



New South Wales

Food (Plant Products Food Safety Scheme) Regulation 2005

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 prescribe a food safety scheme for certain plant products. This Regulation includes provisions relating to the following:

- (a) requirements that a person obtain a licence to carry on a business involving the handling of certain plant products, being fresh cut fruit, fresh cut vegetable, vegetables in oil, unpasteurised juice or seed sprouts,
- (b) licences, including applications for licences, conditions of licences and suspension and cancellation of licences,
- (c) the preparation and certification of food safety programs for plant products businesses,
- (d) the sampling and analysis of plant products,
- (e) inspections and audits of plant products businesses by officers of the NSW Food Authority,
- (f) the establishment of a New South Wales Plant Products Industry Committee for the purposes of carrying out industry consultation required by the *Food Act 2003*,
- (g) the setting of fees by the NSW Food Authority for the purposes of this Regulation,
- (h) the issue of penalty notices for certain offences.

This Regulation is made under the *Food Act 2003*, including sections 102, 120 and 139 (the general regulation-making power).

This Regulation refers to the *Food Standards Code* of the Commonwealth and to the *Plant Products Manual* published by the NSW Food Authority.

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Clause 1 Food (Plant Products Food Safety Scheme) Regulation 2005

Part 1 Preliminary

Food (Plant Products Food Safety Scheme) Regulation 2005

under the

Food Act 2003

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Food (Plant Products Food Safety Scheme) Regulation 2005*.

2 Commencement

This Regulation commences on 1 April 2005.

3 Plant Products Food Safety Scheme

The provisions of this Regulation are prescribed as a food safety scheme for the purposes of section 102 of the Act.

4 Definitions

(1) In this Regulation:

approved fee, in relation to a particular provision of this Regulation, means the fee approved by the Food Authority under clause 26 for the purposes of that provision.

food safety program for a plant products business means a food safety program certified by the Food Authority under Part 4 for the plant products business.

fresh cut fruit means any fruit that has been processed in some way such as by trimming, cutting, slicing, peeling or pulling apart, but is still raw.

fresh cut vegetable means any vegetable that has been processed in some way such as by trimming, cutting, slicing, peeling or pulling apart, but is still raw.

licence means a licence in force under this Regulation.

pasteurisation means, in relation to food of any kind:

- (a) heating the food to a temperature of no less than 72 degrees Celsius and retaining the food at that temperature for no less than 15 seconds, or

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- (b) treating the food using a technology or method that produces an equivalent lethal effect on microorganisms present in the food as that provided by the method referred to in paragraph (a).

plant product means fresh cut fruit, fresh cut vegetable, vegetables in oil, unpasteurised juice or seed sprouts.

plant products business is defined in clause 6.

Plant Products Manual means the document of that name published by the Food Authority, as in force from time to time.

seed sprouts means sprouted seeds or beans.

the Act means the *Food Act 2003*.

unpasteurised juice means fruit or vegetable juice, or a mixture of such juice, that has not been subject to pasteurisation.

vegetables in oil means fruits, vegetables or herbs, or a combination of any of those, immersed in oil, whether in whole or in part.

- (2) Notes included in this Regulation do not form part of this Regulation.

5 Application of Regulation to fresh cut fruit and vegetable, seed sprouts and juices

- (1) This Regulation does not apply to the carrying on of a plant products business to the extent to which the business involves the handling of a plant product (other than vegetables in oil) that the person carrying on the business reasonably believes:
- (a) will be further processed in a way that will convert it from being a plant product and reduce the risk of microbiological contamination in it before it is supplied to a consumer, or
 - (b) will be in packaging, when supplied to a consumer, that indicates that the plant product is not ready to consume until it is further processed in a way that will reduce the risk of microbiological contamination in it.
- (2) For the purposes of subclause (1), the risk of microbiological contamination is taken to be reduced:
- (a) in fresh cut fruit, fresh cut vegetable and seed sprouts by cooking or by a process equivalent in its effectiveness, or
 - (b) in unpasteurised juice by pasteurisation or by a process equivalent in its effectiveness.

