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Primary Produce Safety (Seed Sprouts) Regulations 2014

Version current from 1 April 2014 to date (accessed 19 October 2018 at 16:05)

Primary Produce Safety (Seed Sprouts) Regulations 2014

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 .

3 February 2014

PETER G. UNDERWOOD

Governor

By His Excellency's Command,

BRYAN GREEN

Minister for Primary Industries and Water

PART 1 - Preliminary

1. Short title

These regulations may be cited as the Primary Produce Safety (Seed Sprouts) Regulations 2014 .

2. Commencement

These regulations take effect on 1 April 2014.

3. Interpretation

(1) In these regulations –

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

Act means the Primary Produce Safety Act 2011 ;

approved seed sprout food safety auditor means a food safety auditor approved under Part 11 of the Act to audit food safety programs in respect of seed sprouts;

approved seed sprout food safety program means a food safety program in respect of seed sprouts that is an approved food safety program;

full-time seed sprout handler means an individual who directly engages in the primary production of seed sprouts –

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

home seed sprout production means the primary production of seed sprouts, carried on at a residential premises, that does not involve any of the following:

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

primary production of seed sprouts means any of the following activities undertaken to supply seeds or seed sprouts to a food business, within the meaning of the Food Act 2003 , or a seed sprout business:

- (a) the decontamination of seed or seed sprouts by a process of using a controlled environment to reduce the level of pathogenic organisms that may be present in the seed or seed sprouts;
- (b) the soaking of seed;
- (c) the germination or growth of seed;
- (d) the harvest of seed sprouts;
- (e) the washing, drying or packing of seed sprouts;

relevant standard means *Standard 4.2.6 – Production and Processing Standard for Seed Sprouts* in the Food Standards Code;

seed sprout business means a primary produce business, or proposed primary produce business, that consists, in whole or in part, of the primary production of seed sprouts other than home seed sprout production;

seed sprout producer means a producer who engages in, or is proposing to engage in, the primary production of seed sprouts;

seed sprouts means young seedlings that, when prepared for human consumption –

- (a) include all or part of the seed; and
- (b) are intended for human consumption; and
- (c) are grown from –
 - (i) alfalfa, broccoli, clover, onion, radish or sunflower seeds or other seeds; or
 - (ii) mung beans or other beans; or
 - (iii) snow peas or other peas.

(2) In these regulations, a reference to a seed is a reference to a seed used in the production of seed sprouts.

4. Seed sprout food safety scheme

(1) These regulations establish, in Part 2, a food safety scheme in respect of seed sprouts.

(2) In any document, a reference to the seed sprout food safety scheme is taken to be a reference to Part 2 of these regulations, as amended from time to time.

5. Periodic fees and returns

For the purposes of section 16 of the Act –

- (a) the period prescribed as the period for which payment of the fee under subsection (1) of that section must be paid is the period of 12 months ending on the last day of June in any calendar year; and
- (b) the date prescribed for the payment of the fee, and the lodgement of a return, under subsection (1) of that section is the 1 July immediately after the period prescribed under paragraph (a); and
- (c) the fee prescribed to be paid under subsection (1) of that section is the relevant annual fee specified in item 4 of Schedule 1; and
- (d) the fee prescribed as a penalty for default under subsection (2) of that section is the penalty for default specified in item 5 of Schedule 1.

6. 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, unless otherwise specified, exclusive of GST; and
- (b) are prescribed as the fees payable in respect of the matters to which they relate.

(3) The Chief Inspector 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 seed sprout business carried on by the person involves the export of seed sprouts, to another country, in accordance with a law of the Commonwealth;
- (b) the seed sprout business carried on by the person forms part of, or is attached to, a food business registered under the Food Act 2003 that is carried on by that person at the same premises as the seed sprout business;
- (c) the person is an Aboriginal person engaging in a primary production activity of traditional or cultural significance within the Tasmanian Aboriginal community;
- (d) the person holds, or has applied for, accreditation under two or more food safety schemes;
- (e) the seed sprout business carried on by the person is carried on by the person 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 from all or part of the fee.

7. Application for accreditation to take into account certain offences

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

- (a) Agricultural and Veterinary Chemicals (Control of Use) Act 1995 ;
- (b) Agricultural and Veterinary Chemicals (Tasmania) Act 1994 ;
- (c) Animal (Brands and Movement) Act 1984 ;
- (d) Animal Health Act 1995 ;
- (e) Animal Welfare Act 1993 ;
- (f) Environmental Management and Pollution Control Act 1994 ;
- (g) Public Health Act 1997 .

PART 2 - Seed Sprout Food Safety Scheme

8. Application of seed sprout food safety scheme

- (1) This seed sprout food safety scheme applies to –
 - (a) all primary produce comprised, in whole or in part, of seed sprouts; and
 - (b) all primary production activities involving the primary production of seed sprouts.
- (2) The following persons must comply with this seed sprout food safety scheme:
 - (a) a person who supplies primary produce to which this seed sprout food safety scheme applies;
 - (b) a person who engages in, or proposes to engage in, a primary production activity to which this seed sprout food safety scheme applies.

