

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture, Drought and Emergency Management

Imported Food Control Amendment (Risk Foods) Order 2020

Legislative Authority

The *Imported Food Control Act 1992* (the Act) provides for the compliance of food imported into Australia with Australian food standards and the requirements of public health and safety.

Section 16 of the Act provides that the Minister may make regulations setting out particulars of a food inspection scheme. These regulations are the *Imported Food Control Regulations 2019* (the Regulations) and the food inspection scheme referred to as the Imported Food Inspection Scheme (the Scheme). The Scheme is applicable to all food to which the Act applies.

The following provisions of the Act and Regulations provide authority for the amendments in the *Imported Food Control Amendment (Risk Foods) Order 2020* (the Amendment Order):

- section 16(2)(a) of the Act provides that the regulations may empower the Minister, subject to section 17 of the Act, to 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.
- section 17 of the Act provides that the Minister must not make an order for the purposes of section 16(2)(a) without first consulting Food Standards Australia New Zealand (FSANZ).
- section 10(b) of the Regulations provides for the Minister to make orders identifying food of particular kinds as food that must be covered by a recognised foreign government certificate.
- Section 10(c) of the Regulations provides for the Minister to make orders identifying food of particular kinds as food that must be covered by a recognised food safety management certificate.
- section 10(d) of the Regulations provides for the Minister to make orders classifying food of particular kinds into particular categories.
- section 11 of the Regulations provides for the Minister, in an order made under section 10 of the Regulations, to classify food of a particular kind as risk food only if Food Standards Australia New Zealand advises the Minister that food of that kind has the potential to pose a high or medium risk to public health.

Purpose

The purpose of the Amendment Order is to update the *Imported Food Control Order 2019* (the Principal Order) consistent with advice published by FSANZ regarding food that has the potential to pose a high or medium risk to public health.

Background

The Department of Agriculture, Water and the Environment (DAWE) operates the Scheme to ensure compliance of food imported into Australia with Australian food standards and the requirements of public health and safety. FSANZ provides advice to DAWE on whether food has the potential to pose a high or medium risk to public health. DAWE uses this advice to inform administration of the Scheme. The Amendment Order will ensure that the classification of food as risk food for the purposes of the Scheme is consistent with advice provided by FSANZ.

Impact and Effect

The Principal Order identifies and classifies certain kinds of food to which the Act applies as ‘risk food’. The Amendment Order classifies certain foods as risk food and reclassifies other foods so that they are no longer classified as risk food. This is so these foods can be inspected, or inspected and analysed, under the Scheme at a rate that is consistent with the risk to public health and safety. The Amendment Order also identifies certain foods that must be covered by a recognised foreign government certificate and those that must be covered by a food safety management certificate. These certificates provide additional assurance that significant risks to public health and safety are being managed for foods covered by these certificates.

Classification and reclassification of certain kinds of food as risk food

Consistent with section 11 of the Regulations, the foods classified as risk food in the Amendment Order are foods of a kind that FSANZ has advised have the potential to pose a high or medium risk to public health.

The Amendment Order classifies several kinds of food as risk food, which are ‘bivalve mollusc products’, ‘crustacean products’, ‘berries that are ready-to-eat’, ‘pomegranate arils that are ready-to-eat’, ‘poultry that is cooked and is ready-to-eat’, and ‘prohibited plants and fungi’. Note that poultry meat has been broadened from chicken meat, which is already classified as a risk food. FSANZ has advised that these foods have the potential to pose a high or medium risk to public health. The classification of these kinds of food as risk food will impact the rate of inspection and analysis for some of these foods (see table 1 of amending item 14 below for the impact of each of these new risk foods).

The Amendment Order has the effect of reclassifying ‘coconut that is dried’ and ‘marinara mix’ so that they are no longer classified as risk foods. This results in the rate of inspection and analysis being reduced. This reclassification is based on FSANZ advice that these kinds of foods do not have the potential to pose a high or medium risk to public health.

The Amendment Order also amends the definitions of some kinds of food that are currently classified as risk food to ensure consistency with FSANZ advice. This will avoid unnecessary inspection of food that, based on advice provided by FSANZ, does not have the potential to

pose a high or medium risk to public health and, therefore, has not been classified as risk food.

Amending item 14 of Schedule 1 below details the impact of classification or reclassification for each kind of food covered by the Amendment Order.

Foods to be covered by a recognised foreign government certificate

The Amendment Order requires bivalve molluscs and bivalve mollusc products to be covered by a recognised foreign government certificate, excluding those that are both retorted and shelf-stable, or dried. This approach is consistent with FSANZ advice, which noted that these foods have the potential to pose high or medium risk to public health for the hazards domoic acid, paralytic shellfish toxins (saxitoxins), *Listeria monocytogenes*, hepatitis A virus and noroviruses. FSANZ advice also noted that oversight by the relevant competent authority in the exporting country is required to ensure that through-chain production controls are in place to manage the hazards associated with the growing, harvesting and production of bivalve molluscs. This measure also ensures imported bivalve molluscs must comply with the same through-chain food safety controls as domestically produced bivalve molluscs.

