

South Australia

Food Regulations 2002

under the *Food Act 2001*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Food Regulations 2002*.

3—Interpretation

In these regulations—

Act means the *Food Act 2001*;

constituent council has the same meaning as in the *Local Government Act 1999*;

Department means the department of the Minister to whom the administration of the Act has been committed;

relevant regulatory subsidiary means a regional subsidiary established by two or more councils under the *Local Government Act 1999* in connection with the operation and enforcement of the *Food Act 1985* or the *Food Act 2001*;

small business means a business where not more than 20 people are engaged in handling food (and for the purposes of this definition the relevant number of people will be determined by counting people who work full-time in handling food, or the full-time equivalents of such people).

Part 2—Provisions relating to administration of Act

4—Prescription of enforcement agencies

- (1) For the purposes of the definition of **enforcement agency** under the Act—
 - (a) the Department; and
 - (b) all municipal and district councils under the *Local Government Act 1999*; and
 - (c) all relevant regulatory subsidiaries,are prescribed.
- (1a) For the purposes of sections 79 and 81 of the Act—
 - (a) in the case of food businesses conducted outside council areas—the Department is prescribed as the appropriate enforcement agency;
 - (b) in the case of all other food businesses—
 - (i) unless subparagraph (ii) applies—the relevant local government authority for the council area where the food business is conducted is prescribed as the appropriate enforcement agency;
 - (ii) if the Minister so determines—the Department is prescribed as the appropriate enforcement agency.
- (2) For the purposes of section 86 of the Act—
 - (a) if a food business is conducted outside the area of a council, then the Department is prescribed as the **appropriate enforcement agency** with respect to that food business;
 - (b) if a food business is conducted in one, and only one, council area, then the relevant local government authority is prescribed as the **appropriate enforcement agency** with respect to that food business;
 - (c) if a food business is conducted in more than one council area, then the relevant local government authority for each council area where the food business is conducted is prescribed as an **appropriate enforcement agency** with respect to that food business.
- (3) For the purposes of subregulation (2)—
 - (a) if a food business is a food transport business, then that business will be taken to be conducted—
 - (i) at a depot used for the purposes of the food transport business; or

- (ii) if there is no such depot, at the place where the vehicles used for the purposes of the food transport business are principally based or, if there is no such place, at each place where a vehicle used for the purposes of the business is usually parked when not in use;
 - (b) if a food business (not being a food transport business) involves the preparation of food in one or more locations and then the transportation or delivery of the food to another place or places, then that business will be taken to be conducted at any location where the food is prepared;
 - (c) in any other case, a food business will be taken to be conducted at any place where food intended for sale is handled, or where food is sold, on a permanent or regular basis.
- (4) For the purposes of subregulations (1a) and (2) the **relevant local government authority** is—
 - (a) if a relevant regulatory subsidiary has been established in relation to the relevant area—that subsidiary;
 - (b) in any other case—the council established under the Local Government Act 1999 in relation to the relevant area.
- (5) In this regulation—**council area** means—
 - (a) if a relevant regulatory subsidiary has been established in relation to the relevant area—the combined area of the areas of the subsidiary's constituent councils;
 - (b) in any other case—the area of a council established under the *Local Government Act 1999*;

food transport business means a business that involves the transport of food for fee or reward through the use of a food transport vehicle.

5—Head of enforcement agency

For the purposes of the definition of **head of an enforcement agency** under the Act—

- (a) the chief executive of the Department is prescribed as the head of that enforcement agency; and
- (b) the chief executive officer of a municipal or district council under the *Local Government Act 1999*, other than where the council is constituent council of a relevant regulatory subsidiary, is prescribed as the head of that enforcement agency; and
- (c) the person designated by the constituent councils of a relevant regulatory subsidiary as the principal officer of the subsidiary is prescribed as the head of that enforcement agency.

6—Prescription of public institutions

For the purposes of the definition of **public institution** under the Act—

- (a) public hospitals; and

- (b) correctional institutions within the meaning of the *Correctional Services Act 1982*,

are prescribed.

7—Meaning of primary food production

For the purposes of section 7(1) of the Act, the *Primary Produce (Food Safety Schemes) Act 2004* is prescribed.

