



Food Amendment (Food Safety Schemes) Regulation 2004

under the

Food Act 2003

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Food Act 2003*.

IAN MICHAEL MACDONALD, M.L.C.,

Minister for Primary Industries

Explanatory note

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

- (a) to enable a licensed dairy farmer or dairy produce merchant to supply unpasteurised milk or cream to Dairy Farmers Milk Co-operative Limited,
- (b) to enable Dairy Farmers Milk Co-operative Limited to supply a licensed dairy produce factory with milk and cream that has not been pasteurised so long as Dairy Farmers Milk Co-operative Limited has obtained the milk and cream originally from a licensed dairy farmer or dairy produce merchant and merely on-sold it.

The Regulation also amends the *Food Production (Seafood Safety Scheme) Regulation 2001* as follows:

- (a) to replace the annual general seafood levy with an annual general licence fee that will be calculated on the same basis as the levy and will be able to be increased by the NSW Food Authority in accordance with increases in the Consumer Price Index,
- (b) to replace the annual State shellfish program levy with an annual licence fee to be determined by the NSW Food Authority and an annual shellfish service area levy calculated by the Authority on the basis of the number of hectares leased by the holder of a licence for certain aquaculture purposes under the *Fisheries Management (Aquaculture) Regulation 2002*,

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(c) to make an amendment by way of law revision.

This Regulation is made under the *Food Act 2003*, including sections 102, 117C and 139 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Food Amendment (Food Safety Schemes) Regulation 2004*.

2 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.

3 Amendment of Food Production (Seafood Safety Scheme) Regulation 2001

The *Food Production (Seafood Safety Scheme) Regulation 2001* is amended as set out in Schedule 2.

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Schedule 1 Amendment of Food Production (Dairy Food Safety Scheme) Regulation 1999

Schedule 1 Amendment of Food Production (Dairy Food Safety Scheme) Regulation 1999

(Clause 2)

[1] Schedule 1 Dairy Food Safety Scheme

Insert at the end of clause 7 (2) (c) (ii):

, or

- (d) to the supply of milk or cream by a dairy farmer, or dairy produce merchant, who is the holder of a licence to Dairy Farmers Milk Co-operative Limited (ARBN 108 690 384), or
- (e) to the supply of milk or cream by Dairy Farmers Milk Co-operative Limited if the conditions set out in subclause (3) are complied with in relation to that supply.

[2] Schedule 1, clause 7 (3)

Insert after clause 7 (2):

- (3) For the purposes of subclause (2) (e), the following conditions must be complied with:
 - (a) Dairy Farmers Milk Co-operative Limited must obtain the milk or cream from a dairy farmer, or dairy produce merchant, who is the holder of a licence,
 - (b) Dairy Farmers Milk Co-operative Limited must supply the milk or cream to a licensed dairy produce factory,
 - (c) Dairy Farmers Milk Co-operative Limited must not deal with, or handle, the milk or cream except by obtaining it or supplying it in accordance with paragraphs (a) and (b) or disposing of it in a manner that will ensure that it cannot be used for the purposes of human consumption.

Schedule 2 Amendment of Food Production (Seafood Safety Scheme) Regulation 2001

(Clause 3)

[1] Clause 4 Interpretation

Omit the definitions of *annual general seafood levy*, *annual State shellfish program levy* and *seafood* from clause 4 (1).

[2] Clause 4 (1)

Insert in alphabetical order:

seafood—see clause 5A.

[3] Clause 5A

Insert after clause 5:

5A Meaning of “seafood”

- (1) In this Regulation, *seafood* means any of the following intended for human consumption:
 - (a) marine, estuarine or freshwater fish or other aquatic animal life,
 - (b) any aquatic organisms,
 - (c) any product of, or anything containing a product of, fish, animal life or aquatic organisms referred to in paragraphs (a) and (b).
- (2) However, seafood does not include the following:
 - (a) crocodile,
 - (b) aquatic plant life,
 - (c) any product of, or anything containing a product of, crocodile or aquatic plant life that does not also contain any other thing referred to in subclause (1) (a)–(c).

[4] Clause 31 Funding of committees

Omit “money levied” from clause 31 (1).

Insert instead “licence fees and levies payable”.

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[5] Part 8, heading

Omit the heading. Insert instead:

Part 8 Licence fees and levies

[6] Part 8, Division 1

Omit the heading. Insert instead:

Division 1 Annual general licence fees

[7] Clause 32 Payment of annual general seafood levy

Omit the clause.

[8] Clause 33 Payment of annual general licence fee

Omit clause 33 (1). Insert instead:

(1) The holder of a licence who carries on one or more of the activities specified in Column 1 of Schedule 3 is to pay a licence fee each year to the Food Authority calculated in accordance with this clause.

(1A) The licence fee payable under this clause is in addition to any other licence fee or levy payable by the holder under this Part.

[9] Clause 33 (2)

Omit “levy”. Insert instead “amount”.

