

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture

Imported Food Control Act 1992
Imported Food Control Regulations 2019
Imported Food Control Order 2019

Legislative Authority

The *Imported Food Control Act 1992* (the Act) provides for the inspection and control of food imported into Australia in order to achieve compliance with Australian food standards and the requirements of public health and safety.

Subsection 43(1) of the Act provides that the Governor-General may make regulations setting out particulars of a food inspection scheme. These regulations are the *Imported Food Control Regulations 2019* (Regulations) and the food inspection scheme established under these Regulations is the Imported Food Inspection Scheme (the Scheme). The Scheme is applicable to all food to which the Act applies.

Paragraph 16(2)(a) of the Act provides that the regulations setting out particulars of the Scheme may empower the Minister, subject to section 17, to make orders identifying food of a particular kind as food of a kind that is required to be inspected, or inspected and analysed, under the Scheme. These orders are the *Imported Food Control Order 2019* (the Order).

Section 17 of the Act provides that the Minister must not make an order for the purposes of paragraph 16(2)(a) without first consulting Food Standards Australia New Zealand (FSANZ).

Paragraph 10(a) of the Regulations provides the Minister may make orders identifying food of a particular kind as food of a kind that is to be inspected, or inspected and analysed, under the Scheme.

Paragraph 10(b) of the Regulations provides the Minister may make orders identifying food of particular kinds as food that must be covered by a recognised foreign government certificate.

Paragraph 10(c) of the Regulations provides the Minister may make orders identifying food of particular kinds as food that must be covered by a recognised food safety management certificate.

Paragraph 10(d) of the Regulations provides the Minister may make orders classifying food of particular kinds into particular categories.

The particular categories of food that the Minister may specify are provided for in regulations 11-13.

Regulation 11 of the Regulations provides the Minister may make an order to classify food of a particular kind as risk food only if FSANZ advises the Minister that food of that kind has the potential to pose a high or medium risk to public health.

Regulation 12 of the Regulations provides that the Minister may classify food of a particular kind as compliance agreement food to the extent that a compliance agreement applies to food of that kind.

Regulation 13 of the Regulations provides that the Minister may classify food of a particular kind as surveillance food if food of that kind:

- is not risk food; and
- is not compliance agreement food; and
- is not the subject of a holding order.

Purpose

The purpose of the Order is to support the operation of the Scheme. It:

- enables the Minister for Agriculture to identify and classify imported food as surveillance food, risk food or compliance agreement food;
- enables the Minister for Agriculture to identify risk food that must be covered by a recognised foreign government certificate; and
- supports our obligations under the Trans-Tasman Mutual Recognition Arrangement (TTMRA). The TTMRA may be located on the Council of Australian Governments website.

Background

The Imported Food Inspection Scheme (the Scheme) is a risk based border inspection program that is administered by the Department of Agriculture. It monitors imported foods that are regulated under the Scheme for compliance with the Australia New Zealand Food Standards Code.

The *Imported Food Control Order 2001* (the current Order) is subject to sunset provisions of the *Legislation Act 2003* and will cease to be law following 1 October 2019 unless it is remade and registered before that date.

The Department reviewed the current Order and determined that it is still required to ensure operation of the Scheme without any significant amendments.

Impact and Effect

The effect of the Order is to classify particular kinds of food as risk food, surveillance food or compliance agreement food. These classifications allow the Department to set arrangements for the inspection or inspection and analysis of imported food under the Scheme.

The classification of compliance agreement food supports importers who enter into a voluntary Food Import Compliance Agreement (FICA). Foods subject to a FICA are exempt from inspection and analysis.

The Order identifies risk food that must be covered by a recognised foreign government certificate. This is a government to government arrangement with the national competent authority of the foreign government having responsibility to issue the certificate. The department of Agriculture is the competent authority for the Australian Government.

The Order classifies surveillance food as all imported food that is not classified as a risk food, or compliance agreement food, or food that is subject of a holding order made under section

15 of the Act. The classification of surveillance food does not affect importers and there will be no change to how surveillance food is selected for inspection or inspection and analysis. The classification of surveillance food is required to allow the operation of regulation 15 of the Regulations.

The Order identifies New Zealand products that require or do not require inspection or inspection and analysis under the Scheme.

Consultation

The Department consulted with Food Standards Australia New Zealand (FSANZ) as required by section 17 of the Act. FSANZ supports the remake of the Order.

The former Minister for Agriculture and Water Resources, the Hon. David Littleproud MP, and the current Minister for Agriculture, Senator the Hon. Bridget McKenzie MP wrote to Mr Mark Booth, Chief Executive Officer of FSANZ in January 2019 and in September 2019 respectively to consult on the Order. The Chief Executive Officer of FSANZ responded in February 2019 and September 2019 advising that FSANZ was consulted and supported the remake of the Order.

The Department consulted with and notified trading partners as to the proposal to remake the order as required by the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

Public consultation was facilitated through the Department's website and targeted consultation with industry stakeholders.

The Department consulted with the Office of Best Practice Regulation (OBPR) in the preparation of the Order. OBPR advised that no Regulation Impact Statement (RIS) was required as the Department assessed the current Order as effective and no significant amendments were required (ID number 24014).

Details/ Operation

Details of the Order are set out in [Attachment A](#).

Other

The Order 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 [Attachment B](#).

The Order is a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Imported Food Control Order 2019

Section 1 – Name

This section provides that the name of the Order is the Imported Food Control Order 2019 (the Order).

