmitted using the systems specified in subclause 25.1:

- (a) the giving of an application for an export permit and an amendment of an application for an export permit to the Secretary;
- (b) the issuing or giving of an export permit.

*Note* For examples of information not given electronically see clauses 11 and 12 of this Schedule.

**25.3** Subclause 25.2 does not apply to export permits issued under clauses 11 or 12 of this Schedule.

**25.4** The following may be given electronically by being transmitted using the systems specified in subclause 25.1:

- (a) an application for a government certificate;
- (b) a government certificate.

- 25.5** If a person has a disability, or a particular disability, the Secretary must take reasonable steps to ensure:
- (a) the person has equal opportunity in relation to the issuing, giving and receiving of documents referred to in subclauses 25.2 and 25.4; and
  - (b) the special needs the person may have in relation the issuing, giving and receiving of the documents are met.

*Note* For the meaning of **disability** see order 7.

### **If the system is inoperative**

- 26.1** If a system described in subclause 25.1 of this Schedule is inoperative, the information must be given in the manner specified by the Secretary in writing.

*Note* For when a document or information that is transmitted in accordance with the specifications outlined in this clause are taken to be given see section 24A of the Act.

- 26.2** Subclause 26.1 does not require the Secretary to specify the manner of giving information unless a system is inoperative.

### **Specifications for transmissions by the Secretary**

- 27.1** An electronic transmission made to a person (other than the Secretary) using the systems referred to in subclause 25.1 must be transmitted to the person as identified by the identifying code given to the person under clause 30 of this Schedule.

### **Authentication for transmissions to the Secretary**

- 28.1** The sender of a transmission to the Secretary using the systems referred to in subclause 25.1 must authenticate the transmission by including the sender's identifying code referred to in clause 30 of this Schedule.

### **Requirements are specifications for the purposes of the Act**

- 29.1** The requirements specified in clauses 25 to 28 of this Schedule are specifications for the purposes of section 24A of the Act.

### **Allocation of user identifying code**

- 30.1**      The Secretary must take all reasonable steps to ensure that an identifying code for use in electronic transmissions under this Schedule is given to each person who may under subclauses 13.2 and 13.3 of this Schedule access the computer operating system specified in paragraph 25.1(a) for the purpose of the issue of export permits.

## **Schedule 10      Approved auditors**

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## **Part 1 Approved auditors**

### **Division I Register of approved auditors**

#### **Secretary must keep a register**

- 1.1** The Secretary must keep a register of approved auditors.
- 1.2** The register must contain the following information about each approved auditor:
- (a) the auditor's name; and
  - (b) whether the approval is for approval as an approved auditor of:
    - (i) operations for the preparation of milk and milk products for export as food; or
    - (ii) operations for the export as food of milk and milk products; or
    - (iii) operations for the issue of export permits; and
  - (c) if the approval is for approval as an approved auditor of operations for the preparation of milk and milk products for export as food—any limitations of the kind specified in paragraph 5.3(b) of this Schedule.
- 1.3** The Secretary must ensure that the register can be readily accessed by members of the public.

*Note 1* For the meaning of **approved auditor** and **export permit** see order 7.

*Note 2* For the issue of export permits see Division IV of Part 1 of Schedule 9.

### **Division II Approval of auditors**

#### **Application for approval**

- 2.1** An individual may make a written application for approval as an approved auditor of:
- (a) operations for the preparation of milk and milk products for export as food; or
  - (b) operations for the export of milk and milk products as food; or

- (c) operations for the issue of export permits.

*Note* An individual means a natural person and excludes a body politic, see subsection 22(i) of the *Acts Interpretation Act* 1901. (See also section 13 of the *Legislative Instruments Act* 2003.)

