Australian Government
Department of Agriculture and Water Resources

Proposals for changes to Imported Food Control Regulations

Imported Food section

Compliance Arrangements Branch, Compliance Division

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Submissions

The Department of Agriculture and Water Resources is seeking submissions on a range of policy proposals under the Imported Food Control Regulations 1993. These proposals are being considered as part of the department's review of the Regulations which are required to be remade prior to their sunsetting on 1 October 2018.

Your submissions will help us assess whether we need to amend these proposals to better meet your needs while still achieving the objective of the *Imported Food Control Act 1992*.

How to have your say

The deadline for receipt of all submissions is 5pm on Friday 24 February 2017.

The department will consider all relevant material provided within submissions. While there is no set format for a submission, please make sure you include at least the following information:

- the title of this consultation document
- your name and title
- your organisation's name if submitting on behalf of an organisation
- your contact details.

Ensure your comments can be clearly read because copies may be made to help with assessment and evaluation. Assist us by identifying the relevant section when making a general comment on a specific section of this consultation document.

You can return your submission in the following ways:

Submission: Proposals for changes to imported food control regulations
Imported Food Section
Department of Agriculture and Water Resources
GPO Box 858
Canberra ACT 2601

foodimp@agriculture.gov.au

If submitted by email, a hard copy of your submission is not needed. The department endeavours to formally acknowledge receipt of submissions within three business days. Submissions received after 24 February will not be considered unless an extension had been given before the closing date.

Privacy: Personal information collected by the department will only be used to enable the department to contact you about your submission and may be disclosed to specialists, another Commonwealth government agency, a State and Territory government agency or foreign government department, provided the disclosure is consistent with relevant laws, in particular the *Privacy Act 1988*.

The department requests that, as a minimum, you provide your name and contact details with your submission. Please indicate if you do not wish to have personal information published with your submission or disclosed to third parties. Collected personal information will be used and

stored consistent with the Australian Privacy Principles as outlined in the department's Privacy Policy available on the department's website.

Confidentiality: Subject to the *Freedom of Information Act 1982* and the *Privacy Act 1988*, content of submissions may be made public, unless you state you want all or part of your submission to be treated as confidential. A claim for confidentiality must be justified and provided as an attachment, marked 'Confidential'. 'Confidential' material will not be made public. The department reserves the right not to publish submissions.

No breach of confidence will occur if the department shares your submission with a third party referred to under 'Privacy' in seeking advice in response to your submission.

Publishing of submissions

All submissions will be published on the department's website. We will not publish material that is provided in-confidence, but will record that such information is held. In-confidence submissions may be subject to release under the provisions of the *Freedom of Information Act 1991* (FOI Act). Submissions will be published as soon as possible after the end of the public comment period. Where large numbers of documents are involved, the department will make them available on CD, rather than the website.

If you are making a submission, you may wish to indicate any grounds for withholding information contained in your submission. Reasons could include that the information is commercially sensitive or that you wish personal information, such as names and contact details, to be withheld. An automatic confidentiality disclaimer from your IT system will not be considered as grounds for withholding information if the department receives an FOI Act request.

We will take your indications into account when determining whether to release information under an FOI Act request. Any decisions to withhold information requested under the FOI Act may be reviewed by the Ombudsman.

Next steps

After the consultation period has closed, the department will assess all submissions and consider what further amendments may be required to address the issues raised in submissions, while still achieving the objective of the Imported Food Control Act.

The finalised policy for remaking of the Regulations will then be recommended to the Minister for Agriculture and Water Resources.

Table 1 Key dates for remaking of the Regulations

Date	Action
To 24 February 2017	Public consultation on the proposed policy changes for the Regulations
May 2017	Commence drafting of the Regulations
August 2017	Public consultation on remade Regulations
December 2017	Regulations remade

Proposals for changes to imported food regulations

The Imported Food Control Regulations 1993 set out provisions relating to the operation of the Imported Food Inspection Scheme (IFIS) and give effect to:

- the Imported Food Control Order 2001 that the Minister for Agriculture and Water Resources can classify foods for inspection
- set out the fees that apply to chargeable services for assessing imported foods at the border.

