

South Australia

Primary Produce (Food Safety Schemes) (Seafood) 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) (Seafood) Regulations 2017*.

3—Interpretation

In these regulations—

accredited producer means a bivalve mollusc producer accredited under these regulations;

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

approved area—see regulation 9(3);

aquaculture licence has the same meaning as in the *Aquaculture Act 2001*;

bivalve mollusc producer means the holder of an aquaculture or fishery licence authorising the farming or taking of bivalve molluscs;

bivalve mollusc production activities means activities constituted of the production of primary produce involving bivalve molluscs intended for sale or supply for human consumption;

bivalve molluscs includes cockles, clams, mussels, oysters, pipis and scallops;

fishery licence has the same meaning as in the *Fisheries Management Act 2007*;

food safety arrangement—see regulation 8;

licensee means the holder of an aquaculture or fishery licence;

restricted area—see regulation 9(3);

spat means a mollusc that would pass through a screen with a mesh size of 10 millimetres by 10 millimetres;

Standard 4.2.1 means *Standard 4.2.1 (Primary Production & Processing Standard for Seafood)* of the Food Standards Code, within the meaning of the *Food Act 2001*, and includes other documents called up by that Standard;

wet storage means the storage of live bivalve molluscs in containers (not located in the sea) of natural or synthetic seawater.

4—Seafood food safety scheme

- (1) These regulations establish a food safety scheme (the *seafood food safety scheme*) for the activities of licensees constituted of the production of primary produce involving fish intended for sale or supply for human consumption.
- (2) The Minister is the accreditation body for the seafood food safety scheme.

Part 2—Obligations relating to Food Standards Code

5—All licensees must comply with Division 2 of Standard 4.2.1

A licensee must ensure that the requirements set out in Division 2 of Standard 4.2.1 are complied with in respect of activities to which the seafood food safety scheme applies (assuming the activities comprise a seafood business).

Part 3—Obligations relating to production of bivalve molluscs

6—Obligation to be accredited

- (1) For the purposes of section 12 of the Act, a bivalve mollusc producer must not engage in bivalve mollusc production activities without an accreditation.
- (2) A bivalve mollusc producer need not hold an accreditation if—
 - (a) the only bivalve molluscs farmed or taken by the producer comprise spat; or
 - (b) the only bivalve molluscs farmed or taken by the producer are scallops and only the adductor muscle of the scallops is sold or supplied for human consumption.

7—Grant of accreditation

For the purposes of section 15(1)(c) of the Act, an applicant for accreditation must satisfy the Minister 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.

8—Obligation to have approved food safety arrangement

- (1) An accredited producer must have a food safety arrangement approved by the Minister for bivalve mollusc production activities.
- (2) The food safety arrangement must—
 - (a) comply with the requirements for a documented food safety management system set out in Division 3 of Standard 4.2.1; and
 - (b) be designed to ensure compliance by the producer with regulation 9; and
 - (c) be designed to ensure that the producer meets his or her obligations under the *Food Act 2001* relating to ensuring that food for sale is both safe and suitable for human consumption.
- (3) An accredited producer who farms bivalve molluscs under an aquaculture licence need not have a food safety arrangement approved by the Minister in relation to those farming activities if all bivalve molluscs farmed by the producer are moved to the licence area of another accredited producer who farms bivalve molluscs under an aquaculture licence for further development prior to the molluscs being harvested for sale.

9—Specific requirements

- (1) An accredited producer must ensure that the following requirements are complied with in respect of bivalve mollusc production activities:
 - (a) bivalve molluscs of a particular species (other than spat) must not be sold or supplied for human consumption unless they have been harvested for that purpose from a part of an approved area that is open in respect of the species;
 - (b) bivalve molluscs of a particular species (other than spat) must not be brought into an approved area unless, immediately before being brought into the area, they were taken from—

