

EXPLANATORY STATEMENT

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

Imported Food Control Act 1992

Imported Food Control Amendment Order 2005 (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 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 food inspection scheme. The *Imported Food Control Regulations 1993* (the Regulations) set out the particulars of a food inspection scheme and provide for the Minister to make orders.

The food inspection scheme (the scheme) set out in the Regulations is administered by the Australian Quarantine and Inspection Service (AQIS). The purpose of the scheme is to ensure that food imported into Australia meets the standards set out in the Food Standards Code (the Code) as developed by FSANZ. Under the scheme, the rate at which imported food is referred to AQIS by the Australian Customs Service (ACS) and the rate at which AQIS inspects the food that is referred depends on the risk classification given to food in the Regulations and the Orders. FSANZ routinely undertakes risk assessments on imported foods and provides advice to AQIS concerning their classification under the scheme.

The scheme recognises three risk classifications for food. Food considered to be the highest risk is classified as risk food, food considered to be at the next level of risk is classified as active surveillance food while the food that is considered to be the lowest risk is classified as random surveillance food. Under regulation 11 of the Regulations food that is not classified as risk food or as active surveillance food is automatically classified as random surveillance food. However, active surveillance food or random surveillance food that is the subject of a holding order made by the Secretary under section 15 of the Act is, pursuant to regulation 23 of the Regulations, treated as risk food. The scheme operates on a risk and performance-based approach to food imports, using end-point inspection and testing to determine the compliance with the Code.

The purpose of the *Imported Food Amendment Order 2005 (No. 1)* (the Amendment Order) is to give effect to recommendations of FSANZ by amending the *Imported Food Control Order 2001* (the Principal Order) to amend the tables contained in Schedule 1 – Risk Food List and Schedule 2 – Active Surveillance Food.

The Minister has consulted with FSANZ about the changes contained in the Amendment Order. No other consultation has occurred because the changes are of a minor or machinery nature and they do not substantially change the law. The decision not to undertake other consultation is based on the fact that the amendments are shifting foods between categories in accordance with the existing rules that are applied under the legislation relevant to the food inspection scheme.

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

Details of the amendment are set out below:

Order 1

This Order names the Order as the *Imported Food Control Amendment Order 2005 (No. 1)*.

Order 2

This Order provides for the *Imported Food Control Amendment Order 2005 (No. 1)* to commence on the day after registration.

Order 3

This Order provides that Schedule 1 amends the Principal Order.

Schedule 1 Amendments

Item 1 All the food identified in the table in Schedule 1 is required to be inspected or inspected and analysed under the scheme as risk food. The effect of this item is to reflect additions to and deletions from the table of certain kinds of food.

The item adds *Pepper that is dried, Paprika that is dried, Molluscs Bivalve (whether cooked or uncooked)*, removes *Barramundi, Herbs, Spices and Dried Vegetable Seasonings* and *Seaweed – Hijiki only*.

Pepper and Paprika that are dried fall into the broader term of *Herbs, Spices and Dried Vegetable Seasonings*, however as they were the only items within this category they have been listed individually.

Molluscs Bivalve (whether cooked or uncooked) narrows the category of *Molluscs (whether cooked or uncooked)* in order to remove the requirement for Cephalopod Molluscs to be inspected or inspected and analysed, as there has been no recorded outbreak of food borne illness due to the presence of micro-organisms such as E. Coli or Listeria, at either the risk or random rate or testing for the at least the last ten years.

Barramundi has been removed because it would only be treated as a risk food if it fell into the already listed category of “*ready to eat finfish*”, which covers finfish in a form where it can be consumed without further processing (Item 7 (f) of the table).

Seaweed - Hijiki only has been added to ensure that public health and safety is protected due to concerns about the possible presence of inorganic arsenic contained in Hijiki seaweed.

Item 2 All the food identified in the table in Schedule 2 is required to be inspected or inspected and analysed under the scheme as active surveillance food. The effect of this item is to item remove *Prawns and Shrimp, raw* from the table.

As a result of the ongoing and rigorous testing regime for nitrofurans residues and mercury contained in imported prawns, FSANZ have advised that the results indicate that raw *Prawns and Shrimp, raw* should be removed from the list of active surveillance foods.