6 Meaning of “plant products business”

In this Regulation, *plant products business* means a business involving the handling of plant products, but only if any of the following activities are carried out in the course of that business:

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Part 1 Preliminary

- (a) the extraction of juice from vegetables or fruits without pasteurising the juice,
- (b) the processing of seed sprouts, fruits or vegetables to produce plant products, including (but not limited to) cutting, peeling, preserving and cooking,
- (c) the storage of plant products,
- (d) the distribution of plant products,
- (e) the transportation of plant products,
- (f) the packaging of plant products.

Part 2 Handling of plant products

7 Plant products business to be licensed to carry out activities

- (1) A person must not carry on a plant products business unless the person holds a licence for the plant products business.
- (2) Subclause (1) does not apply to a plant products business if the Food Authority has issued an exemption in writing from the operation of that subclause in relation to that business and the exemption has not been revoked by the Food Authority.
- (3) The Food Authority may issue an exemption under subclause (2) only if it is of the opinion that the plant products business concerned is of a class identified in the Plant Products Manual as not requiring licensing.

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Clause 8 Food (Plant Products Food Safety Scheme) Regulation 2005

Part 3 Licensing of plant products businesses

Part 3 Licensing of plant products businesses

8 Application for licence

- (1) A person may apply to the Food Authority for a licence to carry on a plant products business.
- (2) An application for a licence must:
 - (a) be made in a form approved by the Food Authority, and
 - (b) be accompanied by the approved fee for the application and the approved fee for the licence, and
 - (c) comply with any other requirements of this Regulation relating to applications for licences, and
 - (d) be accompanied by such information as the Food Authority requires to determine the application.
- (3) The Food Authority may require further information to be provided by the applicant if the Food Authority considers that the information is necessary to determine the application.

9 Issue of licences

- (1) The Food Authority may, after considering an application for a licence:
 - (a) grant the application, with or without conditions, or
 - (b) refuse the application.
- (2) Without limiting the grounds on which the Food Authority may refuse a licence, the Food Authority must not grant a licence unless satisfied that the applicant for the licence has prepared a proposed food safety program for the plant products business concerned that complies with clause 18.
- (3) The requirement for the preparation of a proposed food safety program referred to in subclause (2) does not apply to a plant products business identified as exempt from that requirement in the Plant Products Manual.
- (4) If the Food Authority grants an application for a licence, it must issue the licence to the applicant in a form that sets out the following:
 - (a) the activities authorised by the licence,
 - (b) the premises or vehicles on or in which such activities may be conducted,
 - (c) the conditions to which the licence is subject.

- (5) If the Food Authority 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.
- (6) If the Food Authority refuses an application for a licence, it is to refund the approved fee for the licence that has been submitted by the applicant.

10 Duration of licence

- (1) A licence has effect for a period of one year after 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 Regulation but the application is not finally determined before the expiry of the licence, the licence continues in force if not suspended or sooner cancelled until the application is finally determined.

11 Additional conditions of licence

In addition to any conditions of a licence imposed by the Food Authority under clause 9, it is a condition of a licence that the holder of the licence ensure that the provisions of the Act, this Regulation and the Food Standards Code are complied with in relation to the carrying on of any activity authorised by the licence and any premises or vehicle to which the licence relates.

12 Variation of terms and conditions of licence

- (1) The Food Authority may vary any term of a licence or any condition imposed by the Food Authority on a licence.
- (2) The Food Authority may vary a term or condition of a licence only after having given the holder of the licence written notice of its intention to vary the term or condition setting out its reasons.
- (3) The notice must include a statement that the holder of the licence concerned may make submissions to the Food Authority in relation to the proposed variation within 14 days after the date of the notice.
- (4) Subclauses (2) and (3) do not apply to the variation of a term or condition of a licence at the request of the holder of the licence.
- (5) A variation of a term or condition of a licence:
 - (a) must be made by notice in writing, and
 - (b) must be served on the holder of the licence, and

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Part 3 Licensing of plant products businesses

- (c) takes effect on the day on which the notice is served or on a later day specified in the notice.
- (6) The Food Authority may charge the holder of a licence who applies for a variation of the terms or conditions of the licence:
 - (a) an approved fee for the application, and
 - (b) if the Food Authority considers that any inspection or audit is required to enable it to determine the application properly, a charge for the inspection or audit in accordance with clause 24.
- (7) If the Food Authority varies a term or condition of a licence, it is to issue the holder of the licence with a replacement licence that takes account of the variation.

