

## **EXPLANATORY STATEMENT**

Issued by Authority of the Secretary of the Department of Agriculture, Water and the Environment

*Export Control Act 2020*

*Export Control Legislation Amendment (2021 Measures No. 1) Amendment (Accredited Marine Surveyor) Rules 2022*

### **Legislative Authority**

The *Export Control Legislation Amendment (2021 Measures No. 1) Amendment (Accredited Marine Surveyor) Rules 2022* (the Amendment Rules) are made by the Secretary of the Department of Agriculture, Water and the Environment (the department) under section 432 of the *Export Control Act 2020* (the Act).

Section 432 of the Act relevantly provides that the Secretary of the department (the Secretary) may, by legislative instrument, make rules prescribing matters required or permitted by the Act, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Under section 289 of the Act, the Minister may give directions to the Secretary about the performance of the Secretary's functions or the exercise of the Secretary's powers in making rules under section 432 of the Act. Directions made by the Minister to the Secretary are legislative instruments but are not subject to disallowance or sunset. At the time of commencement, a Ministerial direction has not been made under section 289 of the Act for the purposes of rules relating to the export of goods.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### **Purpose**

The Amendment Rules amend the *Export Control Legislation Amendment (2021 Measures No. 1) Rules 2021* (2021 Measures No. 1 Rules) to change the date of commencement of Part 2 of Schedule 5 to the 2021 Measures No. 1 Rules to 1 July 2023.

### **Background**

The 2021 Measures No. 1 Rules amend various rules made under the Act, including amendments to the *Export Control (Plants and Plant Products) Rules 2021* (the Plant Rules). Part 2 of Schedule 5 to the 2021 Measures No. 1 Rules makes amendments to the Plant Rules to require marine surveyors to be accredited by the Australasian Institute of Marine Surveyors (AIMS) in order to carry out bulk vessel surveys for the purposes of the Plant Rules.

## **Impact and Effect**

The Amendment Rules require bulk vessel surveys to be carried out by accredited marine surveyors for the purposes of the Plant Rules from 1 July 2023, instead of 1 July 2022 as previously prescribed. The Amendment Rules include a transition period ending on 30 June 2024 for marine surveyor's certificates for bulk vessels in force immediately before commencement.

The Office of Best Practice Regulation (OBPR) determined that a regulation impact statement was not required for changes to the Plant Rules that improve assurance and compliance of empty bulk vessels for plant product exports (OBPR Ref: 44335). OBPR also confirmed that changing the commencement date of the Accredited Grain Surveyor Assurance (AGSA) scheme would not require a preliminary assessment form, since the proposal had not changed in terms of its regulatory impact.

## **Consultation**

The department has consulted with AIMS in relation to the delayed commencement of the accredited marine surveyors scheme on 25 May 2022, 1 June 2022 and 8 June 2022. Prior to these dates, the department engaged in ongoing discussions with AIMS.

## **Details and Operation**

Details of the Amendment Rules are set out in [Attachment A](#).

The Amendment Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The whole of this instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

## **Other**

The Amendment Rules are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in [Attachment B](#).

**Details of the *Export Control Legislation Amendment (2021 Measures No. 1) Amendment (Accredited Marine Surveyor) Rules 2022***

Section 1 – Name

This section provides that the name of the instrument is the *Export Control Legislation Amendment (2021 Measures No. 1) Amendment (Accredited Marine Surveyor) Rules 2022* (the Amendment Rules).

Section 2 – Commencement

This section provides for the commencement details for the Amendment Rules.

The table in subsection 2(1) provides that the Amendment Rules commence on the day after the instrument is registered on the Federal Register of Legislation.

The note below the table provides that the table relates only to the provisions of the Amendment Rules as originally made. It would not be amended to deal with later amendments of the Amendment Rules. The purpose of this note is to clarify that the commencement of any subsequent amendments would not be reflected in this table.

Subsection 2(2) provides that any information in column 3 of the table is not part of the Amendment Rules. This clarifies that information may be inserted in column 3 of the table, or information in it may be edited, in any published version of the Amendment Rules.

Section 3 – Authority

This section provides that the Amendment Rules are made under the *Export Control Act 2020* (the Act).

Section 4 – Schedules

This section provides for the amendment or repeal of instruments as set out in a Schedule to the Amendment Rules. This enables the amendment of the *Export Control Legislation Amendment (2021 Measures No. 1) Rules 2021* (the 2021 Measures No. 1 Rules).

## Schedule 1 – Amendments

### *Export Control Legislation Amendment (2021 Measures No. 1) Rules 2021*

#### **Item [1] – Subsection 2(1) (table item 6)**

Section 2 of the 2021 Measures No. 1 Rules provides for the commencement of the 2021 Measures No. 1 Rules. Item 6 in the table in subsection 2(1) provides for the commencement of Part 2 of Schedule 5 to the 2021 Measures No. 1 Rules. Part 2 of Schedule 5 to the 2021 Measures No. 1 Rules amends the *Export Control (Plants and Plant Products) Rules 2021* (the Plant Rules) in relation to accredited marine surveyors.