Under the *Legislation Act 2003*, legislative instruments made in 1990, 1991, 1992, 1993 and 1994 will automatically be repealed on 1 October 2018. In many cases, a replacement instrument must be made and registered before the instrument sunsets to ensure continuity of the law.

The department is conducting a review to ensure that the Regulations are still relevant and required before they expire on 1 October 2018.

These Regulations are still required to achieve the objectives of the Act, however amendments ensuring their continued relevance and compliance with current legislative drafting practices must be considered.

This public consultation allows the department to receive submissions that will form part of its review process before remaking the Regulations. Any changes recommended will be subject to government consideration and agreement.

Further information on the current operation of the IFIS is available from the department's Imported Food Inspection Scheme webpage.

What is being reviewed

The department is undertaking a review to assess whether the current Regulations:

- meet the needs of industry and government today and into the future, noting that the scope for this review extends only to minor amendments to existing policy
- are clear, transparent and easy to understand.

Links to imported food legislation

The following are links to where the relevant legislation may be obtained:

- Imported Food Control Act
- Imported Food Control Regulations
- Imported Food Control Order

What is not being reviewed

Aspects of the IFIS will not be considered in this review because they are being considered as part of other reviews and reforms processes. These are:

- the fees and charges contained within the Regulations
- the imported food reform activity that the department is progressing.

Further information on the imported food reform work is available from the department's Imported Food Reform webpage.

The review of the Regulations will only consider minor amendments to the existing policy because the imported food reforms address broader policy proposals on how we manage imported food safety risks.

Summary of proposals

While the department considers that the Regulations are still required, they could be improved by making several minor amendments to the policy for administration of the IFIS. The proposals in this consultation document provide for the following changes to existing policy:

- increased flexibility for industry to satisfy mandatory requirements for the importation of some risk classified foods
- amended policy on weights and volumes of food taken to be for private consumption for risk classified foods and prohibited plants and fungi to account for contemporary commercial trade in food and to manage risks to human health
- amended Regulations to align the inspection rate variation for risk foods with current Australian Standards and international standards
- creating flexibility in application of the five per cent inspection of surveillance foods
- removal of some of the switching rules that have never been used under the IFIS.

The proposals are part of the department's review of the Regulations, and if supported, will seek to remake the Regulations with inclusion of these proposals during 2017.

Certification in the Regulations

The department is proposing a new policy to permit a recognised quality assurance certificate as an alternative to the current mandatory foreign government certification requirement for some risk classified foods. Under the Act, a recognised quality assurance certificate is an alternative means of demonstrating the safety of a food. This new policy will provide flexibility for industry because they will have the choice between using either option to demonstrate the safety of their food. The department will also make amendments to regulations 26, 27, 31 and 32 to clarify how food imported under certification is managed and inspected.

Prohibited plants and fungi in the Regulations

Section 7 of the Act does not apply to food that is for private consumption. Subsection 7(2) of the Act provides that food is taken to be imported for private consumption if it has a volume of less than 10 litres or a weight of less than 10 kilograms, unless the regulations prescribe a lower volume or weight. The Regulations currently prescribe lower weights and volumes for concentrated liquid food, moisture-reduced food and spices.

The department proposes a new policy which will make any amount of a prohibited plant or fungus subject to the Act because these have potential to affect human health if consumed. This would not prevent the importer from putting their case to the department that the food is for private consumption and is therefore exempt. This policy would support state and territory government food laws and no longer provide automatic exemption from the border inspection activity.

Risk classified food in the Regulations

Risk classified foods are known to pose a medium or high risk to human health. This policy will reduce the amount imported that is considered to be for private consumption from 10 kilograms

to one kilogram. Changing patterns of commercial imports indicate that high-value, low-volume imports of risk classified foods are occurring for commercial purposes. Amounts once considered for private consumption are now being used for commercial trade. This policy still provides for exemption from inspection where the importer declares the food to be for private consumption, but it no longer provides automatic exemption for weights of up to 10 kilograms.

