

South Australia

Primary Produce (Food Safety Schemes) (Dairy) Regulations 2017

under the *Primary Produce (Food Safety Schemes) Act 2004*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Primary Produce (Food Safety Schemes) (Dairy) Regulations 2017*.

2—Commencement

These regulations will come into operation 4 months after the day on which they are made (see *Subordinate Legislation Act 1978* section 10AA).

3—Interpretation

- (1) In these regulations, unless the contrary intention appears—

accredited producer means a person authorised by an accreditation to carry on—

- (a) a dairy primary production business; or
- (b) a dairy processing business; or
- (c) a dairy transport business;

Act means the *Primary Produce (Food Safety Schemes) Act 2004*;

annual fee—see regulation 20;

Authority means the Dairy Authority of South Australia established under the revoked regulations and continued in existence under regulation 7;

dairy farmer means a person who carries on a dairy primary production business;

dairy industry food safety scheme means the food safety scheme established under the revoked regulations and continued in existence under these regulations;

dairy primary production business means a business, or an enterprise or activity carried on for a commercial purpose, that involves the production of milk for human or animal consumption and includes the keeping, grazing, feeding and milking of animals and the storage of milk on the premises at which the animals were milked;

dairy processing business means a business, or an enterprise or activity carried on for a commercial purpose, that involves the manufacture of dairy products;

dairy processor means a person who carries on a dairy processing business;

dairy products means—

- (a) milk (as defined in these regulations); and
- (b) any other product included in the definition of *dairy product* in Standard 4.2.4 of the *Food Standards Code*;

dairy transport business means a business, or an enterprise or activity carried on for a commercial purpose, involving the collection and transport of milk from a dairy primary production business to a dairy processing business or the transport of bulk milk or dairy products between dairy processors;

dairy transporter means a person who carries on a dairy transport business;

Food Standards Code has the same meaning as in the *Food Act 2001*;

large scale dairy processing business—see subregulation (2);

large scale dairy processor means a dairy processor designated under subregulation (2) as carrying on a large scale dairy processing business;

milk means milk (including colostrum) derived from a cow, camel, goat, sheep or buffalo;

monthly rate—see regulation 20;

revoked regulations means the *Primary Produce (Food Safety Schemes) (Dairy Industry) Regulations 2005*.

- (2) The Authority may, by written notice given to an accredited producer—
 - (a) designate the producer as carrying on a *large scale dairy processing business*; or
 - (b) revoke a designation under paragraph (a).

4—Definition of dairy produce (section 3)

Dairy products within the meaning of Standard 4.2.4 of the *Food Standards Code* are prescribed milk products for the purposes of the definition of *dairy produce* in section 3 of the Act.

5—Waiver, reduction, deferral and recovery of fees

- (1) The Authority may waive, reduce or defer payment of a fee payable under these regulations if the Authority considers that appropriate in the circumstances.
- (2) The Authority may recover an amount payable to the Authority by way of a fee or part of a fee payable under these regulations as a debt from the person liable to pay.

Part 2—Dairy industry food safety scheme

6—Dairy industry food safety scheme

These regulations establish a food safety scheme for the following classes of activities:

- (a) carrying on a dairy primary production business;
- (b) carrying on a dairy processing business;
- (c) carrying on a dairy transport business.

Part 3—Dairy Authority of South Australia

7—Dairy Authority of South Australia

- (1) The *Dairy Authority of South Australia* established under the revoked regulations continues in existence.
- (2) The Authority—
 - (a) is a body corporate with perpetual succession and a common seal; and
 - (b) is capable of suing and being sued in its corporate name; and
 - (c) is capable of acquiring, holding or dealing with real or personal property in its corporate name; and
 - (d) has the functions and powers assigned or conferred by or under these regulations.
- (3) A reference in an Act or instrument to the Dairy Authority of South Australia is, so far as the context permits, to be taken to be a reference to the Dairy Authority of South Australia established by the revoked regulations and continued in existence under this regulation.
- (4) In the performance and exercise of its functions and powers, the Authority is subject to the direction of the Minister except in relation to the making of a recommendation or report to the Minister.

