

NORTHERN TERRITORY OF AUSTRALIA

FOOD AMENDMENT REGULATIONS 2019

Subordinate Legislation No. 18 of 2019

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 18 of 2019*

Food Amendment Regulations 2019

I, Vicki Susan O'Halloran, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Food Act 2004*.

Dated 22 July 2019

V. S. O'Halloran
Administrator

By Her Honour's Command

N. S. Manison
Treasurer
acting for
Minister for Health

* Notified in the *Northern Territory Government Gazette* on 31 July 2019.

1 Citation

These Regulations may be cited as the *Food Amendment Regulations 2019*.

2 Commencement

- (1) These Regulations (except regulation 6) commence on 1 August 2019.
- (2) Regulation 6 commences on 1 August 2020.

3 Regulations amended

These Regulations amend the *Food Regulations 2014*.

4 Regulation 3 amended (Definitions)

- (1) Regulation 3, definition ***risk classification***
omit

- (2) Regulation 3
insert

CHO, means the Chief Health Officer.

risk classification, of a food business, means the classification determined under regulation 3B.

5 Part 2 replaced

Part 2

repeal, insert

Part 1A Risk classification of food business

3A Northern Territory Food Business Risk Classification

- (1) For section 135(3)(a) of the Act, the Northern Territory Food Business Risk Classification is a tool used to classify food businesses on the basis of food safety risks.
- (2) For section 135(3)(b) of the Act, the Northern Territory Food Business Risk Classification, as in force from time to time, applies on and from the commencement of this Regulation.

(3) For section 135(3)(c) of the Act, the Northern Territory Food Business Risk Classification:

(a) must be available for inspection at the Agency's office during normal business hours; and

(b) must be published on the Agency's website.

3B Risk classification

The Agency may classify a food business in accordance with the Northern Territory Food Business Risk Classification.

Part 2 Fees

4 Registration fee

For section 71(2)(c) of the Act, the prescribed fee for a food business with a risk classification specified in Schedule 1, is as specified in Schedule 1 for each premises where the operation of the food business will be carried on.

4A Renewal fee

For section 75(2)(b) of the Act, the prescribed fee for a food business with a risk classification specified in Schedule 1A, is as specified in Schedule 1A for each premises where the operation of the food business will be carried on.

4B Fee for variation of conditions of registration of food business

For section 78(5)(b) of the Act, the prescribed fee for a food business with a risk classification specified in Schedule 1B, is as specified in Schedule 1B.

6 Part 2A inserted

After regulation 4B

insert

Part 2A Audits**Division 1 Food safety auditors****4C Approval of food safety auditors**

- (1) The CHO may approve a person to be a food safety auditor if the CHO is satisfied the person is competent to carry out the functions of an auditor having regard to the person's appropriate skills and knowledge.
- (2) A person may apply, in the approved form, to the CHO for an approval under subregulation (1).
- (3) The CHO may require the applicant to provide additional information relevant to the application.
- (4) The CHO may, after considering an application:
 - (a) approve the application, with or without conditions; or
 - (b) refuse to approve the application.
- (5) If the CHO approves an application, the CHO must issue the applicant with a written notice of approval that sets out any conditions to which the approval is subject.
- (6) If the CHO refuses to approve an application, the CHO must issue the applicant with a written notice of refusal that sets out the reasons for the refusal.
- (7) The applicant may, if dissatisfied with the CHO's decision, apply to the Local Court to review the merits of the decision.
- (8) The application must be made within 5 business days after notice of the CHO's decision was received by the applicant.
- (9) In determining the review, the Court must, by written notice to the applicant:
 - (a) confirm the decision; or
 - (b) vary the decision; or

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- (c) revoke the decision; or
 - (d) substitute a decision for that decision.
- (10) The Court must state the reasons for its determination in the notice.

4D Approval of authorised officers as food safety auditors

- (1) The CHO may approve an authorised officer to be a food safety auditor if the CHO is satisfied the authorised officer has the appropriate skills and knowledge.
- (2) The CHO may approve an authorised officer to be a food safety auditor under subregulation (1) subject to any conditions the CHO considers appropriate.
- (3) An authorised officer may, in writing to the CHO, request approval to be a food safety auditor.
- (4) An authorised officer is not required to make an application under regulation 4C.

4E Term of approval

- (1) An approval granted under regulation 4C remains in force until the earlier of the following:
 - (a) the expiry of the period, not exceeding 3 years, specified in the approval;
 - (b) the date of which the approval is suspended;
 - (c) the date of which the approval is cancelled.
- (2) An auditor approved under regulation 4C may apply for renewal of an approval.
- (3) An approval granted under regulation 4D remains in force while the authorised officer is appointed as an authorised officer.

4F Variation of conditions, suspension or cancellation of approval

- (1) The CHO may, on the CHO's own motion, vary the conditions of, or suspend or cancel, an approval of a food safety auditor.
- (2) The CHO may suspend or cancel a food safety auditor's approval on one or more of the following grounds:
 - (a) the auditor has wilfully or negligently contravened the Act or these Regulations;