9. Standard applying under seed sprout food safety scheme

A person who is required to comply with this seed sprout food safety scheme must comply with the relevant standard as applicable.

10. Requirement to be accredited

The proprietor of a seed sprout business is required to be accredited under this seed sprout food safety scheme.

11. Requirement for accreditation

It is a requirement for accreditation under this seed sprout food safety scheme that the applicant for the accreditation –

- (a) has made appropriate arrangements to comply with the requirements of the Act and this seed sprout food safety scheme; or
- (b) proposes to make appropriate arrangements to comply with the requirements of the Act and this seed sprout food safety scheme and has the capacity to make those arrangements before the accreditation is to commence.

12. Requirement to prepare and implement a food safety program

An accredited seed sprout producer must prepare and implement a food safety program in respect of each activity involving seed sprouts for which the accredited seed sprout producer holds accreditation under this seed sprout food safety scheme.

13. Auditing requirements

An approved seed sprout food safety program must be audited by an approved seed sprout food safety auditor –

- (a) at intervals determined by the Chief Inspector in respect of the approved seed sprout food safety program, or approved seed sprout food safety programs generally, as notified in writing to the accredited seed sprout producer in respect of the approved seed sprout food safety program; or
- (b) if no such intervals are specified, at least once every 12 months.

14. Register of accreditation

- (1) The Chief Inspector is to establish a register of accredited seed sprout producers.
- (2) The register established under this regulation is to contain the following particulars in respect of an accreditation granted to a seed sprout producer:
 - (a) the granting of such an accreditation;
 - (b) any conditions attached to such an accreditation;
 - (c) any variation or revocation of a condition attached to such an accreditation;

(d) any suspension of such an accreditation;

(e) if such an accreditation is cancelled or revoked, the cancellation or revocation of the accreditation;

(f) if such an accreditation is surrendered, the surrender of the accreditation;

(g) if such an accreditation is transferred, the transfer of the accreditation.

(3) The register established under this regulation is to be available for inspection, without charge and during normal business hours, on a written request to the Chief Inspector.

(4) A person inspecting the register under subregulation (3) may, on payment of any reasonable fee determined by the Chief Inspector that does not exceed 50 fee units, do either or both of the following:

(a) obtain an extract of an entry in the register established under this regulation;

(b) obtain a copy of anything contained in the register established under this regulation.

PART 3 - Offences

15. Seed sprouts must be lawfully produced

(1) A person must not supply any seed sprout that has not been lawfully produced for human consumption.

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 seed sprout is taken to have been lawfully produced for human consumption if –

(a) in the case of a seed sprout that has been produced outside of Australia, it has been lawfully imported into Australia; and

(b) in any other case, to the extent to which the seed sprout 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 corresponding law if the production or processing occurred in another State or a Territory.

16. Infringement notices

(1) The offences that are created by the provisions of these regulations specified in column 2 of the table in Schedule 2 are prescribed offences for the purposes of section 53 of the Act.

(2) The prescribed penalty for each of the prescribed offences is the penalty specified opposite that offence in column 3 of the table in Schedule 2 .

SCHEDULE 1 - Fees

Regulations 5 and 6

| | | Fee units |
|----|--|------------------|
| 1. | Application under section 12 of the Act for accreditation of a seed sprout producer | 350 |
| 2. | Application under section 18 of the Act for variation of accreditation of a seed sprout producer – | |
| | (a) if the variation does not involve the approval or variation of a seed sprout food safety program | 250 |
| | (b) if the variation involves the variation of an approved seed sprout food safety program for the accreditation | 300 |
| | (c) if the variation involves the approval of a new seed sprout food safety program for the accreditation that is in addition to, or in substitution for, an existing approved seed sprout food safety program for the accreditation | 300 |
| 3. | Application under section 19 of the Act for transfer of accreditation of a seed sprout producer | 300 |
| 4. | Annual fee for accredited seed sprout producer whose maximum number of persons 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) fewer than 5 full-time seed sprout handlers | 175 |
| | (b) 5-50 full-time seed sprout handlers | 350 |
| | (c) more than 50 full-time seed sprout handlers | 750 |
| 5. | Penalty for default in respect of an accredited seed sprout producer | 75 |

SCHEDULE 2 - Infringement notice offences

Regulation 16

| | Column 2 Regulation | Column 3 Penalty (penalty units) | |
|----|--------------------------------|---|-----------------------|
| | | Individual | Body corporate |
| 1. | Regulation 15(1) | 5 | 10 |

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

Notified in the *Gazette* on 12 February 2014

These regulations are administered in the Department of Primary Industries, Parks, Water and Environment.