

EXPLANATORY STATEMENT

Issued by Authority of the Secretary of the Department of Agriculture

Imported Food Control Act 1992
Imported Food Control (Recordkeeping) Determination 2019

Legislative Authority

Subsection 28(1) of Part 3A of the *Imported Food Control Act 1992* (the Act) provides that if food to which this Act applies is imported into Australia, the owner of the food at the time of the importation must keep records containing the information determined in an instrument under subsection 28(2). Subsection 28(2) of the Act provides that the Secretary may, by legislative instrument, determine the information that must be contained in records under this section.

Purpose

The purpose of the Imported Food Control (Recordkeeping) Determination 2019 (the Determination) is to:

- require the owner of imported food at the time of importation to keep records containing:
 - the name or a description of the food that is sufficient to indicate the true nature of the food;
 - either the lot code or batch code for the food;
 - certain contact details for both the producer of the food and the person(s) to whom the owner dispatches the food;
 - the dates the owner received the food from the producer or supplier and the dates the owner dispatched the food to another person or persons; and
 - the volume or quantity of the food dispatched.

These records will ensure that imported food is traceable and can be efficiently and effectively recalled if required.

Background

The *Imported Food Control Amendment Act 2018* (Amendment Act) strengthened the current risk-based management approach to imported food safety to better protect the health of consumers while reducing the regulatory burden for compliant food importers. The majority of the amendments to the Act made by the Amendment Act commenced on 21 September 2018.

Part 6 of the Amendment Act inserted new Part 3A into the Act, concerning record-keeping requirements for imported food. Under new Part 3A, if food to which the Act applies is imported into Australia, the owner of the food at the time of the importation must keep records of information determined by the Secretary. These records must be retained for 5 years and may need to be produced to the Secretary.

Part 6 of the Amendment Act commenced on 21 September 2019.

Impact and Effect

The Determination will protect the health of consumers by ensuring that imported food to which the Act applies can be easily traced and quickly recalled if necessary.

Consultation

Extensive consultation was undertaken for the making of the Amendment Act. The Office of Best Practice Regulation (OBPR) advised that a full Regulatory Impact Assessment (RIS) was required (ID 19384).

Formal and public consultation occurred during the drafting of the Amendment Act and the preparation of the RIS with imported food industry representatives, state and territory food authorities, trading partners, consumers, and relevant Commonwealth government agencies and statutory authorities, including the Department of Health and Food Standards Australia New Zealand.

Details/ Operation

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

Other

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

Details of the Imported Food Control (Recordkeeping) Determination 2019

Section 1 – Name

This section provides that the name of the instrument is the Imported Food Control (Recordkeeping) Determination 2019 (the Determination).

Section 2 – Commencement

This section provides for the Determination to commence the day after it is registered.

Section 3 – Authority

This section provides that the Determination is made under the *Imported Food Control Act 1992* (the Act).

Section 4 – Definitions

This section defines terms that are used throughout the Determination.

Act means the *Imported Food Control Act 1992*.

The note to this section states that a number of expressions used in the instrument are defined in the Act, including *food* and *owner*.

Food is defined in section 3A of the Act.

Section 3 of the Act defines *owner* in relation to food, to include any person (other than an officer of Customs or an authorised officer) being or holding himself or herself out to be the owner, importer, consignee, agent or person having control of, a beneficial interest in, or the power of disposition over, the food.

Regulations means the Regulations made under the Act, that is, the *Imported Food Control Regulations 1993*.

The expressions *batch* and *lot* have the same meaning as in the Regulations.

Section 3 of the Regulations defines *batch* to mean food of a particular kind made or packaged in a distinct manner which may include one or more lots.

Section 3 of the Regulations defines *lot* to mean a quantity of food of a particular kind prepared or packaged under essentially the same conditions (ordinarily from a particular preparation or package unit and during a particular time usually not exceeding 24 hours).

Section 5 – Information that must be contained in records

This section provides that if food to which the Act applies is imported into Australia, the owner of the food at the time of importation (the owner) must maintain records containing information specified in the section.

Paragraph 5(1)(a) provides that that the records kept by the owner must include the contact details specified in subsection 5(2) for the producer of the food and the person or persons to whom the owner dispatches the food.

Paragraph 5(1)(b) provides that that the record kept by the owner must include the contact details at subsection 5(3) for each of the persons mentioned in paragraph (a) (that is, the producer of the food and the person(s) to whom the owner dispatches the food, but only if those contact details are known to the owner).

Paragraph 5(1)(c) provides that that the record kept by the owner must include a name or a description of the food that is sufficient to indicate the true nature of the food.

Paragraph 5(1)(d) provides that the record kept by the owner must include the date that the food was received by the owner from the producer or supplier of the food, and the date the owner dispatches the food to each person to whom the owner dispatches it.

Paragraph 5(1)(e) provides that the record kept by the owner must include either the lot code or the batch code as it applies to the food.

Paragraph 5(1)(f) provides that the record kept by the owner must include the volume or quantity of the food that the owner dispatches to each person to whom the owner dispatches it.

Subsection 5(2) provides further contact details to be kept by an owner for the producer of the food and the person(s) to whom the owner dispatches the food. These details are:

- the name of the person;
- any business name used by the person; and
- the person's street address.

Subsection 5(3) provides further contact details to be kept by an owner for the producer of the food and the person(s) to whom the owner dispatches the food (if these are known to the owner). These details are:

- the person's telephone number; and
- the person's email address.

Statement of Compatibility with Human Rights

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

Imported Food Control (Recordkeeping) Determination 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 purpose of the Imported Food Control (Recordkeeping) Determination 2019 (the Determination) is to:

- require the owner of imported food at the time of importation to keep records containing:
 - the name or a description of the food that is sufficient to indicate the true nature of the food;
 - either the lot code or batch code for the food;
 - certain contact details for both the producer of the food and the person(s) to whom the owner dispatches the food;
 - the dates the owner received the food from the producer or supplier and the dates the owner dispatched the food to another person or persons; and
 - the volume or quantity of the food dispatched.

The Determination will protect the health of consumers by ensuring that imported food to which the Act applies can be easily traced and quickly recalled if necessary.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

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

The Determination engages and promotes the right to health in Article 12 of the ICESCR by requiring the owners of imported food maintain records will ensure that imported food is traceable and can be efficiently and effectively recalled if required.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Daryl Quinlivan
Secretary of the Department of Agriculture