This amendment means that more food is referred for inspection, increasing the costs for some food businesses operating in imports of small quantities. However, only food that is for commercial sale will be inspected because the importer has the opportunity to provide evidence the food is for private consumption. This will allow the appropriate regulation of imported food to achieve the outcomes of the Act in managing risks to human health.

Inspection and analysis of foods in the Regulations

The department has identified a range of issues with current regulations concerning rates of inspection in regulations 14 to 17 and 21, and with analysis applied in regulation 29. This proposal will amend the regulations to address each of the following issues:

- some rules have never been applied and on review are considered unnecessary
- other rules do not provide for a hazard to be initially analysed at a reduced rate for a risk classified food
- the rules which govern how inspection rates are reduced for risk classified foods are no longer consistent with the current Australian Standard 1199-1988 (Sampling procedures and tables for inspection by attributes) and other relevant international standards
- the department has also identified the need for more transparency in how it determines what analyses it will apply to surveillance foods.

Administration of the inspection of surveillance food in the Regulations

This policy will provide greater flexibility in how the department allocates the five per cent inspection 'envelope' across all surveillance classified foods. With this flexibility, the department could target infrequent and new food importers for inspection, or conduct other short-term targeted inspection activity in response to information gaps or community concerns. The department could then reduce surveillance inspection of imported food that will be used for food manufacturing within Australia. The flexibility would be provided through a notice published on the department's website.

This addresses the issue where surveillance foods may take some time before the current five per cent rate of inspection and analysis would randomly select an importer's goods. This anomaly means that non-compliance may not be detected until many months after the importer has been importing the food or after many consignments have been imported. This means that potentially non-compliant foods may have been released into the market. It also creates confusion because the importer has 'suddenly' been found to not comply when they may have been importing the food for many months.

Context

The department is one of many government agencies responsible for regulating food in Australia. The department administers two sets of requirements with which imported food must comply. Food imported into Australia must meet biosecurity requirements under the *Biosecurity Act 2015* (Cwlth). It is also subject to the *Imported Food Control Act 1992* (Cwlth) to meet requirements for food safety and compliance with Australia's food standards.

To monitor importers' compliance with sourcing food that meets Australia's food standards, the department operates a risk-based border inspection scheme—the Imported Food Inspection Scheme (IFIS).

Food Standards Australia New Zealand (FSANZ), an independent statutory authority within the Department of Health portfolio, develops and maintains the Australia New Zealand Food Standards Code (the Code). The Code lists Australia's food standards requirements including contaminants (such as microbiological and chemical), additives, labelling and genetically modified food, as well as production and processing standards.

FSANZ provides advice to the department on foods that pose a medium to high risk to public health. The department classifies these as risk food under the inspection scheme, and classifies all other food as surveillance food.

To identify which food is of interest, and the rate at which they should be referred (that is, whether at 100 per cent or five per cent of consignments), the department applies electronic profiles in the Department of Immigration and Border Protection Integrated Cargo System (ICS).

Once food is referred, the department's systems apply relevant tests and inspection rates based on the risk the food may pose and for some food, the compliance history of the food producer.

When imported food fails inspection, follow-up action such as treatment of the food to bring it into compliance, destruction or export is undertaken. Additionally, subsequent imports of the same food are subject to inspection at the rate of 100 per cent of consignments until a history of compliance is demonstrated.

In addition to the department's imported food testing, the state and territory governments and local governments have responsibility for ensuring that all food, including imported food, meets the requirements of the Code at the point of sale.

Why Regulations are needed

The Regulations are delegated legislation, impose legally-binding obligations and establish the rules for how the IFIS is administered by the department.

The Act provides the broad framework for ensuring food imported to Australia complies with Australian food standards and is safe to eat.

The Regulations made under this Act allow for more detailed requirements to set out how things will work on a practical level, such as inspection rates for different foods under the IFIS.

Why the Regulations need to be remade

The Regulations were drafted in 1992 and have had amendments made to them since that time. The format for the way they are currently drafted is no longer consistent with modern drafting practices and approaches that simplify legislation. For this reason, when the Regulations are remade there will be changes in the way they are formatted and they will be simplified. This process will not change the underlying policy for how the IFIS is administered.

