



**Statutory Rules 1993 No. 107**

100 / 07

# **Imported Food Control Regulations**

## **TABLE OF CONTENTS**

### **PART 1—PRELIMINARY**

1. Citation
2. Commencement
3. Interpretation

### **PART 2—FOOD CONTROL**

4. When is food taken to have been imported for private consumption?
5. How is a food control certificate obtained?

### **PART 3—FOOD INSPECTION SCHEME**

6. What constitutes the Food Inspection Scheme
7. What orders may the Minister make in relation to the Scheme?
8. How may food be classified?
9. What is meant by “risk” food?
10. What is meant by “active surveillance” food?
11. What is meant by “random surveillance” food?
12. How can food receive a different classification?
13. What food is subject to inspection?
14. At what rate must food be referred for inspection?

**Table of Contents—continued**

15. What is the rate of inspection for risk food?
16. At what rate is risk food first inspected?
17. When may the rate of inspection for risk food be altered?
18. When is food taken to be failing food?
19. When, and at what rate, may food related to failing food be inspected?
20. When, and at what rate, may reprocessed food be inspected?
21. Which active or random surveillance food is to be inspected?
22. What sampling procedures are followed in inspection of food?
23. How is food that is subject of a holding order treated?
24. What is an imported food inspection advice?
25. How is food subject to inspection to be marked?
26. How is food subject to inspection to be held?
27. Are there any exceptions to the rules relating to the holding of risk food?
28. Who is to analyse food under the Scheme?
29. How is food to be analysed under the Scheme?
30. What are the powers of authorised officers?
31. How does the holding of a foreign government or quality assurance certificate affect the incidence of inspection, of food?

**Table of Contents—continued**

32. How is the reliability of foreign government or quality assurance certificates verified?

**PART 4—FEES**

33. What fees are payable for chargeable services?  
34. When must a fee be paid for analysis of food?  
35. When may fees be waived?

**SCHEDULES**

**SCHEDULE 1**

**SELECTION OF SAMPLES**

**SCHEDULE 2**

**FEES**



Statutory Rules 1993 No. 1

100/

## Imported Food Control Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and section 4 of the *Acts Interpretation Act 1901*, make the following Regulations under the *Imported Food Control Act 1992*.

Dated 27 May 1993.

**BILL HAYDEN**  
Governor-General

By His Excellency's Command,

SIMON CREAN  
Minister for Primary Industries and Energy

### PART 1—PRELIMINARY

#### Citation

1. These Regulations may be cited as the Imported Food Control Regulations.

## Commencement

2. These Regulations commence on 15 June 1993.

## Interpretation

3. (1) In these Regulations, unless the contrary intention appears:

**“Act”** means the *Imported Food Control Act 1992*;

**“approved”** means approved by the Secretary;

**“batch”** means food of a particular kind made or packed in a distinct manner which may include one or more lots;

**“chargeable service”** has the same meaning as in section 36 of the Act;

**“import entry”** means a computer import entry or a documentary import entry within the meaning of section 71A of the *Customs Act 1901*;

**“inspection”** means inspection, or inspection and analysis, as the case requires;

**“lot”** means a quantity of food of a particular kind prepared or packed under essentially the same conditions (ordinarily from a particular preparation or package unit and during a particular time usually not exceeding 24 hours);

**“consignment”** means food of a particular kind that comprises 1 or more batches imported by the same owner at the same time and described by a single line import entry;

**“package”** means a container of food that is not separated from the food by any intervening covering except lining material;

**“particular source”**, in relation to food, includes the overseas producer, manufacturer, packer or supplier of the food;

**“Scheme”** means the Food Inspection Scheme;

**“shipment”** means 1 or more consignments imported by the same owner at the same time described by 1 import entry;

**“spices”** means aromatic vegetable substances commonly used as condiments, without reduction or extraction of their natural oils.

## **PART 2—FOOD CONTROL**

### **When is food taken to have been imported for private consumption?**

**4. (1)** For the purposes of paragraph 7 (2) (a) of the Act, concentrated liquid food (however packed) that:

- (a) is used in the preparation of other food; or
- (b) is not usually consumed otherwise than as part of a prepared food;

is taken to have been imported by a person for private consumption if it has a total volume of not more than 2 litres.

