



Australian Government
**Department of Agriculture
and Water Resources**

Final report of the review of the Imported Food Control Regulations

Imported Food Section

Compliance Arrangements Branch, Compliance Division



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Introduction

The Department of Agriculture and Water Resources (the department) is reviewing the Imported Food Control Regulations 1993 (the Regulations) prior to their sunset on 1 October 2018.

In October 2016 the department established a Review Panel to undertake the review in advance of the Regulations' sunset; and to oversee a public consultation to determine if the Regulations are still required, and if so, whether they are fit for use.

The Review Panel was comprised of representatives from the department including the Assistant Secretary, Compliance Division; Director, Principal Scientist and Technical Managers in Imported Food; Assistant Director, Compliance Partnerships; and a representative from Food Standards Australia New Zealand. Following the settling of this report, the Review Panel had discharged its responsibilities under the Terms of Reference by which it was formed, and it was disbanded. This is the final report of the Review Panel and its recommendations to the department.

In December 2016 the department invited submissions on a range of policy proposals being considered as part of the review. The period of consultation closed on 24 February 2017.

A total of five submissions was received: two from domestic food peak bodies – the Australian Food and Grocery Council (AFGC) and the Food & Beverage Importers Association (FBIA); and three from overseas government authorities – the Thai Department of Fisheries (DOF), the Thailand Department of Agriculture (DOA), and the United States Department of Agriculture (USDA).

All submissions have been published on the [department's website](#), along with the original [consultation document](#). The department's responses to the comments and issues raised in the submissions can be found at Attachment A.

Key milestones

The department's Review Panel has assessed all submissions and considered what amendments may be required to address the issues raised, while still achieving the objectives of the *Imported Food Control Act 1992* (the Act). This report contains the recommended proposals for the department to proceed with in remaking the Regulations.

The department is reviewing the recommendations of the Review Panel and proposes to conduct a second period of public consultation in August 2017 when an exposure draft of the remade Regulations and supporting documents have been prepared.

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

Table 1 Key dates for remaking of the Regulations

Date	Action
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 Regulations set out provisions relating to the operation of the Imported Food Inspection Scheme (IFIS) and provide for:

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

Under the *Legislation Act 2003*, legislative instruments made between 1990 and 1994 will automatically be repealed on 1 October 2018. Where appropriate, a remade instrument must be made and registered before the existing instrument sunsets to ensure continuity of the law.

The Regulations are due to sunset on 1 October 2018 and the process is now underway to review their content and remake them with minor changes to existing policy to address clearer laws principles, current drafting practices and modernise the regulatory approach where considered necessary. Improvements in construction and reduction in complexity of the Regulations will also occur.

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

Links to imported food legislation

The following are links to the relevant legislation:

- [Imported Food Control Act 1992](#)
- [Imported Food Control Regulations 1993](#)
- [Imported Food Control Order 2001](#)

What was reviewed

The department's Review Panel completed a review, of which public consultation was a part, to ensure that the Regulations are still relevant and required. As a result of the review, the Review Panel recommends that the Regulations:

- are still required in order to achieve the objectives of the Act, however amendments are needed to ensure their continued relevance and compliance with current legislative drafting practices
- need to meet the requirements of industry and government into the future, noting that the scope for this review extends only to minor amendments to existing policy
- need to be clear, transparent and easy to understand.

While the Review Panel considers that the Regulations are still required, they would be improved by making minor amendments to the policy for administration of the IFIS. The Review Panel

recommends the following changes to existing policy for consideration when remaking the Regulations:

- 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
- greater flexibility in application of the five per cent inspection of surveillance foods
- removal of some of the switching rules under the IFIS, by which the rate of inspection for a risk food from a particular source may be varied; the rules have never been used
- formalising the authority of authorised officers to request (not require) that a person provide information about a food so that the food can be efficiently and correctly inspected under the IFIS.

What was not reviewed

Fees and charges set out in the Regulations are out-of-scope for the review, as are aspects of the IFIS which are being considered as part of other reviews being conducted by the department.