- 2.2 The application must be given to the Secretary and must be accompanied by:
- (a) evidence of the applicant's qualifications; and
  - (b) details of the applicant's experience relevant to the work of an auditor; and
  - (c) documented procedures for the conduct of audits by the applicant.
- 2.3 An application for approval as an approved auditor of operations for the preparation of milk and milk products as food must specify:
- (a) that approval of the applicant is sought for the audit of compliance with all of the following:
    - (i) all of the applicable requirements of the Act and these Orders; and
    - (ii) all requirements of approved arrangements and their conditions; and
    - (iii) all importing country requirements;for all aspects of the preparation of all milk and milk products for export as food at all establishments; or
  - (b) must specify:
    - (i) the requirements; and
    - (ii) the aspects of preparation; and
    - (iii) the milk and milk products for export as food; and
    - (iv) the establishments (including industries or industry sectors) of a particular kind; andin relation to which the approval of the auditor is sought.

### **Request for information, documents or assessment**

- 3.1 The Secretary may request that the applicant do any of the following that the Secretary reasonably requires in order to decide the application:
- (a) provide further specified information or documents;
  - (b) submit to assessment by interview, audit or written examination, or any combination of those ways.

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**Decision by the Secretary**

- 4.1** If the Secretary has not decided the application within 30 days after the day the application is received (not including any period between the Secretary making a written request under clause 3.1 of this Schedule and the applicant meeting the request) the Secretary is taken to have refused the application.

**Approval by the Secretary**

- 5.1** The Secretary may, by written notice given to the applicant, approve the applicant as an auditor if the Secretary is satisfied that:
- (a) the applicant has the necessary knowledge, training, skills and experience to competently carry out audits of the kind for which approval is sought; and
  - (b) the audits conducted by the applicant will be objective, independent, fair and accurate and, unless stated otherwise in the audit report, will be complete; and
  - (c) the applicant will comply with the requirements of Division II of Part 6 of these Orders; and
  - (d) the applicant will comply with documented procedures for the conduct of audits that are necessary to ensure:
    - (i) the matters specified in paragraphs 5.1(b) and 5.1(c) will be met; and
    - (ii) an accurate assessment can be made of whether the matters specified in paragraphs 5.1(b) and 5.1(c) are met; and
  - (e) the applicant will comply with the procedures referred to in paragraph 5.1(d); and
  - (f) the applicant is a fit and proper person having regard to the matters specified in section 4.05 of the *Export Control (Prescribed Goods—General) Order 2005*.
- 5.2** Without limiting the matters the Secretary may take into account for the purpose of being satisfied of the matters specified in subclause 5.1, the Secretary may take into account any real or perceived conflict of interest that could arise if the applicant was to be approved.
- 5.3** The notice of approval of an approved auditor of operations for the preparation of milk and milk products for export as food:

- (a) must specify that the approval is for the audit of compliance with all of the requirements specified in paragraph 2.3(a) of this Schedule for all aspects of the preparation of all milk and milk products for export as food at all establishments; or
- (b) must specify:
  - (i) the requirements; and
  - (ii) the aspects of preparation; and
  - (iii) the milk and milk products for export as food; and
  - (iv) the establishments (including industries or industry sectors) of a particular kind; and
 in relation to which the approval of is given.

### **When the Secretary need not approve an auditor**

- 6.1** The Secretary need not approve the applicant as an auditor if the applicant:
- (a) either alone or jointly with another person owes to the Commonwealth any amount payable to the Department; or
  - (b) has, in an application or other document given to the Secretary, or in a document or information required to be made or given under the Act, the Orders or a condition of the approval of the auditor made a statement that is:
    - (i) false, misleading, or incomplete; or
    - (ii) for which there is no sound basis for making the statement.

*Note* For the meaning of any **amount payable to the Department** see order 7.

### **Notice of decision**

- 7.1** If the Secretary decides not to approve the applicant as an approved auditor the Secretary must give the applicant written notice of:
- (a) the decision and the reasons for the decision; and
  - (b) the applicant's right to apply for reconsideration of the decision.

*Note* For reconsideration and review of decisions made under this Schedule see Part 16 of the *Export Control (Prescribed Goods—General) Order 2005* and see also orders 90 and 91 of these Orders.

