

TASMANIA

**PRIMARY PRODUCE SAFETY (DAIRY)
REGULATIONS 2024**

STATUTORY RULES 2024, No. 44

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PRIMARY PRODUCE SAFETY (DAIRY) REGULATIONS 2024

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Primary Produce Safety Act 2011*.

Dated 9 September 2024.

B. BAKER
Governor

By Her Excellency's Command,

J. HOWLETT
Minister for Primary Industries and Water

PART 1 – PRELIMINARY

1. Short title

These regulations may be cited as the *Primary Produce Safety (Dairy) Regulations 2024*.

2. Commencement

These regulations take effect on the day on which their making is notified in the *Gazette*.

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3. Interpretation

Unless the contrary intention appears, in these regulations –

accredited dairy producer means the proprietor of a dairy business who is an accredited producer;

Act means the *Primary Produce Safety Act 2011*;

approved dairy food safety program means a food safety program in respect of dairy products that is an approved food safety program;

Authority means the Tasmanian Dairy Industry Authority established by section 5 of the *Dairy Industry Act 1994*;

dairy animal means a domesticated animal that produces milk –

- (a) consumed by humans or animals;
or
- (b) processed for the use of, or consumption by, humans or animals;

dairy business means a primary produce business, or proposed primary produce business, that consists, either alone or in combination, in whole or in part, of –

- (a) dairy primary production; or

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- (b) dairy processing; or
- (c) a dairy transport business; or
- (d) the wholesale supply of milk or dairy products to a dairy business;

dairy farmer means a dairy producer who engages in dairy primary production for a commercial purpose;

dairy food safety auditor means a food safety auditor approved under Part 11 of the Act to audit food safety programs in respect of dairy products;

dairy food safety scheme – see regulation 5;

dairy processor means a person who carries on a business, enterprise or activity for a commercial purpose that involves dairy processing;

dairy producer means a producer who engages in, or is proposing to engage in, dairy business;

food business has the same meaning as in the *Food Act 2003*;

full-time dairy handler means an individual who engages directly in dairy business –

- (a) as an employee or agent; and
- (b) for 38 hours in a week;

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home dairy product means any dairy product, that is not intended for sale or other commercial use, produced from a dairy animal –

- (a) by the owner or person in charge of the animal; and
- (b) on premises where the owner or person in charge of the animal resides, or on other premises approved in writing by the Authority; and
- (c) for consumption or use on those premises, or on other premises that have been approved in writing by the Authority;

home dairy production means dairy primary production or dairy processing that is carried on solely to produce home dairy products, and does not involve any of the following:

- (a) the supply of dairy products to a dairy business;
- (b) the supply of dairy products to a food business;
- (c) the supply of dairy products at a market;
- (d) the supply of dairy products by way of retail or wholesale;

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registered food business means a food business registered in accordance with Part 7 of the *Food Act 2003*.

4. Prescribed primary production activity

For the purposes of paragraph (j) of the definition of *primary production activity* in section 5(1) of the Act, the wholesale supply of a dairy product to a dairy business is prescribed as a primary production activity.

5. Dairy food safety scheme

- (1) These regulations establish, in Part 2, a food safety scheme in respect of dairy products.
- (2) In any document, a reference to a dairy food safety scheme is taken to be a reference to Part 2 of these regulations, as amended from time to time.

6. Periodic fees and penalty for default

- (1) For the purposes of section 16(1) of the Act, in relation to an accredited dairy producer –
 - (a) the period prescribed is the period of 12 months ending on 30 June in any calendar year; and
 - (b) the date prescribed is the 31 July immediately after the period prescribed under paragraph (a); and

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- (c) the fee prescribed is the relevant annual fee specified in item 4 of Schedule 1.
- (2) For the purposes of section 16(2) of the Act, the fee prescribed as a penalty for default by an accredited dairy producer is the penalty for default specified in item 5 of Schedule 1.

