

## **EXPLANATORY STATEMENT**

Issued by Authority of the delegate of the Director of Biosecurity and the Director of Human Biosecurity

*Biosecurity Act 2015*

*Biosecurity (Conditionally Non-prohibited Goods) Amendment (Meat and Meat Products for Personal Use) Determination 2022*

### **Legislative Authority**

The *Biosecurity Act 2015* (the Act) provides the regulatory framework for the management of diseases and pests that may cause harm to human, animal or plant health or the environment.

The Act also gives effect to Australia's relevant international rights and obligations, including Australia's obligations under the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). The SPS Agreement provides for Australia's obligations with respect to the Appropriate Level of Protection (ALOP), which, for Australia, is a high level of sanitary and phytosanitary protection aimed at reducing biosecurity risks to a very low level, but not zero.

Subsection 174(1) of the Act provides that the Director of Biosecurity and Director of Human Biosecurity may jointly determine that specified classes of goods must not be brought or imported into Australian territory unless specified conditions (including conditions for administrative purposes) are complied with.

Under subsection 174(3) of the Act, the Director of Biosecurity and the Director of Human Biosecurity must apply the ALOP for Australia in conducting a risk assessment for the purpose of deciding whether to make a determination under subsection 174(1).

Under paragraph 541(4)(a) of the Act, in performing functions or exercising powers under the Act, including making a determination under section 174, the Director of Biosecurity must have regard to the objects of the Act, which relevantly include providing for managing biosecurity risks and giving effect to Australia's international rights and obligations.

Under subsection 542(1) of the Act, the Director of Biosecurity may, in writing, delegate any or all of the Director's functions or powers under the Act to an SES employee, or an acting SES employee, in the Agriculture Department. The Director of Biosecurity has delegated his functions or powers under subsection 174(1) of the Act to each person from time to time occupying, or acting in, the position of an SES Band 3 of the Department of Agriculture, Fisheries and Forestry (the department). The Deputy Secretary of the Biosecurity and Compliance Group holds the position of an SES Band 3 of the department.

### **Purpose**

The purpose of the *Biosecurity (Conditionally Non-prohibited Goods) Amendment (Meat and Meat Products for Personal Use) Determination 2022* (the Amendment Determination) is to

amend the *Biosecurity (Conditionally Non-prohibited) Goods Determination 2021* (the Goods Determination) to manage the biosecurity risks posed by certain meat and meat products for personal use that are products of countries that are not free from Foot and Mouth Disease (FMD).

## **Background**

The department and the Department of Health and Aged Care co-administer the Act, which establishes the framework for biosecurity risk management. The detail and specific information requirements for certain activities under the Act are provided for in the *Biosecurity Regulation 2016* and other delegated legislation, including the Goods Determination.

Goods entering Australia carry a risk that they may introduce pests and diseases that could have a negative impact on the environment or human, plant or animal health. To regulate the bringing or importing of goods into Australian territory, the department identifies priority pests and diseases of concern and identifies the measures to be put in place to manage the biosecurity risks associated with specified classes of goods. In determining the appropriateness of the measures, the department evaluates the likelihood of entry, establishment or spread of a pest or disease within Australian territory, as well as the associated potential harm and economic consequences, in accordance with the ALOP for Australia.

## **Impact and Effect**

The Amendment Determination imposes additional alternative conditions on specified meat and meat products for personal use requiring that the products must be commercially manufactured and clearly labelled by the manufacturer as a product of an FMD-free country, and makes minor consequential amendments.

## **Consultation**

Due to the significant biosecurity risk posed by FMD to Australia, the Amendment Determination needed to be made rapidly. This has therefore limited the time in which consultation could be conducted. The changes only affect personal, and not commercial consignments of certain meat and meat products that may be imported through the international mail and passenger pathways. Therefore, the department is not able to undertake consultation with individual importers who may be affected by the change. Alerts and change notices will be issued through the Australian Biosecurity Import Conditions system (BICON) and supported by increased communication material for travellers, including messaging on incoming flights and signage at airports.

The Office of Best Practice Regulation has been consulted and advised that the amendments do not have more than a minor regulatory impact and a Regulation Impact Statement (RIS) is not required (OBPR22-03033).

