

EXPLANATORY STATEMENT

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

Export Control Act 2020

Export Control (Animals) Amendment (Exports to Kingdom of Saudi Arabia) Rules 2021

Authority

The *Export Control Act 2020* (the Act) sets out the overarching legislative framework for the regulation of exported goods, including food and agricultural products, from Australian territory, and enables the Secretary of the Department of Agriculture, Water and the Environment (the Secretary) to make rules that detail the requirements and establish conditions relating to the export of certain goods. The Act provides provisions for the application of the Act and how the Act interacts with State and Territory laws.

Section 432 of the Act relevantly provides that 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.

The *Export Control (Animals) Amendment (Exports to Kingdom of Saudi Arabia) Rules 2021* (the KSA Amendments) reflect recent changes in operational requirements for the live export of sheep and goats to the Kingdom of Saudi Arabia. This instrument amends the *Export Control (Animals) Rules 2021* (the Animal Rules). The KSA Amendments are made by the Secretary under section 432 of the Act.

Under section 289 of the Act, the Minister may issue 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 livestock exports to the Kingdom of Saudi Arabia.

Purpose

The purpose of the KSA Amendments is to simplify the process for livestock exports to the Kingdom of Saudi Arabia. In particular, the KSA Amendments detail new vaccination requirements for sheep and goats against scabby mouth (contagious pustular dermatitis) and related record-keeping practices. These changes reduce the regulatory burden involved in the administration of scabby mouth vaccine to sheep and goats intended for export to the Kingdom of Saudi Arabia, improving practice, and streamlining information collection while maintaining the welfare of livestock intended for export. The changes also ensure Australian livestock exports continue to meet the Kingdom of Saudi Arabia's importing requirements.

Impact and Effect

The KSA Amendments make minor changes to requirements for export operations involving exporting sheep or goats to the Kingdom of Saudi Arabia by:

- removing the requirement, in certain circumstances, to continue vaccinating sheep or goats where those sheep or goats have already been vaccinated;
- removing the requirement to collect vaccination data that is not necessary for demonstrating compliance with the Act and the Animal Rules; and
- streamlining the requirements for vaccination information to be provided to vendors by vaccinators as well as by vendors to holders of livestock export licences.

Consultation

The department undertook consultation with industry regarding the revised operational requirements to facilitate the export of live sheep and goats to the Kingdom of Saudi Arabia. Following this, on 7 April 2021, the then Minister for Agriculture, Drought and Emergency Management announced that a new pathway was available for the export of live sheep to the Kingdom of Saudi Arabia. This new pathway is reflected in the KSA Amendments.

A Regulation Impact Statement was not required for the making of the KSA Amendments [OBPR ID: 19535]. This is because the amendments reduce and simplify the regulatory requirements in the Animal Rules for the vaccination of relevant livestock in preparation for export to the Kingdom of Saudi Arabia.

Details and Operation

Details of the KSA Amendments are set out in Attachment A.

The KSA Amendments is a legislative instrument for the purposes of the *Legislation Act 2003*.

The KSA Amendments commence the day after registration.

Other

The KSA Amendments 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 (Animals) Amendment (Exports to Kingdom of Saudi Arabia) Rules 2021

1 Name

Section 1 provides that the name of the instrument is the *Export Control (Animals) Amendment (Exports to Kingdom of Saudi Arabia) Rules 2021* (the KSA Amendments).

2 Commencement

Section 2 provides for the KSA Amendments to commence the day after the instrument is registered.

3 Authority

Section 3 provides that the KSA Amendments are made under the *Export Control Act 2020*.

4 Schedules

Section 4 provides that each instrument specified in a Schedule to this instrument is amended or repealed in accordance with the provisions set out in this instrument, 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 Subsection 6-24(2)

This item repeals the existing subsection 6-24(2) and substitutes a new subsection.

New paragraph 6-24(2)(a) sets out a general requirement for each sheep or goat in a consignment for export to the Kingdom of Saudi Arabia to have been vaccinated against scabby mouth, using a modified live virus, at least 30 days before the date of export of the consignment.

New paragraph 6-24(2)(b) provides an additional requirement for sheep or goat in the consignment that were vaccinated more than 12 months before the date of export of the consignment. Such sheep or goat must not have resided, for any continuous period of more than 12 months since their most recent vaccination, on a property that does not have an annual vaccination program.

New subsection 6-24(2) allows greater flexibility in the requirements for administering the scabby mouth vaccine to sheep and goats intended for export to the Kingdom of Saudi Arabia. The amendment recognises that where vaccinated sheep and goats are held on properties with an annual scabby mouth vaccination program, it is not necessary to continue administering the vaccination to these animals on a yearly basis.

2 Paragraph 6-24(3)(d)

This item omits “the time (which may be a period) and” in existing paragraph 6-24(3)(d).

Amending paragraph 6-24(3)(d) in this way removes the requirement for the vaccinator to make a written record of the time the vaccination was carried out. This information is not considered necessary to ensure compliance with the Act and importing requirements. It was also difficult to ascertain due to the time taken to vaccinate a high volume of sheep or goats. The requirement to make a written record of the date of vaccination is sufficient for the vaccination record, and this requirement remains in place.

3 Subparagraphs 6-24(3)(f)(iii) to (v)

This item repeals existing subparagraphs 6-24(3)(f)(iii) to (v) and substitutes a new subparagraph 6-24(3)(f)(iii).

New subparagraph 6-24(3)(f)(iii) requires the vaccinator to make a record of the expiry date or date of manufacture of the vaccine that was administered. This information, as well as the product name and batch number, means that the vaccine can be traced back to the supplier without recording the additional information required by the existing subparagraphs 6-24(3)(f)(iii) to (v).

