

## **EXPLANATORY STATEMENT**

Issued by Authority of the Secretary of the Department of Agriculture, Fisheries and Forestry

*Export Control Act 2020*

*Export Control (Organic Goods) Amendment (National Organic Standard) Rules 2024*

### **Legislative Authority**

The *Export Control (Organic Goods) Amendment (National Organic Standard) Rules 2024* (the Amendment Rules) are made by the Secretary of the Department of Agriculture, Fisheries and Forestry (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.

A number of provisions in the Act set the parameters of the Secretary's rule-making power and either:

- provide examples of the kinds of things for which the Secretary may make provision in the rules; or
- set out the default matters for the provision and allow the Secretary to give further detail, or set out additional requirements, in the rules.

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.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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 (Organic Goods) Rules 2021* (Organic Goods Rules) to refer to the latest version of the *National Standard for Organic and Bio-Dynamic Produce* (the National Organic Standard), published by the department, as in effect on the date of commencement.

## **Background**

The National Organic Standard provides the requirements for the labelling of goods which either state or imply they have been produced under organic or bio-dynamic systems. It sets out technical standards in relation to production, processing, storage, transportation, labelling and importation of organic and bio-dynamic produce, and aligns with the requirements of Australia's international trading partners. The National Standard is available on the department's website.

Incorporating the most up to date version of the National Organic Standard, as in effect on the date of commencement of the Amendment Rules, will ensure that the rules remain fit for purpose and reflect the latest technical standards in relation to organic and bio-dynamic produce.

## **Impact and Effect**

The current definition of the National Organic Standard refers to the version of the document that existed at the time of commencement of the Organic Goods Rules, that is 28 March 2021. The amendment updates this definition to refer to the National Organic Standard that exists at the time of commencement of the Amendment Rules. The Amendment Rules also update the website reference in the note.

## **Consultation**

The department undertook public consultation on the amendments between January 2024 and March 2024 through the department's 'Have Your Say' website.

The Office of Impact Analysis has advised that a regulation impact statement is not required as the proposal is unlikely to have a more than minor impact, as detailed in case OIA23-06144.

## **Details/ Operation**

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

The Amendment Rules commence on the day after the instrument is registered on the Federal Register of Legislation.

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

## **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 with Human Rights is set out in [Attachment B](#).

**Details of the *Export Control (Organic Goods) Amendment (National Organic Standard) Rules 2024***

Section 1 – Name

This section provides that the name of the instrument is the *Export Control (Organic Goods) Amendment (National Organic Standard) Rules 2024* (the Amendment Rules).

Section 2 – Commencement

Subsection 2(1) provides that each provision of the Amendment Rules 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.

Item 1 in the table provides that the whole of the instrument commences on the day after the Amendment Rules are registered.

The note below the table provides that the table relates only to the provision 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 later amendments is not reflected in this table.

Subsection 2(2) provides that 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.

Section 3 – Authority

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

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 (Organic Goods) Rules 2021*.

**Schedule 1 – Amendments**

*Export Control (Organic Goods) Rules 2021*

**Item [1] – Section 1-6 (definition of *National Organic Standard*)**

Section 1-6 of the *Export Control (Organic Goods) Rules 2021* (Organic Goods Rules) provides definitions of terms used in the Organic Goods Rules. Section 1-6 of the Organic Goods Rules provides that ***National Organic Standard*** means the *National Standard for Organic and Bio-Dynamic Produce*, published by the Department, as that document exists at the commencement of this instrument.

Item 1 repeals and substitutes the definition of *National Organic Standard* in section 1-6 of the Organic Goods Rules. This item omits the words “this instrument” and substitutes the words “the *Export Control (Organic Goods) Amendment (National Organic Standard) Rules 2024*”. The definition as amended provides that the National Organic Standard means the *National Standard for Organic and Bio-Dynamic Produce*, published by the Department, as that document exists at the commencement of the Amendment Rules.

The purpose of this amendment is to ensure the references to the National Organic Standard in the Organic Goods Rules are updated to reflect the latest version of the *National Standard for Organic and Bio-Dynamic Produce* as it exists on commencement of the Amendment Rules.

The following provisions in the Organic Goods Rules refer to the National Organic Standard:

- Subparagraph 2-12(f)(i) which provides that a matter that must be stated in an organic goods certificate is that the approved certifying body reasonably believes that export operations in relation to the organic goods have been carried out in accordance with the National Organic Standard;
- Paragraph 2-13(a) which provides that a requirement for issuing an organic goods certificate is that export operations in relation to the organic goods have been carried out in accordance with the National Organic Standard;
- Paragraph 2-15(b) which provides that there are reasonable grounds to suspect that operations to produce or prepare the organic goods for export have not been carried out in accordance with the National Organic Standard;
- Paragraphs 2-16(a) and (b) which provide that circumstances for refusing to issue an organic goods certificate include that the applicant failed to provide sufficient evidence that export operations were carried out in accordance with the National Organic Standard or that compliance with the National Organic Standard is not sufficient to ensure that all relevant importing country requirements are met;
- Paragraph 2-17(c) which provides that a change requiring the holder of the organic goods certificate to give additional or corrected information to the issuing body is that there are reasonable grounds to suspect that operations to produce or prepare the organic goods for export were not carried out in accordance with the National Organic Standard;
- Section 2-18 which provides that circumstances for revoking an organic goods certificate are that export operations have not been carried out in accordance with the National Organic Standard or that compliance with the National Organic Standard has not ensured, or is ineffective in ensuring, that all relevant importing country requirements are met; and
- Section 5-3 which provides that an approved arrangement must ensure that the requirements of the National Organic Standard are met in relation to export operations and the prescribed organic goods in relation to which those export operations are carried out.

The *National Standard for Organic and Bio-Dynamic Produce* is incorporated by reference in the form in which it exists on commencement of the Amendment Rules and not in the form in which it may exist from time to time. This approach is consistent with paragraph 14(1)(b) of the *Legislation Act 2003*.

Item 1 also repeals and substitutes the note to the definition of *National Organic Standard* in section 1-6 of the Organic Goods Rules. The note omits the word “2021” and substitutes the

word “2024”. The item substitutes the website URL for the department by omitting “<http://www.awe.gov.au>” and substituting “<http://www.agriculture.gov.au>”.

This amendment has the effect that the note to the definition of *National Organic Standard* explains that the National Organic Standard could in 2024 be viewed on the Department’s website (<http://www.agriculture.gov.au>).

**Statement of Compatibility with Human Rights**

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

*Export Control (Organic Goods) Amendment (National Organic Standard) Rules 2024*

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 (Organic Goods) Amendment (National Organic Standard) Rules 2024* (the Legislative Instrument) is made under the *Export Control Act 2020* (the Act) and amends the *Export Control (Organic Goods) Rules 2021* (Organic Goods Rules) to update the reference to the National Organic Standard such that it incorporates a newer version of the Standard.

The current definition of the National Organic Standard refers to the version of the document that existed at the time of commencement of the Organic Goods Rules, that is 28 March 2021. The amendment updates this definition to refer to the National Organic Standard that exists at the time of commencement of the Amendment Rules. The amendments also update the website reference in the note.

The definition of the National Organic Standard is relevant to provisions in the Organic Goods Rules that relate to the matters that must be stated in an organic goods certificate, issuing, refusing to issue or revoking an organic goods certificate, and the conditions of an approved arrangement relating to organic goods certification operations.

**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.

**Adam Phillip Fennessy PSM**  
**Secretary of the Department of Agriculture, Fisheries and Forestry**