

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 120

Issued by the authority of the Minister for Agriculture, Fisheries and Forestry

Imported Food Control Act 1992

Imported Food Control Amendment Regulations 2005 (No. 1)

Subsection 43(1) of the *Imported Food Control Act 1992* ('the Act') provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 36(1) of the Act provides that a person for whom a chargeable service is provided is liable to pay to the Commonwealth such amount ('the payable amount') in respect of the provision of that service as is prescribed. Subsection 36(2) provides that the payable amount in respect of a particular service must not exceed the direct and indirect costs that are properly attributed to the provision of that service in accordance with ordinary commercial principles.

Paragraph 33(1)(a) of the *Imported Food Control Regulations 1993* ('the Principal Regulations') provides that, for the purposes of section 36 of the Act, a person for whom there is provided a chargeable service referred to in column 2 of an item in Part 1 of Schedule 2 to the Principal Regulations is liable to pay to the Commonwealth the amount, or an amount calculated at the rate, specified in column 3 of that item for the provision of that service.

The *Imported Food Control Amendment Regulations 2005 (No. 1)* ('the Amendment Regulations') amends the descriptions and amounts payable for chargeable services in Schedule 2 to the Principal Regulations to ensure compliance with Commonwealth cost recovery guidelines, to simplify and clarify the description of some services, and to delete a service that is no longer necessary.

It is expected that these amendments will result in a reduction of approximately 3% to the total fees charged to industry in the 2005-06 financial year.

The Amendment Regulations also make minor amendments to the definition of the entry management system used in relation to the assessment of information in an entry relating to a consignment of food, and insert new definitions relating to the provision of chargeable services.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The Australian Quarantine and Inspection Service undertook consultation with industry in making the Amendment Regulations. However, a regulation impact statement was not required, as the Office of Regulation Review advised that the amendments were minor and machinery of government in nature.

Details of the Amendment Regulations are set out below:

Regulation 1

Regulation 1 provides that the Amendment Regulations are named the *Imported Food Control Amendment Regulations 2005 (No. 1)*.

Regulation 2

Regulation 2 provides that the Amendment Regulations commence on 1 July 2005.

Regulation 3

Regulation 3 provides that Schedule 1 of the Regulations amends the *Imported Food Control Regulations 1993* ('the Principal Regulations').

Schedule 1 - Amendments

Item [1]

This item omits the definition for "Australian Customs Service entry management system" in regulation 3 of the Principal Regulations. The term "Australian Customs Service entry management system" is used in Schedule 2 to the Principal Regulations in relation to chargeable services for the assessment of information in an entry pertaining to a consignment of food. The term is omitted from regulation 3 and thereby Schedule 2 as, notwithstanding that entries pertaining to a consignment of food originate from the Australian Customs Service entry management system, at the time of the assessment of information in that entry, the entry has already been made (or transferred) to an AQIS entry management system.

Item [2]

This item replaces the reference to "Part 1" in subregulation 33(1) with a reference to "Part 2". The renumbering is consequential on the inclusion of the new Part 1 to Schedule 2, which provides definitions for that schedule, (see item [5]).

Item [3]

This item replaces the reference to "Part 2" in subregulation 33(2) with a reference to "Part 3". The renumbering is consequential on the inclusion of the new Part 1 to Schedule 2, (see item [5]).

Item [4]

This item amends the definition for "ordinary hours of duty" in subregulation 33(4) to have the same meaning as the definition provided in Schedule 2.

Item [5]

This item substitutes the entire Schedule 2 with a new schedule containing three parts.

The new Part 1 of Schedule 2 provides definitions for “AQIS entry management system”, “AQIS holiday”, “ordinary hours of duty”, “weekday” and “working day” for that schedule. The definition for “AQIS entry management system” replaces the definition for “Australian Customs Service entry management system” for the reason described in amending item 1 (above).

“AQIS holiday” includes public holidays and any other holidays falling between 27 December and 31 December in any year such as Australian Public Service holidays and holidays given by reason of the certified agreement belonging to the Department of Agriculture, Fisheries and Forestry.

The definition for “ordinary hours of duty” simplifies the existing definition in subregulation 33(4) of the Principal Regulations. The definitions for “weekday” and “working day” together with “AQIS holiday” and “ordinary hours of duty” are necessary for describing chargeable services in the new Parts 2 and 3 of Schedule 2.

Part 2 of Schedule 2 specifies the amounts payable for chargeable services performed during ordinary hours of duty.

Column 3 of item 1 is amended to clarify that the services performed by an officer for one day are those services performed by the officer in a “working day” – that being, 7.5 hours during ordinary hours of duty on a weekday and not the entire period between 6.30am and 6.30pm. There is no financial impact on industry as a result of this amendment. The amendment merely confirms current service delivery arrangements.

Column 2 of item 2 is amended to confirm that the assessment of information in relation to a consignment of food is an assessment of information contained in an entry relating to a consignment of food made on an AQIS entry management system.

Column 3 of item 2 is amended to remove the reduced quarter-hourly fee applying to the chargeable service for the period 12 January 2004 to 11 January 2005 inclusive. This amendment is necessary as the fee reduction applied for the specified twelve-month period only.

Column 2 of item 3 is amended to confirm that the assessment of information in relation to a consignment of food is an assessment of information contained in an entry relating to a consignment of food made on an AQIS entry management system.

Column 3 of item 3 is amended to apply a fee of \$27 to the assessment of information for each entry and an additional fee of \$27 where further information is required to complete the assessment. These fees replace the existing fee of \$35.50 for each quarter hour or part quarter hour. The

amendment will decrease the fees payable by industry for this chargeable service. The new fees reflect an anticipated reduction in resources required over the next three years as a result of the increasing uptake in automated entry processing and assessment processes.

Column 3 of item 4 is reformatted for consistency with preceding items.

The old item 5 is deleted, as the chargeable service and corresponding amount payable is no longer necessary. Fees for making import entries are dealt with under the *Quarantine Service Fees Determination 2005*.

The new item 5 replaces the old item 6 to specify the additional fees payable for chargeable services performed outside ordinary hours of duty. Column 3 of the new item 5 is divided into services performed on:

- a weekday immediately before or immediately after services performed by the officer during ordinary hours of duty;
- a weekday at any other time;
- Saturday;
- Sunday; or
- an AQIS holiday.

This will provide greater certainty and ease of application compared to the existing overtime structure, which depends on the officer's entitlement to remuneration at the rate of time and a half, double time, or double time and a half.

The new structure for overtime fees in item 5 will result in a reduction of fees charged to industry. However, the projected administrative efficiencies gained in the application of the new structure will most likely offset the reduction in revenue.