

Victoria Government Gazette

No. S 372 Thursday 17 November 2011 By Authority of Victorian Government Printer

DECLARATION UNDER THE FOOD ACT 1984

Temporary and Mobile Food Premises and Food Vending Machines

I, Pauline Ireland, as delegate of the Secretary to the Department of Health (the Department) under sections 19V(1), 43E(1) and 43H(1) of the Food Act 1984 -

Statements of trade

- 1. declare under section 43H(1) that
 - (a) the proprietors of food businesses that operate a class 4 food vending machine are exempt from the requirement to lodge a statement of trade in respect of such a machine; and
 - (b) the proprietors of food businesses that operate a temporary food premises or a mobile food premises at a function or location that is not open to members of the public are exempt from the requirement to lodge a statement of trade in respect of that activity;
 Examples of paragraph (b) a wedding reception, a function for staff of a business, or a dinner for club members;
- 2. declare under section 43H(1) that the proprietors of food businesses that operate a mobile food premises at which the method of sale involves the vehicle roaming a municipal district and only stopping temporarily for any period required to sell food to customers
 - (a) are exempt from the requirement in section 43I(4)(e)(ii) to specify in a statement of trade the addresses of the places within a municipal district at which the premises operates; and
 - (b) are required to include in the statement of trade a general description of the area in which the premises operates such as a town or other locality;

Example: the operator of an ice-cream van that travels the streets and does not park at a regular site;

General requirements applying to notifications and registrations of components of a food business under Division 4 of Part VI

3. declare under section 43E(1) that the requirements which apply to the notification or registration of components of a food business under Division 4 of Part VI of the Act are as specified in schedule 1 to this instrument;

Requirements and exemptions for different types of food premises

- 4. declare under section 43E(1) the requirements that apply to the registration of components of a food business under Division 4 of Part VI of the Act and make exemptions
 - (a) as specified in schedule 2 to this instrument for temporary food premises;
 - (b) as specified in schedule 3 to this instrument for food vending machines;
 - (c) as specified in schedule 4 to this instrument for mobile food premises;
 - (d) as specified in schedule 5 to this instrument for class 3 food premises;

Location of food safety program and minimum records for food vending machines and temporary food premises

- 5. exempt under section 19V(1) the proprietors of food businesses operating a food vending machine or temporary food premises from
 - (a) the obligation under section 19F to ensure that a food safety program is kept at the food vending machine or temporary food premises to which it relates, on condition that any records that are required to be completed under the food safety program at a particular time for that machine or premises are completed at that time; and

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(b) the obligation under section 19CB(6) to ensure that the required minimum records are kept at the food vending machine or temporary food premises to which they relate, on condition that if any of these records must be completed at a particular time for that machine or premises under sections 19C or 19CB that they are completed at that time.

Interpretation

6. The exemptions under section 19V(1) in this instrument apply until 1 March 2017.

Definitions

7. (1) In this instrument –

'class 1 food premises' means food premises declared to be class 1 food premises under section 19C of the Act;

'class 2 food premises' means food premises declared to be class 2 food premises under section 19C of the Act;

'class 3 food premises' means food premises declared to be class 3 food premises under section 19C of the Act;

'class 4 food premises' means food premises declared to be class 4 food premises under section 19C of the Act; and

'class 4 food vending machine' means a food vending machine that is a food premises declared to be a class 4 food premises under section 19C of the Act; and

'minimum records declaration' means the declaration made under section 19CB of the Act published in the Government Gazette on 25 June 2010 (S 241); and

'the Act' means the Food Act 1984; and

'the one application' means an application made under Division 4 of Part VI of the Act, whether it relates to registration or notification of components of a food business, or both.

- (2) In this instrument
 - (a) a reference to a clause shall, unless the context otherwise requires, be construed as a reference to a clause in this instrument; and
 - (b) a reference to a schedule shall, unless the context otherwise requires, be construed as a reference to a schedule in this instrument; and
 - (c) a reference to a section shall, unless the context otherwise requires, be construed as a reference to a section of the Act.

