

Australia's Response to DG (SANCO) / 2012-6361– MR PREFINAL

Introduction:

The Australian Export Meat Inspection System (AEMIS) represents the modernisation of the Australian meat inspection system to one which is more evidence and science-based. It is important to emphasise that AEMIS is not a new system but an overall enhancement of the existing Australian system. AEMIS places greater emphasis on the collection and analysis of objective data about the hygiene of product and measurements of the effectiveness of post-mortem inspection. In making these changes, the fundamental sanitary measures that underpin the system remain unchanged from those that existed previously.

Additions to the meat inspection system under AEMIS, include regulatory tasks that were not performed previously such as objective post-mortem verification, the recording and analysis of data on product hygiene and increased emphasis on systems-based audits.

In addition to the use of government employed inspectors, AEMIS provides the option for food business operators (FBOs) to engage Australian Government Authorised Officers (AAOs). AEMIS only uses government approved and authorised regulatory inspectors to make meat inspection dispositions, this includes AAOs. AAOs are linked to DAFF by virtue of a Deed of Obligation. AEMIS does not utilise “company inspectors”.

Our comments regarding the pre- final audit report have been framed around our understanding of the discussion at our meetings with the FVO and DG (SANCO) on 30 and 31 May 2013. Our understanding from these meetings is that:

1. AAOs who are directly paid and employed by the FBO did not meet the legal interpretation of an “official auxiliary”. The competency of AAOs was not questioned.
2. EU regulations require that inspection staff do not have a conflict of interest. DAFF has noted that potential for conflict of interest exists within all regulatory systems. AEMIS includes arrangements, consistent with OECD guidelines, to ensure actual or potential conflicts of interest are appropriately managed. These arrangements include that FSMAs and official veterinarians (OPVs) must comply with the Australian Public Service Code of Conduct, a requirement that applies equally to AAOs by virtue of the Deed of Obligation between DAFF and AAOs (for details, see Attachment 1). In addition, establishment management is bound through their Approved Arrangement (AA) not to interfere with AAOs performing their official functions; whether the AAOs are employed by them or not. The arrangements within AEMIS for managing conflict of interest were recognised by the FVO. However, at one ovine slaughterhouse the auditors identified wording in the AA that did not effectively contribute to the management of potential conflicts of interest. Addressing this and other observations will further strengthen this system.

3. The matters in points 1 and 2 above were considered at our meeting to be separate issues.

The response is set out in the following manner. The heading of the section is written in bold or bold italics as it is in the DG (SANCO) 2012-6361– MR PREFINAL report. It is followed by the page and paragraph or dot point reference in the report.

Where DAFF requests that the text of the report is modified or deleted, the original text is copied, then any comments followed by the suggested amendment. Where DAFF would like to clarify matters or make a comment but does not have any suggested text changes, the text in question is quoted directly and this is followed by either a clarification or comment.

Executive Summary

Paragraph 3: *“The AEMIS inspection systems is not in line with the requirements of Regulation (EC) No 854/2004 because the AAOs cannot be considered as official auxiliaries (OA) to perform post-mortem inspection and, although operating under regulated conditions, the possibility of conflicts of interest for the AAOs while performing official inspection tasks, could not be ruled out.”*

Comment and suggested text: Consistent with our discussion at the meetings on 30 and 31 May 2013, DAFF understands that the only aspect of AEMIS that does not meet EU requirements is the direct employment and payment of AAOs by FBOs. The potential for a conflict of interest was noted as a separate issue.

Suggested text: ‘The AEMIS inspection systems is not in line with the requirements of Regulation (EC) No 854/2004 because the AAOs who are directly employed and paid by the FBO cannot be considered as official auxiliaries (OA) to perform post-mortem inspection.

Paragraph 4: *“They (the FBO) have no status which ensures their impartiality and have a direct commercial interest in the product being certified or in the establishments in which they originate as required by Art 4 of 96/93. The role of the DAFF officials is limited to verifying that establishments implement controls over edible products intended for export in accordance with their AA.”*

Comment: DAFF is unsure what the reference to status in relation to FBOs means. FBOs are required to have systems in place to ensure product being certified meets importing country requirements. The second sentence simplifies the arrangements within AEMIS for generating export documentation and does not fully describe DAFF’s role.

Suggested text: ‘They (the FBO) have systems which ensure the product being certified by DAFF meets EU requirements. The role of the DAFF officials includes verifying that establishments implement controls over edible products intended for export, in accordance with the AA, and applying appropriate sanctions where this is not the case.’

