

EXPLANATORY STATEMENT

Issued by Authority of the Deputy Prime Minister and
Minister for Agriculture and Water Resources

Imported Food Control Act 1992

Imported Food Control Amendment (Food Inspection) Regulations 2017

Legislative Authority

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.

Purpose

The purpose of the *Imported Food Control Amendment (Food Inspection) Regulations 2017* (the proposed Regulations) is to allow for the lowering of the rate of inspection and analysis of a risk food where there are reasonable grounds to believe the food complies with Australia's food standards and does not pose a risk to human health. The proposed Regulations also correct an outdated reference and some typographical errors.

Background

The Act requires Australian businesses to ensure that the food they import complies with Australia's food standards and does not pose a risk to human health. Australia's food standards are detailed in the Australia New Zealand Food Standards Code (the Code) which is maintained by Food Standards Australia New Zealand (FSANZ).

Under the Scheme, foods are classified as either 'risk foods' or 'surveillance foods', based on advice provided by FSANZ. Risk food is initially inspected and tested at a rate of 100 per cent of consignments (tightened rate) against a published list of potential hazards, including microorganisms and contaminants. Once five consecutive consignments have passed inspection, the inspection rate may be reduced to 25 per cent (normal rate). After a further 20 consecutive passes, the inspection rate may be reduced to five per cent (reduced rate). If any consignments are found to be non-compliant, future consignments of that product are returned to the 100 per cent rate of inspection until a history of compliance is re-established.

Surveillance foods are subject to inspection at a rate of five per cent of inspections. If a consignment is determined to be non-compliant, inspection is raised to 100 per cent until five consecutive consignments pass inspection, following which the inspection rate reverts to five per cent.

The Department of Agriculture and Water Resources (the department) uses the Scheme to monitor compliance with requirements of the Act. In addition to the department's monitoring, state and territory jurisdictions have responsibility for ensuring that all food, including imported food, meets requirements in the Code.

Section 16 of the Act provides that the regulations may set out particulars of a food inspection scheme. The *Imported Food Control Regulations 1993* (the Principal Regulations) set out the Imported Food Inspection Scheme (the Scheme), which is a risk-based end-product inspection and analysis scheme for imported foods with provisions for industry risk management arrangements and foreign government certification arrangements. Section 16 also provides that the regulations setting out particulars of the Scheme may specify the manner and incidence of inspection, or inspection and analysis, of particular food that is imported into Australia.

Regulations 15, 16 and 17 of the Principal Regulations set out rates of inspection for risk foods. However, these regulations use a ‘one size fits all approach’, and do not provide flexibility to take into account the particular source of a food, an exporting country’s food safety system, or assessment of the equivalence of an exporting country’s food safety system in relation to Australia’s. Assessment of the equivalence of food safety systems is becoming more common internationally and Australia’s trading partners are developing these assessments as a means of facilitating trade in food between countries with equivalent systems.

The proposed Regulations allow a more flexible inspection regime for specified imported risk foods within the framework of the Act while ensuring public health and safety remain protected. This includes where the the department and the instrumentality of a foreign government (for example, an overseas government food authority) agree that the food safety systems in both countries are equivalent, which will allow the department to reduce the rate of inspection and analysis of those foods.

Conversely, the proposed Regulations provide benefits for Australian food businesses exporting to other countries through reciprocated reduced border intervention and reduced or no in-country audits of Australian food manufacturers by the other country. Formal recognition of foreign government regulatory controls to manage food safety will enable the department to better utilise border monitoring resources, achieve greater assurances of the safety of foods being imported from those countries and provide deregulatory opportunities for industry.

Impact and Effect

With increased globalisation of the food supply chain and associated increase in the volume of food traded between countries, measures which reduce regulatory burden and costs on Australia’s food trade, while ensuring that imported food is safe for human consumption, may be achieved through assessment and recognition of other countries’ regulatory controls.

A circumstance where a more flexible inspection regime for specified imported risk foods applies is where the department and the foreign government instrumentality have assessed each other’s food safety systems and concluded that they provide equivalent food safety protection. In this circumstance, there are reasonable grounds to allow Australia to reduce the rate of inspection of those foods to a minimum of five per cent of consignments. This provides a similar arrangement as the foreign government certification arrangement, without the need for government certification to accompany each consignment.

This inspection regime provides similar benefits for Australian food businesses exporting to those countries through reduced or no in-country audits of Australian food manufacturers, and reduced border intervention on Australian imports to that country.

The proposed Regulations also correct an outdated reference and typographical errors.

Consultation

The department consulted with state and territory government food authorities, the Australian Government Department of Health and the department's Imported Food Consultative Committee (IFCC) on the proposed systems recognition proposals. The IFCC contains representatives of the Food and Beverage Importers' Association, Australian Food and Grocery Council, Seafood Importers' Association of Australia and Food Standards Australia New Zealand (FSANZ).

All agencies and organisations which were consulted are supportive of the policy underlying the proposed changes.

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

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The proposed Regulations 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 the Attachment.

Details of the *Imported Food Control Amendment (Food Inspection) Regulations 2017*

Section 1 – Name

This section provides that the name of the proposed Regulations is the *Imported Food Control Amendment (Food Inspection) Regulations 2017*.

Section 2 – Commencement

This section provides for proposed Regulations to commence the day after the instrument is registered.

