



Administrative Practice Statement – decisions relating to approving or varying an exporter supply chain assurance system (ESCAS)

2012/1

Please note: This Statement is for information only to assist exporters and other interested parties to understand the legislative requirements for making decisions relating to approving or varying an ESCAS and the matters that will or may be relevant to such decisions. It is not intended to bind the Secretary to take any particular course of action in relation to an export or proposed export, nor is it intended to be a comprehensive account of legislative provisions relating to the export of live animals. The *Export Control Act 1982*, the *Australian Meat and Live-stock Industry Act 1997* and the legislative instruments made under each Act contain further details.

1. Purpose

1.1 On 1 March 2012, a regulatory framework for livestock exports came into effect through orders made under the *Export Control Act 1982* and the *Australian Meat and Live-stock Industry Act 1997*. The purpose of this statement is to provide guidance on the application of the announced policy and to articulate the use of discretion provided under the orders, in particular elements of the *Export Control (Animals) Order 2004*.

2. Background

2.2 On 21 October 2011, the Minister for Agriculture, Fisheries and Forestry, Senator the Hon. Joe Ludwig, announced that the Australian Government would extend the supply chain assurance framework developed for Indonesia to all markets for exported Australian feeder and slaughter livestock. This decision reflects the recommendations of reports of the Farmer Review, and the Live Cattle Exports and Live Sheep and Goat Exports Industry Government Working Groups.

2.3 Under the framework, Australian exporters must ensure that:

- animals will be handled and processed at or better than the internationally accepted standards for animal welfare established by the World Organisation for Animal Health (OIE)¹;
- they have control of the movement of animals within their supply chain;
- they can trace or account for animals through the supply chain; and
- they conduct independent verification and performance audits of their supply chains against these new requirements.

2.4 Three orders give effect to the regulatory framework:

- the *Export Control (Animals) Amendment Order 2012 (No. 1)*; (the Animals Amendment Order)
- the *Australian Meat and Live-stock Industry (Conditions on Live-stock Export Licences) Order 2012*; and
- the *Australian Meat and Live-stock Industry (Export of Live-stock to the Republic of Indonesia Repeal) Order 2012*.

¹ As set out in Section 7 of the *Terrestrial Animal Health Code* (2010), available on the Internet at http://web.oie.int/eng/normes/mcode/a_summry.htm as of 1 March 2012.



2.5 Implementation of the regulatory framework will be phased in by 2013, with 75% of trade covered from 1 March 2012, 99% of trade covered from 1 September 2012, and all trade covered from 1 January 2013. The markets and species to which the regulatory framework applies during this transition period are declared by the Secretary of the Department of Agriculture, Fisheries and Forestry by notice on the department's website, pursuant to sections 7.03 and 7.04 of the Animals Amendment Order.

3. Statement

3.1 *Approval of an ESCAS under the Animals Order*

3.1.1 Section 2.44 of the Animals Order provides:

- (2A) The Secretary may approve an ESCAS in relation to a proposed export if satisfied that the ESCAS will ensure that the live-stock will be transported, handled, slaughtered and subjected to any other related operations in accordance with relevant OIE recommendations.
- (2B) Without limiting the matters to which the Secretary may have regard when deciding whether to approve an ESCAS, the Secretary:
 - (a) must have regard to how the ESCAS addresses the matters mentioned in subparagraphs 2.42A (2) (a) (i) to (vii); and
 - (b) may have regard to:
 - (i) the exporter's record in adherence to approved ESCASs and compliance with approval conditions; and
 - (ii) any other relevant information of which the Secretary is aware.

3.1.2 The matters to which the Secretary (references to the Secretary in this statement refer also to their delegate) must have regard when deciding whether to approve an ESCAS, referred to in subparagraph 2.44 (2B) (a) above, are how the ESCAS details:

- (i) the port of arrival;
- (ii) transport, handling and slaughter of the live-stock;
- (iii) feedlots;
- (iv) identification, tracking or accounting and reconciliation of live-stock;
- (v) independent auditing and reporting in relation to matters referred to in subparagraphs (ii), (ii), (iii), (iv) and (vii);
- (vi) access to premises; and
- (vii) any related operations and facilities.