7. Fees generally

- (1) In this regulation –
 - GST* has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.
- (2) The fees specified in Schedule 1 –
 - (a) are prescribed as the fees payable in respect of the matters to which they relate; and
 - (b) are, unless otherwise specified, exclusive of GST.
- (3) The Authority may exempt a person, or class of persons, from all or any part of a fee payable under these regulations in any of the following circumstances:
 - (a) the dairy business carried on by the person or class of persons involves the export of dairy products to another country, in accordance with a law of the Commonwealth;

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- (b) the dairy business, carried on by the person or class of persons forms part of, or is attached to, a food business registered under the *Food Act 2003* that is carried on by that person or class of persons at the same premises as the dairy business;
 - (c) the dairy business carried on by the person or class of persons is the subject of a licence granted under the *Dairy Industry Act 1994*;
 - (d) the person or member of the class of persons holds, or has applied for, accreditation under 2 or more food safety schemes;
 - (e) the dairy business, carried on by the person or class of persons is carried on primarily for a charitable, educational or other non-commercial purpose;
 - (f) the circumstances are exceptional circumstances in which it would be just and equitable to exempt the person or class of persons from all or part of the fee.

8. Application for accreditation to take into account offences under certain Acts

The following Acts are prescribed Acts for the purposes of section 14(3)(a)(iii) of the Act:

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- (a) *Agricultural and Veterinary Chemicals (Control of Use) Act 1995;*
- (b) *Agricultural and Veterinary Chemicals (Tasmania) Act 1994;*
- (c) *Animal Welfare Act 1993;*
- (d) *Biosecurity Act 2019* and any Act repealed by that Act;
- (e) *Dairy Industry Act 1994;*
- (f) *Environmental Management and Pollution Control Act 1994;*
- (g) *Land Use Planning and Approvals Act 1993;*
- (h) *Public Health Act 1997.*

PART 2 – DAIRY FOOD SAFETY SCHEME

9. Application of dairy food safety scheme

(1) The dairy food safety scheme applies to –

- (a) all primary produce comprising dairy products; and
- (b) all primary production activities involving dairy business.

(2) Any person who –

- (a) supplies primary produce to which the dairy food safety scheme applies; or
- (b) engages in, or propose to engage in, a primary production activity to which the dairy food safety scheme applies –

must comply with the dairy food safety scheme.

10. Chief Inspector powers and functions designated to Authority

For the purposes of section 10(b) of the Act, the functions and powers of the Chief Inspector specified in the following Parts and provisions of the Act are designated as powers and functions that are to be exercised and performed by the Authority for the purposes of the scheme:

- (a) Part 4;
- (b) section 30;

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- (c) section 46;
- (d) section 47;
- (e) Part 8;
- (f) Part 10;
- (g) Part 11;
- (h) section 71;
- (i) section 85.

11. Standard and code applying under dairy food safety scheme

A person who is required to comply with the dairy food safety scheme must comply with the following:

- (a) *Standard 4.2.4 – Primary Production and Processing Standard for Dairy Products* in the Food Standards Code, as amended or substituted from time to time;
- (b) all Codes of Practice made and in force under Part 5 of the *Dairy Industry Act 1994*, as applicable.

12. Requirement to be accredited

- (1) Subject to subregulation (2), the proprietor of a dairy business must not carry on the dairy business unless the proprietor is an accredited dairy producer.

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Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues; or
 - (b) an individual, a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 2.5 penalty units for each day during which the offence continues.
- (2) Subregulation (1) does not apply in respect of a person carrying out home dairy production.

13. Requirement for accreditation

It is a requirement for accreditation as a dairy producer that the applicant for the accreditation –

- (a) has made appropriate arrangements to comply with the requirements of the Act and the dairy food safety scheme; or
- (b) proposes to make appropriate arrangements to comply with the requirements of the Act and the dairy food safety scheme and has the capacity

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to make those arrangements before the accreditation is to commence.

14. Requirement to prepare and implement a dairy food safety program

- (1) Subject to subregulation (2), an accredited dairy producer must prepare and implement an approved dairy food safety program in respect of each activity involving dairy products for which the accredited dairy producer holds accreditation under the dairy food safety scheme.
- (2) The Authority may, by written notice to the producer, exempt an accredited dairy producer from the requirement to prepare and implement an approved dairy food safety program under this regulation, if satisfied that there are reasonable grounds for doing so.
- (3) An exemption granted under subregulation (2) may be subject to any conditions or restrictions that the Authority considers appropriate.

15. Auditing requirements

An approved dairy food safety program must be audited by a dairy food safety auditor –

- (a) at intervals determined by the Authority in respect of the approved dairy food safety program, or all food safety programs generally, as notified in writing to the accredited dairy producer in

respect of the approved dairy food safety program; or

- (b) if no such intervals are specified, at least once every 12 months.

