

# Food Production (Dairy Food Safety Scheme) Regulation 1999

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New South Wales

## Status Information

### Currency of version

Historical version for 5 April 2004 to 24 June 2004 (accessed 28 December 2024 at 7:47)

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill 2004](#)
- **Note**  
The [Food Production \(Dairy Food Safety Scheme\) Regulation 1999](#) made under the [Food Production \(Safety\) Act 1998](#) is on and from 5.4.2004 taken to be a regulation made under the [Food Act 2003 No 43](#). See clause 15 of Schedule 2 to the [Food Act 2003](#).

### Authorisation

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# Food Production (Dairy Food Safety Scheme) Regulation 1999



New South Wales

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# Food Production (Dairy Food Safety Scheme) Regulation 1999



New South Wales

## 1 Name of Regulation

This Regulation is the *Food Production (Dairy Food Safety Scheme) Regulation 1999*.

## 2 Commencement

This Regulation commences on 1 July 1999.

## 3 Definition

In this Regulation:

**the Act** means the *Food Act 2003*.

## 4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

## 5 Dairy food safety scheme

The food safety scheme set out in Schedule 1 to this Regulation is prescribed as a food safety scheme for the purposes of section 19 of the Act.

## Schedule 1 Dairy Food Safety Scheme

### Part 1 Preliminary

#### 1 Name of Scheme

This food safety scheme may be referred to as the *Dairy Food Safety Scheme 1999*.

#### 2 Application of Scheme

This Scheme applies to and in respect of milk and dairy products.

### 3 Definitions

(1) In this Scheme:

**approved** means approved by the Food Authority.

**dairy farm** means any land or premises used for or in connection with the stalling, grazing, feeding or milking of milking animals 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 on a dairy farm for human consumption.

**Dairy Industry Act** means the [Dairy Industry Act 2000](#).

**dairy produce factory** means any building or place at or in which:

- (a) any milk or dairy product is produced, or
- (b) any milk is treated or processed after its production if the treatment or processing results in a product that is milk or a dairy product, or
- (c) any dairy product is treated or processed after its production if the treatment or processing results in a product that is a dairy product,

but does not include a building or place:

- (d) used solely for, or in connection with, the grazing, feeding or milking of milking animals for the purpose of producing milk, or
- (e) on a dairy farm, that is used for, or in connection with, the packaging of unprocessed goat's milk that is supplied or is to be supplied for sale.

**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, but does not include any premises used solely for retail purposes.

**dairy product** means a food, not being milk, that contains:

- (a) at least 50 per cent (measured by weight) of either or both of the following:
  - (i) cow's milk,
  - (ii) any substance produced from cow's milk (but disregarding any weight of the

substance not attributable to milk), or

- (b) at least 25 per cent (measured by weight) of either or both of the following:
  - (i) milk from a milking animal other than a cow,
  - (ii) any substance produced from milk from a milking animal other than a cow (but disregarding any weight of the substance not attributable to that milk), or
- (c) at least 50 per cent (measured by weight) of either or both of the following:
  - (i) milk from any one or more species of milking animal,
  - (ii) any substance produced from milk from any one or more species of milking animal (but disregarding any weight of the substance not attributable to that milk).

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

**FSANZ** means Food Standards Australia New Zealand.

**licence** means a licence in force under this Scheme.

**milk** means the mammary secretion of a milking animal obtained from one or more milkings and intended for human consumption as a liquid or for further processing, but does not include colostrums.

**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.

**milking animal** means a cow, goat or sheep.

**NSW Dairy Manual** means the publication of that name published by Safe Food.

**the Act** means the [Food Act 2003](#).

**vehicle vendor** means a person who delivers milk by vehicle and who sells the milk so delivered.

- (2) (Repealed)

#### 4 Food Regulation applies as part of Scheme

- (1) The provisions of the [Food Regulation 2004](#) apply as provisions of this Scheme to the extent that those provisions are applicable to the handling of milk or dairy products.
- (2) A person is not liable to be convicted of an offence arising from a provision of this Scheme and of an offence arising from a provision of that Regulation in respect of

essentially the same act or omission.

(3) This clause does not limit the operation of the *Food Regulation 2004*.

