



New South Wales

Food Production (Dairy Food Safety Scheme) Amendment Regulation 2000

under the

Food Production (Safety) Act 1998

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Food Production (Safety) Act 1998*.

RICHARD AMERY, M.P.,
Minister for Agriculture

Explanatory note

The object of this Regulation is to amend the Dairy Food Safety Scheme established under the *Food Production (Dairy Food Safety Scheme) Regulation 1999*:

- (a) to make amendments consequential on the enactment of the *Dairy Industry Act 2000*, and
- (b) to make amendments, as a result of a review required to be carried out under the Scheme arising from the proposed repeal of Part 5 of the *Dairy Industry Act 1979*, omitting unnecessary or outdated requirements and omitting the requirement that a mere occupier is responsible for complying with the Dairy Food Safety Scheme, and
- (c) to remove requirements for approvals for dairy buildings, dairy produce factories, dairy produce stores and milk stores and replace them with requirements to be complied with before licences can be granted or renewed, and
- (d) to make it an offence to carry on business as a dairy farmer, vehicle vendor or farm milk collector or to carry on the business of operating a milk store or dairy produce factory without holding a licence to do so (maximum penalty 25 penalty units), and

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- (e) to provide for applications for licences and for the issue, duration and renewal of licences, and
- (f) to enable Safe Food to impose conditions on licences, including conditions as to fee collection and prohibiting passing on licence costs, and to vary and revoke conditions imposed on licences, and
- (g) to make it a condition of a licence that the holder of a licence must not carry on an activity related to the production, treatment, storage, distribution, supply or sale of milk or dairy products that is not authorised by the licence concerned, and
- (h) to set out the grounds on which licences may be suspended or cancelled, and
- (i) to provide for a right of appeal to the Administrative Decisions Tribunal in respect of decisions relating to licences, and
- (j) to require a licence holder to notify Safe Food if the person ceases to carry on an activity authorised by a licence, and
- (k) to enable Safe Food to determine licence fees, or the basis on which licence fees are to be determined, and
- (l) to require licence fees to be paid when an application is made or, if approved by Safe Food, by instalments, and
- (m) to enable Safe Food to waive the whole or part of a licence fee payable in respect of a licence, and
- (n) to make other consequential amendments and transitional provisions.

This Regulation is made under the *Food Production (Safety) Act 1998*, including section 19, section 70 (the general regulation-making power) and clause 2 of Schedule 2.

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1 Name of Regulation

This Regulation is the *Food Production (Dairy Food Safety Scheme) Amendment Regulation 2000*.

2 Commencement

This Regulation commences on 14 July 2000.

3 Amendment of Food Production (Dairy Food Safety Scheme) Regulation 1999

The *Food Production (Dairy Food Safety Scheme) Regulation 1999* is amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation.

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Schedule 1 Amendments

Schedule 1 Amendments

(Clause 3)

[1] Appendix Dairy Food Safety Scheme

Omit “as defined in the *Dairy Industry Act*” from clause 2.

[2] Appendix, clause 3 Definitions

Omit “*Dairy Industry Act 1979*” from the definition of *Dairy Industry Act* in clause 3 (1).

Insert instead “*Dairy Industry Act 2000*”.

[3] Appendix, clause 3 (1)

Insert in alphabetical order:

dairy farm means any land or premises used for or in connection with the stalling, grazing, feeding or milking of cattle for the purpose of producing milk that is supplied or to be supplied for sale.

dairy farmer means a person who carries on the business of producing milk for human consumption on a dairy farm.

dairy produce factory means any building or place (other than a dairy farm) at or in which any milk or dairy product is treated or produced or at or in which any dairy product is processed after its production.

dairy produce merchant means any person:

- (a) who is the occupier of a milk store, dairy produce factory or dairy produce store, or
- (b) who is a vehicle vendor.

dairy produce store means any building or place at or in which any dairy product is stored, whether in a cold chamber or otherwise.

farm milk collector means any person who collects milk from a dairy farm for delivery or sale, or both, to a dairy produce merchant.

licence means a licence in force under this Scheme.

milk store means any building or place at or in which processed milk is stored, and includes any building and place at or from which milk is supplied, but does not include a dairy farm.