Should the relevant government competent authority in a country want to export bivalve molluscs and bivalve mollusc products to Australia following commencement of the certification requirements, they can apply for assessment of whether their country's food regulatory systems provide an equivalent food safety outcome to the systems in Australia. Where an equivalent food safety outcome is demonstrated, a recognised foreign government certificate can be negotiated to ensure that food from the exporting country meets the applicable standards in Australia and does not pose a risk to human health. The assessment and negotiation of certification is undertaken in accordance with Codex Alimentarius Commission guidelines.

The Amendment Order provides that this requirement does not apply until 24 months after the Amendment Order commences. This is to allow sufficient time to negotiate certification arrangements with the governments of exporting countries, and therefore minimise impacts on existing trade in bivalve molluscs and bivalve mollusc products. In the intervening period, analytical testing for domoic acid, paralytic shellfish toxins (saxitoxins), *Listeria monocytogenes* and *Escherichia coli* (hygiene process indicator for hepatitis A virus and noroviruses) will apply to these foods at the rate of 5% of consignments.

Foods to be covered by a recognised food safety management certificate

The Amendment Order requires that berries that are ready-to-eat and pomegranate arils, and pomegranate seeds, that are ready-to-eat must be covered by a recognised food safety management certificate. This approach is consistent with FSANZ advice, which noted that these kinds of foods have the potential to pose a high or medium risk to public health and that the hazards associated with these foods need to be effectively managed by through-chain production controls, including assurances about primary production and processing.

A food safety management certificate demonstrates that a food producer operates a food safety management system consistent with internationally agreed food safety principles known as Hazard Analysis and Critical Control Point (HACCP), as set by the Codex Alimentarius Commission. The Amendment Order provides that this requirement does not

apply until 24 months after the Amendment Order commences. This is to allow sufficient time for importers to obtain a recognised food safety management certificate from producers, and therefore minimise impacts on existing trade. During the intervening period, analytical testing for *Escherichia coli* (hygiene process indicator for hepatitis A virus) will apply to these foods at the rate of 5% of consignments.

Consultation

In May 2017, the department publicly consulted on a paper, *Proposals for changes to the inspection and analysis of imported food*. The paper outlined a number of changes to foods classified as risk food, including that imports of bivalve molluscs and bivalve mollusc products must be covered by a recognised foreign government certificate. The World Trade Organization (WTO) was notified of the consultation.

In response to the consultation process, the department received five submissions. Submitters generally supported the changes being recommended. However, some submitters sought further clarification of the scope of bivalve molluscs and bivalve mollusc products that must be covered by a recognised foreign government certification and detail of the certification requirements.

Having regard to the comments received, a second consultation paper was published in December 2018 providing additional detail on:

- the scope of bivalve molluscs and bivalve mollusc products required to be covered by a recognised foreign government certificate;
- the requirements an exporting country must be able to demonstrate and have assessed by the department in order for a recognised foreign government certificate to be negotiated;
- hazards required to be managed; and
- the rate of inspection, or inspection and analysis, and the tests that apply to verify the effectiveness of the foreign government certification arrangement.

The department received five submissions on the second consultation paper, which were generally supportive of the changes but there was a request for the implementation period to be extended to obtain foreign government certification. The commencement date for this requirement has therefore been extended from 12 to 24 months. The WTO was notified of the consultation.

In addition to public consultation, industry was consulted about the Amendment Order through the Imported Food Consultative Committee (IFCC). The IFCC is comprised of industry representatives, including the Australian Food and Grocery Council, the Food and Beverage Importers Association, Seafood Importers' Association and the Australian Horticultural Exporters' and Importers' Association.

On 16 July 2020, the Minister consulted with FSANZ as required by section 17 of the Act. FSANZ noted it has no objection to the Amendment Order.

The Office of Best Practice Regulation (OBPR) has assessed the preliminary assessment on the regulatory impact of the proposed legislative changes. OBPR has determined that a Regulatory Impact Statement is not required (OBPR ID25804 refers).

Details/ Operation

Details of the Amendment Order are set out in Attachment A.

Other

The Amendment Order references the Australia New Zealand Food Standards Code, its standards and schedules, and FSANZ risk advice on imported food. These can be accessed without charge at www.foodstandards.gov.au.

The Amendment Order is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

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

Details of the Imported Food Control Amendment (Risk Foods) Order 2019

Section 1 – Name

This section provides that the name of the Amendment Order is the *Imported Food Control Amendment (Risk Foods) Order 2020*.

