



Export Control (Organic Produce Certification) Orders

as amended

made under regulation 3 of the

Export Control (Orders) Regulations 1982

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taking into account amendments up to *Export Control (Organic Produce Certification) Amendment Orders 2005 (No. 1)*

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Order 1.01

Part 1 Preliminary**1.01 Citation** [see Note 1]

These Orders may be cited as the Export Control (Organic Produce Certification) Orders.

1.02 Object

The object of these Orders is to ensure that produce exported under the trade description 'organic', 'bio-dynamic', 'biological', 'ecological' or any other word of similar indication is properly so described.

1.03 Declaration of prescribed goods

For the Act, organic produce is declared to be prescribed goods.

1.04 Application of these Orders

- (1) These Orders do not affect the operation of any other Orders, except as provided by this order.

Note Another Export Control Order may have operation in relation to products to which these Orders apply, see in particular, the *Export Control (Prescribed Goods — General) Order 2005*.

- (2) If produce for export is prescribed goods because the produce is described as 'organic', 'bio-dynamic', 'biological', 'ecological' or by any other word of similar indication the following provisions of the *Export Control (Prescribed Goods — General) Order 2005* apply to and in relation to the produce:
- (a) Parts 1, 2, 3, 13, 14, 17 and 18; and
 - (b) section 4.05 (to the extent indicated in suborder 3.01 (2) and suborder 3.05 (2) of these Orders); and
 - (c) Part 16 (to the extent indicated in order 4.01 of these Orders).
- (3) No provision in any other Orders is to be taken to prohibit the description of produce as 'organic', 'bio-dynamic', 'biological', 'ecological' or by any other word of similar indication, if there is in force for the produce an organic produce certificate under these Orders.

1.05 Prohibition of export of organic produce

For subsection 7 (1) of the Act, the export of organic produce is prohibited unless an organic produce certificate has been issued under these Orders for the produce.

1.06 Definitions

In these Orders, unless the contrary intention appears:

Order 1.06

Act means the *Export Control Act 1982*.

approved certifying organisation means an organisation in respect of which a QM certificate is in force under order 3.04.

authorised officer — see section 3 of the Act.

expert means a person who has expertise in the production and preparation of organic produce.

exporter means a person who exports, or intends to export, organic produce.

holder, in relation to a QM certificate, means the person to whom the certificate is issued.

importing country authority means a government authority of an importing country that has the function of regulating the import of organic produce into that country.

importing country means a country that is intended to be the destination of exported organic produce.

operator means a person who produces, transports, or prepares organic produce for export.

organic produce means produce that, for the purpose of marketing, is described as ‘organic’, ‘bio-dynamic’, ‘biological’, ‘ecological’ or by any other word of similar indication.

organic produce certificate means a certificate issued in relation to organic produce intended to be exported, that:

- (a) describes the type and quantity of the organic produce to which it relates; and
- (b) certifies that the production and preparation of the produce satisfy the organic produce importing requirements of the importing country authority;

preparation, in relation to organic produce, includes processing, packaging, packing, storing, handling or loading of the produce.

QM certificate means a certificate issued by an authorised officer:

- (a) under order 3.04 — to an organic certifying organisation; or
- (b) under order 3.08 — to an individual operator.

QM manual means a manual made in accordance with Division 3 of Part 3.

QM system means the organisational structure, responsibilities, procedures, processes and resources for implementing quality management.

relevant QM manual, in relation to an approved certifying organisation or an operator, means the QM manual that describes the QM system in relation to which a QM certificate has been issued, under Division 1 or 2 of Part 3, to the organisation or operator.

relevant QM system, in relation to organic produce, means the QM system applying to the produce during its production and preparation.

Note The following terms are defined in section 3 of the Act, and have, in these Orders, the meaning so defined:

authorised officer document

Order 1.07

goods
prescribed goods
Secretary
trade description.

1.07 Meaning of *audit*

- (1) In these Orders, *audit* of a QM system means a systematic examination of the operations carried out under the system to determine whether:
 - (a) the QM manual for the QM system accurately describes the system; and
 - (b) the applicant, or the holder of the certificate, is giving effect to the QM system described; and
 - (c) the QM system ensures that organic produce subject to the system conforms to the trade description of the produce; and
 - (d) the QM system ensures that organic produce subject to the system complies with the requirements of the importing country authorities; and
 - (e) if a QM certificate has been issued for the QM system — the holder of the certificate is complying, or has complied, with any corrective action request that relates to the certificate.