[4] Appendix, clause 3 (2)

Omit the subclause.

[5] Appendix

Omit “dairy premises” from clauses 5 (1), 8, 15, 16, 17, 18 (1) (where firstly occurring) and 38.

Insert instead “dairy farms”.

Omit “dairy premises” from clause 18 (1) (where secondly occurring) and (2).

Insert instead “dairy farm”.

[6] Appendix, clause 5 Persons responsible for compliance

Omit clause 5 (2). Insert instead:

- (2) For the purposes of this Scheme, each of the following persons is considered to be the manager of a dairy farm, a dairy produce factory, a dairy produce store or a milk store:
 - (a) the person in charge of dairy operations at the dairy farm, dairy produce factory, dairy produce store or milk store,
 - (b) the licence holder who carries on the business of the dairy farm, dairy produce factory, dairy produce store or milk store.

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[7] Appendix, clause 7 Milk and cream must be pasteurised

Omit clause 7 (2). Insert instead:

- (2) This clause does not apply:
 - (a) to a dairy farmer in respect of the supply of milk or cream by the dairy farmer to a dairy produce factory, or
 - (b) to a dairy produce factory in respect of the supply of milk or cream by the dairy produce factory to another dairy produce factory.

[8] Appendix, clause 12 Building not to be used as dairy building without licence

Omit “except with the approval of Safe Food and in accordance with any conditions of the approval” from clause 12 (1).

Insert instead “except by or on behalf of the holder of a dairy farmer’s licence and in accordance with any conditions of the licence”.

[9] Appendix, clause 12 (2)–(6)

Omit the subclauses. Insert instead:

- (2) Safe Food must not grant or renew an application for a dairy farmer’s licence unless it is satisfied that any building proposed to be used by the applicant as a dairy building:
 - (a) complies with the requirements set out in the publication *Code of Practice for Dairy Buildings* published by Safe Food, or
 - (b) is constructed in a way that is capable of delivering at least an equivalent outcome in terms of safe food production as a building that complies with the requirements referred to in paragraph (a).
- (3) If a dairy building used by the holder of a dairy farmer’s licence is altered, added to or rebuilt after the licence is granted or renewed, the building must not be used as a dairy building except with the approval of Safe Food and in accordance with any conditions of the approval.

- (4) An application for approval must be made in a form approved by Safe Food and must be accompanied by such documents and information as Safe Food may require.
- (5) Safe Food may grant an approval subject to such conditions as Safe Food considers appropriate.
- (6) Safe Food is not required to satisfy itself under subclause (2) merely because a person is taken, under clause 8 of Schedule 2 to the *Dairy Industry Act*, to be the holder of a licence.

[10] Appendix, clause 16 Sampling and testing

Omit “(such as a person who has successfully completed the Milk Grader and Tanker Driver’s Course offered by the University of Melbourne)” from clause 16 (a).

[11] Appendix, clause 16 (d)

Omit “and must be taken using a device that complies with *Australian Standard 1374-1981—In-line Milk Sampling Devices For Use in Bulk Milk Collection*”.

[12] Appendix, clause 17 Milk collection

Omit clause 17 (c).

[13] Appendix, clause 19 Audit and inspection frequency

Omit “premises” wherever occurring. Insert instead “farms”.

[14] Appendix, clause 20 Building not to be used without licence

Omit “except with the approval of Safe Food and in accordance with any conditions of the approval”.

Insert instead “except by or on behalf of the holder of a dairy produce merchant (dairy produce factory) licence, dairy produce merchant (dairy produce store) licence or dairy produce merchant (milk store) licence, as the case requires, and in accordance with any conditions of the licence”.