[10] Clause 33 (3)

Omit “levy”. Insert instead “licence fee”.

[11] Clause 33 (3)

Omit “amount of each of the levies”. Insert instead “of each amount”.

[12] Clause 33 (5)

Insert after subclause (4):

- (5) The Food Authority may increase the amount of any licence fee payable under this clause annually in accordance with the annual percentage increase (if any) in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

[13] Clause 33 (6)

Omit the subclause.

[14] Part 8, Division 2

Omit the Division. Insert instead:

Division 2 Licence fees and levies for State shellfish program

34 Payment of shellfish licence fees

- (1) The holder of a licence that authorises the harvesting of shellfish or the operation of a depuration plant is to pay a licence fee each year to the Food Authority.
- (2) The amount of the licence fee is the fee determined by the Food Authority or the fee calculated on the basis determined by the Food Authority.
- (3) The Food Authority may determine a fee, or a basis for calculating a fee, for the purposes of subclause (2) that:
 - (a) applies generally or is limited in its application by reference to specified exceptions or factors, or
 - (b) applies differently according to different factors of a specified kind.
- (4) The licence fee payable under this clause is in addition to any other licence fee or levy payable by the holder under this Part.

35 Shellfish area service levy

- (1) The holder of a licence is to pay a levy each year to the Food Authority if the holder:

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- (a) is also the holder of a class A aquaculture permit issued under Part 6 of the *Fisheries Management Act 1994* that authorises the carrying on of any activity authorised by the licence, and
 - (b) is the lessee under an aquaculture lease granted under Part 6 of that Act.
- (2) The amount of the levy payable under this clause by the holder of a licence is to be calculated by multiplying the number of hectares (including any part of a hectare) of the area of the aquaculture lease granted to the holder by \$9.
- (3) The levy payable under this clause is in addition to any other licence fee or levy payable by the holder under this Part.

35A Purposes for which licence fee or levy to be applied

A licence fee or levy payable under this Division is to be applied only for the following purposes:

- (a) meeting the costs incurred in maintaining the NSW Shellfish Committee,
- (b) meeting the costs incurred by that Committee in carrying out its responsibilities,
- (c) contributing to the operating costs of the Program.

[15] Clause 36 Payment of annual local shellfish program levy

Omit clause 36 (3)–(8).

[16] Part 8, Division 4

Insert after Division 3:

Division 4 Procedures for payment of licence fees and levies

37A Payment of licence fees and levies

- (1) The Food Authority is to issue to each holder of a licence who is liable to pay a licence fee or levy under this Part a notice in writing:
- (a) specifying the amount of the licence fee or levy and the period (being not less than 30 days after the issue of the notice) within which the licence fee or levy must be paid, and

- (b) specifying (where relevant) the method of calculating the amount of the licence fee or levy to be paid by that holder.
- (2) The holder of a licence is to pay the licence fee or levy to the Food Authority within the period specified in the notice for its payment unless the holder has approval from the Food Authority under this clause to pay the licence fee or levy by instalments.
- (3) The holder of a licence may, before the expiration of the period referred to in subclause (1) (a), apply to the Food Authority for approval to pay the licence fee or levy for a particular year by instalments.
- (4) An approval under this clause must be notified in writing to the holder of the licence concerned and must specify the amount of each instalment and the date by which each instalment must be paid.
- (5) The holder of a licence who has been given approval by the Food Authority to pay the licence fee or levy by instalments must pay each instalment in accordance with the terms of the approval.
- (6) If there is a failure by the holder of a licence who has approval to pay the licence fee or levy by instalments to pay the amount of an instalment by the date required in the approval, the total unpaid balance of the licence fee or levy may be treated by the Food Authority as an overdue amount even if payment by instalments has commenced.
- (7) The Food Authority may reduce or waive payment of a licence fee or levy in a particular case or class of cases.
- (8) Without limiting subclause (7), if a licence is granted after the commencement of a year for which a licence fee or levy is payable, the Food Authority may reduce the licence fee or levy payable by the holder of the licence for that year by a proportionate amount.

[17] Schedule 3, heading

Omit the heading. Insert instead:

Schedule 3 Annual general licence fees

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Schedule 2 Amendment of Food Production (Seafood Safety Scheme) Regulation 2001

[18] Schedule 5 Savings and transitional provisions

Insert after clause 6:

7 Licence fees and levies for 2003 to 2004

- (1) The amendments made to clauses 32 and 33 by the *Food Amendment (Food Safety Schemes) Regulation 2004* apply only in respect of the year commencing on 1 July 2004 and each subsequent year. Accordingly, this Regulation, as in force immediately before the commencement of that Regulation, applies to and in respect of a levy imposed under clause 32 in respect of a year commencing before 1 July 2004.
- (2) In relation to the year commencing on 1 July 2003, the Food Authority is taken to have determined an amount of \$750 as the licence fee for the purposes of clause 34 (2).

BY AUTHORITY
