



Government of **Western Australia**  
Department of **Health**

# WA Food Regulation: Food Safety Auditing – Guidelines for Enforcement Agencies

**Version 2**

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**Approved by Managing Scientist - Food**

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# Food Safety Auditing – Guidelines for Enforcement Agencies

## 1. Introduction

This Guideline applies to enforcement agencies that have food businesses within their jurisdiction subject to regulatory food safety audits. It provides information and advice for enforcement agencies regarding their responsibilities and the processes involved with the regulatory food safety auditing system.

In addition to this Guideline there is an overarching document titled WA Food Regulation: Management System for Regulatory Food Safety Auditing and two separate Guidelines for Regulatory Food Safety Auditors (RFSAs) and an information sheet for food businesses. There is also a RFSA Code of Conduct that applies to all RFSAs approved by the Chief Executive Officer (CEO) of Department of Health to conduct audits of food businesses.

Part 8 of the *Food Act 2008* (WA) (the Food Act) sets out requirements relating to regulatory food safety audits. It includes provisions for the CEO to authorise a staff member or approve an individual to be an RFSA where the CEO is satisfied that person is competent to do so, and it sets out auditing and reporting requirements. The CEO's powers under Part 8 may be delegated, in writing, to a member of staff. The CEO, acting through the Department of Health, is an enforcement agency as set out in the Food Regulations 2009 (Food Regulations).

## 2. Scope

This Guideline is applicable to Western Australia (WA) only. It is based on the Food Act and the [National Food Safety Audit Policy](#), and the [National Regulatory Food Safety Auditor Guideline](#).

This Guideline provides direction for enforcement agencies on the regulatory food safety auditing process and details the responsibilities of enforcement agencies within the system.

## 3. Objectives

The objectives of this Guideline are:

- to provide direction and guidance for enforcement agencies on their responsibilities within the regulatory food safety auditing system
- to describe the performance standards for enforcement agencies in relation to regulatory food safety auditing under Part 8 of the Food Act

in order to ensure a consistent approach to regulatory food safety auditing.

## 4. Related documents

- [National Regulatory Food Safety Auditor Guideline \(PDF 412 KB external site\)](#)
- [National Food Safety Audit Policy \(PDF 224 KB external site\)](#)
- [WA Food Regulation: Guideline for the Management of the Regulatory Food Safety Auditing System \(PDF 336 KB\)](#)
- [WA Food Regulation: Food Safety Auditing – Guidelines for Regulatory Food Safety Auditors \(on the Audit and Reporting Requirements\) \(PDF 526 KB\)](#)

- [WA Food Regulation: Food Safety Auditing – Guidelines for Regulatory Food Safety Auditors \(on the Approval Process\) \(PDF 541 KB\)](#)
- [WA Food Regulation: Food Safety Auditing – Information for Food Businesses \(PDF 273 KB\)](#)
- [WA Food Regulation: Food Safety Auditing - Code of Conduct \(PDF 288 KB\)](#)
- [Food Act 2008 Regulatory Guideline No 6 - Regulatory Food Safety Auditing in Western Australis \(PDF 127 KB\)](#)

## 5. Definitions

Term	Definition
<b>Audit</b>	A systematic, independent and documented process for obtaining evidence and evaluating it objectively to determine the extent to which the audit criteria are fulfilled.
<b>Audit Report</b>	The report required under section 102 of the Food Act by which RFSAs report audit outcomes to enforcement agencies. The section 102 form for audit reports (approved by the CEO) is contained in Appendix 1 of the <a href="#">WA Food Regulation: Food Safety Auditing – Guidelines for Regulatory Food Safety Auditors (on the Audit and Reporting Requirements) (PDF 526 KB)</a>
<b>Authorised Officer</b>	As defined in section 8 of the Food Act authorised officer means – <ul style="list-style-type: none"> <li>a) a person appointed under Part 10 Division 3; or</li> <li>b) a person designated by a local government as an authorised officer under the <i>Public Health Act 2016</i> section 24(1) for the purposes of this Act;</li> </ul>
<b>CEO</b>	The Chief Executive Officer of the department of the Public Service principally assisting in the administration of the Food Act (section 8). The CEO of the Department of Health is the “Director General”.
<b>Compliance</b>	Refers to a state when persons, food businesses or primary producers are operating within the regulatory requirements that apply to that person, food and associated inputs, food business or primary producer.
<b>Critical non-compliance</b>	Contraventions of the Food Act, regulations relating to food safety programs or the Food Safety Standards detected during regulatory food safety audits that present an imminent and serious risk to the safety of food intended for sale or that will cause significant unsuitability of food intended for sale (section 102(5) Food Act).

