

Export Control (Animals) Amendment (Improving Regulatory Outcomes) Rules 2023

I, Adam Phillip Fennessy PSM, Secretary of the Department of Agriculture, Fisheries and Forestry, make the following rules.

Dated 12 December 2023

Adam Phillip Fennessy PSM
Adam Phillip Fennessy PSM

Secretary of the Department of Agriculture, Fisheries and Forestry

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1 Name

 This instrument is the *Export Control (Animals) Amendment (Improving Regulatory Outcomes) Rules 2023*.

2 Commencement

 (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information |
| --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument | The day after this instrument is registered. | 19 December 2023 |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

 (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

 This instrument is made under the *Export Control Act 2020*.

4 Schedules

 Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Export Control (Animals) Rules 2021

1 After section 2‑14

Insert:

2‑14A Application for new government certificate if original government certificate is revoked

 (1) This section applies if a government certificate in relation to any of the following goods is revoked under subsection 75(1) of the Act:

 (a) prescribed livestock;

 (b) prescribed live animals;

 (c) prescribed animal reproductive material.

 (2) For the purposes of paragraph 65(2)(c) of the Act, an application for a new government certificate in relation to the goods must include details of any changes from the information that was included in the application for the government certificate that was revoked.

Note: The issuing body may accept any information or document previously given to an issuing body in connection with the application as satisfying any requirement to give that information or document under subsection 65(2) of the Act (see subsection 65(3) of the Act).

2 After section 2‑16

Insert:

2‑16A Circumstances for revocation of government certificate

 (1) For the purposes of paragraph 75(1)(h) of the Act, this section prescribes circumstances in which a government certificate in relation to prescribed livestock, prescribed live animals or prescribed animal reproductive material may be revoked.

 (2) The holder of the government certificate requests the issuing body that issued the certificate or the Secretary, in writing, to revoke the certificate.

3 Section 2‑20

Repeal the section.

4 Subsection 2‑21(2) (note)

Omit “2‑20(2)”, substitute “2‑14A(2)”.

5 At the end of section 5‑1

Add:

 (7) Carrying out a kind of export operations in relation to the prescribed livestock in accordance with the proposed arrangement will ensure compliance with any importing country requirements.

6 At the end of Division 2 of Part 1 of Chapter 5

Add:

5‑4A Importing country requirements must be met

 An approved arrangement must ensure that all importing country requirements relating to the following are met:

 (a) export operations carried out in relation to prescribed livestock in accordance with the arrangement;

 (b) the prescribed livestock in relation to which the export operations are carried out.

5‑4B Requirements of Australian Standards for the Export of Livestock must be met

 An approved arrangement must ensure that the requirements of the Australian Standards for the Export of Livestock are met in relation to the following:

 (a) export operations carried out in relation to prescribed livestock in accordance with the arrangement;

 (b) the prescribed livestock in relation to which the export operations are carried out.

7 Before section 5‑22

Insert:

5‑21A Suspension requested by holder—prescribed circumstances

 (1) For the purposes of subsection 169(2) of the Act, subsections (2) and (3) of this section prescribe the circumstances in which the holder of an approved arrangement may request the Secretary to suspend the approved arrangement or a part of the approved arrangement.

 (2) The holder of the approved arrangement considers that some or all of the exporter supply chain assurance operations covered by the arrangement will not be carried out for a continuous period of 12 months or more.

 (3) The holder of the approved arrangement does not have personnel with appropriate qualifications or expertise to carry out some or all of the exporter supply chain assurance operations in accordance with the arrangement.

5‑21B Suspension requested by holder—prescribed information

 (1) For the purposes of paragraph 169(4)(e) of the Act, subsections (2) and (3) of this section prescribe information that must be included in a request by the holder of an approved arrangement to suspend the approved arrangement or a part of the approved arrangement.

 (2) A plan for how each entity, in relation to which exporter supply chain assurance operations were carried out in accordance with the approved arrangement, will be transitioned to alternative export operations to assist the entity to ensure the humane treatment and handling of feeder livestock or slaughter livestock that are exported up until, and including, the point of slaughter.

 (3) A written declaration that, at the time the request is made, there are no export operations being carried out at or by any entity, in relation to which exporter supply chain assurance operations were carried out in accordance with the approved arrangement, involving feeder livestock or slaughter livestock.

 (4) The written declaration referred to in subsection (3):

 (a) must not be made if there are no reasonable grounds for making it; and

 (b) must not be false or misleading; and

 (c) must be signed and dated by the person who made it; and

 (d) if the Secretary has approved a form for making the declaration—must be in that form.