Note. A holder of a licence will need to apply to the Food Authority for a variation under this clause of a term or condition of the licence if, for example, the holder proposes to change the activities authorised by the licence or the premises or vehicles on or in which such activities are conducted.

13 Suspension or cancellation of licence

- (1) The Food Authority may suspend or cancel a licence:
 - (a) if the Food Authority is satisfied that the suspension or cancellation is necessary to avert a potential threat to food safety, or
 - (b) if the Food Authority is satisfied that there has been a contravention of any provision of the Act or this Regulation, or
 - (c) if the Food Authority is satisfied that a condition to which the licence is subject has been contravened, or
 - (d) if the Food Authority is of the opinion that the food safety program for the plant products business is inadequate or is not being properly implemented, or
 - (e) if any amount due to the Food Authority under the Act by the holder of the licence is unpaid, or
 - (f) if the Food Authority is of the opinion that the holder of the licence, or a person involved in the carrying on of the plant products business authorised by the licence, does not have the necessary capacity, experience or qualifications to ensure the safety of food for human consumption, or
 - (g) at the request of the holder of the licence.
- (2) The Food Authority may suspend or cancel a licence only after having given the holder of the licence written notice of its intention to suspend or cancel the licence setting out its reasons.

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- (3) The notice must include a statement that the holder of the licence concerned may make submissions to the Food Authority in relation to the proposed suspension or cancellation within 14 days after the date of the notice.
 - (4) Subclauses (2) and (3) do not apply to the suspension or cancellation of a licence at the request of the holder of the licence.
 - (5) The suspension or cancellation of a licence:
 - (a) must be made by notice in writing, and
 - (b) must be served on the holder of the licence, and
 - (c) takes effect on the day on which the notice is served or on a later day specified in the notice.
 - (6) If a licence authorises the carrying on of more than one activity, the Food Authority may suspend the licence to the extent to which it authorises a particular activity or activities to be carried on.
 - (7) If a licence authorises the carrying on of an activity at 2 or more premises or in or on 2 or more vehicles, the Food Authority may suspend the licence to the extent to which it authorises activities to be carried on at particular premises or in or on a particular vehicle.

14 Licence not transferable

A licence is not transferable.

15 Renewal of licence

- (1) The holder of a licence may, not later than 10 days before the expiration of the term of the licence, apply to the Food Authority for renewal of the licence.
- (2) The application is to be accompanied by the approved fee for the licence.
- (3) The Food Authority may, after considering an application for renewal of a licence:
 - (a) grant the application with or without conditions, or
 - (b) refuse the application.
- (4) If the Food Authority 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 the Food Authority refuses an application for renewal of a licence, the Food Authority must give notice of the refusal in writing to the applicant setting out the reasons for the refusal.

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Part 3 Licensing of plant products businesses

- (6) A written notice of intention to refuse to renew a licence or to impose a condition on a renewed licence must inform the applicant of the applicant's rights of review.
- (7) If the Food Authority refuses an application for renewal of a licence, the Food Authority is to refund the approved fee for the licence that has been submitted by the applicant.

16 Display of licence

- (1) The holder of a licence must ensure that a copy of the licence is displayed on every premises to which the licence relates.
Maximum penalty: 25 penalty units.
- (2) The holder of a licence must ensure that a copy of the licence is carried on every vehicle to which the licence relates.
Maximum penalty: 25 penalty units.

17 Review of decisions

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

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

Part 4 Food safety programs

18 Content of food safety program

A food safety program must:

- (a) comply with the principles and guidelines set out in the document entitled *Hazard Analysis and Critical Control Point (HACCP) System and Guidelines For Its Application* published by the Codex Alimentarius Commission, and
- (b) adequately address measures to be taken to eliminate, or reduce to an acceptable level, food safety hazards reasonably expected to be present in the plant product or products concerned or the handling of the product or products, and
- (c) meet any other requirements notified in writing by the Food Authority to the applicant for a licence or the holder of the licence for the plant products business concerned.