Part 3—Adoption of Food Standards Code

9—Adoption of Food Standards Code

- (1) Subject to subregulation (2), the Australia New Zealand Food Standards Code as defined in the *Food Standards Australia New Zealand Act 1991* of the Commonwealth (as that code is in force from time to time) is adopted for the purposes of the definition of *Food Standards Code* under the Act.
- (2) The code referred to in subregulation (1) is adopted with the following modifications:
 - (a) Standard 2.5.1, clause 4—after subclause (2) insert:
 - (2a) However, clause 15 of Standard 4.2.4 does not apply in relation to goat's milk that is intended to be sold as unpasteurised goat's milk.
 - (b) Standard 3.1.1, clause 3—after the present contents of clause 3 insert:
 - (2) However, this Chapter does not apply to a food business to the extent that the food business is constituted by—
 - (a) an activity or process that is regulated by or under the *Primary Produce (Food Safety Schemes) Act 2004*; or
 - (b) an activity or process that is exempt from the operation of Parts 5, 7 and 8 of the *Food Act 2001* by virtue of the operation of regulation 13 of the *Food Regulations 2002*,(even if the activity or process involves the substantial transformation of food).
 - (c) Standard 3.2.1, clause 2(2)—delete subclause (2) and substitute:
 - (2) This Standard applies—
 - (a) to food businesses that are determined by the appropriate enforcement agency to have a priority classification in a manner consistent with a priority classification system determined by the relevant authority under section 79(2) of the Act; or
 - (b) if another Standard specifically requires food businesses to which that other Standard applies to comply with Standard 3.2.1.
 - (d) Standard 3.2.2, clause 4—after subclause (4) insert:

- (5) This clause operates in the State of South Australia subject to the provisions of regulation 14 of the *Food Regulations 2002*.

Part 4—Miscellaneous

9A—Application fee for food safety auditors

- (1) For the purposes of section 73(3) of the Act, the prescribed fee is \$134.
- (2) The prescribed fee does not apply to an application by a Public Service employee for the purpose of carrying out the functions of a food safety auditor.

9B—Prescribed form

For the purposes of section 81(2) of the Act, the prescribed form may be determined according to the discretion of the Minister.

10—Notification of food business

For the purposes of section 86(3) of the Act, the prescribed period is 14 days after the date of the transfer or change (as the case may be).

10A—Disclosure of information for standardised food sold at multiple-site food businesses

- (1) For the purposes of section 112 of the Act—
 - (a) the following are matters of a prescribed class under section 112(1)(c):
 - (i) the energy content of items of standardised food;
 - (ii) the average adult daily energy intake;
 - (b) the information relating to those matters is to comprise—
 - (i) the average energy content of each item of standardised food expressed in kilojoules (*nutritional information*); and
 - (ii) a statement that the average adult daily energy intake is 8 700 kilojoules (*average intake information*); and
 - (c) nutritional information for each item of standardised food must be calculated in kilojoules in accordance with Standard 1.2.8 of the Food Standards Code, making necessary adjustments to ensure that the calculation is undertaken in relation to the whole of the item rather than per 100 grams; and
 - (d) nutritional information for each item of standardised food must be made available to members of the public as follows:
 - (i) the information must be expressed in numerals followed by the abbreviation "kJ";
 - (ii) if the number of kilojoules calculated for the item of standardised food is rounded—the number must be rounded up to the nearest 10 kilojoules;
 - (iii) the information must be displayed—

- (A) on each menu that includes the item of standardised food in a manner that clearly associates the information with the item (except in the case of drive-through facilities in which case the information may be included on a separate adjacent board visible at or before the point of ordering); and
 - (B) if the item is displayed to persons who may order or purchase the item—on a tag, label or marking that clearly associates the information with the item;
 - (iv) the information must be displayed in a manner that is conspicuous and legible to persons who may order or purchase the food;
 - (v) the information must be in the same font, and be of at least the same font size, as that used to specify the price of the item or, if the price is not specified, to identify the item;
 - (vi) the information must be made available in a manner that is consistent with how nutritional information for each other item of standardised food is made available for persons who may order or purchase the food; and
- (e) average intake information must be made available to members of the public as follows:
 - (i) the information must be displayed—
 - (A) on each menu (except in the case of drive-through facilities in which case the information may be included on a separate adjacent board visible at or before the point of ordering); and
 - (B) in each area in which items of standardised food are displayed to persons who may order or purchase the items;
 - (ii) the information must be displayed in a manner that is conspicuous and legible to persons who may order or purchase the food;
 - (iii) the information must be in the same font, and be of at least the same font size, as the font with the largest font size used to identify an item of standardised food (or, if a font is not used to identify an item, used to specify the price of an item of standardised food) on the menu or in the area (as the case requires); and
- (f) the following are excluded from the operation of section 112(1):
 - (i) standardised food comprised of a loaf of bread or a plain bread roll;
 - (ii) standardised food comprised of an item that—
 - (A) is offered for sale by a multiple-site food business for a period of not more than 60 consecutive days on a trial basis; and
 - (B) is offered for sale by the business at not more than 5 locations in South Australia at any time during that period; and

