EXPLANATORY STATEMENT

Issued by the authority of the Minister for Agriculture, Fisheries and Forestry

*Imported Food Control Act 1992*

*Imported Food Control Regulations 1993*

*Imported Food Control Amendment Order 2011 (No. 1)*

Section 43 of the *Imported Food Control Act 1992* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 16(1) of the Act provides that regulations may set out particulars of a food inspection scheme (the scheme) applicable to all food to which the Act applies.

Paragraph 16(2)(a) of the Act provides that the regulations may empower the Minister, subject to consultation with Food Standards Australia New Zealand (FSANZ), to make orders identifying food of particular kinds as food of a kind that is to be inspected, or inspected and analysed, under the scheme.

Regulation 7 of the *Imported Food Control Regulations 1993* (the Regulations) provides that the Minister may make orders identifying food of a particular kind as food of a kind that is required to be inspected, or inspected and analysed, under the scheme. The Minister may also vary orders made under regulation 7 from time to time. Regulation 8 permits the Minister to make orders classifying food of a particular kind to which the Act applies as either risk food, surveillance food or compliance agreement food.

*The Imported Food Control Order 2001* (the Order) is made under regulations 7 and 8. Suborder 4(1) provides that a food of a kind mentioned in Schedule 1 is required to be inspected, or inspected and analysed, under the scheme as a risk food.

Food classified as ‘risk’ food under the Act is exempted from the *Trans-Tasman Mutual Recognition Act 1997* (TTMRA). This means that risk food imported from New Zealand remains subject to inspection on arrival in Australia.

The purpose of the *Imported Food Control Amendment Order 2011 (No.1)* (the Amendment Order) is to bring appropriate foods under the operation of the TTMRA by no longer identifying them as risk food.

Work undertaken by officials from Food Standards Australia New Zealand (FSANZ), New Zealand Food Safety Authority (NZFSA) and the Department of Agriculture Fisheries and Forestry (the Department) found that New Zealand and Australia recognised and managed the food safety risks associated with these foods in the same manner. On the findings of this work both countries decided to cease border inspection of certain foods by bringing them under the TTMRA.
The effect of the Amendment Order bringing these risk foods under the TTMRA will be to reduce unnecessary regulatory intervention for foods traded between Australia and New Zealand whilst continuing to protect public health and safety. Both countries operate domestic and imported food safety control systems which recognise the risks posed by these foods.

The Minister has consulted FSANZ about the changes contained in the Amendment Order.

The Department has consulted industry through the Imported Food Consultative Committee and the Industry Cargo Consultative Committee.

The Office of Best Practice Regulation has advised that a regulation impact statement is not required.

The Amendment Order is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

Details of the amendments are set out below:

Order 1 provides that the name of the Amendment Order is the Imported Food Control Amendment Order 2011 (No 1).

Order 2 provides that the Amendment Order will commence on the day after it is registered.

Order 3 provides that Schedule 1 amends the Imported Food Control Order 2001.

Schedule 1 – Amendments

Item [1] amends suborder 3(1) by substituting for the definition of ‘New Zealand product’ a new definition referring to food produced in or imported into New Zealand, to which the Trans-Tasman mutual recognition principle set out in Part 2 of the Trans-Tasman Mutual Recognition Act 1997 applies.

Item [2] repeals and substitutes order 4, Identification and classification of food. These amendments are necessary to give effect to the amendments made at Item 3.

Suborder 4(1) provides that food that is mentioned in clause 1 of Schedule 1 is required to be inspected, or inspected and analysed, under the Scheme as risk food.

Suborder 4(2) provides that suborder 4(1) does not apply to food that is New Zealand product or that is classified under suborder 4(4). The effect of suborder 4(2) is to exempt New Zealand product and compliance agreement food from the application of Schedule 1.

Suborder 4(3) provides that New Zealand product that is mentioned in clause 1 of Schedule 2 (other than food classified under suborder 4(4) (compliance agreement food)) is required to be inspected, or inspected and analysed, under the scheme as risk food.
Suborder 4(4) provides that food to which a compliance agreement applies is classified as compliance agreement food.
Suborder 4(5) provides that, if food of a particular kind is required to be inspected, or inspected and analysed, under the scheme as a particular class of food, the food is classified as included in that class.

**Item [3]** repeals Schedule 1 and substitutes Schedule 1 (Risk food) and Schedule 2 (Risk food that is New Zealand product).

The effect of the new Schedule 1 (Risk food) is to:
- Make it clear that if a food is mentioned in one or more of the items in Schedule 1, it is a risk food.
- Remove the reference to New Zealand product in Item 3 of the table.
- Amend Item 20 of the former table from “Seaweed – Hijiki only” to “Seaweed – brown only”. Hijiki seaweed falls within the category of brown seaweed.

A new Schedule 2 (Risk food that is New Zealand product) has been added. It provides that, for suborder 4(3), the New Zealand product is each kind of food described in 1 or more items of the table. If a food is mentioned in one or more of the items in Schedule 2, it is a risk food.

The items listed in the table of Schedule 2 are those New Zealand products for which different food standards apply in Australia and New Zealand. Consequently, these foods cannot be brought under the operation of the *Trans-Tasman Mutual Recognition Act 1997*. These items are classified as risk food for the purposes of the *Imported Food Control Act 1992* and are required to be inspected, or inspected and analysed, under the Scheme as risk food.

Item 5 of Schedule 2 is a modification of the corresponding item in Schedule 1 (item 4 of Schedule 1). It provides that raw milk cheese is a risk food unless the milk or dairy products used to manufacture the cheese are processed, in making the cheese, in accordance with the requirements in clause 2 of Schedule 2.