**(2)** For the purposes of paragraph 7 (2) (b) of the Act, moisture reduced food (however packed), other than liquid food, that:

- (a) is used in the preparation of other food; or
- (b) is not usually consumed otherwise than as part of a prepared food;

is taken to have been imported by a person for private consumption if its total net weight is not more than 2 kilograms.

**(3)** For the purposes of paragraph 7 (2) (b) of the Act, spices (however packed), that:

- (a) are used in the preparation of other food; or
- (b) are not usually consumed otherwise than as part of a prepared food;

are taken to have been imported by a person for private consumption if their total net weight is not more than 1 kilogram.

### **How is a food control certificate obtained?**

**5. (1)** A computer import entry for home consumption that relates to examinable food to any extent is taken to be an application for a food control certificate for the food for the purposes of subsection 11 (1) of the Act.

(2) A person must apply to the Secretary for a food control certificate for examinable food for which there is no computer import entry.

(3) An application under subregulation (2) may be in accordance with a form provided for the purpose by the Secretary and must:

- (a) be in writing addressed to the Secretary; and
- (b) contain the following information about the importer and the importation of the food:
  - (i) the name of the vessel on which the food is imported;
  - (ii) details of the port of loading of the vessel;
  - (iii) the date on which the food is, or is to be, landed in Australia;
  - (iv) the name and address of the person importing the food, and of his or her agent in relation to the importation (including, in each case, telephone and facsimile details); and
- (c) contain the following information about the food:
  - (i) its description;
  - (ii) its country of origin;
  - (iii) details of its manufacturer or packer;
  - (iv) its brand name;
  - (v) the number of packages that are to be imported in the consignment, and the weight of each package;
  - (vi) the total weight of the consignment;
  - (vii) details of any lot codes provided in relation to the consignment;
  - (viii) details of the place at which the consignment may be inspected; and
- (d) be signed by the importer or his or her agent.

## **PART 3—FOOD INSPECTION SCHEME**

### **What constitutes the Food Inspection Scheme**

**6.** The regulations in this Part, together with Division 2 of Part 2 of the Act, constitute the Scheme.

### **What orders may the Minister make in relation to the Scheme?**

- 7.** Subject to section 17 of the Act, the Minister may:
- (a) make orders, not inconsistent with the Act or any Regulations under the Act, identifying food of a particular kind as food of a kind that is required to be inspected, or inspected and analysed, under the Scheme; and
  - (b) from time to time vary orders made under this regulation.

### **How may food be classified?**

**8.** The Minister may make orders classifying food of a particular kind to which the Act applies as:

- (a) risk food; or
- (b) active surveillance food; or
- (c) random surveillance food.

### **What is meant by “risk” food?**

**9.** Food of a particular kind may be classified as risk food if the National Food Authority advises the Minister under subsection 17 (1) of the Act that the food has the potential to pose a high or medium risk to public health.

### **What is meant by “active surveillance” food?**

**10.** Food of a particular kind may be classified as active surveillance food if it:

- (a) is not classified as risk food; and

- (b) the National Food Authority advises the Minister under subsection 17 (1) of the Act that the food should be classified as active surveillance food.

**What is meant by “random surveillance” food?**

**11.** Food must be classified as random surveillance food if it is not:

- (a) classified as risk food; or
- (b) classified as active surveillance food; or
- (c) the subject of a holding order.

**How can food receive a different classification?**

**12.** The Minister may make orders reclassifying food.

**What food is subject to inspection?**

**13.** All food to which the Act applies may be inspected under the Scheme.

**At what rate must food be referred for inspection?**

**14. (1)** All food classified as risk food must be referred by the Australian Customs Service for inspection under the Scheme.

**(2)** Ten per cent of consignments of food of a particular kind:

- (a) that is imported from a particular country; and
- (b) that is classified as active surveillance food;

must be referred by the Australian Customs Service for inspection under the Scheme.

**(3)** Five per cent of consignments of food classified as random surveillance food must be referred by the Australian Customs Service for inspection under the Scheme.