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[15] Appendix, clause 20 (2)–(6)

Omit the subclauses. Insert instead:

- (2) Safe Food must not grant or renew an application for a dairy produce merchant (dairy produce factory) licence, dairy produce merchant (dairy produce store) licence or dairy produce merchant (milk store) licence unless it is satisfied that any building proposed to be used by the applicant as a dairy produce factory, dairy produce store or milk store complies with the requirements applicable in respect of the building under clause 21.
- (3) If a building used by the holder of a dairy produce merchant (dairy produce factory) licence, dairy produce merchant (dairy produce store) licence or dairy produce merchant (milk store) licence is altered, added to or rebuilt after the licence is granted or renewed, the building must not be used as a dairy produce factory, dairy produce store or milk store except with the approval of Safe Food and in accordance with any conditions of the approval.
- (4) An application for approval must be made in a form approved by Safe Food and must be accompanied by such documents and information as Safe Food may require.
- (5) Safe Food may grant an approval subject to such conditions as Safe Food considers appropriate.
- (6) Safe Food is not required to satisfy itself under subclause (2) merely because a person is taken, under clause 8 of Schedule 2 to the *Dairy Industry Act*, to be the holder of a licence.

[16] Appendix, clause 30 Evaporated and concentrated milk as ingredient

Omit the clause.

[17] Appendix, clause 34 Coliform contamination of milk products

Omit the clause.

[18] Appendix, clause 41 Standards for milk and dairy produce stores

Omit clause 41 (1) and (2).

[19] Appendix, Part 5A

Insert at the end of Part 5:

Part 5A Licences

Division 1 Offences

45A Licence required with respect to certain dairy businesses

- (1) A person must not:
- (a) carry on business as a dairy farmer unless the person is the holder of a dairy farmer's licence, or
 - (b) carry on the business of operating a milk store unless the person is the holder of a dairy produce merchant (milk store) licence, or
 - (c) carry on the business of operating a dairy produce factory unless the person is the holder of a dairy produce merchant (dairy produce factory) licence, or
 - (d) carry on the business of operating a dairy produce store unless the person is the holder of a dairy produce merchant (dairy produce store) licence, or
 - (e) carry on business as a vehicle vendor unless the person is the holder of a vehicle vendor licence, or
 - (f) carry on business as a farm milk collector unless the person is the holder of a farm milk collector's licence.

Maximum penalty: 25 penalty units.

- (2) For the purposes of this Regulation, a vehicle vendor who is taken to be the holder of a dairy produce merchant licence under clause 8 of Schedule 2 to the *Dairy Industry Act* is taken to be the holder of a vehicle vendor licence.

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Schedule 1 Amendments

Division 2 General provisions relating to licences

45B Application for licence

- (1) A person may apply to Safe Food for a licence.
- (2) An application for a licence must:
 - (a) be made in the approved form, and
 - (b) be accompanied by the approved application fee, and
 - (c) be accompanied by such information as Safe Food requires to determine the application.

45C Issue of licences

- (1) Safe Food may, after considering an application for a licence:
 - (a) grant the application, with or without conditions, or
 - (b) refuse the application.
- (2) If Safe Food grants an application for a licence, it must issue the licence to the applicant in a form that sets out the conditions to which the licence is subject.
- (3) If Safe Food refuses an application for a licence, it must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.
- (4) A written notice of intention to refuse a licence, or to impose a condition on a licence, must inform the applicant of the rights of review under clause 45I.
- (5) Safe Food may refuse to issue a licence if:
 - (a) the applicant has been convicted of 2 or more offences against any laws of this State or any other State or Territory of the Commonwealth or of the Commonwealth relating to the production, treatment, storage, distribution, supply or sale of milk or dairy products, or
 - (b) Safe Food is of the opinion that the applicant is not a suitable person to hold a licence, or

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- (c) in the case of a corporation—Safe Food is of the opinion that a person who has an interest (whether legal or equitable) in any shares in the corporation or who is a director or officer of the corporation is not a suitable person to hold a licence, or
 - (d) Safe Food is of the opinion that any dairy farm, milk store, dairy produce factory, conveyance or equipment occupied or used, or proposed to be occupied or used, by the applicant does not comply with any applicable requirements of this Scheme or is not suitable for its purpose or proposed purpose, or
 - (e) if, in the opinion of Safe Food, it is necessary to enable Safe Food to effectively carry out or give effect to any of the provisions of this Scheme or the Act to refuse to issue the licence.