Commencement

8. This declaration takes effect on 25 November 2011. Dated 16 November 2011

PAULINE IRELAND Assistant Director Food Safety and Regulation Department of Health

GENERAL REQUIREMENTS ON REGISTRATION OR NOTIFICATION OF TEMPORARY FOOD PREMISES, FOOD VENDING MACHINES AND MOBILE FOOD PREMISES

Information relevant to registration and notification

- 1. The requirements applying to the registration or notification of components of a food business are as follows
 - (a) the registration authority must obtain sufficient information
 - (i) to determine the class of each of the components of the food business that are the subject of the application; and
 - (ii) in the case of an application to register, transfer registration or renew registration of a food vending machine that has been inspected or subject to a food safety assessment in the previous 12 months – to understand any systems used by the proprietor to ensure that food sold or handled for sale in, at or from that machine is safe and suitable; and
 - (iii) in the case of a temporary food premises, food vending machine or mobile food premises that is the subject of the one application together with a fixed premises – to consider how the food handling at the fixed premises relates to, and affects, the compliance of the temporary food premises, food vending machine or mobile food premises with the relevant requirements of the Act; and
 - (b) the registration authority must have regard to any relevant information that is available to that registration authority in any state-wide record system that is in operation about the components of a food business for the purposes of Division 4 of Part VI of the Act, including information from anywhere in Victoria about
 - (i) any inspections or food safety assessments of each of the components of the food business that are the subject of the application; and
 - (ii) any failure to comply with the requirements of the Act with respect to the operations of each component.

Requirements for class 3 components operating under a food safety program

- 2. The requirements that apply in the case of a proprietor of a food business that
 - (a) elects under clause 1 of schedule 5 to keep a food safety program for a class 3 food premises; and
 - (b) applies to register, or transfer the registration, of that food premises –

are as follows -

- (c) the registration authority must also be satisfied about the matters listed in paragraph (c) of clause 1 of schedule 5 in relation to that food premises; and
- (d) the registration authority must also be satisfied about the matters listed in paragraph (e) of clause 1 of schedule 5 in relation to that food premises (whether directly or from a certificate issued by an approved food safety auditor in the case of a non-standard food safety program).
- 3. In the case of a proprietor of a food business
 - (a) that elects under clause 1 of schedule 5 to keep a food safety program for a class 3 food premises; and
 - (b) applies to renew registration of that food premises –

the registration authority is also required to be satisfied about -

- (c) the matters listed in paragraph (c) of clause 1 of schedule 5 in relation to that food premises; and
- (d) the matters listed in paragraph (f) of clause 1 of schedule 5 in relation to that food premises, by a certificate from an approved food safety auditor.
- 4. The requirements that apply under clauses 2 and 3 of this schedule are additional to the requirements that apply under clause 1 of this schedule.

TEMPORARY FOOD PREMISES

Registration of class 2 or class 3 temporary food premises

- 1. The requirement in section 38B(1)(c) that a temporary food premises that is a class 2 food premises or class 3 food premises be inspected by the registration authority before the registration of that food premises is granted or transferred is modified under section 43E(1) as follows:
 - (a) the registration authority must obtain information from the applicant about the operation of the temporary food premises; and
 - (b) an inspection by the registration authority is not required, but the registration authority must take into account the results of any inspection of the temporary food premises
 - (i) that it conducts; or
 - (ii) which is undertaken by any council at the request of the registration authority.

Renewal of registration of class 2 temporary food premises

- 2. Under section 43E(1), the requirements that apply in the case of a renewal of registration of a temporary food premises that is a class 2 food premises under section 38D(2) are as follows:
 - (a) the registration authority must obtain information from the applicant about the operation of the temporary food premises; and
 - (b) the registration authority must take into account the results of
 - (i) any inspection of the temporary food premises that it conducts; or
 - (ii) an inspection of the temporary food premises undertaken by any council at the request of the registration authority; and
 - (c) in any case where the registration authority has reasonable grounds for believing that a relevant requirement of the Act with respect to the temporary food premises has not have been complied with during the previous registration period, obtain information to determine whether that non-compliance has been, or will be, remedied.
- 3. A proprietor of a food business that operates a temporary food premises that is a class 2 food premises using a standard food safety program is exempt under section 19V(1) from any requirement in or under section 19C that a food safety assessment be conducted of the temporary food premises.

Renewal of registration of class 3 temporary food premises

- 4. The requirement in sections 38D(1)(b) and 39 that a temporary food premises that is a class 3 food premises be inspected by the registration authority before the registration of that food premises is renewed is modified under section 43E(1) as follows-
 - (a) the registration authority must obtain information from the applicant about the operation of the temporary food premises; and
 - (b) an inspection by the registration authority is not required, but the registration authority must take into account the results of any inspection of the temporary food premises-
 - (i) that it conducts; or
 - (ii) which is undertaken by any council at the request of the registration authority; and
 - (c) in any case where the registration authority has reasonable grounds for believing that a relevant requirement of the Act with respect to the temporary food premises has not have been complied with during the previous registration period, obtain information to determine whether that non-compliance has been, or will be, remedied.