Section 2 – Commencement

This section provides for the Amendment Order, excluding Schedule 2, to commence on the day after the Amendment Order is registered. Schedule 2 is to commence the day after the end of the period of 24 months beginning on the day the Amendment Order is registered.

Section 3 – Authority

This section provides that the Amendment Order is made under section 10 of the *Imported Food Control Regulations 2019*.

Section 4 – Schedules

This section provides that the *Imported Food Control Order 2019* (the Principal Order) is amended as set out in the Schedules.

Schedule 1 – Amendments commencing day after registration

Imported Food Control Order 2019

Set out below is an explanation of the changes made to the Principal Order by the Amending Order.

Item 1 Section 4 (note 1 to the heading)

This item inserts “the following” after “including” in note 1 to the heading of section 4 as an editorial amendment. The insertion reflects modern drafting practices.

Item 2 Section 4 (paragraph(c) of note 1 to the heading)

This item repeals paragraph (c) of note 1 to the heading of section 4, and substitutes to include recognised food safety management certificate and recognised foreign government certificate as an expression used in the Principal Order that is defined in the *Imported Food Control Act 1992*.

Item 3 Section 4 (note 2 to the heading)

This item inserts “the following” after “including” in note 2 to the heading of section 4 as an editorial amendment. The insertion reflects changes in drafting practices.

Item 4 Section 4 (definition of beef)

This item omits “cattle” from the definition of beef in section 4 and substitutes that it extends to “an animals of the subfamily *bovinae*” and therefore also includes buffaloes and bison. This amendment aligns the Principal Order with Standard 2.2.1 – Meat and meat products of the Australia New Zealand Food Standards Code (Code). While the definition extends the definition of beef to include buffaloes and bison, the amendment is not expected to affect existing trade in beef and beef products.

Item 5 Section 4 (at the end of the definition of beef)

This item inserts a note at the end of the definition of beef in section 4 to provide further information about animals in the subfamily *bovinae*.

Item 6 Section 4

This item inserts definitions in section 4 for ‘hermetically sealed container’, ‘poultry’, ‘poultry meat’, ‘processed meat’, ‘prohibited plants and fungi’ and ‘raw milk cheese’.

The definition for hermetically sealed container is included to clarify the meaning of the terms “retorted” and “shelf-stable”.

The definition of poultry is included to clarify what kinds of animals are considered poultry, and therefore whether a food of a particular kind is a risk food.

The definition of poultry meat is included because it is classified as risk food under the Amendment Order. The definition for poultry meat aligns imported food legislation with Standard 4.2.2 – Primary Production and Processing Standard for Poultry Meat, of the Code.

The definition of processed meat replaces the reference in the Principal Order to ‘manufactured meat’ to align imported food legislation with Standard 1.1.2 – Definitions used throughout the Code, within the Code and reflects risk statements provided by FSANZ for ready-to-eat cooked and processed meat products.

The definition of prohibited plants and fungi is included because they are classified as risk food under the Amendment Order. The definition specifies these prohibited plants and fungi are the same as those specified in Schedule 23 – Prohibited plants and fungi, of the Code, as in force at the commencement of this definition. Prohibited plants and fungi specified in Schedule 23 of the Code are prohibited from sale for human consumption.

The definition of raw milk cheese is included to align the definition for this kind of food, which is classified as risk food under the Principal Order, with subclause 16(1) or (2), or paragraph 16(3)(a), of Standard 4.2.4 – Primary Production and Processing Standard for Dairy Products, of the Code, as in force at the commencement of this definition.

The alignment of definitions for hermetically sealed container, poultry, poultry meat, processed meat, prohibited plants and fungi and raw milk cheese under both imported food and biosecurity and export legislation, as well as the Code, provides for consistency with relevant legislation.

Item 7 Section 4 (definition of ready-to-eat)

This item repeals the definition for ‘ready-to-eat’ in section 4 of the Principal Order and inserts provisions to explain the meaning of ‘ready-to-eat’ (see amending item 9 in Schedule 1).

Item 8 Section 4

This item inserts provisions after section 4 to explain the meanings of ‘retorted’ and ‘shelf-stable’ (see amending item 9 in Schedule 1).

Item 9 After section 4

This item inserts provisions after section 4 to explain the meanings of ‘ready-to-eat’, ‘retorted’ and ‘shelf-stable’.

The explanation of the meaning of ‘ready-to-eat’ in new section 4A (see amending item 7 in Schedule 1 for repeal of current definition in the Principal Order) clarifies that food is not ordinarily consumed in the same state as that in which it is sold if, before it is consumed, it requires further processing (such as cooking) in order to reduce any pathogenic microorganisms potentially present in the food to safe levels. It is unnecessary to inspect, or inspect and analyse, foods for pathogenic microorganisms if they are going to be further processed and this processing will reduce the levels of the microorganism to a safe level. The meaning of ‘ready-to-eat’ is consistent with FSANZ advice regarding the kind of food that has the potential to pose a high or medium risk to public health.

