

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 25, 2015**

Issued by Authority of the Minister for Agriculture

*Imported Food Control Act 1992*

*Imported Food Control Regulations 1993*

*Imported Food Control Amendment (Recognised Foreign Government Certificates and Other Measures) Regulation 2015*

#### **Legislative Authority**

Subsection 43(1) of the *Imported Food Control Act 1992* (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.

#### **Purpose**

The purpose of the *Imported Food Control Amendment (Recognised Foreign Government Certificates and Other Measures) Regulation 2015* (Amendment Regulation) is to implement arrangements for certain risk foods to require recognised foreign government certification as evidence of through-chain food safety controls, in order to provide assurance that hazards are controlled and food is safe on importation.

#### **Background**

Food Standards Australia New Zealand (FSANZ) conducts food risk analyses to identify hazards, some of which require through-chain process controls and assurances relating to the way imported food is grown, harvested, manufactured and exported. Physical inspection alone for these specific hazards in some risk foods does not provide sufficient assurance of food safety. Recognised government certification of through-chain controls is a more effective means of managing these hazards by providing Australia's food safety regulators with end-point assurance that the exporting country is controlling hazards and the food may be considered safe.

Regulation 18 currently allows Australian Government officials to fail food if it fails inspection. The Amendment Regulation will enable officials to fail the identified risk food if it is not accompanied by a recognised foreign government certificate.

Recognised foreign government certification of through-chain food safety controls would provide Australia's food safety regulators with end-point assurance that the exporting country is controlling hazards and that the food may be considered safe.

#### **Impact and Effect**

The Amendment Regulation requires exporters of certain risk foods to Australia to ensure that those foods are accompanied by a recognised certificate from the competent authorities of the exporting country by enabling Australian officials to fail food if it is not accompanied by a certificate.

Recognised government certification of the through-chain controls is a more effective means of assessing the hazard and determining if the food poses a danger to human health.

For high-risk food, measures used at the border include provision of recognised foreign government certificates, inspection and analytical testing where effective tests are available.

### **Consultation**

Industry was consulted through the Imported Food Consultative Committee, which is the Department of Agriculture forum for consultation with the food and beverage importing industry, and supports this approach. The committee contains representatives of the Food and Beverage Importers' Association, Australian Food and Grocery Council, Seafood Importers' Association and FSANZ.

Consultation also occurred with Commonwealth, state and territory government food authorities which support this work by the department and FSANZ on risk foods.

The Department consulted with the Office of Parliamentary Counsel in the drafting of the amendments, and the Office of Best Practice Regulation has advised that a regulation impact statement is not required (ID 17861).

The Amendment Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Amendment Regulation is 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 the Attachment.

### **Details of the *Imported Food Control Amendment (Recognised Foreign Government Certificates and Other Measures) Regulation 2015***

#### Section 1 – Name

This section provides that the name of the Amendment Regulation is the *Imported Food Control Amendment (Recognised Foreign Government Certificates and Other Measures) Regulation 2015*.

#### Section 2 – Commencement

This section provides that the Amendment Regulation commences on 1 April 2015.

#### Section 3 – Authority

This section provides that the Amendment Regulation is made under the *Imported Food Control Act 1992*.

#### Section 4 – Schedule

This section provides that the *Imported Food Control Regulations 1993* are amended as set out in the Schedule.

#### Schedule 1 – Amendments

**Item 1** inserts a new definition of 'risk food' into subregulation 3(1) of the Principal Regulations which is food of a particular kind that is classified as risk food by an order made under regulation 8.

The purpose of the amendment is to aid interpretation of the term ‘risk food’ which is used throughout the Principal Regulations and is food of a particular kind to which the Act applies and for which the Minister may make orders.

**Item 2** substitutes paragraph 7(a) of the Principal Regulations with a new paragraph 7(a) to provide that the Minister may make orders identifying food of a particular kind as food that must be covered by a recognised foreign government certificate.