Note: A person may commit an offence or be liable to a civil penalty if the person provides false or misleading information or documents (see sections 137.1 and 137.2 of the *Criminal Code* and sections 368 and 369 of the Act).

8 Section 5‑22 (heading)

Omit “**Other**”, substitute “**Suspension by Secretary—other**”.

9 At the end of Division 2 of Part 2 of Chapter 6

Add:

6‑8A Orders made by authorised officer

 The holder of a livestock export licence must comply with an order given to the holder by an authorised officer in accordance with section 9‑54.

10 Subsection 6‑42(1)

Omit “, by written notice to the holder of an approved ESCAS, revoke the”, substitute “revoke an”.

11 Paragraph 6‑42(1)(b)

After “holder”, insert “of the approved ESCAS”.

12 Subsection 6‑42(1) (note)

Omit “The notice under subsection (1) of this section must also include the reasons for the decision (see subsection 382(1) of the Act).”.

13 Subsection 6‑42(3)

Repeal the subsection, substitute:

 (3) A notice under subsection (2) must:

 (a) state that the Secretary proposes to revoke the approval of the ESCAS; and

 (b) specify the grounds for the proposed revocation; and

 (c) specify the date the proposed revocation is to take effect; and

 (d) subject to subsection (4), request the holder of the approved ESCAS to give to the Secretary within 14 days after the day the notice is given, or within such longer period specified in the notice, a written statement showing cause why the approved ESCAS should not be revoked; and

 (e) include a statement setting out the holder’s right to seek review of a decision to revoke the approved ESCAS; and

 (f) if the notice includes the request referred to in paragraph (d)—state that the proposed revocation will take effect on the date specified under paragraph (c) if the Secretary does not receive a response to the request within:

 (i) 14 days after the notice is given; or

 (ii) if the notice specifies a longer period—that longer period.

14 Subsection 6‑42(4)

Omit “(3)(b)”, substitute “(3)(d)”.

15 At the end of Division 3 of Part 9 of Chapter 6

Add:

6‑42A Notice of revocation

Notice of revocation

 (1) If the Secretary decides to revoke an approved ESCAS under subsection 6‑42(1), the Secretary must give the holder of the approved ESCAS a written notice stating the following:

 (a) that the approval of the ESCAS is to be revoked;

 (b) the grounds for the revocation;

 (c) the date the revocation is to take effect.

When revocation takes effect

 (2) If:

 (a) the notice (the ***show cause notice***) given to the holder of the approved ESCAS under subsection 6‑42(2) included the request referred to in paragraph 6‑42(3)(d); and

 (b) the Secretary receives a response from the holder to the request within:

 (i) 14 days after the show cause notice was given; or

 (ii) if the show cause notice specified a longer period—that longer period;

the revocation must not take effect before the day after the response is received.

 (3) If:

 (a) the notice (the ***show cause notice***) given to the holder of the approved ESCAS under subsection 6‑42(2) included the request referred to in paragraph 6‑42(3)(d); and

 (b) the Secretary does not receive a response from the holder to the request within:

 (i) 14 days after the show cause notice was given; or

 (ii) if the show cause notice specified a longer period—that longer period;

the revocation takes effect on the date specified in the show cause notice under paragraph 6‑42(3)(c).

 (4) If the notice given to the holder of the approved ESCAS under subsection 6‑42(2) did not include the request referred to in paragraph 6‑42(3)(d), the revocation takes effect on the date specified in the notice under paragraph 6‑42(3)(c).

16 After paragraphs 8‑9(1)(c) and 8‑14(1)(c)

Insert:

 ; or (d) the exporter of the consignment:

 (i) made a false, misleading or incomplete statement in the notice of intention to export the consignment; or

 (ii) gave false, misleading or incomplete information or documents to the Secretary or to another person performing functions or exercising powers under the Act; or

 (iii) gave false, misleading or incomplete information or documents to the Secretary or the Department under a prescribed agriculture law.

17 Paragraph 9‑19(4)(c)

Repeal the paragraph, substitute:

 (c) subject to subsection (5), request the accredited veterinarian to give a written statement to the Secretary within 14 days after the day the notice is given, or within such longer period specified in the notice, showing cause why the proposed variation should not be made; and

18 Paragraph 9‑19(7)(b)

After “given”, insert “or, if the show cause notice specified a longer period, the end of that longer period”.