The explanation of the meaning of ‘retorted’ and ‘shelf-stable’, in new sections 4B and section 4C respectively, align imported food legislation with biosecurity legislation, specifically the *Biosecurity (Prohibited and Conditionally Non-prohibited Goods) Determination 2016*, and replace the reference to ‘canned’ in the Principal Order, which is ambiguous.

Food can be packaged in a ‘can’ but may not have been retorted and may not be shelf-stable. In addition, food can also be retorted and shelf-stable but not be in a ‘can’, for example food in a retort pouch. Risk foods sometimes exclude food that is both retorted and shelf-stable where the processing has mitigated the hazard(s) of concern. This is consistent with FSANZ advice that such foods, which are both retorted and shelf-stable, do not pose a high or medium risk to public health.

Item 10 Subsections 5(1) and (3)

This item omits ‘mentioned’ in subsections 5(1) and (3), and substitutes to include ‘described in an item of the table’. The insertion reflects modern drafting practices.

Item 11 Subsection 6(1)

This item omits ‘mentioned in any of items 1, 2, 5, 13 and 25’ in subsection 6(1), and substitutes to include ‘described in item 1, 2, 7 or 23’. The amendment reflects the reordering of the kinds of food that are classified as risk food in the new table in clause 1 of Schedule 1 (see amending item 14 in Schedule 1), and will not result in any impact on the risk foods that must be covered by a recognised foreign government certificate.

Item 12 Subsection 6(2)

This item omits ‘mentioned in item 1 or 2’ in subsection 6(2), and substitutes to include ‘described in item 1’. The amendment combines the references to ‘beef’ and ‘beef products’ with a single reference to ‘beef and beef products’ in the new table in clause 1 of Schedule 1 (see amending item 14 in Schedule 1), and will not result in any impact on New Zealand product that must be covered by a recognised foreign government certificate.

Item 13 Schedule 1 (note to Schedule heading)

This item repeals the note to the Schedule heading for Schedule 1, and substitutes to include a note to ‘See subsections 5(1) and 6(1)’. The insertion reflects modern drafting practices and includes a reference to 6(1).

Item 14 Clause 1 of Schedule 1 (table)

This item repeals the table in clause 1 of Schedule 1 and substitutes to include a table with a revised list of the kinds of food that have been classified as risk food. Consistent with section 11 of the Regulations, the kinds of food classified as risk food in the new table reflect the foods that FSANZ has advised have the potential to pose a high or medium risk to public health. See Table 1 for detail of changes and impact for each kind of risk food for which the classification has changed. See the Impact and Effect section above for a summary of the classification and reclassification of food as risk food. A number of foods that are currently classified as risk food in the Principal Order have been reordered according to food category to improve readability.

This item also inserts a note that a number of items in the table are also relevant for the purposes of subsection 6(1).

TABLE 1 IMPACT OF RISK FOOD CLASSIFICATIONS IN THE AMENDMENT ORDER

Table item	Food	Impact
Animal and animal products		
1	Beef and beef products	<p>Table item number(s) in Principal Order: 1 & 2</p> <p>Change: The definition of ‘beef’ has been broadened to include all animals of the subfamily <i>bovinae</i>, and therefore also includes buffaloes and bison (see amending item 4 of Schedule 1).</p> <p>Impact: For the purposes of managing biosecurity risk under the <i>Biosecurity Act 2015</i>, an import policy has only been developed for importation of unretorted bison meat, which means that importation of this type of food is only permitted from one country. Unretorted buffalo cannot presently be imported into Australia. As such, the change is not expected to impact the inspection and analysis of this</p>

Table item	Food	Impact
		kind of food under the Scheme because of the limited importation of these foods into Australia.
2	Meat of the following kinds that is ready-to-eat: a) uncooked dried meat; b) uncooked sausages; c) uncooked spreadable sausages	Table item number(s) in Principal Order: 13 Change: The description of this risk food has been updated for consistency with other risk foods, where the characteristics of the food (such as 'uncooked' and 'dried') are combined with the food type (such as 'meat'). The scope of food has not changed. Impact: There will be no impact to the inspection and analysis of this kind of food under the Scheme.
3	Processed meat that is cooked and ready-to-eat, but is not: a) both retorted and shelf-stable; or b) dried	Table item number(s) in Principal Order: 12 Change: The term "manufactured meat" has been substituted with "processed meat" (see amending item 6 of Schedule 1). The description has also been amended to reduce the scope of food that is classified as risk food consistent with FSANZ advice. Food of this kind that is both retorted and shelf-stable will no longer be classified as risk food. Impact: These changes are consistent with the current arrangements for inspection and analysis of this food under the Scheme and, therefore, there will be no impact.
4	Poultry meat that is cooked and ready-to-eat, but is not both retorted and shelf-stable	Table item number(s) in Principal Order: 6 Change: This description of the risk food has been broadened from "Cooked chicken meat that is ready- to- eat, but is not canned" (see table item 6 in Schedule 1 of the Principal Order) to "poultry meat that is cooked and ready-to-eat, but is not both retorted and shelf-stable". This is consistent with FSANZ advice that all poultry meat of this kind has the potential to pose a high or medium risk to public health. Impact: This will increase the inspection and analysis under the Scheme of poultry meat that is not chicken, e.g. duck meat.
5	Poultry paté and poultry livers	Table item number(s) in Principal Order: 22