- (i) another approved area; or
 - (ii) a part of a restricted area that is open in respect of the species;
- (c) bivalve molluscs of a particular species taken from a part of an approved area that is closed in respect of the species, or from a part of a restricted area that is open in respect of the species, must not be brought into an approved area except in accordance with a written authorisation (a **relaying authorisation**) granted to the producer by the Minister and, while in the approved area, the molluscs—
 - (i) must be kept in an area that is clearly marked as a relaying area; and
 - (ii) must be adequately separated from other bivalve molluscs so as to avoid cross contamination; and
 - (iii) must be subjected to a process for the reduction of pathogenic organisms or contaminants,in accordance with the relaying authorisation;
- (d) bivalve molluscs must not be kept in wet storage except in accordance with a written authorisation (a **wet storage authorisation**) granted to the producer by the Minister;
- (e) bivalve molluscs that have been kept in wet storage must not be sold or supplied for human consumption unless the water in which the molluscs have been stored has been tested as required by the wet storage authorisation and found to be suitable as specified by the authorisation;
- (f) the producer must, in accordance with a request of the Minister, supply bivalve molluscs and water samples for testing and facilitate the taking of bivalve molluscs or water samples on behalf of the Minister;
- (g) bivalve molluscs harvested for human consumption by or on behalf of the producer on the same date from the same approved area must be stored and handled in a manner that ensures that they can be readily distinguished from bivalve molluscs harvested on a different date or from a different area and must, before being sold or supplied to another, be placed in a container labelled with—
 - (i) the name of the producer; and
 - (ii) the number of the producer's accreditation; and
 - (iii) if the producer holds an aquaculture licence—the number of the licence; and
 - (iv) if the producer holds a fishery licence—the number of the licence; and
 - (v) the date on which the bivalve molluscs were harvested; and
 - (vi) details identifying the approved area from which the bivalve molluscs were harvested;

- (h) bivalve molluscs farmed by an accredited producer who is exempt from the requirement to have an approved food safety arrangement must not be sold or supplied for human consumption unless the molluscs have been moved to the licence area of another accredited producer who farms bivalve molluscs under an aquaculture licence for further development prior to the molluscs being harvested;
 - (i) if there is reason to believe that bivalve molluscs are unsafe or unsuitable as food within the meaning of the *Food Act 2001*, the producer must immediately notify the Minister.
- (2) Subregulation (1)(a) does not apply to scallops if only the adductor muscle of the scallops is sold or supplied for human consumption.
- (3) The Minister may, either by notice in the Gazette or by written notice to accredited producers who are authorised to farm or take bivalve molluscs in the area—
- (a) classify an area as an approved area or a restricted area;
 - (b) specify the period during the year when the area or parts of the area will be open (and if the Minister does not specify a period, the area will be taken to be open throughout the year);
 - (c) specify the species for which the area will be open (and if the Minister does not specify a species, the area will be taken to be open in respect of all species);
 - (d) temporarily close an approved area or restricted area or part of an approved area or restricted area absolutely or in respect of specified species.
- (4) The Minister may, by subsequent notice in the Gazette or by written notice to accredited producers who are authorised to farm or take bivalve molluscs in the area, vary or revoke a notice under subregulation (3).

Part 4—Fees and charges

10—Annual fees and returns

- (1) For the purposes of section 17(1) of the Act, for each year, an accredited producer must, not later than the prescribed date—
- (a) pay to the Minister the annual fee fixed by Schedule 1; and
 - (b) lodge with the Minister an annual return that conforms to the requirements of the Minister about its form, contents and the manner in which it is made.
- (2) The *prescribed date* is—
- (a) if the producer holds an aquaculture or fishery licence that is granted on an annual basis—the day and month that the licence will expire;
 - (b) if the producer holds an aquaculture or fishery licence that is granted for a period exceeding 1 year and is required to submit an annual return in connection with the licence—the day and month that the annual return must be submitted;
 - (c) in any other case—the day and month specified by the Minister by notice in writing to the accredited producer.

- (3) For the purposes of section 17(2) of the Act, the penalty for default in paying an annual fee or lodging an annual return is as set out in Schedule 1.

11—Fee payable before grant of accreditation

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

- (a) the annual fee that would have been payable by or on behalf of the producer had the producer been an accredited producer at the last date for payment of the annual fee; and
- (b) the proportion that the number of whole months between the grant of accreditation and the next date for payment of the annual fee bears to 12 months.

12—Fees generally

- (1) Further fees and charges are payable as set out in Schedule 1.
- (2) The Minister may waive, defer or reduce payment of a fee payable under these regulations if the Minister considers that appropriate in the circumstances.
- (3) The Minister may recover an amount payable to the Minister by way of a fee or part of a fee payable under these regulations as a debt from the person liable to pay.