**What is the rate of inspection for risk food?**

**15.** All food classified as risk food is subject to 1 of the following rates of inspection:

- (a) tightened—under which each consignment from a particular source is inspected;
- (b) normal—under which 25% of consignments from a particular source are selected randomly for inspection;
- (c) reduced—under which 5% of consignments from a particular source are selected randomly for inspection.

**At what rate is risk food first inspected?**

**16. (1)** Food that is classified as risk food must be inspected at the tightened rate if:

- (a) it has the potential to pose a high risk to human health; and
- (b) its rate of inspection has not been lowered under regulation 17.

**(2)** Food that is classified as risk food must be inspected at the normal rate if:

- (a) it has the potential to pose a medium risk to human health; and
- (b) its rate of inspection has not been raised or lowered under regulation 17.

**When may the rate of inspection for risk food be altered?**

**17. (1)** The rate of inspection of food that is:

- (a) of a particular kind; and
- (b) classified as risk food; and
- (c) imported from a particular source;

may be raised or lowered in accordance with this regulation.

**(2)** The rate of inspection of food may be lowered from the tightened rate to the normal rate when 5 consecutive batches of that food pass inspection.

(3) The rate of inspection of food may be lowered from the normal rate to the reduced rate when:

- (a) 20 consecutive batches of that food under normal inspection are considered acceptable on original inspection; and
- (b) there are reasonable grounds for believing that food of that kind from that source does not pose a risk to public health.

(4) The rate of inspection of food may be raised from the normal rate to the tightened rate when:

- (a) 1 lot of the food from which samples are taken is rejected on original inspection; or
- (b) there are reasonable grounds for believing that food of that kind from that source does not comply with an applicable standard.

(5) The rate of inspection of food may be raised from the reduced rate to the normal rate:

- (a) 1 lot of the food is rejected on original inspection; or
- (b) there are reasonable grounds for believing that food of that kind from that source does not comply with an applicable standard.

(6) The rate of inspection of food may be raised from the reduced rate to the tightened rate when:

- (a) 1 or more lots is rejected on original inspection; or
- (b) there are reasonable grounds for believing that food of that kind from that source:
  - (i) does not comply with an applicable standard; or
  - (ii) poses a serious risk to public health.

### **When is food taken to be failing food?**

**18.** A particular lot of food from a batch is taken to be failing food if:

- (a) 1 sample in the batch fails inspection; and
- (b) the particular lot concerned has not passed inspection.

**When, and at what rate, may food related to failing food be inspected?**

- 19. (1)** The owner of a particular lot of food that:
- (a) has not been inspected; and
  - (b) is taken to be failing food;
- may apply for a further Food Control Certificate for that lot.
- (2)** If a particular lot of food:
- (a) is taken to be failing food;
  - (b) has not been inspected; and
  - (c) is presented again by its importer for inspection within a reasonable period after it was taken to be failing food;
- the food may be sampled, inspected or analysed at a more intensive rate than that prescribed for food classified as risk food.

**When, and at what rate, may reprocessed food be inspected?**

- 20. (1)** A lot of failing food that has been inspected must not be inspected again unless it is treated in accordance with a permission to treat failing food given under paragraph 20 (2) (a) of the Act.
- (2)** Food that:
- (a) fails inspection under the Scheme; and
  - (b) is treated in accordance with a permission to treat failing food given under paragraph 20 (2) (a) of the Act;
- may be sampled, inspected or analysed at a more intensive rate than that prescribed for food classified as risk food.

**Which active or random surveillance food is to be inspected?**

- 21. (1)** All food:
- (a) classified as active surveillance food or random surveillance food; and
  - (b) referred for inspection under the Scheme;
- must be inspected.

(2) If food coming to the attention of an authorised officer acting in the course of his or her duties:

- (a) is examinable food to which subparagraph (d) (i) of the definition of “examinable food” applies; and
- (b) is not referred for inspection under the Scheme;

the authorised officer may refer that food for inspection as if it were classified as risk food that potentially poses a high risk to human health.

(3) Food referred for inspection under subregulation (2) must be the subject of notice to an owner setting out the reasons why the food must be inspected.

### **What sampling procedures are followed in inspection of food?**

22. (1) Food that is referred for inspection under the Scheme may be inspected by inspecting randomly selected samples of the food.