Section 2 – Commencement

This section provides for the Order to commence immediately after the commencement of the *Imported Food Control Regulations 2019*.

Section 3 – Authority

This section provides that the Order is made under regulation 10 of the *Imported Food Control Regulations 2019* (the Regulations).

Section 4 – Definitions

This section provides definitions that are used throughout the Order. Those terms are:

beef

This section provides that ‘beef’ means the flesh, bone, offal or any other tissue of cattle.

beef products

This section provides that ‘beef products’ means food prepared from or containing beef, but does not include gelatine, collagen, rendered fats, tallow or di-calcium phosphate.

dried meat

This section provides that ‘dried meat’ means meat that has been dried but does not include slow cured dried meat.

New Zealand product

This section provides that ‘New Zealand product’ means food to which the Act applies that is produced in or imported into New Zealand, being food to which the Trans-Tasman mutual recognition principle set out in Part 2 of the *Trans-Tasman Mutual Recognition Act 1997* applies.

ready-to-eat:

This section provides that food is ***ready-to-eat*** if it is ordinarily consumed in the same state as that in which it is sold.

sausage

This section provides that ‘sausage’ means a food that:

- consists of meat that has been minced, meat that has been comminuted, or a mixture of both, whether or not mixed with other foods, and which has been encased or formed into discrete units; and
- is not formed or joined into the semblance of cuts of meat.

Section 5 – Identification and Classification of Food

Under regulation 10(d) of the Regulations, the Minister may make orders classifying food of particular kinds into particular categories for the purposes of paragraph 16(2)(a) of the Act.

The Minister has classified imported food as risk food, compliance agreement food or surveillance food under section 5 of the Order. This classification permits differentiation in the arrangements for the inspection or inspection and analysis of imported foods that are subject to the Scheme.

Section 5 of the Regulations defines *risk food* as food of a particular kind that is classified as risk food in an order made under section 10 of the Act. Section 11 of the Act provides that the Minister may only classify food of a particular kind as risk food in an order under section 10 if Food Standards Australia New Zealand advises the Minister that food of that kind has the potential to pose a high or medium risk to public health. Risk foods are identified in clause 1 of Schedule 1 of the Order.

Section 5 of the Regulations defines *compliance agreement food* to mean food of a particular kind classified as compliance agreement food in an order under section 10 of the Act. Section 12 of the Regulations provides that the Minister may, in an order under section 10, classify food of a particular kind as compliance agreement food to the extent that a compliance agreement applies to a food of that kind.

Compliance agreement food is food that is imported by an entity that has a food import compliance agreement (FICA) with the Department of Agriculture. A FICA enables an importer to opt in for a conditional exemption from inspection or inspection and analysis under the Scheme, where their documented food safety management system is found to meet the requirements of the Scheme.

Surveillance food is food that is not risk food, compliance agreement food or food that is the subject of a holding order.

Under subsections 5(3) and (4) of the Order, New Zealand product of a kind to which the Act applies that is mentioned in clause 1 of Schedule 2 is classified as risk food and is required to be inspected, or inspected and analysed, under the Scheme as risk food, unless the food is compliance agreement food. These foods include beef and beef products. These provisions give effect to Australia's obligations under the Trans-Tasman Mutual Recognition Arrangement.

Section 6 – Risk food that must be covered by a recognised foreign government certificate

This section identifies certain risk foods and certain New Zealand products that must be covered by a recognised foreign government certificate. This is a government to government certification arrangement with the national competent authority of the country exporting food to Australia. It provides confidence that the food has been produced safely.

Beef, beef products, raw milk cheese and ready to eat meat (uncooked dried meat, uncooked sausage and uncooked spreadable sausages) are risk foods that must be covered by a recognised foreign government certificate. Beef and beef products that are New Zealand product would also need to be covered by a recognised foreign government certificate.

SCHEDULE 1 – RISK FOOD

Schedule 1 of the Order sets out the kinds of foods that are classified as risk foods and are required to be inspected, or inspected and analysed under the Scheme as risk food for the

purposes of subsection 5(1) of the Order. They include beef, certain kinds of cheese, raw milk cheese and certain kinds of fish. These foods are classified as risk foods because they pose a medium to high risk to human health.

SCHEDULE 2 – RISK FOOD THAT IS A NEW ZEALAND PRODUCT

Schedule 2 of the Order sets out the kinds of foods that are New Zealand product that are classified as risk foods and are required to be inspected, or inspected and analysed, under the scheme as risk food for the purposes of subsection 5(3) of the Order. They are beef, beef products, ready-to-eat cassava chips and brown seaweed.

ATTACHMENT B

Statement of Compatibility with Human Rights

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

Imported Food Control Order 2019

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

The Imported Food Control Order 2019 will:

- classify particular kinds of risk food that require inspection or inspection and analysis for relevant hazards at a rate that is consistent with the regulations based on human health; and
- identify risk foods that must be covered by a recognised foreign government certificate to provide evidence and assurance that the food safety risks for these foods are being effectively managed.

Human rights implications

The Order engages the right to health (Article 12) in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Order engages and promotes the right to health in Article 12 of the ICESCR by:

- inspecting, or inspecting and analysing, risk food for relevant public health hazards to determine if these products are safe; and
- requiring recognised foreign government certification for risk food so these foods are safe.

Conclusion

The Order is compatible with human rights because it is promoting the right to health through the inspection and certification of risk food products so they are safe for human consumption.

Senator the Hon. Bridget McKenzie MP
Minister for Agriculture