Section 3 – Authority

This section provides that the proposed Regulations is made under the *Imported Food Control Act 1992*.

Section 4 – Schedules

This section provides that the *Imported Food Control Regulations 1993* to be amended or repealed as set out in the applicable items in the Schedule 1.

Schedule 1 – Amendments

Item 1 corrects a spelling error in the definition of 'particular source' in regulation 3 by inserting the correct spelling of the word 'manufacturer'. This amendment does not result in any substantive change to the operation of the Principal Regulations.

Item 2 substitutes regulation 9 of the with a new regulation 9 to provide that food of a particular kind may be classified as risk food if, on being consulted as required under section 17 of the Act, FSANZ advises the Minister that the food has the potential to pose a high or medium risk to public health.

The amendment replaces the reference to the ‘Australia New Zealand Food Authority’ with ‘Food Standards Australia New Zealand’ to reflect the contemporary name of this agency. The amendment also replaces the reference ‘section 17(1) of the Act’ with the reference ‘section 17 of the Act’ as section 17 no longer has a subsection (1).

The reference to ‘public health’ in regulation 9 has been retained and has not been replaced with the words ‘human health’ as described in items 3 and 6. This is because regulation 9 relates to the public health advice provided by FSANZ, rather than the ‘risks to human health’ that are managed by the Act and referred to in other provisions of the Principal Regulations.

The amendment rephrases the regulation to comply with current legislation practice and does not result in any substantive change to the operation of the Principal Regulations.

Item 3 substitutes the words ‘public health’ in paragraph 17(3)(b) with the words ‘human health’.

The purpose of the amendment is to provide consistency with the Act and other parts of regulation 17 which refer to ‘human health’; the amendment does not result in any substantive change to the Principal Regulations.

Item 4 inserts new subregulation 17(3A) to provide that the rate of inspection of a particular food from a particular source may be lowered to the reduced rate from either the normal rate (25%) or the tightened rate (100%), when there are reasonable grounds for believing that the food from a particular source complies with the applicable standards, does not pose a risk to human health, and the rate of inspection had previously been raised under subregulations 17(4), 17(5) or 17(6).

Under subregulations 17(4), 17(5) and 17(6), the rate of inspection of a food may be raised to the normal rate or tightened rate if the food is rejected on inspection, that is, it is found to be non-compliant. The new subregulation provides that the rate may only be lowered in these circumstances if five consecutive batches are found to comply.

The new subregulation provides an additional means of reducing rates of inspection and analysis of specified risk foods within the existing inspection framework of the Act, but only where there are reasonable grounds to believe the food is safe and compliant when imported from a particular source. The effect of the new subregulation is consistent with the other means of reducing the rate of inspection currently provided in the Principal Regulations, for example, for foods covered by foreign government certification, quality assurance arrangements or compliance agreements.

The new regulation allows the department to assess the likely compliance of food from particular sources with equivalent food safety systems, and reduce inspection of those foods when they meet applicable standards and do not pose a risk to human health. This allows the department to focus its resources on those foods that are more likely to be from non-compliant sources.

Item 5 inserts the word ‘when’ in subregulation 17(5) after the words ‘the normal rate’.

The purpose of the amendment is to correct omission of the qualifying word ‘when’, and does not result in any substantive change to the operation of the Principal Regulations.

Item 6 substitutes the words ‘public health’ in subparagraph 17(6)(b)(ii) with the words ‘human health’.

The purpose of the amendment is to provide consistency with the Act and other parts of regulation 17 which more appropriately should refer to ‘human health’. This amendment does not result in any substantive change to the operation of the Principal Regulations.

Item 7 inserts new regulation 17A *Systems recognition arrangements* after regulation 17. The new regulation describes a particular circumstance in which there are reasonable grounds for believing that a risk food complies with the applicable standards, does not pose a risk to human health, and meets the requirements of new paragraph 17(3A)(a).

The circumstance is where:

- there is a written arrangement between the department and an instrumentality of a foreign government that (among other things) is based on a completed assessment of the food safety systems of Australia and the foreign country; and
- the food safety system assessments conducted by each country conclude that Australia and the foreign country have equivalent food safety systems; and
- the department and the instrumentality of the foreign government conduct equivalent monitoring of the food they regulate.

An example would be where the department has assessed a foreign government’s food regulatory system in whole or in part and found that the system is equivalent to the system in Australia. Based on this assessment, the department and the foreign government instrumentality would agree to a written arrangement to formalise the equivalence of the food safety systems in the two countries, including foods that are within or excluded from the scope of the arrangement. The assessment and written arrangement would then allow the department to reduce the rate of inspection for all consignments of the relevant risk foods from that country to a rate that is no lower than 5 per cent of consignments.

The reduced rate of inspection would facilitate entry of those risk foods which are within the scope of the written arrangement with that country, and could be reciprocated by the foreign government instrumentality for foods exported from Australia to that country.

Statement of Compatibility with Human Rights

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

Imported Food Control Amendment (Food Inspection) Regulations 2017

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 allow for a reduced rate of inspection of certain risk foods when there are reasonable grounds for believing that kind of food from identified sources complies with applicable standards and does not pose a risk to human health, and may be covered by a written arrangement with countries which have been assessed as having comparable food safety systems.

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
Deputy Prime Minister and Minister for Agriculture and Water Resources**