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**Approval may be subject to conditions**

- 8.1** The Secretary may:
- (a) approve a person as an approved auditor subject to conditions specified in the notice of approval; and
  - (b) by written notice given to the approved auditor impose new conditions or vary or revoke the conditions.
- 8.2** The conditions must be for the purpose of ensuring that the matters specified in paragraphs 5.1(a) to 5.1(e) of this Schedule are met.

**How long approval lasts**

- 9.1** The approval of a person as an auditor takes effect on:
- (a) the day specified in the notice given under subclause 5.1 of this Schedule as being the day the approval takes effect; or
  - (b) if no day is so specified—the day that the notice is given to the person.
- 9.2** However, if the auditor must pay a fee under the *Export Control (Fees) Orders 2001*, the approval does not begin to have effect until the fee is paid.
- 9.3** The approval of a person as an auditor ceases to have effect:
- (a) at the end of 12 months after the day specified in subclause 9.1 as the day the approval takes effect; or
  - (b) when it is revoked;
- which ever occurs first.

*Note* For revocation see clause 11 of this Schedule.

**Assessing the competence of approved auditor**

- 10.1** The Secretary may assess the competence of an approved auditor, as often as the Secretary thinks necessary.
- 10.2** Without limiting subclause 10.1 the assessment may include:
- (a) an examination of reports made by the auditor in the course of auditing operations; and
  - (b) an audit of at least one operation that was audited under these Orders within the previous six months by the auditor; and
  - (c) observing the auditor while he or she is conducting an audit.

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**Division III            Revocation of approval of auditor****Revocation**

- 11.1**     The Secretary may by written notice revoke the approval of a person as an approved auditor if the Secretary:
- (a) is satisfied that the applicant is not to a fit and proper person having regard to the matters specified in section 4.05 of the *Export Control (Prescribed Goods—General) Order 2005*; or
  - (b) has reasonable grounds to believe the person does not have the necessary knowledge, training, skills or experience to competently carry out audits of the kind for which approval is given or the person has failed to show reasonable competence in audit work; or
  - (c) has reasonable grounds to believe an audit conducted or an audit report prepared by the person is not objective, independent, fair, accurate or complete (and the audit report fails to give sound reasons why the audit is incomplete); or
  - (d) has reasonable grounds to believe the person has failed to comply with a requirement of Division II of Part 6 of these Orders or a condition of the approval of the person as an approved auditor; or
  - (e) has reasonable grounds to believe the person has in an application or other document given to the Secretary or in a document or information required to be made or given under the Act, the Orders or a condition of the approval of the person as an approved auditor made a statement that is:
    - (i) false, misleading, or incomplete; or
    - (ii) for which there is no sound basis for making the statement.
- 11.2**     Without limiting the matters the Secretary may take into account for the purpose of forming a view as to the matters specified in subclause 11.1, the Secretary may take into account any real or perceived conflict of interest.
- 11.3**     The revocation takes effect:
- (a) on the day specified in the written notice of revocation given to the auditor concerned as being the day it takes effect; or
  - (b) if no such day is specified—when the written notice is given to the auditor concerned.

- 11.4** The Secretary must give the auditor concerned written notice of:
- (a) the reasons for the revocation; and
  - (b) the auditor's right to apply for reconsideration of the decision.

*Note* For reconsideration and review of decisions made under this Schedule see Part 16 of the *Export Control (Prescribed Goods—General) Order 2005* and see also orders 90 and 91 of these Orders.

## Notes to the Export Control (Milk and Milk Products) Orders 2005

### Note 1

The *Export Control Milk and Milk Products) Orders 2005* (in force under regulation 3 of the *Export Control (Orders) Regulations 1982*) as shown in this compilation is amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments.

### Table of instruments

| Title                                               | Date of FRLI registration | Date of commencement | Application, saving or transitional provisions |
|-----------------------------------------------------|---------------------------|----------------------|------------------------------------------------|
| Export Control (Milk and Milk Products) Orders 2005 |                           | 1 October 2005       | —                                              |

### Table of amendments