<b>Enforcement agencies</b>	<p>As defined in section 8 of the Food Act, an enforcement agency is</p> <ul style="list-style-type: none"> <li>(a) the CEO; or</li> <li>(b) a local government; or</li> <li>(c) a person or body, or a person or body within a class of persons or bodies, prescribed by the regulations for the purposes of this definition;</li> </ul> <p>As prescribed in the Regulations, depending on the circumstances, an enforcement agency will be either the CEO or a local government.</p>
<b>Food Act</b>	<p><a href="#"><u>Food Act 2008 (WA) (external site)</u></a></p>
<b>Food Business</b>	<p>As defined in section 10 of the Food Act, a “food business” is “a business, enterprise or activity (other than a business, enterprise or activity that is primary food production) that involves —</p> <ul style="list-style-type: none"> <li>(a) the handling of food intended for sale; or</li> <li>(b) the sale of food,</li> </ul> <p>regardless of whether, subject to section 6, the business, enterprise or activity concerned is of a commercial, charitable or community nature or whether it involves the handling or sale of food on one occasion only”.</p> <p>Note that dairy primary producers are also a ‘food business’ in accordance with Regulation 6 of the Food Regulations which prescribes that any food production activity to which a standard in Chapter 4 of the Australia New Zealand Food Standards Code (Food Standards Code) applies is not primary food production for the purpose of section 10.</p>
<b>Food Regulations</b>	<p><a href="#"><u>Food Regulations 2009 (WA) (external site)</u></a></p>

<b>Food Safety Program (“FSP”)</b>	<p>As defined at section 103(1) Food Safety Program means, “for a food business, the food safety program required by the regulations to be prepared for the food business”.</p> <p>Standard 3.2.1 states a <b>food safety program</b> must -</p> <ul style="list-style-type: none"> <li>a) systematically identify the potential hazards that may be reasonably expected to occur in all food handling operations of the food business;</li> <li>b) identify where, in a food handling operation, each hazard identified under paragraph (a) can be controlled and the means of control;</li> <li>c) provide for the systematic monitoring of those controls;</li> <li>d) provide for appropriate corrective action when that hazard, or each of those hazards, is found not to be under control;</li> <li>e) provide for the regular review of the program by the food business to ensure its adequacy; and</li> <li>f) provide for appropriate records to be made and kept by the food business demonstrating action taken in relation to, or in compliance with, the food safety program.</li> </ul>
<b>Food Safety Standards</b>	<p>Defined at section 8 of the Food Act to mean: the Standards contained in Chapter 3 of the Food Standards Code</p>
<b>Food Standards Code</b>	<p><a href="#">Australia New Zealand Food Standards Code</a> (external site)</p> <p>Under section 8 of the Food Act means the Australia New Zealand Food Standards Code as defined in the <i>Commonwealth Food Standards Australia New Zealand Act 1991</i> and as adopted or incorporated by the regulations.</p> <p>The Food Standard Code has been adopted under Regulation 7 of the Food Regulations. The Code sets out in Chapters, the Standards that apply to food.</p>
<b>List of Approved Regulatory Food Safety Auditors in WA</b>	<p>The list of regulatory food safety auditors, as required by section 105 of the Food Act, to be prepared and maintained by the CEO. The publicly available list of RFSAs in WA is located on the <a href="#">Department of Health website</a></p>
<b>National Food Safety Audit Policy</b>	<p>The policy endorsed by the Australian and New Zealand Food Regulation Ministerial Council on 25 October 2006 for the approval and management of RFSAs and regulatory food safety audits in Australia. This policy is available on the <a href="#">Food Regulation website</a> (external site).</p>
<b>Non-compliance</b>	<p>A non-compliance against the FSP, the Food Safety Standards (or if applicable Standard 4.2.4) or the Food Act that is not considered to pose an imminent and serious risk to food intended for sale or that will cause significant unsuitability of food intended for sale. Compare to “critical non-compliance”.</p>