## **5 Persons responsible for compliance**

(1) The person responsible for compliance with the obligations imposed by this Scheme in respect of dairy farms, a dairy produce factory, a dairy produce store or a milk store is the manager of the dairy farms, dairy produce factory, dairy produce store or milk store. The manager must ensure that those obligations are complied with.

(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.

(3) This clause does not apply to an obligation imposed by this Scheme on some other person.

## **6 Australian Standards and other publications**

(1) A reference in this Scheme to an Australian Standard or other publication is a reference to the Standard or publication as in force from time to time.

(2) A provision of this Scheme that requires compliance with provisions of an Australian Standard or other publication does not extend to require compliance with a provision of the Standard or publication:

(a) that is expressed to be a recommendation, or

(b) in relation to which the word “should” is used so as to indicate that the provision is of an advisory nature only.

## **Part 2 General requirements**

### **7 Milk and cream must be pasteurised**

(1) A person must not supply milk or cream for human consumption unless:

(a) the milk or cream has been pasteurised by one of the processes specified in Standard 1.6.2 (Processing requirements) of the Food Standards Code, and

(b) (Repealed)

(c) in the case of cow’s milk or cream—the milk or cream does not exhibit a

phosphatase activity equivalent to that required to give a reading in excess of 10 µg/mL of p-nitrophenol when tested immediately after pasteurisation by the current standard method in Australian Standard AS2300—*Methods of Chemical and Physical Testing for the Dairying Industry*.

(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, or
- (c) to goat's milk or cream, but only if:
  - (i) the milk or cream has been produced in compliance with a food safety program certified under clause 18, and
  - (ii) in the case of milk or cream that is unpasteurised—the milk or cream bears a label that includes an advisory statement in accordance with clause 2 of Standard 1.2.3 of the Food Standards Code.

## **8 Protection of milk and dairy products on premises**

Milk and dairy products at dairy farms, a milk store, a dairy produce factory or a dairy produce store must be kept, stored and treated in a manner that will protect the milk or dairy products at all times from all conditions or situations that may allow contamination to enter the milk or dairy products or cause spoilage or tainting of the milk or dairy products.

## **9 Protection of milk and dairy products being transported**

A carrier or vehicle vendor must transport milk or dairy products in a manner that will protect it at all times from all conditions or situations that may allow contamination to enter the milk or dairy products or cause spoilage or tainting of the milk or dairy products.

## **10 Requirements for production, manufacturing and storage areas**

Products and materials must not be stored in the production area, manufacturing area, milk or dairy products storage area or packaging materials storage area of dairy premises, a milk store, a dairy produce factory or a dairy produce store except those products and materials that are used in the production or manufacture of milk, dairy products or other foods, or in the cleaning and sanitising of buildings and equipment used in connection with the production or manufacture of milk, dairy products or other foods.

## **Part 3 Requirements for dairy farms**

### **Division 1 Dairy buildings and equipment**

#### **11 Definition of “dairy buildings”**

In this Division:

**dairy building** means:

- (a) a building used for or in connection with the milking of milking animals for the purpose of producing milk that is supplied or to be supplied for profit or sale, or
- (b) a building on a dairy farm, that is used for, or in connection with, the packaging of unprocessed goat’s milk that is supplied or is to be supplied for sale.

#### **12 Building not to be used as dairy building without licence**

- (1) A building must not be used as a dairy building except by or on behalf of the holder of a dairy farmer’s licence and in accordance with any conditions of the licence.
- (2) The Food Authority 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 substantially 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 the Food Authority and in accordance with any conditions of the approval.
- (4) An application for approval must be made in a form approved by the Food Authority and must be accompanied by such documents and information as the Food Authority may require.
- (5) The Food Authority may grant an approval subject to such conditions as the Food Authority considers appropriate.
- (6) The Food Authority 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.



### **13 Equipment in dairy buildings**

A building must not be used as a dairy building unless equipment in the building used for or in connection with the milking of milking animals complies with the requirements set out in the publication *Code of Practice for Dairy Buildings* published by Safe Food, or the Food Authority otherwise approves in the particular case.