Table item	Food	Impact
	that are cooked and ready-to-eat, but are not both retorted and shelf-stable	<p>Change: The description of this risk food has been updated for consistency with other risk foods, where the characteristics of the food (such as 'cooked' and 'ready-to-eat') are combined with the food type (such as 'poultry livers'). The scope of food has not changed.</p> <p>Impact: There will be no impact to the inspection and analysis of this food.</p>
6	Cheese in which growth of <i>Listeria monocytogenes</i> can occur	<p>Table item number(s) in Principal Order: 4</p> <p>Change: There is no change to this risk food.</p> <p>Impact: No impact.</p>
7	Raw milk cheese	<p>Table item number(s) in Principal Order: 5</p> <p>Change: There is no change to the description of this risk food. A definition for raw milk cheese will be included to align with the Code (see amending item 6 in Schedule 1).</p> <p>Impact: There will be no impact to the inspection and analysis of this food under the Scheme.</p>
8	Crustaceans and crustacean products that are cooked and ready-to-eat, but are not: a) both retorted and shelf-stable; or b) dried	<p>Table item number(s) in Principal Order: 8</p> <p>Change: The description has been amended to expand the scope of food that is risk food to include cooked crustacean products consistent with FSANZ advice. Cooked crustaceans that are dried or not ready-to-eat will no longer be classified as risk food.</p> <p>Impact: These changes are consistent with the current inspection and analysis of this food under the Scheme and, therefore, there will be no impact.</p>
9	Fish of the following kinds: a) all fish in the family <i>Carangidae</i> ; b) all fish in the family <i>Clupeidae</i> ; c) all fish in the family <i>Coryphaenidae</i> ; d) all fish in the family <i>Engraulidae</i> ; e) all fish in the family	<p>Table item number(s) in Principal Order: 9</p> <p>Change: There is no change to this risk food.</p> <p>Impact: No impact.</p>

Table item	Food	Impact
	<i>Pomatomidae</i> ; f) all fish in the family <i>Scomberesocidae</i> ; g) (g) all fish in the family <i>Scombridae</i>	
10	Fish products that contain more than 300 grams per kilogram of all or any of the kinds of fish in the families mentioned in item 9	Table item number(s) in Principal Order: 10 Change: There is no change to this risk food. Impact: No impact.
11	Finfish that is ready-to-eat	Table item number(s) in Principal Order: 11 Change: The description of this risk food has been updated for consistency with other risk foods, where the characteristics of the food ('ready-to-eat') are combined with food type ('finfish'). The scope of food has not changed. Impact: There will be no impact to the inspection and analysis of this food under the Scheme.
12	Bivalve molluscs and bivalve mollusc products	Table item number(s) in Principal Order: 15 Change: The risk food has been reclassified to clarify that bivalve mollusc products (food containing bivalve molluscs) are also risk foods, consistent with FSANZ advice. Following a 24-month transition period, bivalve molluscs and bivalve mollusc products, excluding those that are dried or both retorted and shelf-stable, must be covered by a recognised foreign government certificate. (see amending items 2 and 3 of Schedule 2). Impact: The clarification that bivalve mollusc products are risk food is consistent with the current inspection and analysis of this food as marinara mix, which may contain bivalve molluscs, was classified as a risk food (see Impact and Effect section), therefore there will be no impact. See amending item 2 of Schedule 2 below for the impact of the requirement for this risk food to be covered by a recognised foreign government certificate.
Plants and plant products		