This review of the Regulations only considered minor amendments to existing policy because the imported food reforms being undertaken by the department will address broader policy proposals on how we manage imported food safety risks.

Further information on the imported food reform work is available on the department's [Imported Food Reform webpage](#).

Feedback on our proposals for change

Summary

All stakeholders generally supported the proposed measures as outlined in the section 'What was reviewed'. The FBIA and the AFGC submitted an additional issue for the department's consideration regarding the definition in the Act of a trade sample; this issue is dealt with in the section 'Feedback on out-of-scope issues'.

In addition, the AFGC provided comments on projects which it has underway, and suggested that it may collaborate with the department on developing these initiatives. These items are also out of scope for this project and the department will discuss them directly with the AFGC.

Review Panel recommendations

The Review Panel considers that the Regulations are still required and could be improved by making minor amendments to the following policies for administration and operation of the IFIS.

More certification options

Permit a recognised quality assurance certificate as an alternative to the current mandatory foreign government certification requirement for some risk-classified foods. This new policy would provide flexibility for industry which would be able to use a quality assurance certificate if there was no recognised foreign government certificate arrangement to demonstrate the safety of its food.

More effective inspection of prohibited plants and fungi

Make any amount of a prohibited plant or fungus subject to the Act because they have potential to affect human health if consumed. This would not prevent importers from putting their case to the department that the food was intended for private consumption and therefore exempt from the Act.

Improved scrutiny of risk-classified food

Reduce the imported amount of risk-classified food that is considered to be for private consumption from 10 kilograms to one kilogram in any one consignment. 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.

Modernising the inspection and analysis of foods

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 need for more transparency in how the department determines what analyses it will apply to surveillance foods.

Flexibility in the inspection of surveillance food

Provide greater flexibility with 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 or community concerns. The department could then reduce

surveillance inspection of other imported food such as food which will be used for food manufacturing in Australia.

Powers of authorised officers

At its final meeting, the Review Panel identified another minor amendment which is recommended for inclusion.

Provide a specific measure to reflect current practice by which authorised officers have the power to request (not require) that a person provide information about a food so that the food can be efficiently and correctly inspected under the IFIS.

Feedback on out-of-scope issues

Certification in the Regulations

AFGC stated that it is undertaking a project '*A National Approach to Food Safety Certification*' (summary attached to submission) aimed at reducing duplication in food safety audit certification, and for safety certification with Australia's domestic food industry, including by governments, supermarkets and food companies, to be undertaken by appropriately trained and skilled third party auditors. The department will follow up separately with the AFGC on this important matter.

Food that is imported as a trade sample

The FBIA and AFGC requested that provision be included in the Regulations to allow for organoleptic and taste-test evaluation of a food which is imported as a trade sample, as commercial evaluation requires taste-testing. The prohibition on consumption by any person prevents an adequate evaluation of a food and voids the exemption for a trade sample.

The department agrees that proper commercial evaluation of food is likely to require taste testing to determine the organoleptic and taste properties of the sample. Amendments to the Act would be required to enact any policy change to this proposal, and the required amendments are being addressed through reform work currently underway in the department, as can be viewed in the [Imported Food Control Amendment Bill 20XX](#).

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) of the Act.
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.
Food Standards Code	The Standards in the Australia New Zealand Food Standards Code are legislative instruments under the <i>Legislation Act 2003</i> . The Code is enforced in Australia by state and territory authorities, the Department of Agriculture and Water Resources for imported food and the New Zealand Ministry for Primary Industries.
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 food risk assessments and advises the Department of Agriculture and Water Resources about food that has the potential to pose a medium or high risk to public health.
Holding order	Issued under section 15 of the <i>Imported Food Control Act 1992</i> . Use of a holding order increases the rate of inspection of a food until subsequent imports demonstrate compliance with the requirements of the Act.
IFIS	The imported food inspection scheme, or food inspection scheme, provided for under s16 of the <i>Imported Food Control Act 1992</i> , 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 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.
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 to the Imported Food Control Order 2001.
Surveillance food	Food which is not classified as risk food, compliance agreement food or 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).