19 Paragraph 9‑20(3)(f)

Repeal the paragraph, substitute:

 (f) subject to subsection (4), request the accredited veterinarian to give to the Secretary within 14 days after the day the notice is given, or within such longer period specified in the notice, a written statement showing cause why the accreditation should not be suspended as proposed; and

20 Paragraph 9‑20(3)(h)

Omit “within 14 days after the notice is given.”, substitute:

 within:

 (i) 14 days after the notice is given; or

 (ii) if the notice specifies a longer period—that longer period.

21 Paragraph 9‑21(2)(b)

Repeal the paragraph, substitute:

 (b) the Secretary receives a response from the accredited veterinarian to the request within:

 (i) 14 days after the show cause notice was given; or

 (ii) if the show cause notice specified a longer period—that longer period;

22 Paragraph 9‑21(3)(b)

Repeal the paragraph, substitute:

 (b) the Secretary does not receive a response from the accredited veterinarian to the request within:

 (i) 14 days after the show cause notice was given; or

 (ii) if the show cause notice specified a longer period—that longer period;

23 Paragraph 9‑24(3)(d)

Repeal the paragraph, substitute:

 (d) subject to subsection (4), request the accredited veterinarian to give to the Secretary within 14 days after the day the notice is given, or within such longer period specified in the notice, a written statement showing cause why the accreditation should not be revoked; and

24 Paragraph 9‑24(3)(f)

Omit “within 14 days after the notice is given.”, substitute:

  within:

 (i) 14 days after the notice is given; or

 (ii) if the notice specifies a longer period—that longer period.

25 Paragraph 9‑25(2)(b)

Repeal the paragraph, substitute:

 (b) the Secretary receives a response from the accredited veterinarian to the request within:

 (i) 14 days after the show cause notice was given; or

 (ii) if the show cause notice specified a longer period—that longer period;

26 Paragraph 9‑25(3)(b)

Repeal the paragraph, substitute:

 (b) the Secretary does not receive a response from the accredited veterinarian to the request within:

 (i) 14 days after the show cause notice was given; or

 (ii) if the show cause notice specified a longer period—that longer period;

27 Paragraph 9‑26(1)(c)

Before “details about”, insert “subject to subsection (1B),”.

28 Paragraph 9‑26(1)(d)

Before “sufficient information”, insert “subject to subsection (1B),”.

29 At the end of subsection 9‑26(1)

Add:

 ; (e) details about whether the holder of the approved export program has*,* in accordance with section 9‑43A, provided the accredited veterinarian with copies of the parts of the approved export program relating to the program of export operations to be undertaken by the accredited veterinarian.

30 After subsection 9‑26(1)

Insert:

 (1A) The accredited veterinarian must also keep a copy of all invoices received relating to the purchase of a drug or product for administration to prescribed livestock as mentioned in subparagraph (1)(a)(iv).

 (1B) Paragraphs (1)(c) and (d) do not apply during the period that the accredited veterinarian accompanies, or is engaged to accompany, the prescribed livestock during their transport from Australia to their overseas destination in connection with the approved export program.

31 Subsection 9‑26(2)

After “subsection (1)”, insert “, and copies of invoices referred to in subsection (1A),”.

32 At the end of Division 2 of Part 4 of Chapter 9

Add:

Subdivision E—Copies of approved export program

9‑43A Holder must provide copies of approved export program

 (1) The holder of an approved export program must provide an accredited veterinarian with a copy of the parts of the approved export program relating to the program of export operations to be undertaken by the accredited veterinarian.

 (2) If an approved export program is varied in accordance with Subdivision B of this Division, the holder of the approved export program must provide an accredited veterinarian with a copy of the parts of the varied approved export program relating to the program of export operations to be undertaken by the accredited veterinarian.

 (3) The holder of an approved export program must provide the copies mentioned in subsections (1) and (2) to the accredited veterinarian:

 (a) for each consignment of prescribed livestock to which the approved export program relates; and

 (b) before the accredited veterinarian undertakes the program of export operations in relation to the consignment.

 (4) The holder of an approved export program must make a record of the provision of each copy to an accredited veterinarian in accordance with subsection (1) or (2).

Note: The holder of the approved export program must retain each record made under this subsection for at least 2 years (see section 11‑6).

33 At the end of Chapter 9

Add:

9‑52 Powers of Secretary that must not be subdelegated

 For the purposes of paragraph 288(4)(b) of the Act, the power of the Secretary under subsection 9‑54(3) of this instrument must not be subdelegated under subsection 288(2) of the Act.