8—Membership of Authority

- (1) The Authority consists of 3 members appointed by the Governor.
- (2) The Authority's membership must include at least 1 person with wide experience in the dairy industry.
- (3) The Authority may appoint a suitable person to be the deputy of a member of the Authority and a person so appointed may act in the place of the member during any absence of the member.

9—Conditions of membership of Authority

- (1) A member of the Authority is to be appointed for a term, not exceeding 3 years, specified in the instrument of appointment and is, on the expiration of a term of office, eligible for reappointment.
- (2) A member of the Authority is entitled to such remuneration, allowances and expenses as may be determined by the Governor.
- (3) The Governor may remove a member of the Authority from office for—
 - (a) misconduct; or
 - (b) failure or incapacity to carry out satisfactorily the duties of office.
- (4) The office of a member of the Authority becomes vacant if the member—
 - (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice addressed to the Minister; or

- (d) is convicted of an indictable offence; or
 - (e) is removed from office under subregulation (3).
- (5) On the office of a member becoming vacant, a person must be appointed in accordance with these regulations to the vacant office.

10—Procedures of Authority

- (1) The Governor will appoint a member of the Authority to preside at meetings of the Authority.
- (2) In the absence of the person appointed under subregulation (1) from a meeting of the Authority, a member chosen by the members present at the meeting will preside.
- (3) A quorum of the Authority consists of 2 members of the Authority and no business may be transacted at a meeting of the Authority unless a quorum is present.
- (4) Subject to subregulation (3), the Authority may act despite vacancies in its membership or a defect in the appointment of a member.
- (5) A decision carried by a majority of the votes cast by members present at a meeting is a decision of the Authority.
- (6) Each member present at a meeting of the Authority has 1 vote on a matter arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote.
- (7) A telephone or video conference between members will, for the purposes of this regulation, be taken to be a meeting of the Authority at which the participating members are present.
- (8) A proposed resolution of the Authority becomes a valid decision of the Authority despite the fact that it is not voted on at a meeting of the Authority if—
 - (a) notice of the proposed resolution is given to all members in accordance with procedures determined by the Authority; and
 - (b) all members express their concurrence in the proposed resolution by letter, facsimile transmission, e-mail or other written communication setting out the terms of the resolution.
- (9) The Authority must have accurate minutes kept of its proceedings and make them available to all members of the Authority.
- (10) A person who is not a member of the Authority may be present during a meeting with the consent of the Authority but not otherwise.
- (11) Subject to these regulations, the Authority may determine its own procedures.

11—Conflict of interest under Public Sector (Honesty and Accountability) Act

A member of the Authority will not be taken to have a direct or indirect personal or pecuniary interest in a matter for the purposes of the *Public Sector (Honesty and Accountability) Act 1995* by reason only of the fact that the member has an interest in the matter that is shared in common with the dairy industry or a substantial section of the dairy industry.

12—Functions of Authority

- (1) The Authority is the accreditation body for the classes of activities to which the dairy industry food safety scheme applies.
- (2) The Authority has the following functions:
 - (a) to administer the dairy industry food safety scheme;
 - (b) to monitor the extent of compliance by accredited producers with Standard 4.2.4 of the *Food Standards Code* and to enforce the Standard;
 - (c) to approve food safety arrangements to be adopted by accredited producers and monitor the implementation of such arrangements;
 - (d) to advise the Minister on matters relating to the administration of the dairy industry food safety scheme;
 - (e) to carry out other functions assigned to the Authority by these regulations or the Minister.

13—Powers of Authority

- (1) The Authority may exercise powers that are necessary or expedient for, or incidental to, the performance of its functions and may, for example—
 - (a) enter into any form of contract or arrangement; or
 - (b) employ staff or make use of the services of staff employed in the public or private sector; or
 - (c) engage consultants or other contractors; or
 - (d) delegate powers to a person or body of persons.
- (2) A delegation of powers by the Authority is revocable at will and does not derogate from the power of the Authority to act itself in a matter.