Attachment A

Table 2 Summary of consultation submissions and the department's responses — Certification

Summary of the issue – Certification	Department's response
Food and Beverage Importers Association (FBIA) supports the proposed changes in relation to certification.	Noted.
Australian Food and Grocery Council (AFGC) supports this measure.	Noted.
Thai Department of Fisheries (DOF) supports the proposed policy on the use of QAC issued by the processor provided that Australia liaises directly with the company; the activities should not require DOF's oversight.	Noted and agreed.
DOF would like clarification on the criteria for classification of risk food that qualifies for QAC application.	Recognised quality assurance certificates (QAC) may apply to any food from an approved overseas manufacturer. Currently Schedule 1 of the Imported Food Control Order 2001 lists those risk foods that may be imported only if accompanied by a recognised foreign government certificate (RFGC). Currently this applies to beef, beef products, some uncooked ready-to-eat meat and raw milk cheese.
DOF questions if a risk food is entitled for QAC provision, will a processor have a choice of using either QAC or government issued health certificate for a shipment? DOF questions if a processor opts for QAC, will all its subsequent shipments be accompanied only by self-issued certificates? DOF believes that a processor should not be given an option to use either QAC or government issued health certificate for a shipment. A processor should only select one method of certification for its business. This is due to the fact that some shipments might be refused certification by the government authority because of quality or safety issues, nevertheless the processor may still export the products accompanied by self-issued QAC.	The department prefers to rely on recognised foreign government certification. The change to the Regulations proposed in the consultation document <i>Proposals for changes to imported food regulations</i> would provide flexibility by allowing those risk foods to be covered by a recognised QAC where there is no RFGC in place for that country.
DOF questions regarding eCerts, whether it will be possible for an importer to choose to provide hard-copy government-issued health certificates or will they be restricted to electronic transfer only?	Upon introduction of the changes, the department would accept both forms – electronic and hard copy. However we would expect that the information on each version of the form would be consistent with the other.
Thailand Department of Agriculture (DOA) supports the application of the eCert as it is expected to increase working efficiently, facilitate trade and prevent document fraud.	Noted.

Summary of the issue – Certification	Department's response
<p>United States Department of Agriculture (USDA) states that under proposed approaches, Australia notes the term “risk foods”. Will Australia please clarify what is meant by “risk foods” that must be covered by a “recognised foreign government certificate”?</p>	<p>A food is a risk food if it is classified as a risk food in the Imported Food Control Order 2001 (the Order). The Minister for Agriculture and Water Resources may classify a food as a risk food in the Order if Food Standards Australia New Zealand (FSANZ) has advised the Minister that the food has the potential to pose a medium or high risk to public health. Foods classified as risk foods are regularly reviewed by FSANZ.</p> <p>For some risk-classified foods, assurances about the management of hazards through the supply chain are required to ensure the hazards have been satisfactorily managed. For these risk foods, foreign government certification is required. Currently Schedule 1 to the Order identifies beef and beef products, raw milk cheese and uncooked ready-to-eat meat products (for example, salami) as risk foods for which foreign government certification is required.</p>
<p>USDA questions how frequently does Australia expect to identify a “risk food,” and how will Australia notify its trading partners when a food has been identified as a “risk food” requiring certification?</p>	<p>Risk foods are identified through FSANZ’s risk assessment processes and subsequently advised to the Department of Agriculture and Water Resources (the department).</p> <p>The department issues a WTO SPS notification and seeks comment whenever it is proposed that a food be either:</p> <ul style="list-style-type: none"> • classified as a risk food; or • classified as a risk food for which foreign government certification is required.
<p>USDA questions whether, as Australia mentions flexible certification requirements, but does not provide clarity into attestations, will Australia accept official certificates attesting that the product being certified meets the requirements of the exporting country (or that covered products may be freely sold in the country of origin)?</p>	<p>The form (including any attestations) of government certifications is based upon negotiation with the overseas government authority. The certification arrangement is based upon the overseas food safety controls being equivalent to those in Australia - providing satisfactory controls for known hazards and producing safe food. The form (including attestations) may vary between countries or government authorities depending upon outcomes of Australia’s assessment of the authority’s regulatory system.</p>