<b>Priority Classification</b>	The Priority Classification of a food business as determined by an enforcement agency in accordance with the <a href="#">WA Priority Classification System</a> approved by the CEO under section 100 of the Food Act.
<b>Regulatory Food Safety Audit</b>	An audit (by an RFSAs) arranged by a food business proprietor to satisfy the requirements imposed by section 99(2) of the Food Act.  Regulatory food safety audit means an evaluation, by an RFSAs, of a food business' verified food safety program or other aspect of a food business to determine compliance with relevant aspects of the Food Act, the Food Regulations and associated policies applicable in WA.
<b>Regulatory Food Safety Auditor (RFSAs)</b>	A food safety auditor approved or authorised by the CEO in accordance with Part 8 Division 1 of the Food Act.  RFSAs means a person formally approved or authorised by the CEO to conduct audits of food businesses or other premises requiring food safety audits (e.g. any business required by the Food Standards Code to implement a food safety program that complies with Standard 3.2.1 i.e. hospitals, child care centres etc.).
<b>Regulatory Food Safety Auditor – Code of Conduct</b>	Sets out standards of conduct that all RFSAs are required to demonstrate in their practice as RFSAs, and all RFSAs are required to commit to abide by the Code of Conduct as a condition of their approval. The Code of Conduct imposes an obligation on RFSAs to notify the CEO of any direct or indirect interest in any food business (section 96 of the Food Act). The RFSAs Code of Conduct can be found on the <a href="#">Department of Health website</a> .
<b>Relevant Officer</b>	The person employed and authorised by the Department of Health to manage audit activities within WA. The relevant officer is the Managing Scientist – Food as delegate of the CEO of the Department of Health.
<b>Standard 3.2.1</b>	<a href="#">Standard 3.2.1 (Food Safety Programs) of the Food Standards Code</a> (external site)
<b>Standard 4.2.4</b>	<a href="#">Standard 4.2.4 (Primary Production and Processing Standard for Dairy Products) of the Food Standards Code</a> (external site)
<b>Verification</b>	The application of methods, procedures, tests and other tools for evaluation, in addition to monitoring, to determine compliance of the food business's FSP with the Food Standards Code or appropriate regulation.

## 6. Responsibilities

Responsibility for the regulatory food safety audit process is shared between the Department of Health, local government enforcement agencies, approved RFSAs and food businesses that require regulatory food safety auditing. For an overview of the responsibilities of all the parties involved in the regulatory food safety auditing system, refer to the [WA Food Regulation: Management System for Regulatory Food Safety Auditing](#).

The CEO of Department of Health is responsible for approving RFSAs and maintaining a [list of approved RFSAs](#) (section 105 of the Food Act). This will help ensure the consistency of approvals and authenticity of persons claiming to be approved RFSAs.

**Enforcement agencies shall only accept regulatory food safety audits conducted by RFSAs detailed on the above list.**

Enforcement agencies have a key role in relation to responding to evidence collected by RFSAs during the regulatory food safety audit process by taking further action as appropriate. Enforcement agencies also have a role in reporting concerns about the conduct of regulatory food safety audits performed by approved RFSAs to the Department of Health.