The department in its preliminary review of the Regulations also identified several areas where minor amendments could be made to the current administrative policy to deliver improved outcomes. These are the proposals that are raised for consultation in this document.

Cost recovery not in scope

The fees and charges contained within the Regulations are out of scope for this review activity. These were reviewed in 2015, with new fees and charges commencing from 1 December 2015.

This document contains no cost-recovery proposals.

Imported food reforms not in scope

Reviewing the Regulations before their sunset on 1 October 2018 is a separate activity to the imported food reform work being conducted by the department. This review of the Regulations will only consider minor amendments to existing policy because the imported food reforms are addressing broader policy proposals to improve how we manage imported food safety risks.

Further information on the imported food reform work is available from the department's Imported Food Reform webpage.

Our proposals for change

Certification in the Regulations

Background

Some hazards can only be effectively managed during production and processing of food. In addition, end point inspection and analysis are not reliable in ensuring that hygienic controls have been used in the production and processing of food.

For these reasons, certification is used regularly by governments as a means for ensuring that hazards have been effectively managed and hygienic controls are used during the production and processing of a food.

Under the Act the Secretary of the department can determine recognised foreign government certificates and recognised quality assurance certificates.

For the purposes of this document 'food covered by certification' means food that is covered by either a recognised foreign government certificate or a recognised quality assurance certificate.

Current approach

The Regulations provide for:

- the Minister to make an order identifying a risk food as a food that must be covered by recognised foreign government certification (regulation 7(a)(ii))
- the holding of food while the food is subject to inspection (regulations 26 and 27)
- the rate of inspection and analysis to be reduced for risk foods that are covered by certification (regulations 31 and 32).

The issues with the current measures are:

- the need for more flexibility for importers by providing for recognised quality assurance certificates as an alternative to the required recognised foreign government certificates
- ensuring that regulations 31 and 32 work as intended and are flexible enough to deal with where an analysis is not possible, for example in the case of Bovine Spongiform Encephalopathy (BSE)
- ensuring that regulations 26 and 27 do not apply to a food covered by certification, unless that food is subject to a holding order, and that regulation 27 only applies after a suitable compliance history has been achieved.

Proposed approach

Recognised quality assurance certificates

Importers will be provided with more flexibility if the Minister for Agriculture and Water Resources is also authorised to make an order identifying a risk food as a food that must be covered by a recognised quality assurance certificate. This flexibility will be provided because

recognised foreign government certification is negotiated between governments, while recognised quality assurance certificates can be negotiated directly by the department with overseas food processing operations. This flexibility will provide a means for importers to source products from approved overseas food processing operations even if government certification arrangements are being developed.

It is proposed that regulation 7 be amended to authorise the Minister for Agriculture and Water Resources to make an order identifying a risk food as a food that must be covered by a recognised quality assurance certificate.

Flexible certification requirements

Regulations 31 and 32 provide for the rate of inspection to be varied if the owner produces either a recognised foreign government certificate or a recognised quality assurance certificate for a food. A recognised foreign government certificate is a certificate issued under section 18 of the Act. A recognised quality assurance certificate is a certificate issued under section 19 of the Act.

The authority in paragraph 16(2)(i) of the Act provides for regulation 31 to permit the rate of inspection of a food to be varied if there is no reason to doubt the authenticity of the certificate. The authority in paragraph 16(2)(j) of the Act provides for regulation 32 to establish that the reliability of a certificate referred to in regulation 31 may be verified by all three of the following:

- drawing samples of food at a rate that is not less than five per cent of the total consignments certified
- auditing the system operated by the foreign government instrumentality or approved overseas food processing operation
- conducting documentation checks by requiring the foreign government instrumentality to verify certificates.

To ensure that regulations 31 and 32 operate as intended, it is proposed that these regulations be redrafted, if necessary, to provide that:

- the rate of inspection and analysis of a risk food covered by certification may be lowered if a certificate is provided to an authorised officer and the officer has no reason to doubt the authenticity of the certification
- the reliability of the certification must be verified by:
  - inspecting (with or without sampling for analysis) no less than five percent of consignments of a risk food covered by certification
  - auditing
  - documentation checks for risk foods of a particular kind from a particular source.