FOOD VENDING MACHINES

Registration of class 2 food vending machines

- 1. In the case of an application to register or transfer the registration of one or more food vending machines that are class 2 food premises in the one application, the requirement in section 38B(1)(c) that such a machine be inspected by the registration authority before the registration of that machine is granted or transferred is modified under section 43E(1) as follows
 - (a) the inspection may be undertaken as described in clause 6 of this schedule; and
 - (b) the machine does not need to be inspected if at least one other food vending machine that is a class 2 food premises and which is also the subject of the application is inspected before the registration is granted or transferred.

Registration of class 3 food vending machines

- 2. In the case of an application to register or transfer the registration of one or more food vending machines that are class 3 food premises in the one application, the requirement in section 38B(1)(c) that such a machine be inspected by the registration authority before the registration of that machine is granted or transferred is modified under section 43E(1) as follows
 - (a) the inspection may be undertaken as described in clause 6 of this schedule; and
 - (b) the machine does not need to be inspected if at least one other food vending machine that is a class 3 food premises and which is also the subject of the application is inspected before the registration is granted or transferred.

Renewal of registration of class 2 food vending machines

- 3. In the case of an application to
 - (a) renew registration of one or more food vending machines in the one application; and
 - (b) some or all of these machines are class 2 food premises using a standard food safety program –

the requirement that arises under section 38D(2)(c) that a food safety assessment of a machine referred to in paragraph (b) must be conducted before the registration of that machine is renewed does not apply under section 43E(1) if –

- (c) the registration authority does not have any reasonable grounds for believing that a relevant requirement of the Act with respect to that machine has not have been complied with during the previous registration period; and
- (d) a food safety assessment is conducted within the relevant registration period of at least one other machine that is also the subject of the application and which is a class 2 food premises.
- 4. A proprietor of a food business that is
 - (a) applying to renew registration of one or more food vending machines in the one application; and
 - (b) some or all of these machines are class 2 food premises using a standard food safety program –

is exempt under sections 19V(1) from any requirement in or under section 19C that a food safety assessment of a machine referred to in paragraph (b) must be conducted if –

- (c) the registration authority does not have any reasonable grounds for believing that a relevant requirement of the Act with respect to that machine has not have been complied with during the previous registration period; and
- (d) a food safety assessment is conducted within the relevant registration period of at least one other machine that is also the subject of the application and which is a class 2 food premises.

Renewal of registration of class 3 food vending machines

- 5. In the case of an application to
 - (a) renew registration of one or more food vending machines in the one application; and
 - (b) some or all of these machines are class 3 food premises –

the requirement in sections 38D(1)(b) and 39 that a machine referred to in paragraph (b) is inspected by the registration authority before the registration of that machine is renewed is modified under section 43E(1) as follows –

- (c) the inspection may be undertaken as described in clause 6 of this schedule; and
- (d) the inspection does not need to be undertaken if the registration authority does not have any reasonable grounds for believing that a relevant requirement of the Act with respect to that machine has not been complied with during the previous registration period.

Inspections

- 6. For the purposes of clauses 1, 2 and 5 of this schedule, an inspection may be undertaken
 - (a) by the registration authority; or
 - (b) if the registration authority so chooses
 - (i) by any council, at the request of the registration authority; or
 - (ii) in the case of an application to renew or transfer registration, by any council in whose district the machine has operated during the relevant period-

if, when deciding whether to register or transfer the registration or renew the registration of any machine in relation to which the inspection is relevant, the registration authority receives a report of the inspection and takes the results of that inspection into account when deciding whether to register, transfer or renew the registration.

MOBILE FOOD PREMISES

Registration of class 2 and class 3 mobile food premises

1. In the case of an application to register or transfer the registration of a mobile food premises that is a class 2 food premises or a class 3 food premises, the requirement in section 38B(1)(c) that the registration authority must inspect the mobile food premises before the registration is granted or transferred is modified under section 43E(1) as described in clause 5 of this schedule.

Renewals of class 3 water transport vehicles

2. In the case of an application to renew the registration of a class 3 food premises that is a water transport vehicle, the requirement in sections 38D(1)(b) and 39 that the registration authority must inspect the water transport vehicle before the registration is renewed is modified under section 43E(1) as described in clause 5 of this schedule.