- (C) has not been sold or offered for sale at any time before that period by the business at any of those locations;
- (iii) a multiple-site food business carried on at less than 20 separate locations in South Australia and at less than 50 separate locations in Australia (including South Australia);

Note—

When this exclusion and the definition of *multiple-site food business* in section 112(4) are taken into account, section 112(1) only applies to a multiple-site food business if it is carried on—

- (a) at 20 or more separate locations in South Australia; or
 - (b) at 50 or more separate locations in Australia (of which 5 or more are in South Australia).
- (iv) a multiple-site food business comprised of a supermarket or convenience store (including a supermarket or convenience store located in a service station);
 - (v) a multiple-site food business that involves the sale of food but only for consumption on the premises on which it is sold;
 - (vi) a multiple-site food business that primarily provides food catering services;
 - (vii) a multiple-site food business that is a body incorporated on a not-for-profit basis for the benefit of the public that provides services delivering meals to persons in their homes.
- (2) No offence is committed against section 112 of the Act if the failure to comply with the requirements occurs within 12 months after an increase in the number of locations at which a multiple-site food business is carried on brings the businesses that are part of the multiple-site food business within the scope of the requirements.
 - (3) A person who is carrying on a business excluded from the operation of section 112(1) of the Act is encouraged to ensure that nutritional information and average intake information is available for persons who may order or purchase food sold in the course of the business as if the business were not excluded from the operation of that section.
 - (4) However, if, in the course of such a business, nutritional information (or information that might reasonably be mistaken to be nutritional information) is made available in relation to an item of standardised food on a menu or in an area in which items of standardised food are displayed to persons who may order or purchase the items, the information must be calculated and made available as if section 112(1) of the Act applied.
 - (5) If there is a failure to comply with a requirement of subregulation (4), the person who carries on the business is guilty of an offence.
Maximum penalty: \$2 500.
Expiation fee: \$125.
 - (6) For the purposes of this regulation—
 - (a) if an item of standardised food is available in different size servings, each size serving is to be treated as a separate item of standardised food; and

- (b) if a number of items of standardised food is available as a combination, the combination is to be treated as a separate item of standardised food (in addition to each individual item in the combination that is available as a separate item); and
- (c) a menu includes any list or other representation of standardised food available from a food business published or made available to members of the public on the Internet, in a leaflet, on a board or poster or by other means (but excludes advertising not designed to be used, and not ordinarily used, in connection with placing an order for food); and
- (d) if advertising includes contact details that may be used to place an order for food, the advertising will be taken (in the absence of proof to the contrary) to be designed to be used in connection with placing an order for food; and
- (e) a supermarket or convenience store is a store the primary business of which is the sale of a range of food, beverages, groceries and other domestic goods.

11—Inspection fee

- (1) An enforcement agency may impose an inspection fee for the carrying out of any inspection of any premises or food transport vehicle by an authorised officer appointed by the enforcement agency reasonably required in connection with the operation or administration of the Act.
- (2) A fee under subregulation (1)—
 - (a) must not exceed the reasonable costs of the enforcement agency with respect to the inspection by the authorised officer and in any event must not exceed—
 - (i) in the case of a small business—\$82;
 - (ii) in any other case—\$205; and
 - (b) may be recovered by the enforcement agency as a debt from the occupier of the premises, or from the owner or operator of the food transport vehicle (as the case may be).

12—Specific provision relating to meat

- (1) Pursuant to section 113(2)(b) of the Act, a person must not sell for human consumption the meat of an animal that is not referred to in the definition of *meat* in the Food Standards Code.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) Subregulation (1) does not apply to or in relation to—
 - (a) game; or
 - (b) the meat of a crocodile.
- (3) Subregulation (1) does not apply if the food in question is to be exported to another country.
- (4) In this regulation—

game means a goat, rabbit, hare, kangaroo, wallaby or bird that has not been confined or husbanded in any way;

meat includes the flesh of an animal.