14—Annual report

- (1) The Authority must, on or before 30 September in every year, present a report to the Minister on the administration of these regulations during the previous financial year.
- (2) A report under this regulation must include—
 - (a) an audited statement of the accounts of the Authority for the period to which the report relates; and
 - (b) directions given to the Authority by the Minister during the period to which the report relates.
- (3) The Minister must, within 12 sitting days after receiving a report under this regulation, cause copies of the report to be laid before each House of Parliament.

Part 4—Accreditation

15—Obligation to be accredited

For the purposes of section 12 of the Act, a person must not engage in a class of activities to which the dairy industry food safety scheme applies without an accreditation.

16—Requirements for accreditation

For the purposes of section 15(1)(c) of the Act, an applicant for accreditation must satisfy the Authority that the applicant has the capacity, or has made or proposes to make appropriate arrangements, to satisfy the requirements of the Act and these regulations applicable to the activities to be accredited.

17—Approved food safety arrangement

An accredited producer must have an approved food safety arrangement.

18—Compliance with Standard 4.2.4 of *Food Standards Code*

- (1) In this regulation, a reference to Standard 4.2.4 of the *Food Standards Code* is a reference to that Standard as modified by subregulation (4).
- (2) An accredited producer must ensure that the activities under the accreditation are carried on in compliance with the provisions of Standard 4.2.4 of the *Food Standards Code* applicable to those activities.
- (3) The Authority may, on application, exempt an accredited producer from compliance with specified provisions of Standard 4.2.4 of the *Food Standards Code* if satisfied that satisfactory alternative arrangements have been made by the producer or in order to allow the producer a specified period within which to comply.
- (4) Standard 4.2.4 of the *Food Standards Code* is modified as follows:
 - (a) a reference to a dairy primary production business is to be taken to be a reference to a dairy primary production business as defined in these regulations;
 - (b) a reference to a dairy processing business is to be taken to be a reference to a dairy processing business as defined in these regulations;
 - (c) a reference to dairy products is to be taken to be a reference to dairy products as defined in these regulations;
 - (d) a reference to a dairy transport business is to be taken to be a reference to a dairy transport business as defined in these regulations;
 - (e) a reference to milk is to be taken to be a reference to milk as defined in these regulations.

Part 5—Periodic fees and returns

19—Periodic fees and returns under section 17

This Part is made for the purposes of section 17 of the Act.

20—Determination of monthly rate and annual fee

- (1) The Authority must, for the purposes of calculating periodic fees under this Part, determine—
 - (a) the monthly rate for—
 - (i) dairy farmers who sell milk to large scale dairy processors; and
 - (ii) large scale dairy processors; and

- (b) the annual fee for each financial year for various classes of producers (which may vary between class of producers).
- (2) Subject to subregulation (3), in determining the monthly rates, the Authority must have regard only to the Authority's estimate of the costs associated with accrediting producers of that class and enforcing their compliance with the dairy industry food safety scheme.
- (3) In determining the monthly rates and the annual fees, the Authority must disregard costs incurred by the Authority associated with auditing of approved food safety arrangements conducted by or on behalf of the Authority.

21—Notice of monthly rate and annual fee

- (1) The Authority must give written notice of the relevant monthly rate and at least 1 month's advance written notice of a change in that rate to each accredited producer of the following classes:
 - (a) dairy farmers who sell milk to large scale dairy processors; and
 - (b) large scale dairy processors.
- (2) The Authority must give each accredited producer written notice of the relevant annual fee for a financial year at least 1 month before the commencement of the financial year.