Enforcement agencies are responsible for:

- Providing new food businesses with an appropriate and reasonable timeframe to develop and implement an FSP (as a guide this is three months), in accordance with Food Act Regulatory Guideline No.6.
- The initial verification of a Food Safety Program (FSP) to ascertain if it contains the prescribed elements as required by clause 5 Standard 3.2.1 Food Safety Programs of the Food Standards Code.
- Assigning initial audit frequencies to businesses that require regulatory food safety auditing having regard to the WA Priority Classification system (see Appendix 1).
- Determining, with regard to the WA Priority Classification (refer to Appendix 1), the appropriate range by which the minimum audit frequency for that business can be set.
- Responding to audit findings where they require a compliance and/or enforcement response (i.e. where issues have been identified that relate to non-compliance and/or critical non-compliances).
- Investigating complaints made about food businesses by RFSAs and vice versa (although in some cases local government may need to refer a matter to Department of Health).
- Reporting to the Department of Health substantiated complaints/concerns about the performance and/ or capabilities of approved RFSAs or issues that indicate breach of the Code of Conduct or the Guidelines for RFSAs.
- Reviewing and confirming any changes in audit frequencies determined by the RFSAs and notifying the food business and RFSAs in writing of any change to audit frequency.
- Meeting the performance standards detailed in section 7 of this document and other responsibilities as set out in the Food Act and Food Regulations.

## **7. Enforcement agency performance standards**

### **7.1 Prior to receiving an RFSAs report**

**7.1.1** The enforcement agency must provide new food businesses with an appropriate and reasonable timeframe to develop and implement an FSP (as a guide this is three months), in accordance with Food Act Regulatory Guideline No.6.

The enforcement agency performs a verification assessment of the food business' FSP to assess whether the program contains the elements prescribed in clause 5

of Standard 3.2.1. The Department of Health has developed a tool to assist with the assessment of FSPs (*Food Act 2008* Verification of Food Safety Program Guideline on the [Department of Health website](#)) which should be read in conjunction with [Food Standards Australia New Zealand \(FSANZ\) Food Safety Programs: A guide to Standard 3.2.1](#) (external site).

Authorised Officers from the relevant enforcement agency will need to be satisfied that the FSP, when put into operation, will be likely to enable a food business to meet its obligations under Standard 3.2.1. This only requires a decision to be made on whether the program **substantially complies at the time of the assessment**.

The initial verification assessment is **not an approval of the FSP**, as a FSP is a living document and once it has been determined that it contains the required elements it will be the audit process (and the RFSA) that will determine whether the FSP continues to be adequate to control the hazards associated with the processes within the food business. The RFSA may request from the food business undergoing a regulatory food safety audit for the first time written evidence to verify that the FSP has undergone the initial verification assessment by the enforcement agency.

7.1.2 Food businesses are responsible for organising their own regulatory food safety audit within the specified audit frequency assigned by the enforcement agency following a successful verification assessment (by the enforcement agency). When a food business fails to arrange for an approved RFSA to audit their FSP by the scheduled date, the enforcement agency will take action to ensure the business is aware that the audit is overdue and if necessary take compliance and/or enforcement action to ensure the audit is conducted.

## **7.2 Following receipt of an RFSA report**

**7.2.1** An enforcement agency can expect to receive audit reports within 21 days (except for the reporting of critical non-compliances which is within 24 hours) of the completion of the regulatory food safety audit (in accordance with section 102 (2)(b) of the Food Act). A regulatory food safety audit will be considered 'complete' within 14 days or earlier from the beginning of audit activities. This will be the case even if there are outstanding issues not addressed by the food business.

**Under no circumstances can a RFSA undertake enforcement action – these powers are reserved for authorised officers only.**

The enforcement agency will be notified by the RFSA if there are issues identified during the audit that relate to **non-compliance** with the Food Safety Standards or complete failure to have a FSP that meets the requirements of Standard 3.2.1. The enforcement agency is responsible for undertaking follow up action (including any necessary compliance or enforcement response) to ensure that these issues are rectified within appropriate time-frames.

As specified in section 102 (6) of the Food Act if the RFSA detects a **critical non-compliance** during a regulatory food safety audit the relevant enforcement agency must be notified of the audit failure as soon as possible but in any event within 24 hours after the critical non-compliance comes to the RFSA's attention.

7.2.2 Non-compliances detected during regulatory food safety audits of a food business' system will be classified as either:

- Critical non-compliances; or
- Non-compliances.