Part 2 Organic produce certificates

Division 1 Issue of organic produce certificate

2.01 Application for organic produce certificate

- (1) Application for an organic produce certificate in relation to particular produce may be made by the exporter of the produce:
 - (a) to an approved certifying organisation; or
 - (b) to an authorised officer.
- (2) Application must be in a form approved by the Secretary for the purpose, and must set out all the information necessary to enable a decision to be made.
- (3) An application under paragraph (1) (b) must be accompanied by the fee prescribed in the Export Control (Fees) Orders.
- (4) An organic produce certificate must be issued in a form approved by the Secretary.

2.02 Issue of organic produce certificate — approved certifying organisations

An approved certifying organisation must issue, to an applicant under paragraph 2.01 (1) (a), an organic produce certificate in relation to a quantity of organic produce that is intended to be exported, if:

- (a) the produce has been subjected to the organisation's QM system; and
- (b) the production and preparation of the produce has complied with the QM system; and
- (c) the produce and its preparation satisfy the organic produce importing requirements of the relevant importing country authority.

2.03 Issue of organic produce certificate — authorised officers

An authorised officer must issue, to an applicant under paragraph 2.01 (1) (b), an organic produce certificate in relation to a quantity of organic produce that is intended to be exported, if:

- (a) the production and preparation of the produce has complied with the QM system of an individual operator approved under Part 3; and
- (b) the produce, and its preparation, satisfy the organic produce importing requirements of the relevant importing country authority.

Order 2.04

Division 2 Revocation and return of organic produce certificates

2.04 Revocation of organic produce certificate

- (1) An organic produce certificate may be revoked:
 - (a) if it was issued by an approved certifying organisation — by that organisation; and
 - (b) in any case — by an authorised officer.
- (2) The grounds on which a certificate may be revoked are:
 - (a) the information contained in the certificate is incorrect in an important way; or
 - (b) there are reasonable grounds to believe that a false or misleading statement was made in the application for the certificate; or
 - (c) the holder of the certificate has failed, in relation to the organic produce, to comply with a requirement of an importing country authority for the importing country; or
 - (d) the holder of the certificate has failed, in relation to the organic produce, to produce or prepare the produce in a manner compatible with the relevant QM system; or
 - (e) there are reasonable grounds to believe that the QM system applied to the organic produce is unreliable, or not effective, in ensuring that the production or preparation of the produce satisfies an importing requirement of an importing country authority in the importing country.

2.05 Return of organic produce certificate

- (1) A certificate revoked by an approved certifying organisation must be surrendered to the organisation by the holder, after receiving written notification of the revocation, within 7 days if practicable, and, in any event, within 14 days.
- (2) A certificate revoked by an authorised officer must be surrendered by the holder, after receiving written notification of the revocation, within 7 days if practicable, and, in any event, within 14 days:
 - (a) to an authorised officer; or
 - (b) if the certificate was issued by an approved certifying organisation — to the approved certifying organisation.
- (3) A certificate surrendered to an approved certifying organisation under paragraph (2) (b) must be given by the organisation to an authorised officer within 7 days after surrender, if practicable, and, in any event, within 14 days.

Part 3 QM certificates

Division 1 Issue of QM certificates to certifying organisations

3.01 Eligibility for QM certificate — organisations

- (1) To be eligible for the issue of a QM certificate, an organisation must:
 - (a) be operating a QM system that will ensure that organic produce subject to the system:
 - (i) conforms to trade description of the produce; and
 - (ii) complies with the requirements of importing country authorities; and
 - (b) have prepared a QM manual, in relation to the QM system, that complies with Division 3.
- (2) However, an organisation is not eligible to have a QM certificate issued to it if any officer of the organisation is not a fit and proper person (having regard to the matters specified in paragraphs 4.05 (1) (a) to 4.05 (1) (g) of the *Export Control (Prescribed Goods — General) Order 2005*).
- (3) In suborder (2):

officer of an organisation means:

 - (a) if the organisation is a body to which the Corporations Law applies — a director of the body, within the meaning given by section 60 of the Corporations Law; and
 - (b) in any other case — a person having authority in the organisation equivalent to that of a director.

3.02 Application procedure

- (1) Application may be made to an authorised officer for the issue of a QM certificate under this Division for one or more kinds of organic produce.
- (2) An application must be accompanied by a copy of the QM manual for the QM system to which the application relates.