### **14 Maintenance**

- (1) A dairy building must be maintained in good repair and clean condition.
- (2) Equipment in a dairy building used for or in connection with the milking of milking animals must be maintained in a serviceable and hygienic condition.

## **Division 2 Handling of farm milk**

### **15 Cooling or packaging of milk**

Milk harvested at dairy farms must, within 3 hours 30 minutes after the commencement of milking:

- (a) be processed or packaged, or
- (b) be cooled to a temperature that is 4 degrees C or less and must be kept at that temperature during storage at the premises.

### **16 Sampling and testing**

The manager of a dairy produce factory must ensure that the following requirements are complied with in respect of milk collected from dairy farms for delivery to the dairy produce factory:

- (a) milk must be sampled and sensory graded, and a record made of the volume and temperature of the milk and of the results of the sensory grading, by an appropriately qualified person,
- (b) samples of milk must be taken, stored, transported and treated in accordance with the requirements of the *NSW Dairy Manual*,
- (c) a sample of milk taken at dairy farms for microbiological testing must be a representative sample and must be taken aseptically,
- (d) when a sample is taken for the purpose of testing for the presence of any anti-microbial drug residue, the sample must be a representative sample,
- (e) milk received at a dairy produce factory must be tested in accordance with the requirements of the *NSW Dairy Manual* and a record of the test results kept at the factory and available for inspection for at least 12 months after the test,

- (f) milk must not be processed for human consumption and must not be used in the manufacture of dairy products unless it complies with the requirements of the following standards of the Food Standards Code with respect to metals, chemical residues, drug residues and contaminants:
  - (i) Standard 1.4.1 (Contaminants and Natural Toxicants),
  - (ii) Standard 1.4.2 (Maximum Residue Limits),
  - (iii) Standard 2.5.1 (Milk).

## **17 Milk collection**

The manager of a dairy produce factory must ensure that the following requirements are complied with in respect of the collection of milk from dairy farms for delivery to the dairy produce factory:

- (a) the frequency of milk collection from dairy farms must be such as to permit the cleaning and sanitising of the farm vat after emptying and before any more milk is placed in the vat,
- (b) milk is not to be collected from any farm vat unless the temperature has been reduced to 4 degrees C or less, unless specifically authorised in a particular case by the Food Authority,
- (c) (Repealed)
- (d) milk collection must be in accordance with the requirements of the publication *Code of Practice for Collection of Milk from Dairy Farms* published by Safe Food.

## **Division 3 On-farm food safety programs**

### **18 Certification of food safety program**

- (1) The manager of dairy farms may apply to the Food Authority for certification by the Food Authority of a food safety program for dairy operations carried on at the dairy farm.
- (2) The Food Authority may certify a food safety program only if the Food Authority is satisfied, on the basis of the information available to the Food Authority at the time of certification, that the program:
  - (a) complies with the principles and guidelines set out in the publication *Hazard Analysis and Critical Control Point (HACCP) System and Guidelines For Its Application* published by the Codex Alimentarius Commission, or
  - (b) is otherwise appropriate and adequate for the processes carried out on the dairy farm at the time of certification.

## **19 Audit and inspection frequency**

- (1) Dairy farms at which a certified food safety program has been implemented are to be audited by the Food Authority at the frequency provided for by the *NSW Dairy Manual*.
- (2) Dairy farms at which no certified food safety program has been implemented are to be inspected by the Food Authority at the frequency determined by the Food Authority from time to time.

## **Part 4 Requirements for dairy produce factories, dairy produce stores and milk stores**

### **Division 1 Buildings and equipment**

#### **20 Building not to be used without licence**

- (1) A building must not be used as a dairy produce factory, dairy produce store or milk store 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.
- (2) The Food Authority 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 substantially 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 the Food Authority and in accordance with any conditions of the approval.
- (4) An application for approval must be made in a form approved by the Food Authority and must be accompanied by such documents and information as the Food Authority may require.
- (5) The Food Authority may grant an approval subject to such conditions as the Food Authority considers appropriate.
- (6) The Food Authority 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.