The purpose of the amendment is to clarify that the Minister has the power to make orders in relation to the Food Inspection Scheme in order to specify certain risk foods as requiring a foreign government certificate. Imported food is subject to the scheme and for risk food to be regulated under the scheme, it is necessary for the Minister to be able to make orders classifying particular kinds of food as risk food.

The amendment also provides consistency with terminology used in the *Imported Food Control Order 2001*.

**Item 3** substitutes the heading ‘How may food be classified?’ in regulation 8 of the Principal Regulations with a new heading ‘Classification of food by Minister’.

The purpose of the amendment is to ensure that the heading accurately reflects the intention of regulation 8 of the Principal Regulations, which states that the Minister may make orders classifying food of a particular kind, including risk food, to which the Act applies. There is no change to the content of Regulation 8 of the Principal Regulations.

The new heading also provides consistency with current drafting practice by which headings are provided as statements rather than as questions.

**Item 4** substitutes the heading ‘What is meant by *risk food*?’ in regulation 9 of the Principal Regulations with a new heading ‘Food that may be classified as risk food’.

The purpose of the amendment is to provide consistency with current drafting practice with respect to headings which are provided as statements rather than questions.

**Item 5** inserts the number (1) before the words ‘A particular’ in regulation 18 of the Principal Regulations.

The purpose of the amendment is to reformat regulation 18 of the Principal Regulations to allow insertion of new subregulation (2), as provided in item 6.

**Item 6** inserts a new subregulation (2) in regulation 18 of the Principal Regulations to provide that particular food is taken to be failing food if the food that is identified in an order under regulation 7 as risk food and which must be covered by a recognised foreign government certificate is not covered by such a certificate.

The purpose of the amendment is to require exporters of certain risk foods to Australia to ensure that those foods are accompanied by a recognised certificate from the competent authorities of the exporting country by enabling Australian officials to ‘fail’ food if it is not accompanied by a certificate. This will provide Australia’s food safety regulators with end-point assurance that through-chain processes in the exporting country are controlling hazards and that the food is safe, thereby improving the robustness of the Australian regulatory system and minimising the

chance of post border food-borne illness outbreaks.

**Item 7** inserts new Part 5 – *Transitional provisions* consisting of regulation 37 after Part 4 of the Principal Regulations, to provide that an order that was in force under regulation 7 immediately before 1 April 2015 would continue to be in force under that regulation. The new part 5 provides that the new part will be repealed on 2 April 2015.

The purpose of the amendment is to save the existing Order made under regulation 7 and allow the enabling provision for the Order, existing paragraph 7(a), to be repealed without requiring formal amendment of the Principal Regulations. As new regulation 37 needs to be in force for only one day, it will automatically be repealed on the day after the amended Principal Regulations commence.

**Item 8** substitutes the definition of ‘Customs’ in subregulation 3(1) of the Principal Regulations with a new definition which provides that Customs has the meaning given by section 4AA of the *Customs Administration Act 1985*.

The purpose of the amendment is to reflect the transition in the name of the Australian Customs Service to a new body following proposed amendments to principal legislation by the Parliament.

**Item 9** substitutes the name ‘Australian Customs Service’ in subregulation 14(1) of the Principal Regulations with the name ‘Customs’.

The purpose of the amendment is to reflect the transition in the name of the Australian Customs Service to a new body following proposed amendments to principal legislation by the Parliament.

**Item 10** substitutes the heading ‘When, and at what rate, may reprocessed food be inspected?’ in regulation 20 of the Principal Regulations with new heading ‘When, and at what rate, failing food may be presented again for inspection’ to indicate that any food, processed or otherwise, which has failed an inspection may be presented again for inspection.

The purpose of the amendment is to ensure that the heading accurately reflects regulation 20 of the Principal Regulations, which states that imported food which has been inspected and failed may be presented again for inspection following treatment, in accordance with permission to treat failing food given in the Act.

The new heading also provides consistency with current drafting practice by which headings are provided as statements rather than as questions.

**Item 11** substitutes the heading ‘How does the holding of a foreign government or quality assurance certificate affect the incidence of inspection, of food?’ in regulation 31 of the Principal Regulations with new heading ‘Effect of recognised foreign government certificate or recognised quality assurance certificate on rate of inspection of food’.

