

South Australia

Primary Produce (Food Safety Schemes) (Dairy Industry) Regulations 2005

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 Industry) Regulations 2005*.

2—Commencement

These regulations come into operation on the day on which the *Primary Produce (Food Safety Schemes) Act 2004* comes into operation.

3—Interpretation

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

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

- (a) a dairy farmer; or
- (b) a dairy manufacturer; or
- (c) a dairy distributor; or
- (d) a dairy produce carrier;

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 regulation 7;

dairy distribution premises means premises where packaged dairy produce is kept for sale or distribution other than—

- (a) dairy manufacturing premises; or
- (b) premises where the dairy produce is kept in the course of the business of selling packaged dairy produce by retail;

dairy distributor means a person—

- (a) who operates dairy distribution premises; or
- (b) who purchases dairy produce for the purposes of distribution and sale;

dairy distributor vehicle means a vehicle used by a dairy distributor for the transportation of dairy produce;

dairy farm means premises where animals are kept or milked for the purpose of producing dairy produce for profit or sale;

dairy farmer means a person who keeps or milks animals for the purpose of producing dairy produce;

Dairy Industry Food Safety Code means the *Code of Practice for Dairy Food Safety* published by the Authority as in force from time to time;

dairy industry food safety scheme means the food safety scheme established under these regulations;

dairy manufacturer means a person who operates dairy manufacturing premises;

dairy manufacturing premises means premises where—

- (a) milk is received direct from a dairy farm; or
- (b) dairy produce is manufactured or packed;

dairy produce carrier means a person who transports dairy produce in a bulk container;

dairy transport vehicle means a vehicle used principally to transport dairy produce in a bulk container;

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

large scale dairy manufacturer—see subregulation (2);

milk means milk derived from a cow, goat, sheep or buffalo;

monthly rate—see regulation 20.

- (2) The Authority may designate an accredited producer as a *large scale dairy manufacturer* by written notice to the producer and may revoke the designation by subsequent written notice to the producer.

4—Definition of dairy produce (section 3)

For the purposes of paragraph (b) of the definition of *dairy produce* in section 3 of the Act, the following milk products are prescribed:

- (a) any of the following products within the meaning of Standard 2.5 of the Food Standards Code:
 - (i) milk or skim milk (see Standard 2.5.1);
 - (ii) cream (see Standard 2.5.2);
 - (iii) yoghurt and other fermented milk products (see Standard 2.5.3);
 - (iv) cheese and processed cheese (see Standard 2.5.4);
 - (v) butter (see Standard 2.5.5);
 - (vi) ice cream (see Standard 2.5.6);
 - (vii) dried, evaporated or condensed milk (see Standard 2.5.7);
- (b) colostrum;
- (c) any other product if at least one half of the total mass consists of—
 - (i) a product referred to in paragraph (a) or (b); or
 - (ii) milk solids or reconstituted milk.

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 the business of a dairy farmer;
- (b) carrying on the business of a dairy manufacturer;
- (c) carrying on the business of a dairy distributor;
- (d) carrying on the business of a dairy produce carrier.

Part 3—Dairy Authority of South Australia

7—Establishment of Dairy Authority of South Australia

- (1) The *Dairy Authority of South Australia* is established.
- (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) The Authority is to be taken to be the same body corporate as the Dairy Authority of South Australia established under the *Dairy Industry Act 1992*.
- (4) 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 this regulation.
- (5) 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 his or her 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 Management Act

A member of the Authority will not be taken to have a direct or indirect interest in a matter for the purposes of the *Public Sector Management 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 establish, maintain and improve, for incorporation in the Dairy Industry Food Safety Code—
 - (i) food safety standards for dairy produce; and
 - (ii) food safety standards for the construction, maintenance and hygiene of dairy farms or dairy manufacturing premises and plant and equipment on dairy farms or dairy manufacturing premises; and
 - (iii) food safety standards for the construction, maintenance and hygiene of dairy transport vehicles and dairy distributor vehicles;
 - (c) to monitor the extent of compliance by accredited producers with the Dairy Industry Food Safety Code and to review and enforce the Code;
 - (d) to approve food safety arrangements to be adopted by accredited producers and monitor the implementation of such arrangements;
 - (e) to advise the Minister on matters relating to the administration of the dairy industry food safety scheme;
 - (f) 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

- (1) An accredited producer must have an approved food safety arrangement.
- (2) This regulation does not apply to a person whose accreditation is temporary under Schedule 1 Part 4 of the Act.

18—Compliance with Dairy Industry Food Safety Code

- (1) An accredited producer must ensure that the activities under the accreditation are carried on in compliance with the Dairy Industry Food Safety Code.

- (2) The Authority may, on application, exempt an accredited producer from compliance with specified provisions of the Dairy Industry Food Safety 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.

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 manufacturers; and
 - (ii) large scale dairy manufacturers; 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 manufacturers;
 - (b) large scale dairy manufacturers.
- (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 (except in the case of the annual fee for the first financial year following commencement of these regulations, in which case, the notice must be given before or as soon as practicable after that commencement).

22—Monthly fee and return—large scale dairy manufacturers

- (1) An accredited producer carrying on business as a large scale dairy manufacturer 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 manufactured 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 business as a dairy farmer who sells milk to the manufacturer, 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 manufacturer 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 manufacturers other than large scale dairy manufacturers;
 - (b) dairy manufacturers other than large scale dairy manufacturers;
 - (c) dairy distributors;
 - (d) dairy produce carriers.
- (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 \$180.

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.

27—Transitional provision

The periodic fee payable on the first occasion after the commencement of these regulations by a person who holds or has held a temporary accreditation under Schedule 1 Part 4 of the Act will be reduced by the amount, if any, of the periodic licence fee paid by the person under the *Dairy Industry Act 1992* attributable to the portion of the term of the licence that was unexpired at that commencement.

Schedule 1—Application fees

1	Application for accreditation	\$100
2	Application for variation of accreditation	\$100
3	Application for exemption from compliance with Dairy Industry Food Safety Code	\$100
4	No fee is payable on an application for accreditation by the holder of a temporary accreditation under Schedule 1 Part 4 of the Act.	

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- 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 and variations

New entries appear in bold.

Year	No	Reference	Commencement
2005	165	<i>Gazette 14.7.2005 p2381</i>	1.8.2005: r 2
2009	15	<i>Gazette 26.2.2009 p774</i>	1.7.2009: r 2