## **Details/Operation**

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

## **Other**

This Amendment Determination is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act). Subsection 174(5) of the Act provides that the Amendment Determination is not subject to disallowance. It is appropriate for the Amendment Determination to be exempt from disallowance because the decision to make a determination under subsection 174(1) of the Act relies solely on technical and scientifically-based evidence to specify conditions required to be complied with to meet the ALOP for Australia in relation to the bringing in or importation of conditionally non-prohibited goods. The conditions are based on the latest scientific and technical information available, including identifying the species susceptible to FMD and the health status of an exporting country relevant to goods. This exemption from disallowance is in accordance with paragraph 44(2)(a) of the Legislation Act.

As the Amendment Determination is exempt from disallowance, this also means that a Statement of Compatibility with Human Rights is not required in accordance with paragraph 15J(2)(f) of the Legislation Act and subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Amendment Determination commences on the day after it is registered as an instrument.

**Details of the *Biosecurity (Conditionally Non-prohibited Goods) Amendment (Meat and Meat Products for Personal Use) Determination 2022***

**Section 1—Name**

This section provides that the name of the legislative instrument is the *Biosecurity (Conditionally Non-prohibited Goods) Amendment (Meat and Meat Products for Personal Use) Determination 2022* (the Amendment Determination).

**Section 2—Commencement**

This section provides that the Amendment Determination commences on the day after it is registered.

**Section 3—Authority**

This section provides that the Amendment Determination is made under subsection 174(1) of the *Biosecurity Act 2015*.

**Section 4—Schedules**

This section provides that each instrument specified in the Schedule to the Amendment Determination is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in the Schedule has effect according to its terms.

**Schedule 1—Amendments**

**Item 1            Subsection 17(2) (at the end of the cell at table item 1, column 2)**

This item adds new paragraph (d) in column 2 of table item 1 in subsection 17(2) of the *Biosecurity (Conditionally Non-prohibited) Goods Determination 2021* (the Goods Determination).

Table item 1 in subsection 17(2) provides for alternative conditions that apply to meat-based flavouring products. If the alternative conditions in column 2 of table item 1 are complied with, meat-based flavouring products can be brought or imported into Australian territory without an import permit. These alternative conditions currently require that the goods have been commercially manufactured and packaged; do not contain any discernible pieces of meat; and are for personal use.

New paragraph (d) provides for an additional alternative condition requiring that if the goods were derived from bovine, caprine, ovine or porcine animals, the goods must be clearly labelled by the manufacturer as a product of an FMD-free country.

“FMD-free country” is defined in section 6 of the Goods Determination to mean a country that the Director of Biosecurity is satisfied is free from Foot and Mouth Disease (FMD) and

that is specified in the FMD-free Country List prepared by the Director of Biosecurity and published on the Agriculture Department's website, as existing from time to time. This list is publicly available on the Agriculture Department's website (<https://www.agriculture.gov.au/biosecurity-trade/policy/legislation#biosecurity-legislation>).

This amendment, together with the amendments made by items 2 to 6, manages the biosecurity risks posed by meat products that could carry FMD by ensuring that the products must be commercially manufactured and labelled as a product of a country that is specified in the FMD-free Country List.

**Item 2            Subsection 17(2) (at the end of the cell at table item 3, column 2)**

This item adds new paragraph (d) in column 2 of table item 3 of subsection 17(2) of the Goods Determination.

Table item 3 in subsection 17(2) provides for alternative conditions that apply to pâté or foie gras. If the alternative conditions in column 2 of table item 3 are complied with, pâté and foie gras can be brought or imported into Australian territory without an import permit. These alternative conditions currently require that the goods are shelf-stable; are for personal use; and the quantity of the goods is not more than 1 kilogram or 1 litre. "Shelf-stable" is defined in section 6, together with section 10 of the Goods Determination, to mean, among other things, that the goods have been commercially manufactured and packaged, the package has not been opened or broken, and the goods are able to be stored at room or ambient temperature.

New paragraph (d) provides for additional alternative conditions requiring that if the goods were derived from bovine, caprine, ovine or porcine animals, the goods have been commercially manufactured and must be clearly labelled by the manufacturer as a product of an FMD-free country.