13—Application of Act to certain food businesses

- (1) Pursuant to section 113(2)(p) of the Act, Parts 5, 7 and 8 of the Act do not apply to a person undertaking on farm land or on a boat an activity or process that constitutes a food business for the purposes of the Act (even if the activity or process involves the substantial transformation of food).
- (2) Subregulation (1) does not apply insofar as any activity or process involves—
 - (a) the packing or treating of food in circumstances within the ambit of section 7(2)(b) of the Act; or
 - (b) the handling of food that is to be sold directly to the public.
- (3) In this regulation—

boat includes any form of vessel;

farm land means land (including land covered wholly or partially by water) used wholly or mainly for the purposes of primary production.

14—Transitional provision—Notification of food business

- (1) This regulation contains provisions of a transitional nature consequent on the commencement of section 86 of the Act.
- (2) The proprietor of a food business that commences operations between 1 September 2003 and 30 November 2003 (inclusive) is not required to provide the notice required by subsection (1) of section 86 of the Act until 1 December 2003 (and the proprietor may conduct that business until that date despite the provisions of that subsection).
- (3) If subsection (3) of section 86 of the Act applies with respect to a food business between 1 September 2003 and 30 November 2003 (inclusive), the prescribed period under that subsection for giving notice of the relevant transfer or change is the period ending on 1 December 2003 or the period of 14 days after the date of the transfer or change, whichever is the longer.

15—Transitional provision—Authorised officers

- (1) A person holding office as an authorised officer under the *Food Act 1985* immediately before the commencement of this regulation will be taken to have been appointed as an authorised officer for the purposes of the *Food Act 2001* (and section 94(1) of the Act will not apply with respect to such a person).
- (2) A certificate of authority under the *Food Act 1985* held by an authorised officer within the ambit of subregulation (1) will be taken to be a certificate of authority provided under section 95 of the *Food Act 2001*.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation revoked by principal regulations

The *Food Regulations 2002* revoked the following:

Food Regulations 1986

Food Hygiene Regulations 1990

Principal regulations and variations

New entries appear in bold.

| Year | No | Reference | Commencement |
|-------------|-----------|---------------------------------------|---|
| 2002 | 216 | <i>Gazette 21.11.2002 p4246</i> | 1.12.2002: r 2(1) except r 11—1.1.2003: r 2(3) and except rr 4(2)—(5), 10 and 14—1.9.2003: r 2(2) |
| 2005 | 166 | <i>Gazette 14.7.2005 p2391</i> | 1.8.2005: r 2 |
| 2007 | 234 | <i>Gazette 27.9.2007 p3842</i> | 27.9.2007: r 2 |
| 2009 | 16 | <i>Gazette 26.2.2009 p778</i> | 1.7.2009: r 2 |
| 2012 | 7 | <i>Gazette 23.2.2012 p843</i> | 23.2.2013: r 2 |
| 2012 | 247 | <i>Gazette 6.12.2012 p5466</i> | 1.3.2013: r 2 |
| 2014 | 91 | <i>Gazette 19.6.2014 p2538</i> | 1.7.2014: r 2 |

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision | How varied | Commencement |
|-----------|--|--------------|
| Pt 2 | | |
| r 2 | <i>omitted under the Legislation Revision and Publication Act 2002</i> | 1.8.2005 |
| r 4 | | |
| r 4(1a) | inserted by 234/2007 r 4(1) | 27.9.2007 |
| r 4(4) | varied by 234/2007 r 4(2) | 27.9.2007 |
| r 7 | varied by 166/2005 r 4 | 1.8.2005 |

| | | |
|---------|--|-----------------|
| | substituted by 234/2007 r 5 | 27.9.2007 |
| r 8 | <i>deleted by 247/2012 r 4</i> | 1.3.2013 |
| Pt 3 | | |
| r 9 | | |
| r 9(2) | varied by 166/2005 r 5 | 1.8.2005 |
| | varied by 234/2007 r 6(1), (2) | 27.9.2007 |
| | substituted by 16/2009 r 4 | 1.7.2009 |
| Pt 4 | | |
| r 9A | inserted by 234/2007 r 7 | 27.9.2007 |
| r 9A(1) | varied by 91/2014 r 4 | 1.7.2014 |
| r 9B | inserted by 234/2007 r 7 | 27.9.2007 |
| r 10A | inserted by 7/2012 r 4 | 23.2.2013 |
| r 11 | | |
| r 11(2) | varied by 91/2014 r 5(1), (2) | 1.7.2014 |
| r 16 | <i>omitted under the Legislation Revision and Publication Act 2002</i> | 1.8.2005 |

Historical versions

1.8.2005
27.9.2007
1.7.2009
23.2.2013 (electronic only)
1.3.2013