Table 3 Summary of consultation submissions and the department's responses – Prohibited plants and fungi

Summary of the issue – Prohibited plants and fungi	Department's response
<p>FBIA has no objection to this proposed change.</p>	<p>Noted.</p>
<p>AFGC supports this measure.</p>	<p>Noted.</p>
<p>DOA supports the measure to make any amount of prohibited plant and fungus subject to the Act, replacing the 10 litres or 10 kilograms for private consumption which can be exempt from regulatory inspection. This will be in line with Thailand’s Plant Quarantine Act 1964 (B.E. 2507) where any amount of prohibited substance is considered to contain risk and shall be subject to risk control conditions.</p>	<p>Noted.</p>

Table 4 Summary of consultation submissions and the department's responses — Risk-classified foods for private consumption

Summary of the issue – Risk-classified foods for private consumption	Department's response
FBIA supports this proposed change.	Noted.
AFGCs supports this measure.	Noted.

Table 5 Summary of consultation submissions and the department's responses — Inspection and analysis of food

Summary of the issue – Inspection and analysis of food	Department's response
FBIA supports these proposed changes as they will remove unnecessary costs and are consistent with best practice.	Noted.
AFGCs supports this measure as it will have the capacity to reduce regulatory and compliance costs for government and industry while improving certainty and transparency for food importers.	Noted.

Table 6 Summary of consultation submissions and the department's responses — Inspection of surveillance food

Summary of the issue – Inspection of surveillance food	Department's response
FBIA agrees that the Regulations are still required to implement the Imported Food Inspection Scheme.	Noted.
AFGCs supports this measure, and states that with respects to the use of industry and government intelligence to better target the surveillance of food imports in the 5% general surveillance category, it would be prepared to assist the department with this measure.	Noted. The department will follow up separately with the AFGC.
AFGCs supports all of the five proposed measures as being appropriate measures to achieve best practice regulation, and recommends that the department proceeds with these measures.	Noted.
USDA questions whether in the event that Australia finds that an importer is not in compliance, will the restrictions be applied to all products imported by the importer? Or will the restrictions be specific to individual products and producing establishments?	<p>The proposals for amendments to the Imported Food Control Regulations 1993 (the Regulations) will not affect how the Imported Food Inspection Scheme currently operates in relation to non-compliant food.</p> <p>If a particular food from a particular overseas producer or supplier is found to be non-compliant, it is identified as a failing food, and all consignments of that food from that specific source are inspected (tightened rate of inspection) until a history of compliance is established.</p> <p>By the proposed amendments to the Regulations, the department will have discretion to increase inspection rates for some situations</p>

Summary of the issue – Inspection of surveillance food	Department's response
	(such as new or infrequent food importers or a specific food) and reduce the inspection rate of certain food, for example, food which would be used for domestic food manufacturing, to less than the five per cent surveillance rate.
<p>USDA questions whether, as Australia acknowledges that non-compliant food may be imported many months before the product is determined non-compliant, will Australia recall previously imported products that were found in compliance? What criteria will Australia use to determine if a product is non-compliant?</p>	<p>The proposals for amendments to the Regulations will not change the current processes for food recall or assessment of whether a food complies with food safety requirements and the Australia New Zealand Food Standards Code.</p> <p>The department has identified a potential risk of non-compliance where new or infrequent importers are not aware of their legal responsibilities. The proposal is to allow the department to target consignments of food imported by new or infrequent importers to actively monitor their compliance, rather than wait for the usual random selection of consignments.</p> <p>There are no changes to the post-border regulation of food in this proposal.</p> <p>Food recalls are a post-border activity and undertaken voluntarily by the food business or by the relevant state or territory government depending upon the circumstances. Food recalls may be triggered in response to food business verification checks, consumer complaints or government monitoring.</p>