

EXPLANATORY STATEMENT

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

Export Control Act 1982 and Export Control (Orders) Regulations 1982

*Export Control (Wild Game Meat and Wild Game Meat Products) Amendment
Order 2013 (No.1)*

Legislative Authority

Section 3 of the *Export Control Act 1982* (Act) defines ‘prescribed goods’ to mean goods, or goods included in a class of goods, that are declared by the *Export Control (Orders) Regulations 1982* (Principal Regulations) to be prescribed goods for the purposes of the Act. Section 7 of the Act provides that the Principal Regulations may prohibit the export of prescribed goods from Australia absolutely or to a specified place or unless specified conditions or restrictions are complied with or to a specified place unless conditions or restrictions are complied with.

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

The *Export Control (Wild Game Meat and Wild Game Meat Products) Orders 2010* (Orders) are made under the Principal Regulations. The Orders regulate the export of wild game meat and wild game meat products and, in particular, the conditions and restrictions on their export.

Purpose

The *Export Control (Wild Game Meat and Wild Game Meat Products) Amendment Order 2013 (No.1)* (Amendment Order) corrects typographical errors and drafting, requires exporters to return paper export permits and government certificates and requires auditors to produce the scope of the audit prior to the audit commencing.

The Amendment Order is in accordance with the principal objectives set out in Order 1.03 of the Orders to ensure:

- (a) that wild game meat and wild game meat products intended for export for food:
 - (i) are wholesome or are identified as requiring further processing to be fit for human consumption; and
 - (ii) meet the importing country requirements; and
 - (iii) are traceable and can be recalled if required; and
 - (iv) are derived from animals that were treated humanely during harvest; and
- (b) that the integrity of wild game meat and wild game meat products exported, or for export, for food is assured; and
- (c) that the trade descriptions for wild game meat and wild game meat products exported, or for export, for food are accurate; and

- (d) that accurate assessments can be made as to whether the principal objectives, and the relevant requirement of the Act and the Orders, are met.

Background

The Orders and the *Export Control (Prescribed Goods – General) Orders 2005* (PGGOs), together with the Act, provide the legislative basis for regulation of the export of poultry meat and poultry meat products and, in particular, the conditions and restrictions on their export. The PGGOs focus primarily on administrative functions that apply to all prescribed goods, whereas the Orders focus on poultry-specific conditions and restrictions.

Impact and effect

The Amendment Order amends Orders 1.10, 4.08, 5.02, 5.03 and 6.04. The amendments to Suborders 1.10(1) and 4.08(2) correct typographical errors and drafting inconsistencies. Orders 5.02 and 5.03 were amended to require exporters to return paper export permits and government certificates and Suborder 6.04(2) inserts a requirement for an auditor to produce a description of the scope of the audit before commencing the audit.

Consultation

The Department of Agriculture, Fisheries and Forestry (Department) considers that these changes produce more flexibility to the game meat industry and as such, will benefit game meat registered establishments and exporters.

The Australian Government Solicitor was consulted in the development of the legislative instrument.

The Office of Best Practice Regulation was consulted in the preparation of the Amendment Order (ID 13211).

The Statement of Compatibility with Human Rights is contained in the Attachment.

Operation

Details of the *Export Control (Wild Game Meat and Wild Game Meat Products) Amendment Orders 2013 (No.1)* are set out below.

Section 1 – Name of Order

This section provides that the name of the Amendment Order is the *Export Control (Wild Game Meat and Wild Game Meat Products) Amendment Order 2013 (No.1)*.

Section 2 – Commencement

This section provides that the Amendment Order commences on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Amendment of *Export Control (Wild Game Meat and Wild Game Meat Products) Orders 2010*

This section provides that Schedule 1 amends the *Export Control (Wild Game Meat and Wild Game Meat Products) Orders 2010*.

Schedule 1 – Amendments

Item 1 substitutes the definition of ‘person who manages or controls’ in suborder 1.10(1) of the Orders with the following.