Table item	Food	Impact
13	Brown seaweed in the <i>Phaeophyceae</i> class	<p>Table item number(s) in Principal Order: 23</p> <p>Change: The description of this risk food has been amended to clarify that only brown seaweed of the <i>Phaeophyceae</i> class is risk food, consistent with FSANZ advice.</p> <p>Impact: The change is consistent with the current inspection and analysis of this food under the Scheme and, therefore, there will be no impact.</p>
14 and 15	<p>Food and food products of the following kinds:</p> <ul style="list-style-type: none"> a) peanuts; b) pistachios; c) peanut products other than peanut oil; d) pistachio products other than pistachio oil 	<p>Table item number(s) in Principal Order: 17, 18, 20 and 21</p> <p>Change: The description has been combined and updated to reduce the scope of food that is risk food, consistent with FSANZ advice. Peanut or pistachio oil will no longer be a risk food.</p> <p>Impact: These changes are consistent with the current inspection and analysis of this food under the Scheme and, therefore, there will be no impact.</p>
16	<p>Sesame seeds and sesame seed products of the following kinds:</p> <ul style="list-style-type: none"> a) sesame seeds that are ready-to-eat; b) sesame seed products (other than sesame oil) that are ready-to-eat, but are not: <ul style="list-style-type: none"> i) both retorted and shelf-stable; or ii) cooked or baked 	<p>Table item number(s) in Principal Order: 24</p> <p>Change: The description has been updated to reduce the scope of food that is risk food consistent with FSANZ advice. Sesame seeds that are not ready-to-eat will be no longer risk foods. Sesame seed products that are not ready-to eat, or are both retorted and shelf-stable, or are cooked or baked, or is sesame oil will no longer be risk food.</p> <p>Impact: These changes are consistent with the current inspection and analysis of this food under the Scheme and, therefore, there will be no impact.</p>
17	Berries that are ready-to-eat	<p>Table item number(s) in Principal Order: N/A</p> <p>Change: Berries that are ready-to-eat will be classified as risk food, consistent with FSANZ advice.</p> <p>Following a 24-month transition period, this food must be covered by a recognised food safety management certificate (see amending</p>

Table item	Food	Impact
		<p>item 4 of Schedule 2).</p> <p>Impact: See amending item 4 of Schedule 2 below for the impacts of the requirement for this risk to be covered by a recognised food safety management certificate.</p>
18	Pomegranate arils, and pomegranate seeds, that are ready-to-eat	<p>Table item number(s) in Principal Order: N/A</p> <p>Change: Pomegranate arils, and pomegranate seeds, that are ready-to-eat will be classified as risk food, consistent with FSANZ advice.</p> <p>Following a 24-month transition period, this food must be covered by a recognised food safety management certificate (see amending item 4 of Schedule 2).</p> <p>Impact: See amending item 4 of Schedule 2 below for the impact of the requirement for this risk food to be covered by a recognised food safety management certificate.</p>
19	Paprika that is dried	<p>Table item number(s) in Principal Order: 16</p> <p>Change: There is no change to this risk food.</p> <p>Impact: No impact.</p>
20	Pepper that is dried	<p>Table item number(s) in Principal Order: 19</p> <p>Change: There is no change to this risk food.</p> <p>Impact: No impact.</p>
21	Prohibited plants and fungi	<p>Table item number(s) in Principal Order: N/A</p> <p>Change: Prohibited plants and fungi in Schedule 23 of the Code will be classified as risk food.</p> <p>Impact: This classification represents an increase in the inspection and analysis of these foods under the Scheme to reflect that they have the potential to pose a high or medium risk to public health, based on FSANZ advice. These foods are not currently permitted for sale for human consumption under food legislation and so the only practical effect of the classification will be to improve the department's ability to detect these foods when they are imported.</p>

Table item	Food	Impact
22	Cassava chips that are ready-to-eat	Table item number(s) in Principal Order: 3 Change: There is no change to this risk food. Impact: No impact.
Other		
23	Human milk and human milk products	Table item number(s) in Principal Order: 25 Change: There is no change to this risk food. Impact: No impact.
24	Food in which caffeine is present at a concentration of: a) 5% or greater, if the food is a solid or semi-solid food; or b) (b) 1% or greater, if the food is a liquid food	Table item number(s) in Principal Order: 26 Change: There is no change to this risk food. Impact: No impact.

Item 15 Schedule 2 (note to Schedule heading)

This item repeals the note to the Schedule heading for Schedule 2, and substitutes to include a note to ‘See subsections 5(3) and 6(2)’. The insertion reflects modern drafting practices and includes a reference to subsection 6(2) for New Zealand product that must be covered by a recognised foreign government certificate.

Item 16 At the end of clause 1 of Schedule 2

This item inserts a note at the end of clause 1 of Schedule 2 to advise that a number of items in the table are also relevant for the purposes of subsection 6(2).

Item 17 Clause 1 of Schedule 2 (table items 1 to 4)

This item repeals the table in clause 1 of Schedule 2, and substitutes to include a table with a revised list of the kinds of food that have been classified as risk food that is New Zealand Product. Consistent with section 11 of the Regulations, the kinds of food classified as risk food in the new table reflect the foods that FSANZ has advised have the potential to pose a high or medium risk to public health. See Table 2 for detail of changes and impact for each kind of risk food for which the classification has changed. See the Impact and Effect section above for a summary of the classification and reclassification of food as risk food.