3.03 Assessment of applicant's QM system

- (1) An authorised officer must conduct an audit of the applicant's QM system to determine whether it is a system of the kind described in paragraph 3.01 (1) (a).
- (2) The audit must be conducted by a person who is disinterested in relation to the business of the applicant.
- (3) For suborder (1), an expert may be engaged to:
 - (a) evaluate the applicant's QM system, and to conduct an inspection of the applicant's place of business for that purpose; and

Order 3.04

- (b) provide a written report of the evaluation and inspection to the authorised officer and applicant.
- (4) The reasonable costs of the engagement of an expert are to be borne by the applicant.

3.04 Issue of QM certificate

- (1) If an applicant complies with order 3.01, an authorised officer must issue a QM certificate to the applicant.
- (2) The certificate may be issued subject to any conditions set out in the certificate.

Division 2 Issue of QM certificates to individual operators

3.05 Eligibility for QM certificate — individual operators

- (1) To be eligible for the issue of a QM certificate, an individual operator must:
 - (a) be operating a QM system that will ensure that organic produce subject to the system:
 - (i) conforms to trade description of the produce; and
 - (ii) complies with the importing requirements of the importing country authorities; and
 - (b) have prepared a QM manual, in relation to the QM system, that complies with Division 3.
- (2) However, an individual operator is not eligible to have a QM certificate issued to it if the operator, or (if the operator is a body to which the Corporations Law applies) a director of the operator, is not a fit and proper person (having regard to the matters specified in paragraphs 4.05 (1) (a) to 4.05 (1) (g) of the *Export Control (Prescribed Goods — General) Order 2005*).
- (3) In suborder (2):
director of an operator that is a body to which the Corporations Law applies has the meaning given by section 60 of that Law.

3.06 Application procedure

- (1) Application may be made to an authorised officer for the issue of a QM certificate under this Division for one or more kinds of organic produce.
- (2) An application must be accompanied by a copy of a QM manual for the QM system to which the application relates.

3.07 Assessment of applicant's QM system

- (1) An authorised officer must conduct an audit of the applicant's QM system to determine whether it is a system of the kind described in paragraph 3.05 (1) (a).
- (2) The audit must be conducted by a person who is disinterested in relation to the business of the applicant.
- (3) For suborder (1), an expert may be engaged to:
 - (a) evaluate the applicant's QM system, and to conduct an inspection of the applicant's place of business for that purpose; and
 - (b) provide a written report of the evaluation and inspection to the authorised officer and applicant.
- (4) The reasonable costs of the engagement of an expert are to be borne by the applicant.

3.08 Issue of QM certificate

- (1) If an applicant complies with order 3.05, an authorised officer must issue a QM certificate to the applicant.
- (2) The certificate may be issued subject to any conditions set out in the certificate.

Division 3 Quality Management manuals

3.09 QM manual

A QM manual must describe in detail the measures in the QM system to which the manual relates that are designed to ensure compliance with paragraph 3.01 (1) (a) or 3.05 (1) (a), and must include:

- (a) the name and address of the organisation, or individual operator, whose QM system it is; and
- (b) the address of the registered office (if any) of the organisation or operator; and
- (c) if the organisation or operator is a company — the Australian Company Number of the company under the Corporations Law; and
- (d) the telephone number and facsimile number (if any) of the organisation or operator; and
- (e) the name of each person who will be responsible for giving effect, day to day, to the QM system; and
- (f) any other relevant information required by an authorised officer.

Order 3.10

Division 4 Obligations of holder of QM certificate

3.10 QM system to be given effect

- (1) The holder of a QM certificate must give effect to the QM system so certified:
 - (a) in accordance with the relevant QM manual; and
 - (b) for all produce the production and preparation of which is subject to the system.
- (2) An authorised officer may revoke a QM certificate if the holder of the certificate is not complying with suborder (1).
- (3) If a QM certificate is revoked, the holder of the certificate must surrender it to an authorised officer.

3.11 Modification of QM system

- (1) A QM system must not be modified in a way that substantially changes the system in any way without the written approval of an authorised officer.
- (2) Application may be made to an authorised officer, in writing, for approval of a modification.
- (3) An authorised officer may approve the modification if:
 - (a) the modified system will ensure that organic produce subject to the system:
 - (i) conforms to trade description of the produce; and
 - (ii) complies with the requirements of the importing country authorities; and
 - (b) the holder of the QM certificate has the capacity to implement the system as modified; and
 - (c) the relevant QM manual is amended to describe accurately the system as modified.
- (4) If approval is given, the amended QM manual becomes the relevant QM manual for the QM system.