Part 6—Functions and powers of authorised officers

9‑53 Purpose of this Part

 For the purposes of section 300 of the Act, this Part confers functions and powers on authorised officers, or a class of authorised officers, for the purposes of achieving the objects of the Act in relation to livestock for export.

Note: An authorised officer may only perform functions or exercise powers conferred on an authorised officer by the Act that are specified in the authorised officer’s instrument of authorisation (see subsection 301(1) of the Act).

9‑54 Power to give orders in relation to prescribed livestock for export

Orders relating to prescribed livestock for export

 (1) An authorised officer may order the holder of a livestock export licence to not do any of the following in relation to prescribed livestock:

 (a) move prescribed livestock to a landing place, port or other place for the purpose of being exported;

 (b) unload a consignment of prescribed livestock at a landing place, port or other place for the purposes of being exported;

 (c) load, or continue to load, a consignment of prescribed livestock onto any aircraft or vessel for export.

Note: The decision of an authorised officer to give an order under this subsection is a reviewable decision (see section 11‑1).

 (2) However, the order may be given only if:

 (a) the authorised officer has been notified by the Secretary under subsection (3); and

 (b) the authorised officer has reasonable grounds to suspect that the prescribed livestock will not be permitted to enter the intended overseas destination because of the disease, infection or infestation notified by the Secretary.

 (3) The Secretary may notify an authorised officer of the suspected presence in Australian territory of a disease, infection or infestation if:

 (a) the Secretary reasonably suspects that the disease, infection or infestation is present in Australian territory; and

 (b) the disease, infection or infestation is not endemic to Australia; and

 (c) either:

 (i) the disease, infection or infestation is listed in Chapter 1.3 of the *Terrestrial Animal Health Code* published by the Office International des Epizooties (also known as the World Organisation for Animal Health), as existing from time to time; or

 (ii) the Secretary reasonably believes that the disease, infection or infestation has the potential to cause significant harm to human, animal or plant health and could result in the export of prescribed livestock from Australian territory being adversely affected.

Note: The *Terrestrial Animal Health Code* could in 2023 be viewed on the website of the World Organisation for Animal Health (http://www.woah.org).

Notification

 (4) Before making an order under subsection (1), the authorised officer must, if reasonably practicable in the circumstances, give the holder of the livestock export licence particulars of the order.

 (5) If the authorised officer decides to make the order, the officer must, as soon as practicable after making the decision, notify the licence holder of the order.

 (6) If the authorised officer notifies the licence holder orally under subsection (5), the officer must, as soon as practicable after notifying the licence holder, also notify the licence holder in writing.

Period of effect

 (7) An order made under subsection (1):

 (a) takes effect when notification of the order is given under subsection (5); and

 (b) remains in effect for 72 hours unless revoked earlier.

Revocation of order

 (8) An authorised officer may, by written notice to the licence holder, revoke an order made under subsection (1) if the authorised officer is satisfied that the reason for the order no longer exists and there is no reason why the order should not be revoked.

Failure to comply does not invalidate order

 (9) A failure to comply with subsection (4) or (6) does not invalidate an order given under this section.

34 Section 11‑1 (at the end of the table)

Add:

|  |  |  |  |
| --- | --- | --- | --- |
| 37 | To give an order to a holder of a livestock export licence | Subsection 9‑54(1) | The holder of the livestock export licence |

35 At the end of Chapter 12

Add:

Part 8—Amendments made by the Export Control (Animals) Amendment (Improving Regulatory Outcomes) Rules 2023

12‑34 Definitions

 In this Part:

***amending Rules*** means the *Export Control (Animals) Amendment (Improving Regulatory Outcomes) Rules 2023*.

***commencement day*** means the day the amending Rules commence.

12‑35 Conditions of approved arrangements

 Sections 5‑4A and 5‑4B, as inserted by the amending Rules, apply in relation to approved arrangements granted before, on or after the commencement day.

12‑36 Conditions of livestock export licence—orders made by authorised officers

 Section 6‑8A, as inserted by the amending Rules, applies in relation to livestock export licences granted before, on or after the commencement day.

12‑37 Revocation of approved ESCAS

 Section 6‑42, as amended by the amending Rules, applies in relation to notices of proposed revocation given on or after the commencement day.

12‑38 Revocation of approval of notice of intention to export consignment

 Section 8‑9 and 8‑14, as amended by the amending Rules, apply in relation to statements made, or information or documents given to the Secretary, the Department or another person, before, on or after the commencement day.