TABLE 2 IMPACT OF RISK FOOD THAT IS NEW ZEALAND PRODUCT CLASSIFICATION IN THE AMENDMENT ORDER

Table item	Food	Impact
1	Beef and beef products	<p>Table item number(s) in Principal Order: 1 & 2</p> <p>Change: The definition of ‘beef’ has been broadened to include all animals of the subfamily <i>bovinae</i>, and therefore also includes buffaloes and bison (see amending item 4 of Schedule 1).</p> <p>Impact: The change is not expected to impact the inspection and analysis of this kind of food under the Scheme because of the limited importation of these foods from New Zealand.</p>
2	Brown seaweed in the <i>Phaeophyceae</i> class	<p>Table item number(s) in Principal Order: 4</p> <p>Change: The description of this risk food has been amended to clarify that only brown seaweed of the <i>Phaeophyceae</i> class is risk food, consistent with FSANZ advice.</p> <p>Impact: The change is consistent with the current inspection and analysis of this food under the Scheme and, therefore, there will be no impact.</p>

Table item	Food	Impact
3	Cassava chips that are ready-to-eat	Table item number(s) in Principal Order: 3 Change: There is no change to this risk food. Impact: No impact.

Schedule 2 – Amendments commencing 24 months after registration

Imported Food Control Order 2019

Set out below is an explanation of the changes made to the Principal Order by the Amending Order.

Item 1 Subsection 6(1)

This item omits “Food” and substitutes to include “Subject to subsection (1A), food” in subsection 6(1) of the Principal Order (see amending item 3 in Schedule 2).

Item 2 Subsection 6(1)

Subsection 10(b) of the Regulations provides for the Minister to make orders identifying food of a particular kind that must be covered by a recognised foreign government certificate.

This item omits “7 or 23” and substitutes to include “7, 12 or 23” in subsection 6(1) of the Principal Order. The item provides that bivalve molluscs and bivalve mollusc products are risk foods that must be covered by a recognised foreign government certificate (see amending item 3 of Schedule 2 for exclusions). Section 18 of the Act provides for the Secretary to determine that a certificate issued by an instrumentality of a foreign government stating that food of a specified kind meets applicable standards and does not pose a risk to human health is a recognised foreign government certificate. This kind of certificate is regularly used by importing countries to verify that certain requirements have been observed in the production of the food in an exporting country.

The amendment is necessary because:

- a) FSANZ risk statements advise that bivalve molluscs have the potential to pose a high or medium risk to public health for the biotoxins, paralytic shellfish poison and domoic acid and for the microorganisms *Listeria monocytogenes*, hepatitis A and norovirus; and
- b) through-chain production controls, including assurances about the quality of water in production areas, are necessary to ensure that these hazards are effectively managed, and that bivalve molluscs and bivalve mollusc products are safe for human consumption; and
- c) consistent regulation of the production of imported and domestic bivalve molluscs is required. Domestic producers must comply with through-chain food safety controls

specified in Standard 4.2.1 – Primary Production and Processing Standard for Seafood of the Code.

The amendment to subsection 6(1) will mean that the requirement for risk food to be covered by a recognised foreign government certificate does not apply to New Zealand product and so the requirement for a recognised foreign government certificate does not apply to bivalve molluscs or bivalve mollusc products produced in or imported from New Zealand.

The effect of the amendment will prevent bivalve molluscs and bivalve mollusc products being imported into Australia unless they are covered by a recognised foreign government certificate that Australia has negotiated with the exporting country or they are New Zealand product. The amendment will not apply until 24 months after commencement of the Amendment Order to minimise impacts on trade by allowing sufficient time to negotiate a recognised foreign government certificate with exporting countries. Exporting countries already certify exports of bivalve molluscs to other countries and it is expected that the requirement for a recognised foreign government certificate can be implemented with minimal impact on existing trade.

Item 3 After subsection 6(1)

This item inserts subsection (1A) after subsection 6(1) to provide that subsection (1), which refers to food of a kind that must be covered by a recognised foreign government certificate, does not apply to bivalve molluscs and bivalve mollusc products that are both retorted and shelf-stable, or dried.

Item 4 After section 6

This item inserts a new section 7 after section 6 of Schedule 1. The item provides that berries that are ready-to-eat and pomegranate arils, and pomegranate seeds, that are ready-to-eat are foods classified as risk food that must be covered by a recognised food safety management certificate to be imported. This is the first instance that a food safety management certificate has been required for a food, to ensure certain requirements have been met by producers in the production of the food in an exporting country. Section 18A of the Act provides for the Secretary to determine that, for a food of a specified kind, a specified certificate issued by a specified person or specified body is a recognised food safety management certificate.