**Item 3            Subsection 17(2) (at the end of the cell at table item 4, column 2)**

This item adds new paragraphs (c) and (d) in column 2 of table item 4 of subsection 17(2) of the Goods Determination.

Table item 4 in subsection 17(2) provides for alternative conditions that apply to pork crackling or pork rind. If the alternative conditions in column 2 of table item 4 are complied with, pork crackling or pork rind can be brought or imported into Australian territory without an import permit. These alternative conditions currently require that the goods are shelf-stable and are for personal use.

New paragraphs (c) and (d) provide for additional alternative conditions requiring that the goods (which are derived from porcine animals) have been commercially manufactured and must be clearly labelled by the manufacturer as a product of an FMD-free country.

**Item 4            Subsection 17(2) (table item 5, column 2, paragraph (a))**

This item omits the word “prepared” and substitutes the word “manufactured” in paragraph (a) of column 2 of table item 5 in subsection 17(2) of the Goods Determination.

Table item 5 in subsection 17(2) provides for alternative conditions that apply to meat floss. Paragraph (a) in column 2 currently provides that the goods must have been commercially prepared.

The effect of the amendment is to provide that the goods must have been commercially manufactured, instead of commercially prepared. Requiring the goods to be commercially manufactured restricts the form and the use of the goods, which decreases the likelihood of the goods being diverted for other uses, such as being fed to other animals. This has the effect of reducing the likelihood of exposure of the goods to susceptible animal species. This amendment also ensures consistency across section 17 for managing the biosecurity risks posed by meat products that could carry FMD.

**Item 5            Subsection 17(2) (at the end of the cell at table item 5, column 2)**

This item adds new paragraph (c) in column 2 of table item 5 of subsection 17(2) of the Goods Determination.

Table item 5 in subsection 17(2) provides for alternative conditions that apply to meat floss. If the alternative conditions in column 2 of table item 5 are complied with, meat floss can be brought or imported into Australian territory without an import permit. These alternative conditions currently require that the goods have been commercially prepared; and are for personal use.

New paragraph (c) provides for additional alternative conditions requiring that if the goods were derived from bovine, caprine, ovine or porcine animals, the goods must be clearly labelled by the manufacturer as a product of an FMD-free country.

**Item 6            Subsection 17(2) (table item 6, column 2, paragraph (d))**

This item substitutes new paragraph (d) in column 2 of table item 6 of subsection 17(2) of the Goods Determination.

Table item 6 in subsection 17(2) provides for alternative conditions that apply to meat jerky or biltong, other than meat jerky or biltong derived from porcine animals. If the alternative conditions in column 2 of table item 3 are complied with, meat jerky or biltong (other than meat jerky or biltong derived from porcine animals) can be brought or imported into Australian territory without an import permit. These alternative conditions currently require that the goods are shelf-stable; are for personal use; and the quantity of the goods is not more than 1 kilogram or 1 litre. Current paragraph (d) further requires that if the goods are not from avian meat, the goods must have been manufactured in an FMD-free country.

This paragraph is repealed and replaced by new paragraph (d), which provides that if the goods were derived from bovine, caprine or ovine animals, the goods must have been

commercially manufactured and must be clearly labelled by the manufacturer as a product of an FMD-free country. This aligns the requirements for item 6 with other meat products for personal use.

**Item 7            Subsection 17(2) (at the end of the cell at table item 8, column 2)**

This item substitutes new subparagraph (b)(iv) in column 2 of table item 8 of subsection 17(2) of the Goods Determination.

Table item 8 in subsection 17(2) provides for alternative conditions that apply to meat or meat products which are not covered by another item in the table. Paragraph (b) in column 2 of table item 8 provides for alternative conditions for meat or meat products for personal use which, if complied with, allows those meat products to be brought or imported into Australian territory without an import permit. These alternative conditions currently require that the goods have been commercially manufactured and packaged; have been retorted and the container remains unopened since that time; and are shelf-stable. Current subparagraph (b)(iv) provides that the goods must be for personal use, and this requirement is replicated in new subparagraph (b)(iv).

New subparagraph (b)(v) provides that if the goods were derived from bovine, caprine, porcine or ovine animals, the goods must be clearly labelled by the manufacturer as a product of an FMD-free country.