‘Person who manages or controls’ operations means:

- (a) a person who has or is to have authority to direct the operations, or an important or substantial part of them; or
- (b) a person who has or is to have the authority to direct a person mentioned in paragraph (a) in the exercise of that person’s authority.

This amends the formulation of the words for consistency across the Orders and ease of reference.

Item 2 substitutes Orders 5.02 and 5.03 with a new Order 5.03 in Part 5 of the Orders relating to exporter’s documentary obligations.

Previous Orders 5.02 and 5.03 relating to the destruction and return of electronic and paper export permits and government certificates have since been removed and substituted with a new Order 5.03. The previous Order 5.02 requiring exporters to destroy electronic certification security was redundant as the integrity of electronic certification has been correctly stored and administered by the Department.

New Order 5.03 requires an exporter to return a paper export permit or paper government certificate to an authorised officer within 10 days of revocation or cancellation. Suborder 5.03(2) of the order includes a new requirement to notify an authorised officer if an exporter abandons its intention to export any wild game meat or wild game meat products. This

subsection now applies to any meat or meat products which will ensure consistency across the Orders. The rest of the Order 5.03 remains unchanged.

Penalty provisions have not been introduced in Orders 5.02 and 5.03 because once the completed export certificate (now signed and sealed) is moving with the export product and may even be overseas; it may not be possible to retrieve the export certificate through no fault of the exporter.

Item 3 omits the word ‘only’ and inserts the word ‘and’ in Order 4.08 of the Orders which relates to the preparation of kangaroo and wild boar carcasses at registered establishments.

Previously, the preparation of kangaroo or wild boar carcasses could only be carried out at establishments registered solely for the processing of wild game carcasses (i.e. the preparation of these carcasses could not be carried out at establishments registered for general preparation of wild game meat and wild game meat products). Order 4.08 now applies to registered establishments which are registered under an export control order and for the processing of wild game carcasses for export for food.

This amendment corrects a drafting inconsistency between the previous Order 4.08 and Order 4.11 of the Orders which provide that a relevant establishment may be used for the preparation of other products, not only for the processing of wild game carcasses.

Item 4 substitutes the existing suborder 6.04(2) with new suborders 6.04(2) and (3) in Part 6 of the Orders which relate to the performance of audits.

Suborder 6.04(2) requires the auditor to give a description of the scope of the audit before it commences. This amendment is to only require a description of the scope to be given and not the entire scope of the audit before it can commence on site. This is to make the process easier on the part of the person being audited during an audit (including an unannounced audit) as the detail of the specific scope can be extensive and should not be limited in order to allow auditors to identify breaches in compliance with the legislated requirements. The scope can be conveyed during a formal entry meeting if the Department considers it necessary to re-schedule the audit.

This amendment ensures compliance with the National Food Safety Auditor competency framework. The framework introduced on 25 October 2011 is a joint initiative by state, territory and Commonwealth agencies responsible for food safety. It provides for a high standard of regulation and qualification to manage and approve auditors and audits.

Suborder 6.04(3) requires that an auditor must produce his or her identity card upon request by the audited person. It is no longer a requirement that this occur before the audit commences but can occur at any time.

The relevant provisions in the Act which relate to identity cards issued to authorised officers or approved auditors are included as a note to this order.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Export Control (Wild Game Meat and Wild Game Meat Products) Amendment Order 2013 (No.1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

This Legislative Instrument amends Orders 1.10, 4.08, 5.02, 5.03 and 6.04 of the *Export Control (Wild Game Meat and Wild Game Meat Products) Orders 2010*.

The legislative instrument corrects typographical errors and drafting, including requirements for exporters to return paper export permits and government certificates and a new requirement for an auditor to produce a description of the scope of the audit before commencing an audit.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon. Joseph William Ludwig
Minister for Agriculture, Fisheries and Forestry**