Renewal of registration of other class 3 mobile food premises

- 3. In the case of an application to
 - (a) renew registration of one or more mobile food premises in the one application; and
 - (b) some or all of these mobile food premises are class 3 food premises –

the requirement in sections 38D(1)(b) and 39 that a mobile food premises referred to in paragraph (b) is inspected by the registration authority before the registration of that mobile food premises is renewed is modified under section 43E(1) as follows –

- (c) the inspection may be undertaken as described in clause 5 of this schedule; and
- (d) the inspection does not need to be undertaken if
 - (i) the registration authority does not have any reasonable grounds for believing that a relevant requirement of the Act with respect to that mobile food premises has not have been complied with during the previous registration period; and
 - (ii) an inspection is conducted before the registration is renewed of at least one other machine that is also the subject of the application and which is a class 3 food premises.
- 4. In clause 3 of this schedule, a reference to 'mobile food premises' does not include a water transport vehicle.

Inspections

- 5. For the purposes of clauses 1, 2 and 3 of this schedule, the inspection may be undertaken
 - (a) by the registration authority; or
 - (b) if the registration authority so chooses
 - (i) by any council, at the request of the registration authority; or
 - (ii) in the case of an application to renew or transfer registration, by any council in whose district the mobile food premises has operated during the period –

if, when deciding whether to register or transfer the registration or renew the registration of any mobile food premises in relation to which the inspection is relevant, the registration authority receives a report of the inspection and takes the results of that inspection into account when deciding whether to register, transfer or renew the registration.

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SCHEDULE 5

FOOD SAFETY PROGRAMS AND MINIMUM RECORDS FOR CLASS 3 FOOD PREMISES

Election to keep food safety program instead of minimum records

- A proprietor of a food business that operates a class 3 food premises that is
 - (a) a temporary food premises, a mobile food premises or a food vending machine; or
 - (b) a fixed food premises which is the principal premises of that food business with respect to a temporary food premises, a mobile food premises or a food vending machine –

is exempt under section 19V(1) from any requirement in or under section 19C and 19CB to keep minimum records for that class 3 food premises on condition that –

- (c) the premises are the subject of one application with other components of the food business, and one or more of these other components is a class 2 food premises; and
- (d) the proprietor has advised the registration authority in writing that he or she elects to keep a food safety program for the class 3 food premises instead of the minimum records; and
- (e) the food safety program
 - (i) identifies the potential hazards that may be reasonably expected to occur in the food handling operations that are being, or are to be, undertaken at the class 3 food premises, and specifies how those hazards can be controlled and the means of control;
 - (ii) provides for the monitoring of those controls and for corrective action if such a hazard is found not to be under control;
 - (iii) provides for appropriate records to be kept demonstrating action taken by the proprietor in relation, to, or in compliance with, the food safety program as it applies to the food handling operations that are being, or are to be, undertaken at the class 3 food premises; and
- (f) if the food safety program is a non-standard food safety program, the proprietor ensures that either a food safety audit required under section 19C and 19H of the relevant class 2 food premises or a separate annual audit by an approved food safety auditor considers whether the class 3 food premises is compliant with the program, and whether the program is adequate for those premises; and
- (g) the proprietor provides the registration authority with a copy of those parts of the food safety program that relate to the class 3 food premises, or any document referred to in paragraph (h) of this clause, within 7 days of being asked to do so by the registration authority; and
- (h) in the case of a food vending machine, whilst the machine is in operation, and for 12 months after the proprietor ceases to operate the machine, the proprietor keeps a copy of all readily available documents containing recommendations of the manufacturer or the supplier of the machine (if any) about –
 - (i) the manner of operation of the machine; and
 - (ii) any steps that are to be taken to ensure that food sold from the machine or handled in the machine is safe and suitable for human consumption.
- 2. In sub-clause (1)(f) of this schedule, a 'food safety audit' means an audit by an approved food safety auditor-
 - (a) that is conducted in accordance with sections 19HA (2) and (3); and
 - (b) in which the procedures set out in sections 19L, 19M (except sub-section (5)), and 19N are followed.

Minimum records for vending machines

- 3. (1) A proprietor of a food business who operates a class 3 food vending machine is exempt under section 19V(1) from the requirement under sections 19C and 19CB to keep the records referred to in clauses 2 and 4 of the minimum records declaration in respect of that machine, if the proprietor complies with the conditions in sub-clause (2).
 - (2) The proprietor must
 - (a) whilst the machine is in operation, and for 12 months after the proprietor ceases to operate the machine, keep a copy of all readily available documents containing recommendations of the manufacturer or the supplier of the machine (if any) about
 - (i) the manner of operation of the machine; and
 - (ii) any steps that are to be taken to ensure that food sold from the machine or handled in the machine is safe and suitable for human consumption; and
 - (b) provide the registration authority with a copy of that document within 7 days of being asked to do so by the registration authority.

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