45D Duration of licences

- (1) A licence has effect for a period of one year from the date on which the licence was issued or last renewed, except during any period of suspension or unless sooner cancelled.
- (2) Despite subclause (1), if an application for renewal of a licence is made in accordance with this Part but the application is not finally determined before the expiry of the licence, the licence (if not suspended or sooner cancelled) continues in force until the application is finally determined.

45E Renewal of licences

- (1) The holder of a licence may, not later than 10 days before the expiration of the term of the licence, apply to Safe Food for a renewal of the licence.
- (2) Safe Food may, after considering an application for renewal of a licence:
 - (a) grant the application, with or without conditions, or
 - (b) refuse the application.
- (3) Safe Food may refuse an application for renewal of a licence on any ground on which it may refuse an application for a licence.

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- (4) If Safe Food grants an application for renewal of a licence, the licence is renewed by the issue of a further licence in a form that sets out the conditions to which the licence is subject.
- (5) If Safe Food refuses an application for renewal of a licence, Safe Food must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.
- (6) A written notice of intention to refuse to renew a licence, or to impose a condition on a renewed licence, must inform the person of the rights of review under clause 45I.

45F Conditions on licences

- (1) Without limiting clause 45C (1) or 45E (2), Safe Food may impose the following conditions on a licence:
 - (a) any condition it thinks necessary for the purpose of carrying out or giving effect to this Scheme or any of the provisions of the Act,
 - (b) a condition requiring the implementation of, or relating to, a food safety program,
 - (c) a condition relating to standards of any buildings used or proposed to be used by the licence holder,
 - (d) a condition requiring the collection of licence fees and charges on behalf of Safe Food and the remission of any such fees or charges to Safe Food,
 - (e) a condition requiring the deduction of licence fees and other charges owed by another licence holder to Safe Food from money owed by the other licence holder to the licence holder subject to the condition,
 - (f) a condition prohibiting the passing on of costs related to licences, or other fees charged under this Scheme or the Act, to another licence holder.
- (2) It is a condition of a licence that the holder must not carry on any activity related to the production, treatment, storage, distribution, supply or sale of milk or dairy products other than an activity authorised by the licence.

45G Variation of conditions of licences

- (1) Safe Food may vary the conditions of a licence (other than a condition imposed by clause 45F (2)) or impose a condition on a licence.
- (2) Safe Food may vary the conditions of a licence, or impose a condition on a licence, only after having given the licence holder:
 - (a) written notice of its intention to vary the conditions or impose the conditions setting out its reasons, and
 - (b) an opportunity to make submissions.
- (3) A variation of or imposition of conditions on a licence:
 - (a) must be made by notice in writing, and
 - (b) must be served on the licence holder, and
 - (c) takes effect on the day on which the notice is served or on a later day specified in the notice.
- (4) A written notice under this clause must inform the person of the rights of review under clause 45I.

45H Suspension or cancellation of licences

- (1) Safe Food may suspend or cancel a licence:
 - (a) if Safe Food is satisfied that there has been a contravention of any provision of the Act or this regulation by the licence holder, or
 - (b) if Safe Food is satisfied that a condition to which the licence is subject has been contravened or not complied with, or
 - (c) if Safe Food is satisfied that any part of the licence fee, or any other amount due to Safe Food by the licence holder, under the Act is unpaid, or
 - (d) whether or not the holder of the licence is a corporation, if Safe Food is of the opinion that the holder of the licence is not a suitable person to hold a licence, or