The purpose of the amendment is to clarify that the government certificate should be a recognised foreign government certificate and the assurance certificate should be a recognised quality assurance certificate. Recognised foreign government certification of through-chain food

safety controls is a consideration in determining whether food meets the applicable standards or poses a risk to human health.

The new heading also provides consistency with current drafting practice by which headings are provided as statements rather than as questions.

**Item 12** substitutes the word ‘incidence’ in regulation 31 of the Principal Regulations with the word ‘rate’.

No substantive change is made to Principal Regulation 31. The only change is to provide consistency with the remainder of the Principal Regulations, as the word ‘rate’ is used in relation to inspections.

**Item 13** substitutes the heading ‘How is the reliability of foreign government or quality assurance certificates verified?’ in regulation 32 of the Principal Regulations with new heading ‘Verification of reliability of recognised foreign government certificates and recognised quality assurance certificates’.

The purpose of the amendment is to clarify that the government certificate should be a recognised foreign government certificate and the assurance certificate should be a recognised quality assurance certificate. Recognised foreign government certification of through-chain food safety controls, is a consideration in determining whether food meets the applicable standards or poses a risk to human health.

The new heading also provides consistency with current drafting practice by which headings are provided as statements rather than as questions. There is no substantive change to the provisions of regulation 31 of the Principal Regulations.

**Item 14** removes the definition of ‘AQIS entry management system’ and ‘AQIS holiday’ from clause 1 of Schedule 2 to the Principal Regulations.

The purpose of the amendment is to reflect retirement of the AQIS brand.

**Item 15** substitutes new definitions of ‘Departmental entry management system’ and ‘Departmental holiday’ in Clause 1 of Schedule 2 to the Principal Regulations.

The purpose of the amendment is to reflect the role of the Department in administration of the import control systems, and to define a holiday for an officer performing a chargeable service. There is no substantive change to the definitions relating to the entry management system and the holiday for an officer performing a chargeable service.

**Item 16** substitutes the words ‘an AQIS holiday’ in clause 1 of Schedule 2 to the Principal Regulations with the words ‘a Departmental holiday’.

The purpose of the amendment is to reflect retirement of the AQIS brand and to clarify the role of a Departmental officer performing a chargeable service on a weekday that is not a holiday for the officer. There is no substantive change to the definition of ‘weekday’.

**Item 17** substitutes the words ‘an AQIS’ in part 2 of Schedule 2 (table item 2, column 2) to the Principal Regulations with the words ‘a Departmental’.

The purpose of the amendment is to reflect retirement of the AQIS brand and to clarify the Department's administration of an entry management system for assessment of information in relation to a consignment of food for inclusion in a food control certificate for an import entry to which a recognised foreign government certificate relates. There is no substantive change to provisions relating to the entry management system.

**Item 18** substitutes the words 'an AQIS' in part 2 of Schedule 2 (table item 3, column 2) to the Principal Regulations with the words 'a Departmental'.

The purpose of the amendment is to reflect retirement of the AQIS brand and as described by item 17. There is no substantive change to provisions relating to the entry management system administered by the Department.

**Item 19** substitutes the word 'AQIS' in part 3 of Schedule 2 (table item 9, column 3) to the Principal Regulations with the word 'Departmental'.

The purpose of the amendment is to reflect retirement of the AQIS brand and the role of a Departmental officer in performing a chargeable service on a Saturday, Sunday or Departmental holiday. There is no substantive change to provisions relating to services performed outside the ordinary hours of duty.

**Statement of Compatibility with Human Rights**

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

***Imported Food Control Amendment (Recognised Foreign Government Certificates and Other Measures) Regulation 2015***

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**

This Legislative Instrument amends the *Imported Food Control Regulations 1993* to implement arrangements for certain risk foods to require recognised foreign government certification as evidence of through-chain food safety controls, in order to provide assurance that hazards are controlled and food is safe on importation.

**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.

**The Hon. Barnaby Joyce MP  
Minister for Agriculture**