## 21 Requirements of Export Control Orders to apply

- (1) Such of the requirements of Schedules 2 and 3 of the *Export Control (Processed Food) Orders* as are applied to this Scheme under the *NSW Dairy Manual*, published by Safe Food, apply as part of this Scheme to and in respect of a dairy produce factory, dairy produce store or milk store.
- (2) Those provisions so apply with such modifications as may be provided for by the *NSW Dairy Manual*.
- (3) In this clause:

**Export Control (Processed Food) Orders** means the *Export Control (Processed Food) Orders* issued by the Commonwealth Department of Agriculture, Fisheries and Forestry as in force from time to time.

## 22 Cleaning and repair of buildings and equipment

The following requirements apply in respect of the premises and buildings that comprise a dairy produce factory, milk store or dairy produce store and the equipment used there:

- (a) the premises and buildings must be kept clean and in good repair, and
- (b) equipment must be cleaned immediately after use and kept clean prior to reuse, and must be kept in a clean and sanitary condition and in good repair, and
- (c) the premises, buildings and equipment must not be used to manufacture, process or pack any product other than food for human consumption, unless the Food Authority otherwise approves in a particular case.

## Division 2 Food safety program

### 23 Certification of food safety program

- (1) The manager of a dairy produce factory, milk store or dairy produce store may apply to the Food Authority for certification by the Food Authority of a food safety program for the dairy produce factory, milk store or dairy produce store.
- (2) The Food Authority may certify a food safety program only if the Food Authority is satisfied, on the basis of the information available to the Food Authority at the time of certification, that the program:
  - (a) complies with the principles and guidelines set out in the publication *Hazard Analysis and Critical Control Point (HACCP) System and Guidelines For Its Application* published by the Codex Alimentarius Commission, or
  - (b) is otherwise appropriate and adequate for the processes carried out at the dairy produce factory, milk store or dairy produce store at the time of certification.

## **24 Audit and inspection frequency**

- (1) A dairy produce factory, milk store or dairy produce store at which a certified food safety program has been implemented is to be audited by the Food Authority at the frequency provided for by the *NSW Dairy Manual*.
- (2) A dairy produce factory, milk store or dairy produce store at which no certified food safety program has been implemented is to be inspected by the Food Authority at the frequency determined by the Food Authority from time to time.

## **Division 3 Handling of milk and dairy products by dairy produce factory**

### **25 Cooling of milk**

- (1) Milk received at a dairy produce factory must be cooled immediately to and held at a temperature of not more than 5 degrees C until its use in manufacture or dispatch to another dairy produce factory.
- (2) This clause does not apply to milk that is processed or packaged within 3 hours and 30 minutes of milking.

### **26 Records to be kept**

- (1) The manager of a dairy produce factory must keep a record of the details of:
  - (a) all milk, cream and other food ingredients received at the dairy produce factory for the manufacture of milk and dairy products, and
  - (b) all milk and dairy products dispatched by the dairy produce factory to another dairy produce factory, and
  - (c) the quantity, container type and size, date code or product batch number of each type of dairy product manufactured at and distributed from the dairy produce factory.
- (2) A record required by this clause must be kept at the dairy produce factory for not less than 12 months or the accepted shelf-life of the product to which the record relates, whichever is longer.

### **27 Testing of milk consigned from one dairy produce factory to another**

- (1) If raw milk is consigned from one dairy produce factory to another, the milk must be tested by the manager of each factory in accordance with the requirements as to test methods, standards and test frequencies specified in the *NSW Dairy Manual*.
- (2) The results of those tests must be advised by the manager of the consignor dairy produce factory to the manager of the consignee dairy produce factory prior to

acceptance of the milk at the consignee dairy produce factory.

- (3) A record of the results of the tests must be kept at each factory for not less than 12 months.

## **28 Temperature of milk consigned between dairy produce factories**

Milk consigned from a dairy produce factory must not be accepted at another dairy produce factory if the temperature of the milk is more than 5 degrees C on arrival at the other dairy produce factory.