Subsection 10(c) of the Regulations provides for the Minister to make orders identifying food of a particular kind that must be covered by a food safety management certificate. Under this authority, the insertion of section 7 will require food safety management certification for berries that are ready-to-eat and pomegranate arils, and pomegranate seeds, that are ready-to-eat. The amendment is necessary because:

- a) FSANZ has advised that berries that are ready-to-eat and pomegranate arils, and pomegranate seeds, that are ready-to-eat pose a potential a high or medium risk to public health for hepatitis A; and
- b) analytical testing cannot provide an acceptable level of assurance that hepatitis A is not present because of sampling limitations and/or the lack of a reliable testing method; and

- c) there are no processing steps that will eliminate hepatitis A and management of the hazard must be ensured through implementing appropriate controls during the production and processing of the food.

Section 7 does not apply to New Zealand product and so the requirement for food to be covered by a recognised safety management certificate does not apply to berries that are ready-to-eat and pomegranate arils, and pomegranate seeds, that are ready-to-eat produced in and imported from New Zealand.

The effect of the amendment will be to prevent berries that are ready-to-eat and pomegranate arils, and pomegranate seeds, that are ready-to-eat products being imported into Australia unless they are covered by a recognised food safety management certificate or they are New Zealand product. The amendment will not apply until 24 months after commencement of the Amendment Order to minimise impacts on trade by allowing sufficient time for producers to obtain a recognised food safety management certificate, if required.

Item 5 Schedule 1 (note to Schedule heading)

This item repeals the note to the Schedule heading of Schedule 1 and substitutes to include “See subsections 5(1) and 6(1) and section 7” to advise of the new section 7 in Schedule 2 (see amending item 4 of Schedule 2).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Imported Food Control Amendment (Risk Foods) Order 2020

This Amendment Order is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Imported Food Control Amendment (Risk Foods) Order 2020* (the Amendment Order):

- classifies or reclassifies particular kinds of food as risk food, so that these foods can be inspected and analysed at a rate that is consistent with the risk to public health; and
- identifies bivalve molluscs and bivalve mollusc products, excluding those that are dried or both retorted and shelf-stable, as kinds of risk food that must be covered by a recognised foreign government certificate, so that there is evidence that through-chain production controls are in place to manage the hazards associated with the growing, harvesting and production of these foods; and
- identifies berries that are ready-to-eat and pomegranate arils, and pomegranate seeds, that are ready-to-eat as kinds of risk food that must be covered by a recognised food safety management certificate. This will provide evidence that the food producer operates a food safety management system consistent with Hazard Analysis and Critical Control Point principles, as set by the Codex Alimentarius Commission, which identifies and controls food safety hazards that may arise during the production and processing of these foods.

Human rights implications

The Amendment Order engages the right to health (Article 12) in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 12 of the ICESCR promotes the right of all individuals to enjoy the highest attainable standards of physical and mental health.

In its *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)* (2000) (General Comment No 14), the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) stated that health is a ‘fundamental human right indispensable for the exercise of other human rights’, and that the right to health is not the right to be healthy, but rather a right to a system of health protection that provides equal opportunity for people to enjoy the highest attainable level of health. That document further states that health is defined as an inclusive right, extending not only to timely and appropriate health care, but also to the underlying determinants of health, which includes access to an adequate supply of safe food.

Article 4 of the ICESCR provides that countries may subject economic, social and cultural rights—such as the right to health—only to such limitations ‘as are determined by law in so far as this may be compatible with the nature of these rights and solely for the purpose of

promoting general welfare in a democratic society'. The United Nations Committee has stated that such limitations must be proportionate and must be the least restrictive alternative where several types of limitations are available. Further, where such limitations are permitted, they should be of limited duration and should be subject to review.

Following a review conducted by Food Standards Australia New Zealand (FSANZ), the Amendment Order classifies and reclassifies particular kinds of food as risk food, so that these foods can be inspected and analysed for relevant hazards at a rate that is consistent with the risk to public health.

The Amendment Order therefore engages and promotes the right to health in Article 12 of the ICESCR by providing for:

- the inspection and analysis of foods to ensure compliance of food imported into Australia with Australian food standards and the requirements of public health and safety, based on advice from FSANZ about the potential to pose a high or medium risk to public health;
- requiring a recognised foreign government certificate for bivalve molluscs and bivalve mollusc products, excluding those that are dried or both retorted and shelf-stable, to provide additional assurance on the safety of these foods; and
- requiring a recognised food safety management certificate for berries that are ready-to-eat and pomegranate arils, and pomegranate seeds, that are ready-to-eat to provide additional assurance on the safety of these foods.

Conclusion

The Amendment Order is compatible with human rights because it is promoting the right to health through controlling substances and microorganisms in food so that food is safe for human consumption.

The Hon. David Littleproud MP
Minister for Agriculture, Drought and Emergency Management