5.1.2.1 Legislation

2. Certification to EU

DAFF notes the clarification provided that “*Regulation 882/2004 (art 4, point 2b), provides that staff carrying out official controls (e.g. OAs) must be free of any conflict of interest and that competent authorities must ensure impartiality*”

Comment: As discussed at the May meetings, DAFF is of the view that conflicts of interest are unavoidable in all systems and that it is inevitable that some staff employed in a large government organisation will, from time to time, have a conflict of interest. As noted earlier, arrangements consistent with OECD guidelines exist within AEMIS to manage conflict of interest. Requiring staff to declare any conflict they may have is the basis for ensuring impartiality and *Art 4, point 2b of Regulation 882/2004* acts as a strong disincentive for staff to declare a conflict. Arrangements under AEMIS include that DAFF staff must comply with the Australian Public Service Code of Conduct, and these requirements apply equally to AAOs by virtue of the Deed of Obligation between DAFF and AAOs. In addition, establishment management is bound through the AA not to interfere with AAOs performing their official functions. Details of these arrangements are provided in Attachment 1.

5.1.2.1 Legislation (cont)

Observations:

- AEMIS:

Paragraph 3: “*The FBOs recruit, employ, and pay directly the staff that obtains the AAO appointment. In addition they decide when and which staff member is made available for carrying out post-mortem inspection and what additional tasks they have to perform for the FBO.*”

Comment: AEMIS allows FBOs to recruit, employ and directly pay AAOs or to engage AAOs through third party providers.

Suggested text: ‘The FBOs may recruit, employ and pay directly, staff that are appointed as AAOs, or may choose to engage them through a third party provider. Where FBOs choose the former option, they decide when and which staff member is made available for carrying out post-mortem inspection and what additional tasks they may be asked to perform. Regardless of the employment arrangement, the number of AAOs provided must be sufficient to meet post mortem inspection performance standards set by DAFF with compliance being verified on a daily basis by DAFF. Training and competencies required for all AAOs are the same as for government employed inspectors (FSMAs).’

5.1.2.2.2 Competent Authorities' powers, independence and authority for enforcement

“*The CAs have the necessary powers to access the facilities and documentation of the FBOs. No conflict of interest has been noted during the audit with the exception of the AAOs (see also point 5.6.2.2). The CAs have the authority for enforcement.*”

Comment: Point 5.6.2.2 refers to an AAO who was not performing inspection correctly, concerns over the management of an underperforming AAO and an establishment's AA that was inappropriately worded. DAFF is of the view that these instances do not provide evidence of a conflict of interest. The underperformance of an individual inspector, management of under-performance in the system and inappropriate wording of an AA do not indicate a conflict of interest, under the definition of the OECD.

Management of the underperformance of an AAO is an OPV responsibility. The wording of the AA in itself does not constitute a conflict of interest”.

The observation of one AAO not correctly performing inspection of green offal, with no food safety implications, is a simple performance issue and no different to issues raised occasionally in relation to government employed inspectors at previous audits. In this instance the particular AAO was retrained. There is no evidence that this non-compliance was due to a conflict of interest.

Suggested text: Replace the second sentence with “No conflict of interest has been noted during the audit with the exception of the possibility that the current wording of the Approved Arrangements (AAs) at some establishments does not contribute to the effective management of the potential for a conflict of interest.”

5.1.3 Conclusions

Paragraph 2: *“However, the AEMIS inspection system implemented by the DAFF in the export establishments is not in line with the requirements of Regulation (EC) No 854/2004, Art. 2 and 5.4 and 5.6, Regulation 882/2004 Art 4 and of point II.1.4 of the export certificate OVI because:*

- *it foresees the use of FBO's staff to perform post-mortem inspection, employed and paid by the FBO and,*
- *in addition the AAs seen, in some cases, could not rule out the possibility of conflicts of interest by the AAOs while performing official inspection tasks.”*

Comment: The first dot point can be expressed more clearly. In relation to the second dot point, the wording of the AA is one element of the system in AEMIS to manage the potential for conflicts of interest. Inappropriate wording in the AA at some establishments in itself does not support the conclusion that AAOs at those establishments had the possibility of a conflict of interest.

Suggested text: ‘However, the AEMIS inspection system implemented by the DAFF in the export establishments is not in line with the requirements of Regulation (EC) No 854/2004, Art. 2 and 5.4 and 5.6, Regulation 882/2004 Art 4 and of point II.1.4 of the export certificate OVI because:

- AAOs do not meet the definition of an official auxiliary, and
- the current wording of the Approved Arrangements (AAs) seen at some establishments did not contribute to the effective management of the potential for a conflict of interest.

Paragraph 3: *“The system in place for export certification in EU approved establishments operating under AA is not in line with Art. 3 and 4 of Council Directive 96/93/EC, and with Articles 4, 23 and 30 of Regulation (EC) No 882/2004 because the CA cannot ensure that the certifying officers and the persons, designated by them, providing the attestations on which the certifying officer is relying have a status which ensures their impartiality and have no direct commercial interest in the animals or products being certified or in the holdings or establishments in which they originate.”*

Comment: Further to earlier comments regarding certification the addition of a second sentence is suggested.