Regulation 31 only provides for variation in the rate of inspection of a food if the owner of a food produces a recognised foreign government certificate to an authorised officer. The regulation does not provide for the foreign government instrumentality or overseas food processing operation to provide this certificate directly to the authorised officer. Governments are developing 'eCert' arrangements to prevent fraud and deception. Under these arrangements the

certificate is sent directly between governments rather than via the owner of the food. This mechanism provides greater certificate integrity.

To implement these arrangements and as authorised by s 16(2)(i), regulation 31 could be amended to provide that the certificate would be provided directly to the authorised officer and not by the owner of the food.

Holding of food covered by certification

Regulations 26 and 27 specify how food is to be held until the results of the inspection are provided in an imported food inspection advice issued under section 14 of the Act.

Regulation 26 applies to both risk food and food that is the subject of a holding order. After sampling of these foods, the remainder of a consignment of these foods must be held at the place nominated in the food control certificate. However, these foods may be held at another place if an authorised officer approves the food being held at another place. This provides for foods to be moved to particular storage places after sampling and until the results of the inspection are known and advice is issued.

Regulation 27 only applies to risk food that must be held at a particular place because of regulation 26, and does not apply to a food that is the subject of a holding order.

Regulation 27 provides that despite regulation 26, an authorised officer may 'release' a food if that food is so perishable that it cannot be held until the results of the inspection are finalised (that is, until an imported food inspection advice is issued). This provides for high value, highly perishable foods to be released prior to the imported food inspection advice being issued. However, an authorised officer must have approved this dealing with the food and any conditions imposed by the authorised officer for this dealing must be complied with.

In practice regulations 26 and 27 are not meant to apply to a risk food covered by certification. If necessary, regulations 26 and 27 should be amended to provide that they do not apply to a risk food that is covered by certification unless the risk food is the subject of a holding order that has not been revoked.

Regulations 26 and 27 use some expressions that are not defined and would provide greater clarity if amended. For example:

- 'results of the inspection are known' which may need to be described as 'imported food inspection advice is issued'
- 'release' which may need to be described as dealing with a food as if an imported food inspection advice had been issued for the food and that advice did not identify the food as failing food.

In addition, regulation 27 should only apply if a risk food has previously been inspected and analysed at least five times and the inspection and analysis have not identified the food as a failing food. Regulation 27 should be amended to provide that it only applies:

- after the five previous consignments of the food have been inspected and analysed
- for each of these five previous consignments both:

- an imported food inspection advice has been issued
- each imported food inspection advice did not identify the food as a failed food.

Prohibited plants and fungi in the Regulations

Section 7 of the Act provides that the Act does not apply to food that is for private consumption. Subsection 7(2) of the Act provides that food is taken to be imported for private consumption if it has a volume of less than 10 litres or a weight of less than 10 kilograms, unless the regulations prescribe a lower volume or weight. The Regulations currently prescribe lower weights and volumes for concentrated liquid food, moisture-reduced food and spices.

Background

Under the Act and the existing Regulations, up to 10 kilograms of a prohibited plant or fungus may be imported into Australia for private consumption. Once a food has been imported into Australia, state and territory food laws would prevent the sale or handling for sale of this food.

Prohibited plants and fungi have the potential to affect human health. For this reason, it is considered that additional controls should apply to these foods so that state and territory laws are not required to respond to a human health threat if these foods were sold or handled for sale.

Proposed approach

The Regulations be amended to provide that the Act would apply to any amount of a prohibited plant or fungus that is imported. Where the importer provides evidence that the food is for private consumption, the food would then be released as it is exempt from the Act requirements.

For the authorities in subsection 7(2) of the Act, this would mean prescribing a weight and volume of zero kilograms and zero litres for prohibited plants or fungi. The effect of this measure would be to ensure any amount of prohibited plant or fungus is referred for inspection and analysis under the IFIS.

On inspection, these foods would be found to be prohibited plants or fungi and therefore could not be imported for commercial purposes. This is the same approach that would apply to these foods under existing state and territory food laws.