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- (e) if the holder of the licence is a corporation:
 - (i) Safe Food is of the opinion that a person who has an interest (whether legal or equitable) in any shares in the corporation or who is a director or officer of the corporation is not a suitable person to hold a licence, and
 - (ii) Safe Food has notified the corporation in writing of Safe Food's intention to suspend or cancel the licence if that person does not cease to have that interest within the period specified in the notice, and
 - (iii) that person has not ceased to have that interest within that period, or
 - (f) if Safe Food is of the opinion that the licence holder has ceased to carry on an activity covered by the licence, or
 - (g) if Safe Food is of the opinion that any dairy farm, milk store, dairy produce factory, conveyance or equipment occupied or used, or proposed to be occupied or used, by the applicant does not comply with any applicable requirements of this Scheme or is not suitable for its purpose or proposed purpose, or
 - (h) if, in the opinion of Safe Food, it is necessary to enable Safe Food to effectively carry out or give effect to any of the provisions of this Scheme or the Act to suspend or cancel the licence, or
 - (i) at the request of the holder of the licence or after receiving a notice under clause 45J.
- (2) Safe Food may only suspend or cancel a licence after having given the licence holder:
- (a) written notice of its intention to suspend or cancel the licence setting out its reasons, and
 - (b) an opportunity to make submissions.
- (3) Subclause (2) does not apply to the cancellation of a licence at the request of the licence holder or on receipt of a notice under clause 45J.

- (4) The suspension or cancellation of a licence:
 - (a) must be made by notice in writing, and
 - (b) must be served on the licence holder, and
 - (c) takes effect on the day on which the notice is served or on a later day specified in the notice.
- (5) A written notice of intention to cancel or suspend a licence must inform the person of the rights of review under clause 45I.

45I Appeals

A person may apply to the Administrative Decisions Tribunal for a review of the following decisions:

- (a) a decision to issue a licence to the person subject to conditions,
- (b) a decision to vary the conditions of the person's licence or to impose a condition on the person's licence,
- (c) a decision to refuse to issue a licence to the person or to renew the person's licence,
- (d) a decision to suspend or cancel the person's licence.

45J Notice of ceasing to operate

The holder of a licence who ceases to carry on an activity authorised by the licence must notify Safe Food as soon as practicable after so ceasing.

Maximum penalty: 25 penalty units.

Division 3 Licence fees

45K Licence fees

- (1) In addition to application fees payable under this Scheme, a licence holder is liable to pay a licence fee determined in accordance with this clause and section 70 of the Act.

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- (2) The amount of the licence fee is the fee determined by Safe Food in respect of the licence, or class of licence, concerned or the fee calculated on the basis determined by Safe Food for calculating the fee in respect of the licence, or class of licence, concerned.
- (3) The fee is to be paid at the time that the application for the issue or renewal of the licence is made or may, if approved by Safe Food, be paid by instalments during the term of the licence.
- (4) Safe Food may, at any time, waive the whole or part of a licence fee payable in respect of a licence.

Division 4 Transitional provisions

45L Transitional provisions relating to licences

- (1) A person who is issued a licence on or before 31 July 2000 is taken to be the holder of a licence in force on and from 1 July 2000.
- (2) A person referred to in clause 8 (1) of Schedule 2 to the *Dairy Industry Act* is taken to be the holder of a licence, as referred to in that subclause, in force on and from 1 July 2000.
- (3) The licence fee payable by the holder of a licence taken to have been in force on and from 1 July 2000 is payable in accordance with clause 45K (3), but not before 14 July 2000.
- (4) The licence fee payable by a person referred to in clause 8 (1) of Schedule 2 to the *Dairy Industry Act* is payable on 14 July 2000 or, if approved by Safe Food, may be paid by instalments during the term of the licence.
- (5) A person who is, or is taken to be, the holder of a licence taken to be in force on and from 1 July 2000 is not liable in respect of any breach of a condition of the licence that occurred before 14 July 2000, or the date on which the licence was issued, whichever is the later.

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Amendments

Schedule 1

[20] Appendix, clause 48 Review of Scheme following deregulation

Omit the clause.