## **29 Temperature and storage of milk and cream at factories**

- (1) When milk or cream is stored at a dairy produce factory pending processing, it must be kept at a temperature of not more than 5 degrees C unless it is processed within 3 hours and 30 minutes after the commencement of milking.
- (2) When milk or cream is stored at a dairy produce factory where it will be packaged only, it must be kept at a temperature of not more than 5 degrees C prior to packaging unless it is packaged within 3 hours and 30 minutes after the commencement of milking.
- (3) After processing of milk or cream at a dairy produce factory and prior to packaging, the milk or cream must be kept at a temperature of not more than 5 degrees C.
- (4) Packaged milk and cream (other than commercially sterile products) must be cooled to and kept at a temperature of not more than 5 degrees C after packaging.
- (5) In this clause, **commercially sterile product** means a milk or cream product that has been heat treated sufficiently to render it free of:
  - (a) micro-organisms capable of reproducing in the food under normal non-refrigerated conditions of storage and distribution, and
  - (b) viable micro-organisms, including spores, of public health significance.

## **30 (Repealed)**

## **31 Milk for manufacture**

- (1) Milk and milk components used for the manufacture of dairy products for human consumption:
  - (a) must be pasteurised as required by Standard 1.6.2 (Processing requirements) of the Food Standards Code, and
  - (b) in the case of cow's milk or milk components—must not exhibit a phosphatase activity equivalent to that required to give a reading in excess of 10 µg/mL of p-nitrophenol when tested immediately after pasteurisation by the current standard

method in Australian Standard AS 2300.1.10—1988: *Methods of chemical and physical testing for the dairying industry—General methods and principles—Determination of phosphatase activity.*

### **32 Pasteuriser requirements**

- (1) Equipment used for the pasteurisation of milk or milk components at a dairy produce factory:
  - (a) must comply with the requirements of the *NSW Dairy Manual*, and
  - (b) must be cleaned, sterilised and maintained in accordance with the requirements of the *NSW Dairy Manual*.
- (2) When milk is pasteurised at a dairy produce factory, a record must be made in respect of the pasteurisation as required by the *NSW Dairy Manual*.
- (3) A record required by subclause (2) must be kept at the dairy produce factory for not less than 12 months or the accepted shelf-life of the product to which the record relates, whichever is longer.

### **33 Standards and testing of milk and dairy products**

- (1) The manager of a dairy produce factory must ensure that finished milk and dairy products produced at the factory for human consumption comply with the standards specified in the Food Standards Code.
- (2) The manager of a dairy produce factory must ensure that finished milk and dairy products produced at the factory are tested for compliance with the microbiological standards specified in the *NSW Dairy Manual*.
- (3) A failure result in a test for the purposes of subclause (2) must be followed up by testing of all subsequent batches of the same product produced at the dairy produce factory until a satisfactory result is achieved.

### **34 (Repealed)**

### **35 Control of Salmonella**

Measures for the control of Salmonella contamination in dried milk products in a dairy produce factory must be carried out in accordance with the requirements of the publication *Australian Manual for the Control of Salmonella in the Dairy Industry* published by the Australian Dairy Authorities Standards Committee.

### **36 Control of Listeria**

Measures for the control of Listeria contamination in a dairy produce factory must be carried out in accordance with the requirements of the publication *Australian Manual for the Control of Listeria in the Dairy Industry* published by the Australian Dairy Authorities

Standards Committee.

### **37 Product recall procedure**

A dairy produce factory must have a documented product recall and retrieval procedure in place at the factory. The recall procedure must be in accordance with the *Food Industry Recall Protocol* published by FSANZ.

## **Division 4 Requirements for milk transport**

### **38 Use of a milk tanker or vessel used for bulk milk transport**

The operator of a milk tanker or vessel that is used for the bulk transport of milk must not use the tanker or vessel for any purpose except:

- (a) the collection of milk from dairy farms, or
- (b) the transportation of milk or cream, or
- (c) the transportation of clean water or food-grade liquids that will not contaminate or affect the quality of milk or cream or leave residual odours.

### **39 Cleanliness of a milk tanker or vessel used for bulk milk transport**

The operator of a milk tanker or vessel that is used for the bulk transport of milk must not use the tanker or vessel to transport milk or cream unless the tanker or vessel is in good repair and has been cleaned to ensure that its interior surfaces are free of contaminants and that there are no unusual odours in the tanker or vessel.