Suggested text: ‘However, DAFF verifies that the establishments have implemented effective controls over edible products and applies sanctions where this is not the case.’

5.4.2.1 Laboratories testing microbiological criteria for foodstuffs

Paragraph 2: *“The sampling of meat for microbiological testing follows the procedures set out in the AQIS Meat Notice No 2005/13; the E. coli – Salmonella Monitoring Program (ESAM) and Total Viable Counts (TVC) requires samples to be collected at a frequency of 1 in 300 for bovine and horse carcasses, and 1 in 1 000 for other species, after a minimum of 12 hours chilling. Performance criteria are set for TVC at 3 log for m values and at 4.5 log for M values, on a moving window of 15 consecutive samples.”*

Comment: The suggested text provided by DAFF was inserted as paragraph 1 to replace that above.

Suggested text: Delete this text

5.6.2.2 Post-mortem inspection

Observations:

Dot point 2, second sentence: *“The AAO’s files lacked several documents relevant for their appointment: seven of them were appointed without having the minimum training requirements (Certificate of level 4 or commitment to obtain this certificate within 12 months).”*

Comments: The minimum training requirements for appointment as an AAO are Certificate of level 3 and commitment to obtain certificate level 4 within 12 months. This is consistent with the change accepted in section 5.1.2.1

Suggested text: Replace the text in parentheses with “Certificate of level 3 and commitment to obtain certificate level 4 within 12 months.”

5.6.3 Conclusions

Paragraph 2: *“However, the AEMIS inspection system implemented by the DAFF in the export establishments is not in line with the requirements of Regulation (EC) No 854/2004, Art. 2 and 5.4 and 5.6, Regulation 882/2004 Art 4 and of point II.1.4 of the export certificate OVI because:*

- *it foresees the use of FBO's staff to perform post-mortem inspection, employed and paid by the FBO and,*
- *in addition the AAs seen, in some cases, could not rule out the possibility of conflicts of interest by the AAOs while performing official inspection tasks.*
- *The procedures for the appointment of the AAOs by the DAFF are not harmonised.”*

Comment: The first dot point can be expressed more clearly. In relation to the second dot point, the wording of the AA is one element of the system in AEMIS to manage the potential for conflicts of interest. Inappropriate wording in the AA at some establishments in itself does not support the conclusion that AAOs at those establishments had the possibility of a conflict of interest.

Suggested text: ‘However, the AEMIS inspection system implemented by the DAFF in the export establishments is not in line with the requirements of Regulation (EC) No 854/2004, Art. 2 and 5.4 and 5.6, Regulation 882/2004 Art 4 and of point II.1.4 of the export certificate OVI because:

- AAOs do not meet the definition of an official auxiliary, and
- the current wording of the Approved Arrangements (AAs) seen at some establishments did not contribute to the effective management of the potential for a conflict of interest.
- The procedures for the appointment of the AAOs by the DAFF are not harmonised.

Paragraph 3: *“The system in place for export certification in EU approved establishments operating under AA is not in line with Art. 3 and 4 of Council Directive 96/93/EC, and with Articles 4, 23 and 30 of Regulation (EC) No 882/2004 because the CA cannot ensure that the certifying officers and the persons, designated by them, providing the attestations on which the certifying officer is relying have a status which ensures their impartiality and have no direct commercial interest in the animals or products being certified or in the holdings or establishments in which they originate.”*

Comment: Further to earlier comments regarding certification the addition of a second sentence.

Suggested text: ‘However, DAFF verifies that the establishments have implemented effective controls over edible products and applies sanctions where this is not the case.’’

6 OVERALL CONCLUSIONS

Paragraph 1, sentence 1: *“In general, the organisation of the control of the whole chain of the production of fresh meat of domestic animals and wild game meat intended for export to the EU is satisfactory with the exception of the concept introduced by the AEMIS.”*

Comment: DAFF notes that the outcome of meat inspection undertaken within AEMIS, including that performed by AAOs, was satisfactory. Information on the performance of AAOs is included in Annex 1 and 2 of Attachment 1.

Paragraph 1, sentence 2: *“The AEMIS inspection system implemented by the DAFF in the export establishments is not in line with the requirements of Regulation (EC) No 854/2004 because it foresees the use of FBO's staff to perform post-mortem inspection, employed and paid by the FBO and in addition the AAs seen, in some cases, could not rule out the possibility of conflicts of interest by the AAOs while performing official inspection tasks.”*

Comment: See previous comments under Introduction, Executive summary, 5.1.3 and 5.6.3.

Suggested text: ‘The AEMIS inspection system implemented by the DAFF in the export establishments is not in line with the requirements of Regulation (EC) No 854/2004 because the AAOs who are directly employed and paid by the FBO cannot be considered as official auxiliaries to perform post-mortem inspection.’