19 Certification of food safety program

- (1) The Food Authority must certify a food safety program for a plant products business to which a licence relates if the Food Authority is satisfied that the food safety program complies with clause 18.
- (2) For the purposes of determining whether a proposed food safety program for a plant products business should be certified, the Food Authority may arrange for an authorised officer to conduct an audit of the food safety program.

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Clause 20 Food (Plant Products Food Safety Scheme) Regulation 2005

Part 5 Sampling and analyses

Part 5 Sampling and analyses

20 Plant products business to undertake analyses of plant products

- (1) The holder of a licence must, at the holder's own expense, ensure that samples of plant products handled in the course of the plant products business authorised by the licence are analysed:
 - (a) except as provided by paragraph (b), in accordance with the requirements of the Plant Products Manual, or
 - (b) in accordance with the terms of a notice served on the holder of the licence under subclause (2).

Maximum penalty: 25 penalty units.

- (2) The Food Authority may, by notice in writing served on the holder of a licence, specify the frequency at which analyses are to be carried out for the purposes of this clause and the manner in which they are to be carried out.

21 Reports of analyses

- (1) The holder of a licence must ensure that every analysis carried out for the purposes of clause 20 is carried out in a laboratory approved by the National Association of Testing Authorities, Australia, or by the Food Authority, for the particular type of analysis to be undertaken.

Maximum penalty: 25 penalty units.

- (2) The person in charge of a laboratory in which an analysis for the purposes of clause 20 is carried out must, within 24 hours after the analysis is completed, submit a written report to the Food Authority of the results of the analysis if any pathogen or substance specified in the Plant Products Manual is detected, unless the analysis is the subject of an exemption under subclause (7).

Maximum penalty: 25 penalty units.

- (3) The holder of a licence must, in accordance with subclause (4), notify the Food Authority of the results of any analysis carried out by or on behalf of the holder of the licence (other than an analysis the subject of an exemption under subclause (7)) if:

- (a) any pathogen specified in the Plant Products Manual is detected, or
- (b) the results indicate that any plant product analysed contained a substance at a level in excess of that allowed for that substance by the Food Standards Code or the Plant Products Manual.

Maximum penalty: 25 penalty units.

- (4) A notification under subclause (3) must:
 - (a) be made orally as soon as possible after the holder becomes aware of the results of the analysis, and
 - (b) be made in writing within 7 days after the holder becomes aware of the results of the analysis.
- (5) A person is not excused from a requirement to notify the Food Authority under subclause (3) on the ground that the information provided in the notification might incriminate the person or make the person liable to a penalty.
- (6) However, any information furnished in such a notification is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence against subclause (3).
- (7) The Food Authority may exempt analyses carried out for the purposes of clause 20 from the operation of subclause (2) or (3) in a particular case or class of cases.
- (8) An exemption must be in writing and notified to each laboratory or holder of a licence that is affected or, if the exemption affects or may affect a number of laboratories or holders of licences, may instead be published in the Gazette.

22 Charges for analyses

- (1) The charge payable for the carrying out by the Food Authority of any analysis for the purposes of the Act or this Regulation is the amount determined by the Food Authority to be the reasonable costs incurred by the Food Authority in carrying out the analysis or having the analysis carried out on its behalf.
- (2) The charges payable under this clause are payable to the Food Authority.
- (3) The Food Authority may reduce or waive payment of a charge in a particular case or class of cases.

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Clause 23 Food (Plant Products Food Safety Scheme) Regulation 2005

Part 6 Inspections and audits

Part 6 Inspections and audits

23 Inspections and audits in relation to plant products businesses

- (1) The Food Authority may arrange for an authorised officer to carry out any or all of the following types of inspection or audit before or after granting a licence in respect of a plant products business:
 - (a) an inspection of the premises and equipment involved in the plant products business, and the activities carried on in the course of the plant products business,
 - (b) an audit of the food safety program, or proposed food safety program, for the plant products business.
- (2) This clause is not intended to limit any powers of an authorised officer to carry out an inspection under Part 4 or 5 of the Act.