### **40 Sealing of a milk tanker**

When milk is dispatched by tanker from a dairy produce factory to another dairy produce factory, the manager of the dairy produce factory from which the milk is dispatched must ensure that a seal with a mark identifying the dairy produce factory is applied to each access cover and milk outlet of the tanker, before the tanker leaves the dairy produce factory.

## **Division 5 Requirements for distribution premises**

### **41 Standards for milk and dairy produce stores**

- (1), (2) (Repealed)
- (3) Packaged milk and cream (other than commercially sterile products) stored at a milk store or dairy produce store must be kept at a temperature of not more than 5 degrees C during storage.
- (4) Any other dairy product stored at a milk store or dairy produce store must be kept at a temperature of not more than 5 degrees C during storage or at some other



temperature that can be demonstrated to the satisfaction of the Food Authority to not adversely affect the microbiological safety of the product.

#### **42 Records to be kept by milk and dairy produce stores**

- (1) The manager of a milk store or dairy produce store must keep a record of the details of all packaged milk, cream or dairy products received at and distributed from the store.
- (2) A record required by this clause must be kept at the milk store or dairy produce store for not less than 12 months or the accepted shelf-life of the product to which the record relates, whichever is longer.

### **Part 5 Requirements for vehicle vendors**

#### **43 Handling of milk and dairy products**

A vehicle vendor must ensure that:

- (a) milk and dairy products in the vehicle are kept at a temperature of not more than 5 degrees C, unless the Food Authority otherwise approves in a particular case or class of cases, and
- (b) without limiting paragraph (a), milk and dairy products in the vehicle are not placed or kept in such a manner that the product will be deteriorated whether by heat or injurious smells, or by the proximity of unclean matter or by any other means.

#### **44 Certification of food safety program**

- (1) A vehicle vendor may apply to the Food Authority for certification by the Food Authority of a food safety program for the vending operation.
- (2) The Food Authority may certify a food safety program only if the Food Authority is satisfied, on the basis of the information available to the Food Authority at the time of certification, that the program:
  - (a) complies with the principles and guidelines set out in the publication *Hazard Analysis and Critical Control Point (HACCP) System and Guidelines For Its Application* published by the Codex Alimentarius Commission, or
  - (b) is otherwise appropriate and adequate for the processes carried out in the course of the vending operation at the time of certification.

#### **45 Audit and inspection frequency**

- (1) A vehicle vendor who has implemented a certified food safety program for the vending operation is to be audited by the Food Authority at the frequency provided for by the *NSW Dairy Manual*.

- (2) A vehicle vendor who has not implemented a certified food safety program for the vending operation is to be inspected by the Food Authority at the frequency determined by the Food Authority from time to time.

## **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.

### **Division 2 General provisions relating to licences**

#### **45B Application for licence**

- (1) A person may apply to the Food Authority for a licence.
- (2) An application for a licence must:
- (a) be made in the approved form, and
  - (b) be accompanied by an application fee of \$50, and
  - (c) be accompanied by such information as the Food Authority requires to determine

the application.

#### **45C 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) 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 conditions to which the licence is subject.
- (3) 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.
- (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) The Food Authority 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) the Food Authority is of the opinion that the applicant is not a suitable person to hold a licence, or
  - (c) in the case of a corporation—the Food Authority 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) the Food Authority 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 the Food Authority, it is necessary to enable the Food Authority 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 the Food Authority for a renewal of the licence.
- (2) 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.
- (3) The Food Authority may refuse an application for renewal of a licence on any ground on which it may refuse an application for a licence.
- (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.
- (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), the Food Authority 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 the Food Authority and the remission of any such fees or charges to the Food Authority,
  - (e) a condition requiring the deduction of licence fees and other charges owed by another licence holder to the Food Authority 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) The Food Authority may vary the conditions of a licence (other than a condition imposed by clause 45F (2)) or impose a condition on a licence.