22—Monthly fee and return—large scale dairy processors

- (1) An accredited producer carrying on a large scale dairy processing business must, within 14 days after the commencement of each month—
 - (a) pay a monthly fee that consists of—
 - (i) an amount calculated by multiplying the relevant monthly rate by the number of litres or kilograms of dairy produce processed or packed by the producer during the last month but 1 before the commencement of the current month (the *relevant month*); and
 - (ii) one twelfth of the relevant annual fee for the current financial year; and
 - (b) pay, on behalf of each accredited producer carrying on a dairy primary production business who sells milk to the processor, a monthly fee that consists of—
 - (i) an amount calculated by multiplying the relevant monthly rate by the number of litres of milk sold by each such producer to the processor during the relevant month; and
 - (ii) one twelfth of the relevant annual fee for the current financial year; and
 - (c) lodge a return for the relevant month.
- (2) If an accredited producer has not carried on business under the accreditation during the relevant month or part of the relevant month, the monthly fee is to be calculated according to the Authority's reasonable assumptions as to what would have been the producer's level of activity had the producer carried on the business during the whole of that relevant month.

23—Annual fee and return—all other producers

- (1) This regulation applies to accredited producers of the following classes:
 - (a) dairy farmers who sell milk to dairy processors other than large scale dairy processors;
 - (b) dairy processors other than large scale dairy processors;
 - (c) dairy transporters.
- (2) An accredited producer must, on or before 30 September in each year—
 - (a) pay the relevant annual fee for the current financial year; and
 - (b) lodge a return for the financial year ending on 30 June immediately preceding that 30 September.
- (3) The penalty for default in paying an annual fee or lodging an annual return is set out in Schedule 1.

24—Annual fee payable by producer accredited for multiple classes of activities

An accredited producer is liable to pay only 1 annual fee for each financial year (and consequently, if the annual fee is paid by or on behalf of the producer in a particular capacity, no further annual fee is payable by or on behalf of the producer in any other capacity).

25—Fee payable before grant of accreditation

Before a producer of a particular class is granted accreditation, the producer must pay a fee of an amount calculated by multiplying—

- (a) the periodic fee that would have been payable by or on behalf of the producer had the producer been an accredited producer of that class at the last date for payment of the periodic fee by producers of that class; and
- (b) the following proportion:
 - (i) if the periodic fee is a monthly fee—the proportion that the number of whole days between the grant of accreditation and the first day of the next month bears to the total number of days in the month during which accreditation is granted;
 - (ii) if the periodic fee is an annual fee—the proportion that the number of whole months between the grant of accreditation and the next 30 June bears to 12 months.

26—Authority may require information

An accredited producer must comply with a written notice given to the producer by the Authority requiring information to enable the Authority to determine the level of activity of the producer.

Maximum penalty: \$5 000.

Expiation fee: \$315.

Schedule 1—Fees and charges

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|---|---|-------|
| 1 | Application for accreditation | \$100 |
| 2 | Application for variation of accreditation | \$100 |
| 3 | Application for exemption from compliance with Standard 4.2.4 of the <i>Food Standards Code</i> | \$100 |
| 4 | Penalty for default in payment of an annual fee or lodging of an annual return | \$180 |

Schedule 2—Revocation of *Primary Produce (Food Safety Schemes) (Dairy Industry) Regulations 2005*

The *Primary Produce (Food Safety Schemes) (Dairy Industry) Regulations 2005* are revoked.

Schedule 3—Transitional provisions

1—Designation of accredited producer as carrying on large scale dairy processing business

A notice under regulation 3(2) of the revoked regulations will be taken to be a notice under regulation 3(2) of these regulations.

2—Continuation of approved food safety arrangements

An approved food safety arrangement under regulation 17 of the revoked regulations in force immediately before the commencement of this clause will, on that commencement, continue as an approved food safety arrangement under regulation 17 of these regulations, subject to the same terms and conditions (if any) as applied under the approved food safety arrangement immediately before that commencement.

3—Continuation of exemption from compliance with codes

An exemption under regulation 18(3) of the revoked regulations in force immediately before the commencement of this clause will, on that commencement, continue in force as an exemption under regulation 18(3) of these regulations, subject to the same terms and conditions (if any) as applied in respect of the exemption immediately before that commencement.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations

| Year | No | Reference | Commencement |
|------|-----|--------------------------------|---------------|
| 2017 | 288 | <i>Gazette 4.10.2017 p4235</i> | 4.2.2018: r 2 |