(2) The rate at which samples must be taken for inspection from food of each classification referred to in regulation 8 is as set out in Schedule 1.

### **How is food that is subject of a holding order treated?**

23. Food that is the subject of a holding order is taken, for the purposes of the Scheme, to be food classified as risk food until the holding order is revoked.

### **What is an imported food inspection advice?**

24. An imported food inspection advice may be in accordance with an approved form and must:

- (a) be in writing addressed to the person importing the food or his or her agent; and
- (b) contain the following information:
  - (i) the name of the person who inspected the food; and

- (ii) details (if any) identifying the laboratory where the food was analysed; and
- (iii) a description of the failing food, including its country of origin, its lot or code number (if any), its brand and the number and kind of packages in the lot; and
- (iv) a statement indicating the required means of disposal of the food; and
- (v) the reasons for the failure of the food to pass inspection; and
- (c) contain a declaration to be completed by the importer, or his or her agent:
  - (i) setting out his or her intentions in relation to disposal of the food; and
  - (ii) stating that he or she agrees to pay costs of inspection and supervision where applicable.

**How is food subject to inspection to be marked?**

**25. (1)** Batches of food held for inspection must be marked by an authorised officer with the words:

“HOLD  
Imported Foods” .

**(2)** The markings must be clearly visible.

**(3)** A person must not interfere with the markings on a batch of food held for inspection.

Penalty: 10 penalty units.

**(4)** For the purposes of subregulation (1), the erection of signs or tape, bearing the words:

“HOLD  
Imported Foods”,

and delineating the area in which batches of food that are to be inspected are held, constitutes marking those batches of food.

**How is food subject to inspection to be held?**

**26.** Subject to regulation 27, when a sample of a consignment of food classified as risk food, or food that is the subject of a holding order, is selected for inspection, the rest of the consignment must be held:

- (a) at the place nominated in the application for a food control certificate under subparagraph 5 (3) (c) (viii) in relation to the food; or
- (b) if, upon application by the person who applied for the food control certificate, an authorised officer approves the food being held at another place—that other place;

until the results of the inspection are known.

**Are there any exceptions to the rules relating to the holding of risk food?**

**27. (1) Food:**

- (a) that is part of a consignment of food classified as risk food, being a consignment that is selected for inspection; and
- (b) that is not itself part of a sample selected to be inspected; and
- (c) that would otherwise be required to be held under regulation 26 until after the results of inspection or analysis of samples from the consignment; and
- (d) that is so perishable that it cannot be held in its imported condition until the results of the inspection are finalised without perishing or becoming unusable;

may be released by an authorised officer before the results of the inspection are determined subject to conditions intended to minimise or overcome the risk to human health posed by the food.

**(2)** Without limiting the generality of subregulation (1), conditions under that subregulation may include a condition that a number of shipments must be held for inspection before any is released.

**Who is to analyse food under the Scheme?**

**28.** Analysis of food under the Scheme must be performed by a person appointed as an analyst under subsection 34 (1) of the Act.

**How is food to be analysed under the Scheme?**

**29.** Food required to be analysed under the Scheme may be subjected to microbiological, chemical or physical analysis, or any other kind of analysis, necessary to determine whether:

- (a) it poses a risk to human health; or
- (b) it complies with the Food Standards Code.

**What are the powers of authorised officers?**

**30.** An authorised officer may:

- (a) require a person involved in the importation of particular food to provide enough of the food for inspection to enable a true random sample to be obtained for inspection; and
- (b) require a person involved in the importation of particular food to provide details of lot or batch codes and quantities of the food to enable a random sample to be obtained for inspection; and
- (c) take sufficient food to give a representative sample from the food being imported, whether that amount exceeds the amount actually required to be referred for inspection or not; and
- (d) take samples free of any charge; and
- (e) take samples free of any liability for damage necessarily caused in the taking of the sample; and
- (f) ask an analyst to analyse samples of food taken for inspection, whether or not requesting that specific tests, or tests for specific contaminants or matter, be carried out on the food.

**How does the holding of a foreign government or quality assurance certificate affect the incidence of inspection, of food?**

**31.** The incidence of inspection of food may be varied if:

- (a) the owner of the food produces to an authorised officer a recognised foreign government certificate or a recognised quality assurance certificate in relation to the food; and
- (b) there is no reason to doubt the authenticity of the certificate.