Item 6 of the table in subsection 2(1) of the 2021 Measures No. 1 Rules currently provides that Part 2 of Schedule 5 to the 2021 Measures No. 1 Rules commences on 1 July 2022.

This item repeals item 6 in the table of subsection 2(1) of the 2021 Measures No. 1 Rules and substitutes new table item 6. New item 6 in the table in subsection 2(1) provides that Part 2 of Schedule 5 to the 2021 Measures No. 1 Rules commences on 1 July 2023.

The purpose of this amendment is to change the commencement date for the amendments to require marine surveyors to be accredited by the Australasian Institute of Marine Surveyors (AIMS) in order to carry out bulk vessel surveys for the purposes of the Plant Rules. The amendments were introduced to support the establishment of the Accredited Grain Surveyor Assurance (AGSA) scheme under which AIMS will accredit marine surveyors to survey and certify bulk vessels for consumable plant product exports. The AGSA scheme is unable to commence on 1 July 2022 and AIMS will therefore be unable to commence accrediting marine surveyors on that date. The commencement date has been changed to 1 July 2023, to allow sufficient time for the scheme to be established.

#### **Item [2] – Part 2 of Schedule 5 (heading)**

Part 2 of Schedule 5 to the 2021 Measures No. 1 Rules amends the Plant Rules in relation to accredited marine surveyors. The heading of Part 2 of Schedule 5 currently reads ‘Part 2— Amendments commencing 1 July 2022’.

This item amends the heading of Part 2 of Schedule 5 to the 2021 Measures No. 1 Rules by omitting ‘1 July 2022’ and substituting ‘1 July 2023’. The new heading reads ‘Part 2— Amendments commencing 1 July 2023’.

This amendment is consequential to item 1, which changes the commencement date of Part 2 of Schedule 5 to 1 July 2023.

#### **Item [3] – Item 59 of Schedule 5**

Item 59 of Schedule 5 to the 2021 Measures No. 1 Rules currently amends section 11-16 of the Plant Rules by adding new subsections 11-16(3) and (4), which provides for a transitional period during which marine surveyor’s certificates issued before commencement remain in force. This includes providing for the end of a transitional period.

Currently, item 59 of the 2021 Measures No. 1 Rules provides for a transitional period that ends on 30 June 2023, which is 12 months after commencement.

This item repeals item 59 of Schedule 5 and substitutes new item 59 of Schedule 5 to the 2021 Measures No. 1 Rules. New item 59 of Schedule 5 amends the Plant Rules to add new subsections 11-16(3) and (4).

New subsection 11-16(3) of the Plant Rules provides that for the purposes of the Plant Rules, a marine surveyor's certificate for a bulk vessel that was in force immediately before 1 July 2023 continues in force on and after that date as if it had been issued by an accredited marine surveyor.

New subsection 11-16(4) of the Plant Rules provides that subsections 11-16(3) and (4) are repealed at the end of 30 June 2024, which is 12 months after the new commencement date.

Under section 9-23 of the Plant Rules, one of the requirements for approval of a bulk vessel that is intended to be used to transport certain prescribed plants or plant products is that a marine surveyor's certificate is in force for the vessel. As a marine surveyor will need to be accredited after commencement to issue a marine surveyor's certificate, the transitional arrangements ensure that a certificate that was in force immediately before commencement continues in force on or after that date as if it had been issued by an accredited marine surveyor.

“Marine surveyor's certificate” for a bulk vessel is defined in section 1-6 of the Plant Rules (as amended by the 2021 Measures No. 1 Rules) to mean a certificate for the vessel issued by an accredited marine surveyor that states the matters referred to in subparagraphs 11-16(2)(b)(i) and (ii) of the Plant Rules, which in turn provide that the marine surveyor must be satisfied of certain things, including that the vessel is suitable to transport plants or plant products of the relevant kind.

**Statement of Compatibility with Human Rights**

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

***Export Control Legislation Amendment (2021 Measures No. 1) Amendment (Accredited Marine Surveyor) Rules 2022***

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**

The *Export Control Legislation Amendment (2021 Measures No. 1) Amendment (Accredited Marine Surveyor) Rules 2022* (the Legislative Instrument) is made under the *Export Control Act 2020* (the Act) and amends the *Export Control Legislation Amendment (2021 Measures No. 1) Rules 2021* (the 2021 Measures No. 1 Rules).

The amendments made by the Legislative Instrument change the commencement date and transitional period of amendments in the 2021 Measures No. 1 Rules which require marine surveyors to be accredited by the Australasian Institute of Marine Surveyors in order to carry out bulk vessel surveys for the purposes of the Plant Rules.

**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.

**Andrew Edgar Francis Metcalfe AO**  
**Secretary of the Department of Agriculture, Water and the Environment**