**Table 1: Definition of critical non-compliance/non-compliance**

Critical non-compliance	Non-compliance
Contraventions of the Food Act, regulations relating to FSPs or the Food Safety Standards detected during regulatory food safety audits that present an imminent and serious risk to the safety of food intended for sale, or that will cause significant unsuitability of food intended for sale. Critical non-compliances must be reported to the appropriate enforcement agency as soon as possible, and in any event, <b>within 24 hours</b> on the <a href="#">approved form</a> .	Where there is a non-compliance against the FSP, the Food Safety Standards (or if applicable Standard 4.2.4) or the Food Act that is <b>not</b> considered to pose an imminent and serious risk to food intended for sale or that will cause significant unsuitability of food intended for sale. Non-compliances are reported to the enforcement agency by means of the audit report.

All regulatory food safety audit reports received by the enforcement agency must be in the approved form (i.e. regulatory food safety audit report form and notification of a critical non-compliance form). RFSA's may submit their own versions of these forms providing their form includes all elements and wording specified on the 'approved forms' for reporting (refer to [Guideline for Regulatory Food Safety Auditors on the Audit and Reporting Requirements](#)).

An RFSA must report in writing to the appropriate enforcement agency, giving reasons, when the RFSA considers that the priority classification of a food business they have audited should be changed. This notification forms part of the audit report.

The WA Priority Classification System is provided in Appendix 1. RFSA's may determine that the audit frequency be changed in accordance with section 103 of the Food Act.

**If the non-compliance relates to a deficiency of the food business' FSP, it is the responsibility of the RFSA to set an appropriate timeframe for implementing corrective measures and to follow-up within 21 days to assess how the non-compliance has been rectified.**

In circumstances where corrective measures either:

- cannot be finalised within 14 days; or
- have not been finalised by the end of the 14 day period;

the RFSA should include this detail in their audit report submitted to the enforcement agency. The appropriate enforcement agency may then undertake regulatory activities to ensure these issues are addressed within suitable

timeframes (i.e. by issuing an Improvement Notice under section 63 of the Food Act).

After 21 days from a completed audit it is the responsibility of the **appropriate enforcement agency to decide non-compliance by the food business with the Act or the Food Standards Code, and for undertaking any compliance/enforcement action** in relation to compliance failures by the food business.

**7.2.3** When an enforcement agency receives an audit report it shall critically review the report by using the checklist in Appendix 2 and refer any issues to the Department of Health.

**7.2.4** The enforcement agency takes note of the determination made by the RFSA in relation to the appropriate audit frequency and amends and confirms the set minimum audit frequency accordingly (as detailed in Table 2).

Enforcement agencies must advise the Department of Health, if they believe inappropriate determinations in relation to audit frequencies are being made by RFSA's. The Department of Health will review this in consultation with the RFSA where appropriate.

Appendix 3 details a flowchart illustrating the Regulatory Food Safety Auditing Process.

**Table 2: Audit outcomes and amending audit frequency**

REPORTED AUDIT RESULT	DESCRIPTION	RFSA'S DETERMINATION IN RELATION TO AUDIT FREQUENCY
<b>Incomplete audit</b>	<p>A regulatory food safety audit is considered to be incomplete when the RFSA ceases (or does not begin) the audit because an FSP is not in place.</p> <p>An RFSA may make this determination without needing to undertake a site assessment (i.e. based on the results of a desktop audit)</p>	<p><b>Audit frequency to remain the same</b></p> <p>Enforcement agency to follow up non-compliance with food business (including breaches of Food Act) in accordance with their compliance and enforcement policy.</p>
<b>Unsuccessful audit</b>	<p>A regulatory food safety audit is unsuccessful when:</p> <p>in the RFSA's opinion, there are contraventions of the Food Act, the regulations relating to FSPs or the Food Standards Code that pose an imminent and serious risk to the safety of food intended for sale or that will cause significant unsuitability of food intended for sale</p> <p>Or</p> <p>a collection of a number of deficiencies that clearly indicate the FSP is not being implemented that constitute a critical non-compliance that pose an imminent</p>	<p><b>Increase frequency of regulatory audit (within limits set by food business' Priority Classification)</b></p> <p>This result indicates that the food business' FSP is not effective in producing safe food. It is the responsibility of the enforcement agency to follow up with the food business in relation to the identified problems in accordance with their compliance and enforcement policy.</p>