16. Register of accreditations

- (1) The Authority is to establish a register of accredited dairy producers.
- (2) The register established under subregulation (1) is to contain the following particulars in respect of an accreditation granted to a dairy producer:
 - (a) the granting of the accreditation;
 - (b) any conditions attached to the accreditation;
 - (c) any variation or revocation of a condition attached to the accreditation;
 - (d) any suspension of the accreditation;
 - (e) if the accreditation is cancelled or revoked, the cancellation or revocation of the accreditation;
 - (f) if the accreditation is surrendered, the surrender of the accreditation;
 - (g) if the accreditation is transferred, the transfer of the accreditation.

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- (3) The register is to be available for inspection, without charge and during normal business hours, on a written request to the Authority.
- (4) A person inspecting the register under subregulation (3) may, on payment of any reasonable fee determined by the Authority that does not exceed 50 fee units, do either or both of the following:
 - (a) obtain an extract of an entry in the register;
 - (b) obtain a copy of anything contained in the register.
- (5) The Authority may refuse to release, or provide access to, information on the register in circumstances where the release of, or access to, that information may lead to the disclosure of trade secrets or sensitive commercial information.

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17. Dairy products must be lawfully produced

- (1) A person must not supply any dairy product that has not been lawfully produced.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 250 penalty units and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues; or
 - (b) an individual, a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.
- (2) An offence against this regulation is an offence of strict liability.
- (3) For the purposes of this regulation, a dairy product will be taken to have been lawfully produced if –
- (a) in the case of any dairy product that has been produced outside of Australia, it has been lawfully imported into Australia; and

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- (b) in any other case, to the extent to which the dairy product has been produced or processed in Australia, the production or processing has been carried out –
 - (i) in accordance with the requirements of the Act; or
 - (ii) in accordance with any applicable law if the production or processing occurred in another State or a Territory.

18. Infringement notices

For the purposes of section 53 of the Act –

- (a) an offence against a provision of the regulations specified in column 2 of the table in Schedule 2 is prescribed to be an infringement offence for which an infringement notice may be issued; and
- (b) the penalty specified in –
 - (i) column 3 of the table in Schedule 2 for that infringement offence is prescribed as the penalty applicable to that infringement offence that is payable by an individual under an infringement notice; and
 - (ii) column 4 of the table in Schedule 2 for that infringement offence is prescribed as the

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penalty applicable, if any, to that infringement offence that is payable by a body corporate under an infringement notice.

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SCHEDULE 1 – FEES AND PENALTIES

Regulations 6 and 7

		Fee units
1.	Application under section 12 of the Act for accreditation of a dairy producer –	
	(a) if the dairy producer is a dairy farmer	350
	(b) if the dairy producer is a person who carries on a dairy transport business	500
	(c) if the dairy producer is a dairy processor	700
2.	Application under section 18 of the Act for variation of accreditation of a dairy producer –	
	(a) if the variation does not involve the approval or variation of a dairy food safety program	200
	(b) if the variation involves the variation of an approved dairy food safety program for the accreditation	300

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	Fee units
(c) if the variation involves the approval of a new dairy food safety program for the accreditation that is in addition to, or in substitution for, an existing approved dairy food safety program	350
3. Application under section 19 of the Act for transfer of accreditation of a dairy producer	300
4. Annual fee under section 16(1)(a) of the Act for an accredited dairy producer, who is the proprietor of a dairy transport business, whose maximum number of hours for which persons were employed or engaged by that producer at any point during the 12 months preceding the calculation of the fee, was equivalent to the following:	
(a) less than 5 full-time dairy handlers	500
(b) 5 – 50 full-time dairy handlers	1 000
(c) more than 50 full-time dairy handlers	1 250
5. Penalty for default under section 16(2) of the Act in respect of an accredited dairy producer	75

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SCHEDULE 2 – INFRINGEMENT NOTICE OFFENCES

	Regulation	Penalty units (individual)	Regulation 18 Penalty units (body corporate)
1.	Regulation 12	1	2
2.	Regulation 17	5	10

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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 18 September 2024.

These regulations are administered in the Department of Natural Resources and Environment Tasmania.

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations prescribe, for the purposes of the *Primary Produce Safety Act 2011* –

- (a) the food safety scheme in respect of dairy products; and
- (b) that the Tasmanian Dairy Industry Authority is designated to perform certain roles of the Chief Inspector for the purposes of the dairy food safety scheme; and
- (c) the accreditation requirements in respect of the dairy food safety scheme; and
- (d) the fees payable in respect of accreditation under the Act; and
- (e) other miscellaneous matters in relation to dairy products.