This measure does not need to apply to food imported as a trade sample as this food is not for consumption by any person.

Proposal for inspection and analysis of foods in the Regulations

Background and current approach

A number of regulations specify the rate of inspection and analysis of foods, specifically:

- regulation 14 specifies the rate for which both risk foods and surveillance foods must be referred by Customs officers; all risk foods must be referred by a Customs officer and five per cent of surveillance food must be referred

- regulation 15 which specifies the three rates of inspection to which a risk food may be subjected, specifically: tightened (100 per cent), normal (25 per cent) and reduced (5 per cent). These descriptions for rates of inspection are consistent with the Australian Standard 1199, and are consistent with International Standards Organization Standard 2859, and is referenced in the Codex Guidelines on Sampling (CAC/GL 50-2004)
- regulation 16 which specifies the rates at which a risk food must initially be inspected, specifically, at the tightened rate if that risk food has the potential to pose a high risk to human health or at the normal rate if that risk food has the potential to pose a medium risk to human health
- regulation 17 which specifies the 'switching rules' (the rules)
- regulation 21 which specifies the rate of inspection of surveillance food and requires all surveillance food to be inspected
- regulation 29 which provides that any food may be subjected to any microbiological, chemical or physical analysis necessary to determine if the food poses a risk to human health or complies with an applicable standard.

For a risk food, the Regulations result in inspection and analysis that:

- reduce the rate of inspection of a food that is found to be compliant; this rewards owners of compliant food and allows the inspection to focus the inspection resources on those foods that are more likely to be non-compliant
- increase the rate of inspection of any food that is found to be non-compliant; this provides incentive to owners of non-compliant food to bring their food into compliance and also focuses inspection resources on those foods that are more likely to be non-compliant.

Specifically, the rules provide that the inspection and analysis of a risk food from a particular source may be:

- lowered from the tightened rate (100 per cent) to the normal rate (25 per cent) of inspection after five consecutive batches of the food pass inspection
- lowered from the normal rate (25 per cent) to the reduced rate (5 per cent) after 20 consecutive batches of the food pass inspection
- raised from the normal rate (25 per cent) to the tightened rate (100 per cent) when either a lot of the food is rejected on original inspection or there are reasonable grounds for believing the food does not comply with an applicable standard
- raised from the reduced rate (5 per cent) to the normal rate (25 per cent) when either a lot of the food is rejected on original inspection or there are reasonable grounds for believing the food does not comply with an applicable standard
- raised from the reduced rate (5 per cent) to the tightened rate (100 per cent) when either a lot of the food is rejected on original inspection or there are reasonable grounds for believing the food does not comply with applicable standards or poses a serious risk to human health.

Proposed Approach

The issues identified with the current regulations are:

- some rules have never been applied and are considered unnecessary
- the rules do not provide for a hazard to be initially analysed at a reduced rate for a risk food
- the rules are inconsistent with Australian Standard 1199 and the relevant international standards
- there is need for more transparency in determining the analysis of foods.

Unnecessary rules

The department has never used the rule where the rate of inspection and analysis is raised from the reduced rate (5 per cent) to the normal rate (25 per cent) in sub-regulation 17(5). This is because foods that have been found to be non-compliant are inspected and analysed at the 100 per cent rate to ensure any non-compliance has been resolved. It is proposed that the rule in subregulation 17(5) be removed.

The department has never applied the rule where the normal rate (25 per cent) applies because the risk food has the potential to pose a medium risk to human health (subregulation 16(2)). It is proposed that this rule be removed. As a consequence of the removal of this rule, it would be necessary to amend subregulation 16(1) so that consistent with regulation 9, it refers to food that poses either a medium or high risk to human health.

Reduced rate for a risk food

Some hazards in risk foods have the potential to pose a high risk to human health and should be initially analysed for at the tightened rate. However, some hazards in the same food may not pose a high risk to human health and it is appropriate that these hazards be analysed for only at the reduced rate. The current Regulations do not specifically provide this more proportionate approach.