24 Fees and charges for inspections and audits

- (1) The fees and charges payable for the carrying out by the Food Authority of any inspection for the purposes of the Act or this Regulation or any audit of a food safety program or proposed food safety program are those determined by the Food Authority to be the reasonable costs incurred by the Food Authority in carrying out the inspection or audit and may include an amount determined by the Food Authority in relation to travelling time and expenses.
- (2) The fees and charges payable under this clause are payable to the Food Authority.
- (3) The Food Authority may reduce or waive payment of a fee or charge in a particular case or class of cases.

Part 7 Industry consultation

25 New South Wales Plant Products Industry Committee

- (1) The Food Authority is to establish a body to be known as the New South Wales Plant Products Industry Committee (*the Industry Committee*) for the purposes of the consultation referred to in section 105 of the Act in relation to this Regulation.
- (2) The Industry Committee is to be comprised principally of persons nominated by the plant products industry, and endorsed by the Food Authority, to represent the major sectors of the industry.
- (3) The Industry Committee may also comprise such officers of the Food Authority and the Department of Health, and representatives of other bodies or industry organisations and of consumers, as the Food Authority allows.
- (4) The Industry Committee may establish subcommittees to assist it in the exercise of its functions.
- (5) The Food Authority is to appoint a Chairperson and Secretary of the Industry Committee.
- (6) The procedure for the calling and holding of meetings of the Industry Committee is to be as determined by the Food Authority in consultation with the plant products industry.

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Clause 26 Food (Plant Products Food Safety Scheme) Regulation 2005

Part 8 Miscellaneous

Part 8 Miscellaneous

26 Approved fees

The Food Authority may determine the amount of any approved fee for the purposes of this Regulation.

27 Offences

- (1) A breach of a provision of this Regulation does not constitute an offence against this Regulation unless a penalty is provided in the provision.
- (2) Subclause (1) does not affect the operation of section 104 of the Act in relation to the provisions of this Regulation.

Note. Section 104 of the Act:

- (a) makes it an offence for a person to handle or sell food in a manner that contravenes a provision of a food safety scheme, and
- (b) makes it an offence for a person to carry on any food business or activity for which a licence is required by the regulations if the person does not hold such a licence, and
- (c) makes it an offence for the holder of a licence to contravene or fail to comply with a condition of the licence, and
- (d) makes it an offence for the proprietor of a food business not to ensure that certain requirements imposed by a food safety scheme in relation to food safety programs for the business are complied with.

28 Penalty notice offences and penalties

For the purposes of section 120 of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 1 is an offence for which a penalty notice may be served, and
- (b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of Schedule 1.

29 Savings and transitional provisions

Schedule 2 has effect.

Schedule 1 Penalty notices

(Clause 28)

Column 1	Column 2
Provision	\$
Clause 20 (1) of this Regulation	220
Clause 21 (1) of this Regulation	220
Clause 21 (2) of this Regulation	220
Clause 21 (3) of this Regulation	220
Clause 2 (2) of Schedule 2 to this Regulation	220

Schedule 2 Savings and transitional provisions

(Clause 29)

1 Licensing of existing plant products businesses

If a person who is carrying on a plant products business at the commencement of this Regulation makes an application to the Food Authority:

- (a) in accordance with this Regulation, and
- (b) within 2 months after its commencement,

for a licence to carry on the business, the person is taken to be the holder of a licence authorising the carrying on of the business until the Food Authority determines the application.

2 Development of food safety programs for existing plant products businesses

- (1) Despite clause 9 (2), the Food Authority may grant a licence to an applicant who is carrying on a plant products business at the commencement of this Regulation even though the applicant has not prepared a proposed food safety program.
- (2) A person who is carrying on a plant products business at the commencement of this Regulation and who continues to carry on the plant products business after that commencement must submit to the Food Authority a proposed food safety program for the plant products business, that complies with clause 18, within 6 months after that commencement or within such further period as is notified in writing to the person by the Food Authority.
Maximum penalty (subclause (2)): 25 penalty units.
- (3) Subclause (2) does not apply to a plant products business referred to in clause 9 (3).

BY AUTHORITY