Schedule 1—Fees and charges

Application fees

| | | |
|---|--|----------|
| 1 | Application fee for accreditation (section 13 of Act) | \$544.00 |
| 2 | Application fee for approval of a food safety arrangement other than in conjunction with an application for accreditation regulation 8 | \$544.00 |
| 3 | Application fee for variation of an approved food safety arrangement (section 18 of Act) | \$544.00 |

Annual fees (section 17 of Act)

| | | |
|---|---|--|
| 4 | Annual fee payable by an accredited producer who holds— | |
| | (a) an aquaculture licence authorising farming in a subtidal area— | |
| | (i) if the licence authorises the farming of oysters | nil |
| | (ii) if the licence authorises the farming of bivalve molluscs other than oysters | \$234.00 + \$156.00 per hectare of the licence area |
| | (b) an aquaculture licence authorising the farming of oysters in an intertidal area | nil |
| | (c) a fishery licence authorising the taking of scallop (Family Pectinidae) | \$234.00 + \$287.00 per licence |
| | (d) a fishery licence subject to a condition fixing a pipi quota entitlement | \$489.00 + \$23.30 per pipi unit under the entitlement |
| | (e) a fishery licence subject to a condition fixing a vongole quota entitlement in respect of the Coffin Bay vongole fishing zone | \$489.00 + \$0.15 per vongole unit under the entitlement |

- | | | |
|-----|---|---|
| (f) | a fishery licence subject to a condition fixing a vongole quota entitlement in respect of the Port River vongole fishing zone | \$489.00 + \$23.30 per vongole unit under the entitlement |
| (g) | a fishery licence subject to a condition fixing a vongole quota entitlement in respect of the West Coast vongole fishing zone | \$489.00 + \$8.25 per vongole unit under the entitlement |

Default penalty (section 17 of Act)

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|---|--|----------|
| 5 | Penalty for default in payment of an annual fee or lodging of an annual return | \$114.00 |
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Schedule 2—Transitional provisions

Part 2—Transitional provisions

2—Interpretation

In this Part—

revoked regulations means the *Primary Produce (Food Safety Schemes) (Seafood) Regulations 2006*.

3—Approved food safety arrangements to continue

A food safety arrangement approved under regulation 7 of the revoked regulations and in force immediately before the commencement of this clause will be taken, on and from that commencement, to continue as a food safety arrangement approved under regulation 8 of these regulations, and subject to the same terms and conditions (if any), as applied under the food safety arrangement immediately before that commencement.

4—Specific requirements—notices to continue

A notice to accredited producers made under regulation 8(2) of the revoked regulations in respect of a particular matter and in force immediately before the commencement of this clause will be taken, on and from that commencement, to continue as a notice to those accredited producers in relation to the same matter under regulation 9(3) of these regulations, and subject to the same terms and conditions (if any), as applied under the notice immediately before that commencement.

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- 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.

Legislation revoked by principal regulations

The *Primary Produce (Food Safety Schemes) (Seafood) Regulations 2017* revoked the following:

Primary Produce (Food Safety Schemes) (Seafood) Regulations 2006

Principal regulations and variations

New entries appear in bold.

| Year | No | Reference | Commencement |
|-------------|------------|---------------------------------------|---|
| 2017 | 279 | <i>Gazette 19.9.2017 p4132</i> | 19.1.2018: r 2 |
| 2018 | 99 | <i>Gazette 21.6.2018 p2250</i> | 1.7.2018: r 2 |
| 2018 | 169 | <i>Gazette 21.6.2018 p2472</i> | 1.7.2018—immediately after 99/2018: r 2 |
| 2019 | 124 | <i>Gazette 13.6.2019 p2004</i> | 1.7.2019: r 2 |
| 2020 | 186 | <i>Gazette 4.6.2020 p3053</i> | 1.7.2020: r 2 |

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision | How varied | Commencement |
|-------------|--|-----------------|
| Pt 1 | | |
| <i>r 2</i> | <i>omitted under Legislation Revision and Publication Act 2002</i> | <i>1.7.2018</i> |
| Sch 1 | substituted by 99/2018 r 4 | 1.7.2018 |
| | varied by 169/2018 r 4 | 1.7.2018 |
| | substituted by 124/2019 r 4 | 1.7.2019 |
| Sch 2 | | |
| <i>Pt 1</i> | <i>omitted under Legislation Revision and Publication Act 2002</i> | <i>1.7.2018</i> |

Historical versions

1.7.2018