(2) The Food Authority 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) The Food Authority may suspend or cancel a licence:

(a) if the Food Authority is satisfied that there has been a contravention of any provision of the Act or this regulation by the licence holder, or

(b) if the Food Authority is satisfied that a condition to which the licence is subject has been contravened or not complied with, or

(c) if the Food Authority is satisfied that any part of the licence fee, or any other amount due to the Food Authority by the licence holder, under the Act is unpaid, or

(d) whether or not the holder of the licence is a corporation, if the Food Authority is of the opinion that the holder of the licence is not a suitable person to hold a licence,

or

(e) if the holder of the licence is a corporation:

(i) the Food Authority 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) the Food Authority 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 the Food Authority is of the opinion that the licence holder has permanently ceased to carry on an activity covered by the licence, or

(g) if the Food Authority 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 the Food Authority, it is necessary to enable the Food Authority 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) The Food Authority 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 in relation to the issue of a licence to the person or the renewal of the person's licence, including a decision as to the assessment of the applicable licence fee,
  - (a1) a decision to issue a licence to the person, or renew the person's licence, 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 permanently ceases to carry on an activity authorised by the licence must notify the Food Authority 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 139 of the Act.
- (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.
  - (2A) 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.
- (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 the Food Authority, be paid by instalments

during the term of the licence.

- (4) The Food Authority 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) Despite clause 45K (3), the licence fee payable by:
  - (a) a person referred to in subclause (2), or
  - (b) a person who applied for the licence before the first determination was made by the Food Authority under clause 45K (2),

is to be paid at such time as the Food Authority determines and may, if approved by the Food Authority, be paid by instalments during the term of the licence.

- (4) (Repealed)
- (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.
- (6) Until 1 February 2001, the holder of a dairy farmer's licence who, at the commencement of this subclause, is using the dairy farm to which the licence relates as a dairy produce factory does not contravene clause 20 (1) or 45A (1) (c) by so using the dairy farm.

### **45M Transitional provision relating to goat and sheep dairy farmers and producers**

- (1) A person who, immediately before the relevant date, was carrying on any activity in relation to goat's milk or sheep's milk that is required after the relevant date to be authorised by a dairy farmer's licence is, for a period of 6 months from the relevant date, taken to be the holder of such a licence that authorises the carrying on of that activity.
- (2) A person who, immediately before the relevant date, was carrying on any activity in relation to goat's milk or sheep's milk that is required after the relevant date to be



authorised by a dairy produce merchant (dairy produce factory) licence is, for a period of 6 months from the relevant date, taken to be the holder of such a licence that authorises the person to carry on that activity.

- (3) Despite subclauses (1) and (2), the Food Authority may exercise any of its powers under clause 45G or 45H in relation to a licence that is taken to be held under this clause.
- (4) In this clause, **relevant date** means the date of commencement of the *Food Production (Dairy Food Safety Scheme) Amendment (Goat and Sheep Dairy Products) Regulation 2003*.

## Part 6 Miscellaneous

### 46 Industry consultation

The following bodies are declared to be consultative bodies for the purposes of the consultation referred to in section 105 of the Act in respect of this Scheme:

- (a) in relation to cow's milk and cow dairy products—the New South Wales Dairy Industry Conference constituted by the Dairy Industry Act,
- (b) in relation to goat's milk or sheep's milk and goat or sheep dairy products—the New South Wales Goat and Sheep Milk Industry Conference.

### 47 Inspection, analysis and audit charges

- (1) The charge payable for the carrying out by the Food Authority of:
  - (a) any inspection for the purposes of the Act in relation to a licence or application for a licence, or
  - (b) any audit of any food safety program or proposed food safety program required by this Regulation,

is \$140 per hour with a minimum charge of half an hour (excluding time spent in travelling) plus \$35 for travelling expenses.

- (1A) The Food Authority may increase the amount of any charge payable under subclause (1) 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.
- (2) The charge payable for the carrying out by the Food Authority of any analysis for the purposes of the Act is the amount of the reasonable costs incurred by the Food Authority in carrying out the analysis or having the analysis carried out on its behalf.
- (3) The charges payable under this clause are payable to the Food Authority.

(4) The Food Authority may reduce or waive payment of a charge in a particular case or any class of cases.

**48 (Repealed)**

**49 Offence**

A person who contravenes a provision of this Scheme (except a contravention that constitutes an offence under section 21 of the Act) is guilty of an offence.

Maximum penalty: 25 penalty units.