It is proposed that the Regulations be amended to provide that an analysis for a hazard may be commenced at the reduced rate if the hazard does not have the potential to pose a medium or high risk to human health.

Inconsistency with Australian and international standards

The Regulations require 20 consecutive batches of food to pass inspection before the rate of inspection and analysis may be lowered from the normal rate (25 per cent) to the reduced rate (5 per cent). However, the rules provide that only 10 consecutive batches are required to warrant a reduction from the normal rate to the reduced rate.

To align more closely with Australian and international standards, it is proposed to provide that only 10 consecutive batches would need to pass inspection before the rate of inspection and analysis could be lowered from the normal rate (25 per cent) to the reduced rate (5 per cent).

Transparency in determining the analysis of foods

Inspection and analysis of foods can impose substantial costs on importers in terms of analysis costs and time in waiting for analyses to be reported. Currently, regulation 29 provides a general discretionary authority that allows the department to subject any food to any microbiological, chemical or physical analysis necessary to determine if the food poses a risk to human health or

complies with an applicable standard. This general discretionary authority has not currently been assigned to any position of authority within the department.

The department proposes that this authority be exercised by the Secretary, which could then be delegated to appropriate officers in the department. This amendment would provide clear responsibility as to the person who imposes an analysis on a food.

Proposal for risk classified food in the Regulations

Section 7 of the Act provides that the Act does not apply to food that is for private consumption. Subsection 7(2) of the Act provides that food is taken to be imported for private consumption if it has a volume of less than 10 litres or a weight of less than 10 kilograms, unless the regulations prescribe a lower volume or weight. The Regulations currently prescribe lower weights and volumes for concentrated liquid food, moisture reduced food and spices.

Background

Under the Act and existing Regulations, less than 10 kilograms of risk-classified food may be imported into Australia for private consumption. This is because the Act provides that an amount less than 10 kilograms is taken to be for private consumption unless the regulations prescribe a lower amount. A lower amount has not been prescribed for risk foods.

The Act does not apply to foods imported for private consumption. As a result, risk food imports of 10 kilograms or less are not required to comply with the Act, including the certification requirements for those risk foods where this is a mandatory certification requirement. This provides potential for importers to import quantities of high-value risk food for commercial purposes and not be subject to inspection, analysis and certification requirements under the IFIS.

Import data for a twelve month period indicated there were 5 652 lines of risk-classified food declared with a weight of up to 10 kilograms. Of these, approximately half were for risk classified cheese.

Proposed approach

That the Regulations be amended to provide that risk food for private consumption be an amount that is not more than one kilogram. The effect of this measure would be to ensure that any amount of risk food over one kilogram is referred for inspection and analysis under the IFIS. On inspection these foods would need to meet the requirements for risk food, including any mandatory certification requirements.

This regulation would not restrict risk food imports that are greater than one kilogram from being imported for private consumption, provided that the person importing could demonstrate that the food was for their private consumption.

For the authorities in subsection 7(2) of the Act to apply, this proposal would require the Regulations to prescribe a weight of one kilogram for risk-classified food that is taken to be imported for private consumption.

As a transitional measure, the Regulations (as amended) and the Imported Food Control Order 2001 could provide that, for amounts between 10 kilograms and one kilogram, the new

requirements would not be imposed for a period of three months. During this time, industry would be advised of these coming changes through information published on the department's website and during the physical inspection of any risk food requiring inspection within the range of one to 10 kilograms.

This measure would not need to apply to foods imported as a trade sample as this food is not for consumption by any person.

Proposal for administration of the inspection of surveillance food in the Regulations

Background and current approach

A number of regulations specify that five per cent of surveillance food must be inspected.

Currently, the five per cent inspection rate is applied as a flat rate across all surveillance foods.

A problem with the current regulations is the greater potential for non-compliance with imports of surveillance food by infrequent or new food importers, and the disruption and uncertainty when these importers of surveillance food are found to be importing non-compliant food.

Another problem is that if there is an identified information gap or a community concern about a specific surveillance food, the current application of the five per cent inspection rate means it may take significant time for the department to gather information on that specific surveillance food under the IFIS.