4 At the end of subsection 6-24(3)

This item adds new paragraphs (g) and (h) at the end of existing subsection 6-24(3).

New paragraph 6-24(3)(g) requires the vaccinator to make a written record confirming that the vaccine was stored, handled and administered strictly in accordance with the manufacturer's directions. This requirement ensures the vaccine remains effective through appropriate storage and handling and is administered effectively.

New paragraph 6-24(3)(h) requires the vaccinator to make a written record confirming that the vaccinator has retained each invoice relating to the purchase of the vaccine and can provide a copy to the holder of the livestock export licence within 5 days of receiving a request to do so. This requirement ensures that the vaccine can be traced to the place of purchase.

5 Paragraphs 6-24(4)(a) to (c)

This item repeals existing paragraphs 6-24(4)(a) to (c) and substitutes new paragraphs 6-24(4)(a) and (b).

New paragraph 6-24(4)(a) requires that, for the sheep or goats in the consignment, the vendor must give to the holder of the livestock export licence a declaration made by the vaccinator stating that the vaccinator has vaccinated the sheep or goats in the consignment and has prepared and retained a true and complete vaccination record for those sheep or goats.

New paragraph 6-24(4)(b) requires that the vendor give the holder of the livestock export licence a declaration made by the vendor stating that the sheep or goats in the consignment that have been vaccinated more than 12 months before the date of export of the consignment have not, since their most recent vaccination, resided for any continuous period of more than 12 months on a property that does not have an annual vaccination program. The vendor must also declare they have evidence supporting the declaration.

New paragraphs 6-24(4)(a) and (b) require the vendor of the sheep or goats to provide the holder of the livestock export licence with documents containing essential information. Other information previously required to be provided to the holder of the livestock export licence, such as a copy of the vaccination record, will no longer be required in circumstances where these declarations have been provided. This is because the vaccinator can only make a declaration under new paragraph 6-24(4)(a) where they have met the requirements of subsection 6-24(3). This includes the requirement to make a written record. The vendor can rely on this declaration, and the written records made by the vaccinator, to make a declaration to the holder of the livestock export licence under new paragraph 6-24(4)(b) and 6-24(4)(c).

The amendments in this item reflect the changes to vaccination requirements set out in new subsection 6-24(2) of item 2 of this instrument.

6 After subsection 6-24(4)

This item adds new subsection 6-24(4A) after subsection 6-24(4). New subsection 6-24(4A) clarifies the operation of paragraph 6-24(4)(a) by providing that a vaccinator may make a single declaration in relation to the sheep or goats in the consignment where the sheep or

goats that have been vaccinated as a group, and that a separate declaration is not required for each animal in the group.

7 Subsection 6-24(6)

This item reflects the consequential changes to paragraph numbers made by item 5 of this instrument.

8 Subsection 6-24(7)

This item repeals subsection 6-24(7). Subsection 6-24(7) applied only to the declaration required by existing paragraph 6-24(4)(c), which is being repealed.

Statement of Compatibility with Human Rights

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

Export Control (Animals) Amendment (Exports to Kingdom of Saudi Arabia) Rules 2021

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 (Cth)*.

Overview of the instrument

The *Export Control (Animals) Amendment (Exports to Kingdom of Saudi Arabia) Rules 2021* (the KSA Amendments) is made under the *Export Control Act 2020* (the Act) and makes minor changes to regulatory requirements that must be met to export sheep and goat from Australia to the Kingdom of Saudi Arabia. The relevant requirements concern vaccination and record keeping and are necessary to ensure these products meet trade requirements and to maintain overseas market access.

Human rights implications

The KSA Amendments engage the right to protection from arbitrary interference with privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual's privacy, family, home or correspondence, and protects a person's honour and reputation from unlawful attacks. The right to privacy can be limited to achieve a legitimate objective where the limitations are lawful and not arbitrary. For an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the circumstances. The United Nations Human Rights Committee has interpreted the requirement of 'reasonableness' as implying that any interference with privacy must be proportionate to a legitimate end and be necessary in the circumstances. While the United Nations Human Rights Committee has not defined 'privacy', the term is generally understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

Chapter 6 of the *Export Control (Animals) Rules 2021* requires, among other things, a person to provide information or documents. Requiring persons to provide information or documents may incidentally require the provision of personal information. The KSA Amendments make amendments to provisions in Chapter 6 that relate to requiring the provision of certain information to satisfy pre-export conditions for the export of a consignment of sheep or goats to the Kingdom of Saudi Arabia. The collection, use, storage, and disclosure of personal information may engage the right to freedom from arbitrary or unlawful interference with privacy.

The collection of this information is necessary for the legitimate objective of regulating the export of prescribed livestock, live animals, and animal reproductive materials to maintain market access to the Kingdom of Saudi Arabia. The information required to be provided by exporters is limited to that information that is considered necessary to ensure that importing country requirements are met and Australia's overseas market access is maintained.

Further, a person who provides information in a declaration 'opts in' to the regulatory system. A person who has opted in should expect that a certain amount of personal information about the way their business operates will need to be provided to gain the benefits of that system. In addition, many exporters will be corporations, for which the right to privacy does not apply.

For these reasons, this limitation to the right to privacy is reasonable, necessary and proportionate to achieve legitimate objectives and is consistent with the right to privacy in Article 17 of the ICCPR.

Conclusion

The KSA Amendments are compatible with human rights including the right to protection from arbitrary interference with privacy under Article 17 of the ICCPR. To the extent that it engages and limits this right, those limitations are reasonable, necessary and proportionate to achieve the legitimate aims of the instrument and the Act.

Andrew Edgar Francis Metcalfe AO

Secretary of the Department of Agriculture, Water and the Environment