3.12 Records of an approved certifying organisation

An approved certifying organisation must:

- (a) maintain current and accurate records of:
 - (i) the name, address, telephone number and facsimile number (if any) of each operator whose production or preparation of organic produce is subject to the QM system operated by the organisation; and
 - (ii) each inspection of an operator carried out by an inspector of the organisation; and

- (iii) each audit made of the organisation's QM system; and
 - (iv) any corrective action request, under order 3.17, given to the organisation; and
 - (v) any action taken by the organisation in relation to an operator mentioned in subparagraph (i) whose production or preparation gives the organisation cause for significant concern; and
- (b) retain the records for 5 years; and
- (c) if requested by an authorised officer, produce all records necessary for the conduct of an audit.

3.13 Records of operator

An individual operator who is the holder of a QM certificate must:

- (a) maintain current and accurate records of the operation to which the operator's QM system applies; and
- (b) retain the records for 5 years; and
- (c) if requested by an authorised officer, produce all records necessary for the conduct of an audit.

Division 5 Audit

3.14 Frequency of audit

- (1) There are 2 kinds of audit of a QM system for which a QM certificate has been issued:
 - (a) an audit of which notice is given (a 'routine audit'); and
 - (b) one of which no notice is given (a 'random audit').
- (2) A routine audit of the operation of a QM system must be carried out at least once in every year (whether or not a random audit of the system is carried out in that year).
- (3) At least 7 days' written notice must be given of a routine audit.
- (4) A random audit may be carried out without notice at any time, whether or not a routine audit of the system has been carried out in the same year.
- (5) An audit must be carried out by an authorised officer.
- (6) An authorised officer who is carrying out an audit must produce his or her identity card for inspection on request.

Note Section 21 of the Act provides for the issue of identity cards to authorised officers.

3.15 Assistance to authorised officer conducting an audit

During an audit under order 3.14, the holder of a QM certificate must:

- (a) ensure that the authorised officer is able to examine any document or record that is:
 - (i) relevant to the audit; and

Order 3.16

- (ii) available to the holder; and
 - (iii) requested by the authorised officer; and
- (b) provide any assistance that is reasonably necessary to enable the authorised officer to carry out the audit.

3.16 QM audit report

An authorised officer who carries out an audit under order 3.14 must provide a written report to the certificate holder as soon as reasonably possible after the audit has been completed.

3.17 Corrective action request

- (1) If, following an audit of a QM system under order 3.14, an authorised officer determines that the QM system or relevant QM manual fails to comply with these Orders, he or she may give the holder of the certificate a corrective action request.
- (2) A holder of a QM certificate who is given a corrective action request must comply with the request on or before the date mentioned in the request.
- (3) If a corrective action request is not complied with on or before the date mentioned, the QM certificate to which it relates may be revoked.

3.18 Variation of a corrective action request

- (1) A corrective action request may be:
 - (a) amended, or cancelled, by an authorised officer; or
 - (b) with the consent, in writing, of an authorised officer — complied with after the date mentioned in the request.
- (2) An authorised officer amending or cancelling a corrective action request must notify the affected holder, in writing, of the amendment or cancellation.

Part 4 Reconsideration of decisions

4.01 Review of decisions made by an authorised officer

A decision made under any of the following provisions by an authorised officer is taken to be an initial decision for Part 16 of the *Export Control (Prescribed Goods — General) Order 2005*:

- (a) order 2.03;
- (b) suborder 2.04 (1);
- (c) suborder 3.04 (1);
- (d) suborder 3.04 (2);
- (e) suborder 3.08 (1);
- (f) suborder 3.08 (2);
- (g) suborder 3.10 (2);
- (h) suborder 3.11 (3);
- (i) suborder 3.17 (1);
- (j) suborder 3.17 (3);
- (k) suborder 3.18 (1).

4.02 Review of decisions made by an approved certifying organisation

Application may be made under the *Administrative Appeals Tribunal Act 1975* to the Administrative Appeals Tribunal for review of a decision made by an approved certifying organisation under order 2.02 or suborder 2.04 (1).

Table of Instruments

Notes to the Export Control (Organic Produce Certification) Orders

Note 1

The Export Control (Organic Produce Certification) Orders (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 notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
Export Control (Organic Produce Certification) Orders	22 Oct 1997 (see <i>Gazette</i> 1997, No. GN42)	22 Oct 1997	
<i>Export Control (Organic Produce Certification) Amendment Orders 2005 (No. 1)</i>	29 June 2005 (see F2005L01834)	1 July 2005	—

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Note to o. 1.04 (1).....	rs. 2005 No. 1
O. 1.04	am. 2005 No. 1
O. 3.01	am. 2005 No. 1
O. 3.05	am. 2005 No. 1
O. 4.01	am. 2005 No. 1