Proposed approach

That the Regulations be amended to provide greater flexibility in the way that the department allocates the five per cent inspection envelope across all surveillance-classified foods.

With this flexibility, the department could target infrequent and new food importers for inspection, or conduct other short-term targeted inspection activity in response to information gaps.

There will be a corresponding reduction in other surveillance foods to ensure the overall inspection rate for all surveillance foods does not exceed five per cent. For example, inspection of surveillance foods that would be used for domestic food manufacturing could be less than five per cent, as these foods are subject to post-border food regulatory controls. Inspection could be set at zero per cent to minimise the regulatory burden on Australian food manufacturing, or raised to five per cent where data may be required to inform government, or to 100 per cent where there are reasonable grounds to believe that food would be a failing food.

The flexibility would be through a notice published on the department's website and indicate if specific surveillance foods will be targeted at a rate greater than five per cent.

Glossary

Authorised officer	means the Secretary of the Department of Agriculture and Water Resources; or an Australian Public Service employee in the department appointed by the Secretary under subsection 40(1) of the Imported Food Control Act 1992; or, with some exclusions, a person appointed by the Secretary under subsection 40(2).
Compliance agreement food	An agreement which may be entered into by the Secretary with a person in relation to food that may be imported into Australia in accordance with the terms of the agreement.
Customs officer	Reference to a Customs officer is reference to an Officer of Customs within the meaning of the *Customs Act 1901*, which includes such officers as the Secretary of the Department of Immigration and Border Protection or an Australian Public Service employee of that department. Refer to the Customs Act for further detail.
Food control certificate	Issued by an authorised officer following application by the owner of the examinable food to which the application relates for food which is to be inspected, or inspected and analysed under the food inspection scheme.
Foreign government certificate	A certificate issued by an instrumentality of a specified foreign government stating that food of a specified kind meets applicable standards and does not pose a risk to human health.
FSANZ	Food Standards Australia New Zealand is a bi-national government agency responsible for developing food standards and administering the Australia New Zealand Food Standards Code. FSANZ conducts the food risk assessment and advises the Department of Agriculture and Water Resources about food that poses a medium to high risk to human health and safety.
Holding order	A legal document provided for in the *Imported Food Control Act 1992*. Use of a holding order increases the rate of inspection of a failing food until subsequent imports demonstrate compliance with the requirements of the Act.
ICS	Integrated Cargo System is an application managed by the Department of Immigration and Border Protection and used to electronically report and record imports and exports coming into and leaving Australia. The application allows for the collection of duty and GST, and is used to monitor the movement of goods, capture statistics and for intelligence purposes.

IFIS	The imported food inspection scheme, or food inspection scheme, provided for under s16 of the *Imported Food Control Act 1992*, and set out in the Imported Food Control Regulations 1993, provides for inspection of food at various rates at the border in order to assess importer compliance with sourcing food that meets Australian food standards and does not pose a risk to human health.
Inspection	Includes physical inspection (visual and label assessment), or inspection and analysis (samples taken and sent for analysis), as the case requires.
Recognised quality assurance certificate	Certificate issued under a determination made by the Secretary of the Department of Agriculture and Water Resources which states that particular food processed in a particular food processing operation meets applicable standards and does not pose a risk to human health.
Risk food	Food which is set out in Schedule 1 of the Imported Food Control Order 2001.
Safe food	Food that will not cause illness or other physical harm to a person eating it, provided that the food is used as it is intended to be used.
Surveillance food	Food which is not classified as risk food, compliance agreement food or is the subject of a holding order, and which is referred to the electronic recording system, the Agriculture Import Management System.
Switching rules	Colloquial term referring to the rules in regulation 17 of the Imported Food Control Regulations 1993 for varying the rate of inspection for a risk food from a particular source. The rules are based on Australian Standard 1199–1998 Sampling procedures and tables for inspection by attributes; Australian Standard 2490-1997 Sampling procedures and charts for inspection by variables for percent nonconforming; and are consistent with International Standards Organization Standard 2859-1999-Sampling procedures for inspection by attributes; and referenced in the Codex Guidelines on Sampling (CAC/GL 50-2004).