Quarantine Amendment Regulations 2007 (No. 1)

Select Legislative Instrument 2007 No. 28

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the Quarantine Act 1908 and the Legislative Instruments Act 2003.

Dated 1 March 2007

P. M. JEFFERY
Governor-General

By His Excellency’s Command

PETER McGAURAN
Minister for Agriculture, Fisheries and Forestry
1 Name of Regulations
   These Regulations are the *Quarantine Amendment Regulations 2007 (No. 1)*.

2 Commencement
   (1) Subject to subregulation (2), these Regulations commence as follows:
       (a) on the day after they are registered — regulations 1 to 3;
       (b) on a day fixed by legislative instrument made by the Minister — Schedule 1.
   (2) If Schedule 1 does not commence within the period of 6 months beginning on the day on which the Regulations are registered, it commences on the first day after the end of that period.
   (3) A legislative instrument made under subregulation (1) is prescribed for the purposes of the table in subsection 44 (2) of the *Legislative Instruments Act 2003* (so that the instrument is not subject to the disallowance provisions of that Act).
   (4) A legislative instrument made under subregulation (1) is prescribed for the purposes of the table in subsection 54 (2) of the *Legislative Instruments Act 2003* (so that the instrument is not subject to the sunsetting provisions of that Act).

3 Amendment of Quarantine Regulations 2000
   Schedule 1 amends the Quarantine Regulations 2000.
Schedule 1 Amendments
(regulation 3)


\emph{omit}
As at 23 June 2000,

\emph{insert}
Currently,


\emph{insert after dot point 6}
• Part 6A — Import Risk Analysis


\emph{substitute}
7.9 Part 6A sets out certain steps to be carried out in the conduct of a standard or expanded import risk analysis, the timeframes that are to apply to those steps, publication requirements and provisions for termination.

7.10 Part 7 contains the miscellaneous provisions. Matters dealt with in Part 7 include:
• permit applications under the Proclamations (see regulations 70 and 71)
• compliance agreements mentioned in section 66B of the Act (see Division 2)
• seizure, and notices of seizure, of animals, plants or other goods under section 68 or 69 of the Act (see Division 3)
• generally how notices and information may be given (see Division 4)
• how certain rights and obligations under the Quarantine (General) Regulations 1956 are affected by the repeal of those Regulations.
[4] After regulation 69

insert

Part 6A Import risk analysis

69A Scope of Part 6A

This Part deals with import risk analysis.

Note 1 The Chief Executive may make an administrative decision to conduct a risk analysis under this Part.

Note 2 An IRA may be taken into account in a decision as to whether an import permit may be granted under the Act, but is not a precondition on the grant of such a permit (see subregulation 69C (4)).

69B Definitions for Part 6A

In this Part:

Biosecurity Australia means the body that is a prescribed Agency under the Financial Management and Accountability Regulations 1997 and located in the Department of Agriculture, Fisheries and Forestry.

Chief Executive means the person occupying, or performing the duties of, the office within the Department of Agriculture, Fisheries and Forestry known as Chief Executive of Biosecurity Australia.

Eminent Scientists Group means those independent persons appointed by the Secretary to examine and comment on drafts of IRA reports before they are published.

expanded IRA is an IRA that involves the steps in subregulation 69C (2).

import risk analysis, or IRA, means a risk analysis conducted under this Part.

proposer means the person who proposes the importation into Australia of plants, animals or other goods that are the subject of an IRA.

risk analysis means the assessment of the level of quarantine risk associated with the importation, or the proposed importation, of animals, plants or other goods and, where
necessary, the identification of risk management options to limit the level of quarantine risk to 1 that is acceptably low.

*standard IRA* is an IRA that involves the steps in subregulation 69C (1).

### 69C Steps in an IRA

1. A standard IRA must include the following steps:
   - (a) the Chief Executive giving public notice of the start of the IRA;
   - (b) Biosecurity Australia preparing and publishing a report to communicate the preliminary results of the IRA (*draft IRA report*);
   - (c) Biosecurity Australia inviting the public to provide submissions on the draft IRA report;
   - (d) Biosecurity Australia considering submissions received from the public and preparing and publishing a report to communicate the final results of the IRA (*provisional final IRA report*).

2. An expanded IRA must include the following steps:
   - (a) the Chief Executive giving public notice of:
     - (i) the start of the IRA; and
     - (ii) whether a paper setting out issues that will assist with the assessment of the level of quarantine risk for the proposed importation (*issues paper*) will be produced by Biosecurity Australia;
   - (b) if an issues paper is produced, Biosecurity Australia preparing and publishing that paper;
   - (c) if an issues paper is produced, Biosecurity Australia inviting the public to provide submissions on the issues paper;
   - (d) Biosecurity Australia considering submissions received in response to an invitation under paragraph (2) (c) and preparing and publishing a draft IRA report;
   - (e) Biosecurity Australia inviting the public to provide submissions on the draft IRA report;
   - (f) Biosecurity Australia considering submissions received from the public and revising the draft IRA report;
(g) the Eminent Scientists Group examining and commenting on the draft IRA report;

(h) Biosecurity Australia considering the Eminent Scientists Group’s comments and preparing and publishing a provisional final IRA report.

(3) For an IRA, a failure to comply with a step required by subregulation (1) or (2) does not affect the validity of a report published by Biosecurity Australia in respect of the IRA.

(4) The preparation and publication of a report under this Part is not required before a decision can be made as to whether an import permit may be granted under the Act.

Note 1 A provisional final IRA report may be the subject of non-statutory review by an IRA Appeal Panel administered by the Department of Agriculture, Fisheries and Forestry. It will be a final report when such review is no longer available or, if such review is undertaken, when that review has been completed and any findings of the Panel taken into account.