**How is the reliability of foreign government or quality assurance certificates verified?**

**32.** The reliability of a recognised foreign government certificate, or a recognised quality assurance certificate may be verified by:

- (a) drawing consignments for sampling at a rate that is not less than 5% of the total consignments certified by:
  - (i) in relation to a recognised foreign government certificate—an instrumentality of the foreign government under subsection 18 (1) of the Act; or
  - (ii) in relation to a recognised quality assurance certificate—exported by an overseas processing operation approved under subsection 19 (1) of the Act; and
- (b) auditing the system operated by the foreign government instrumentality or the approved overseas processing operation concerned; and
- (c) conducting documentation checks by requiring the foreign government instrumentality concerned to verify selected certificates collected upon arrival in Australia.

**PART 4—FEES****What fees are payable for chargeable services?**

**33.** For the purposes of section 36 of the Act, a person for whom a chargeable service referred to in Column 2 of an item in Schedule 2 is provided is liable to pay to the Commonwealth the amount, or an amount calculated at the rate, specified in Column 3 of the item for the provision of that service.

**When must a fee be paid for analysis of food?**

**34.** For the purposes of subsection 36 (4) of the Act, the person for whom an authorised officer arranges and pays for an analysis of food to be carried out must reimburse the Commonwealth within 28 days after the last day on which the payment was due.

**When may fees be waived?**

**35.** The Secretary may waive a fee for a chargeable service if it would be unreasonable to charge a fee for the service in all the circumstances.

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**SCHEDULES****SCHEDULE 1****Regulation 22****SELECTION OF SAMPLES**

1. If details of lots are provided for a consignment or batch, the number of lots to be selected for sampling is:
  - (a) if the food is classified as active surveillance or random surveillance food—in accordance with Table 1; and

**SCHEDULE 1**—continued

- (b) if the food is classified as risk food and the rate of inspection of the food is tightened or normal—in accordance with Table 1; and
- (c) if the food is classified as risk food and the rate of inspection of the food is reduced—in accordance with Table 2.

**TABLE 1****ACTIVE OR RANDOM SURVEILLANCE FOOD OR RISK FOOD AT TIGHTENED OR NORMAL RATE OF INSPECTION**

No. of lots in batch	No. of lots to be sampled
2 - 8	2
9 - 15	3
16 - 25	5
26 - 50	8

**TABLE 2****RISK FOOD AT REDUCED RATE OF INSPECTION**

No. of lots in batch	No. of lots to be sampled
2 - 8	2
9 - 15	2
16 - 25	2
26 - 50	3

2. If details of lots are not provided for a consignment or batch, the number of packages (however described) of food to be selected for sampling is determined in accordance with Table 3.

**SCHEDULE 1**—continued

TABLE 3

NUMBER OF SAMPLE UNITS WHERE NO LOTS ARE  
SPECIFIED

No. of packages in batch or consignment	No. of sample units to draw
4800 or less	6
4801 - 24000	13
24001 - 48000	21
48001 - 84000	29
84001 - 144000	48
144001 - 240000	84
240000 +	126

**SCHEDULE 2**

Regulation 33

## FEES

Column 1 Item No.	Column 2 Chargeable service	Column 3 Fee
1.	for an inspection of food, including the arrangement by an authorised officer of an analysis of the food to be carried out by another person	\$88.00 for each half hour and part of a half hour that the inspection takes, including the time taken to make the arrangement

**SCHEDULE 2—continued**

Column 1 Item No.	Column 2 Chargeable service	Column 3 Fee
2.	for assessing information for inclusion in a food control certificate provided in relation to a consignment of food to which a recognised foreign government certificate relates	\$20.00 for each consignment
3.	for assessing information for inclusion in a food control certificate provided in relation to a consignment of food to which subregulation (3) does not apply	\$30.00 for each consignment
4.	for supervising the treatment, destruction or re-exportation of food under the Scheme	\$88.00 for each half hour and part of a half hour that the supervision is required

**NOTE**

1. Notified in the *Commonwealth of Australia Gazette* on 1 1993. 3 June/