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- (b) the auditor has contravened a condition of the approval;
 - (c) the auditor has not competently carried out the functions of an auditor under these Regulations;
 - (d) the auditor has a direct or indirect interest in any food business that, in the opinion of the CHO, could affect the performance of the auditor's functions under these Regulations;
 - (e) the auditor has failed to give notice to the CHO of any direct or indirect interest in any food business under regulation 4K(1);
 - (f) for any other reason the CHO considers appropriate.
- (3) The CHO may not vary the conditions of, or suspend or cancel, the approval of a food safety auditor unless the CHO has:
- (a) given the auditor:
 - (i) written notice of the intention to vary, suspend or cancel the approval; and
 - (ii) an opportunity to make submissions in relation to the intended variation, suspension and cancellation; and
 - (b) considered any submissions made by the auditor.
- (4) A variation of the conditions of, or the suspension or cancellation of, the approval of an auditor under subregulation (1):
- (a) must be by written notice; and
 - (b) must be given to the person to whom the approval relates; and
 - (c) takes effect on the day on which the notice is given or on a later day specified in the notice.
- (5) The auditor may, if dissatisfied with the CHO's decision to vary, suspend or cancel the auditor's approval, apply to the Local Court to review the merits of the decision.
- (6) The application must be made within 5 business days after notice of the CHO's decision to vary, suspend or cancel the approval was received by the auditor.
- (7) In determining the review, the Court must, by written notice to the applicant:
- (a) confirm the decision; or

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- (b) vary the decision; or
 - (c) revoke the decision; or
 - (d) substitute a decision for that decision.
- (8) The Court must state the reasons for its determination in the notice.

4G Suspension or cancellation on request by food safety auditor

- (1) The CHO must, if requested to do so by a food safety auditor, suspend or cancel the food safety auditor's approval as a food safety auditor.
- (2) Regulation 4F does not apply to the suspension or cancellation of an approval at the request of the auditor.

4H Identity card

- (1) The CHO must give a food safety auditor an identity card stating the person's name and that the person is a food safety auditor.
- (2) The identity card must:
 - (a) state that it is issued under these Regulations; and
 - (b) show a recent photograph of the food safety auditor; and
 - (c) state the date on which it expires; and
 - (d) specify any conditions to which the person's approval as a food safety auditor is subject; and
 - (e) be signed by:
 - (i) the food safety auditor; and
 - (ii) the CHO.
- (3) A person who ceases to be a food safety auditor must return the person's identity card to the CHO as soon as reasonably practicable after the cessation.

4J Functions of food safety auditors

A food safety auditor has the following functions:

- (a) to carry out audits of food safety programs prepared in relation to food businesses under the Food Standards Code;

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- (b) to carry out any necessary post-audit action, including to carry out further audits to check that any deficiencies in a food safety program have been remedied;
 - (c) to carry out assessments of food businesses to ascertain their compliance with requirements of the Food Safety Standards;
 - (d) to report in accordance with regulation 4M.

4K Direct or indirect interest

- (1) A food safety auditor must notify the CHO of any direct or indirect interest the auditor has in any food business as soon as possible after becoming aware of the interest.
- (2) A food safety auditor must not carry out the functions of an auditor in relation to a food business in which the auditor has a direct or indirect interest.
- (3) Payment to an auditor for carrying out the functions of an auditor does not constitute a direct or indirect interest in a food business for this regulation.

Division 2 Auditing and reporting requirements

4L Frequency of auditing

The CHO must:

- (a) determine the audit frequency of any food safety programs required by the Food Standards Code to be prepared in relation to a food business; and
- (b) give written notice to the proprietor of the food business of:
 - (i) the audit frequency; and
 - (ii) the date by which the food business must have implemented any such food safety programs.

4M Reporting requirements

- (1) A food safety auditor must report in writing to the CHO the results of any audit carried out by the auditor.
- (2) A report under subregulation (1) must:
 - (a) be in the approved form; and

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- (b) be given to the CHO within 21 days after the completion of the audit; and
 - (c) take account of any action taken before the submission of the report to remedy any deficiency identified by the auditor.
- (3) The report must include a statement as to whether, in the opinion of the auditor, the food business is being conducted in compliance with the requirements of the Food Standards Code relating to food safety programs.
 - (4) An auditor must immediately report to the CHO any contravention of the Act, these Regulations, or the Food Safety Standards that comes to the auditor's attention in the course of carrying out an audit:
 - (a) that is an imminent and serious risk to the safety of food intended for sale; or
 - (b) that will cause significant unsuitability of food intended for sale.
 - (5) A report under subregulation (4) must be completed by the auditor as soon as possible and not later than 24 hours after the contravention comes to the auditor's attention.
 - (6) A copy of a report provided to the CHO under this regulation must be given to the proprietor of the food business concerned.

7 Regulation 8 replaced

Regulation 8

repeal, insert

8 Electronic payment and payment by cheque

- (1) If the person uses electronic means to pay the prescribed amount, payment is not effected until the amount is credited to the enforcement agency's bank account.
- (2) If the person tenders a cheque in payment of the prescribed amount, payment is not effected unless the cheque is cleared on first presentation.

8 Regulation 9 amended (Withdrawal of infringement notice)

Regulation 9(1)

omit

Chief Health Officer

insert

CHO

9 Schedule 1 replaced

Schedule 1

omit, insert

Schedule 1 Registration fee

regulation 4

Risk classification	Fee per premises (revenue units)
Priority 1 (P1)	180
Priority 2 (P2)	90
Priority 3 (P3)	45
Priority 4 (P4)	0

Schedule 1A Renewal fee

regulation 4A

Risk classification	Fee per premises (revenue units)
Priority 1 (P1)	145
Priority 2 (P2)	70
Priority 3 (P3)	35
Priority 4 (P4)	0

Schedule 1B Fee for variation of conditions of registration

regulation 4B

Risk classification	Fee (revenue units)
Priority 1 (P1)	90
Priority 2 (P2)	45
Priority 3 (P3)	22
Priority 4 (P4)	0

10 Repeal of Regulations

These Regulations are repealed on the day after they commence.