Note 2 The Chief Executive may make an administrative non-statutory decision to conduct a risk analysis to which this Part will apply. If the Chief Executive chooses to conduct an IRA, he or she may determine whether it will be conducted in accordance with subregulation (1) or (2).

69D Time limits for submissions and comments

(1) Submissions from the public under paragraphs 69C (1) (c), (2) (c) and (2) (e) must be provided within the period specified in the invitation.

(2) The period specified in the invitation must be no more than 60 days from and including the day the invitation is published.

(3) If the Chief Executive considers that members of the public may not have a reasonable opportunity to consider a draft IRA report, the Chief Executive may extend the time for public submissions once, for no more than an additional 60 days.

(4) Comments on a draft IRA report under paragraph 69C (2) (g) must be provided by the Eminent Scientists Group no more than 60 days from and including the day the report is received by the Chair of the Group for examination.
69E Time limits for completing IRAs

(1) A standard IRA must be completed within the period of 24 months commencing on the day public notice of its start was given.

(2) An expanded IRA must be completed within the period of 30 months commencing on the day public notice of its start was given.

Note In calculating the time under subregulations 69E (1) and (2), the periods of time mentioned in regulation 69H should be disregarded.

69F Failure to complete within time limits

For an IRA, a failure to comply with the time limits set by regulations 69D and 69E does not affect the validity of a report published by Biosecurity Australia in respect of the IRA.

69G Circumstances affecting completion of an IRA

(1) If the Chief Executive believes that further information is essential to complete an IRA and that a proposer or another person can provide the information, the Chief Executive may request, in writing, that the proposer, or the other person, provide the information.

(2) If the Chief Executive believes that it is essential to undertake research, or to seek substantial expert advice, to complete an IRA, the Chief Executive may commission the research or advice.

(3) The Chief Executive may decide that a significant national or international quarantine circumstance exists that limits Biosecurity Australia’s ability to complete an IRA within the time required under subregulation 69E (1) or (2).

69H Certain periods of time to be disregarded

(1) For the purpose of calculating the time taken to complete an IRA under subregulation 69E (1) or (2), the time covered by a notice published under this regulation is to be disregarded.
(2) The Chief Executive may publish a notice for the IRA stating:
   (a) that the counting of time for subregulation 69E (1) or (2) is to stop because of an action or a decision under regulation 69G affecting completion of the IRA; and
   (b) the day the counting of time for subregulation 69E (1) or (2) is to stop, not being a day before the day the notice is published; and
   (c) the action or decision taken by the Chief Executive under regulation 69G in respect of the IRA; and
   (d) the day the counting of time for subregulation 69E (1) or (2) is to restart (restart day).

(3) The Chief Executive may change the restart day to an earlier or later day than the day stated in the notice, or take action under regulation 69J, after considering the following matters:
   (a) if a request was made under subregulation 69G (1), whether the proposer or other person has provided an adequate response to the request;
   (b) if research or expert advice was commissioned under subregulation 69G (2), whether adequate research or advice has been obtained;
   (c) if a decision is made under subregulation 69G (3), whether the circumstance still exists.

(4) If the Chief Executive decides to change the restart day under subregulation (3), the Chief Executive must publish a notice stating the changed restart day and the reasons for the changed restart day.

69I Publication

(1) A notice under paragraphs 69C (1) (a) and (2) (a), and an invitation under paragraphs 69C (1) (c), (2) (c) and (2) (e), must be published on Biosecurity Australia’s website.

(2) A notice under paragraphs 69C (1) (a) and (2) (a) must state if a standard IRA or an expanded IRA will be conducted and, for an expanded IRA, if an issues paper will be produced.
(3) An invitation under paragraphs 69C (1) (c) and (2) (e) must state where a draft IRA report has been published, invite written submissions on that report and specify the closing day for submissions in accordance with regulation 69D.

(4) An invitation under paragraph 69C (2) (c) must state where an issues paper has been published, invite written submissions on that paper and specify the closing day for submissions in accordance with regulation 69D.

(5) A report or issues paper under paragraph 69C (1) (b) or (d), or 69C (2) (b), (d), or (h), or a notice under regulation 69H or 69J, must be published on Biosecurity Australia’s website.

**69J Termination of an IRA**

(1) An IRA may be terminated at any step if:

   (a) a proposer notifies Biosecurity Australia in writing that the proposer no longer wishes to proceed with the proposal to import; or

   (b) despite requesting information under subregulation 69G (1), or commissioning research or advice under subregulation 69G (2), the Chief Executive determines that insufficient information is available to complete the IRA satisfactorily and notifies the proposer in writing accordingly; or

   (c) for an IRA that does not have a proposer, the Chief Executive decides to terminate the IRA.

(2) Before the IRA is terminated under paragraph (1) (b), the Chief Executive must notify the proposer, in writing, that the IRA has proceeded as far as possible on the available information and cannot be completed.

(3) The Chief Executive must publish a notice of a termination of an IRA under this regulation.

**69K Risk analysis that has been started**

(1) If a risk analysis other than an IRA has been started either before or after the commencement of this Part, the Chief Executive may elect to continue that risk analysis as an IRA.
(2) In making the election, the Chief Executive may decide to omit any steps required under regulation 69C that have been completed before the election.

(3) The Chief Executive must publish a notice of the election on Biosecurity Australia’s website, stating:
   (a) if a standard IRA or an expanded IRA is to be conducted; and
   (b) the steps that are to be omitted under subregulation (2).

(4) The time limits in subregulations 69E (1) and (2) are to be calculated for the IRA from the day the Chief Executive publishes the notice.

[5] Regulation 69A

renumber

69Z

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the Legislative Instruments Act 2003. See www.frli.gov.au.