[Note: Section 2.44 relates to exports of livestock by sea; section 3.07 replicates this section in relation to exports of livestock other than by sea.]

3.1.3 In deciding whether to approve an ESCAS, the standard that must be reached is that the Secretary **must be satisfied** that the ESCAS will ensure that the live-stock will be transported, handled, slaughtered and subjected to any other related operations in accordance with relevant OIE recommendations.

3.1.4 In determining whether the Secretary is satisfied:



- the Secretary **must have regard to** all of the matters listed in subparagraph 2.44 (2B) (a) above (matters (i) to (vii)). All that is required is that the Secretary considers these matters; and
- the Secretary **may have regard to** the exporter's record in adherence to the approved ESCASs and compliance with approval conditions and any other relevant information of which the Secretary is aware.

3.2 *Types of information considered*

3.2.1 The Secretary may exercise discretion in relation to the type of information that he or she will consider in deciding whether to approve an ESCAS.

3.2.2 Examples of such information may include, but are not limited to:

- contracts between an exporter and a related party with respect to a proposed export;
- evidence of the existence of commercial arrangements other than contracts between the exporter and a related party with respect to a proposed export;
- outcomes from independent audit reports; and
- documented procedures addressing traceability and reporting obligations.

3.2.3 Any such discretion must be exercised appropriately, taking into account administrative law principles. For instance, the Secretary must take into account all relevant considerations and ignore any irrelevant considerations.

3.2.4 It is also open to the Secretary by notice in writing to require further information to be provided in relation to a proposed export, or an ESCAS.

3.2.5 Whilst the Secretary has discretion in relation to the type of information considered, all of the requirements as stated above under section 2.44 of the Animals Order must be met. For example:

- the Secretary may consider matters (i) to (vii) to be adequately addressed, but in light of other information of which the Secretary is aware (such as previous animal cruelty prosecutions, or previous non-compliance with ESCAS approval conditions), may not be satisfied and refuse to approve an ESCAS;
- the Secretary may consider matters (i) to (vii) to be adequately addressed, but in light of other information of which the Secretary is aware (such as previous animal cruelty prosecutions, or previous non-compliance with ESCAS approval conditions), may approve the ESCAS, but with additional conditions to those that would normally be applied;
- in considering matters (i) to (vii) the Secretary may be concerned that one or more of these matters are not adequately addressed. However, in light of all information, including additional information sought from the exporter, the Secretary may approve the ESCAS, perhaps subject to conditions addressing the relevant matter(s).

3.3 *The right to be heard before an adverse decision*



3.3.1 Procedural fairness requires that a person, including a company, whose rights, interests or legitimate expectations would be adversely affected by a proposed decision be given an opportunity to respond to adverse information that is credible, relevant and significant to the decision prior to the decision being made. The Secretary must disclose the substance of any such information to the exporter before making a decision to refuse to approve an ESCAS.

3.4 *Written notice of a decision and/or statement of reasons*

3.4.1 Once a decision whether to approve an ESCAS is made, written notice of the decision must be provided to the exporter. If approval is not granted, reasons for the decision must be provided.

3.5 *Varying or revoking an ESCAS*

3.5.1 The Secretary has the power under section 2.46A (and section 3.09A) of the Animals Order to:

- require an approved ESCAS to be varied in a specified manner;
- approve a variation of an approved ESCAS;
- vary the conditions imposed on an approved ESCAS; and
- revoke an ESCAS approval.

3.5.2 The circumstances in which the Secretary may revoke or vary an ESCAS approval are not restricted, but may include instances where the Secretary is no longer satisfied that the live-stock will be dealt with in accordance with the approved ESCAS, or failure of the exporter to comply with approval conditions.

3.5.3 Similar principles as above apply to decisions to vary or revoke an approved ESCAS, such as the requirement to afford procedural fairness.

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