	<p>and serious risk to the safety of food intended for sale or that will cause significant unsuitability of food intended for sale.</p> <p>RFSA to raise a critical non-compliance and notify the enforcement agency on the approved form as soon as possible but in any event within 24 hours after the contravention comes to the attention of the RFSA (section 102 of the Act).</p>	
<b>Marginal audit</b>	<p>A regulatory food safety audit is to be reported as indicating a marginal audit result when, in the RFSA's opinion, the FSP has been implemented but the food business does not always follow the documented process (i.e. inconsistent compliance with FSP).</p> <p>A non-compliance against specific controls within the FSP that does not meet the criteria for a critical non-compliance (i.e. does not present an imminent and serious risk to the safety of food or that will cause significant unsuitability of food intended for sale) would automatically make the program marginal. It may take a number of non-compliances against prerequisite or support programs to make the program marginal.</p>	<p><b>Increase frequency of regulatory audit (within limits set by food business' Priority Classification)</b></p> <p><b><u>Or</u> audit frequency to remain the same if appropriate</b></p>
<b>Successful audit</b>	<p>A regulatory food safety audit result is successful when the RFSA is confident that the FSP:</p> <ol style="list-style-type: none"> <li>(1) complies with Standard 3.2.1 (and Standard 4.2.4 if applicable)</li> <li>(2) is adequate to control the hazards associated with the industry and process involved</li> <li>(3) has been implemented in accordance with the food business' documented system.</li> </ol> <p>There may be a small number of non-compliances against prerequisite or support programs.</p>	<p><b>Audit frequency to remain the same</b></p> <p><b><u>Or</u> decrease frequency of regulatory audit (within limits set by food business's Priority Classification) if appropriate*</b></p>
<b>High performance audit</b>	<p>Occurs when the regulatory food safety audit has not detected any contravention of the Food Act or the Food Standards Code (Standard 3.2.1 or Standard 4.2.4) and where the RFSA has a high level of confidence in the FSP. A high level of confidence can be measured in two ways:</p> <ol style="list-style-type: none"> <li>(1) evidence of continuing compliance with the FSP</li> </ol>	<p><b>Decrease frequency of regulatory audit (within limits set by food business's Priority Classification) if appropriate *</b></p>

	(2) the food business has an effective internal food safety audit and management review process.	
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**\*NOTE: The food business cannot have their audit frequency decreased unless there is compliance history available to the RFSA and the food business has had no non-compliances identified in two previous audits.**

## 8. Monitoring RFSA's performance within the WA Food Regulation: Food Safety Auditing Management System

An RFSA's performance will be reviewed through a range of monitoring mechanisms, such as check audits, witness audits, investigation of complaints, review of documentation and communications with food businesses. The Department of Health may monitor RFSAs performance by a system of 'check audits' (determined on a risk assessment basis with the aim that all RFSAs will receive a check audit during their approval period). Additionally, the appropriate enforcement agency must critically review all audit reports and may use the RFSA Report – Enforcement Agency Assessment Checklist (refer to Appendix 2).

A "check audit" is:

*An action taken to verify the effectiveness of a previous audit, including a full audit or a partial audit; it may be used to assess the performance of an RFSA or be part of monitoring to assess whether a regulatory system is achieving its objectives.*

Check audits may be undertaken by the relevant enforcement agency authorised officer immediately following a regulatory audit to verify that comments made in the RFSA's report are accurate. This means that check audits are not undertaken at the same time an RFSA is conducting an audit.

Check audits are however different to a witness audit. A witness audit is typically carried out by an RFSA that is a skilled examiner and is carried out to assess an RFSA's skills and knowledge, understanding of the food legislation and to verify that the RFSA/prospective approved RFSA can appropriately interpret and apply the applicable legislation.

Check audits examine an RFSA's ability to:

- conduct desk-top reviews of a business' approved system
- plan a regulatory food safety audit
- review evidence gathered by the business to suggest compliance with its FSP
- gather their own evidence during the on-site component of a regulatory food safety audit
- apply interpretative skills with respect to evidence supplied by the business, or evidence they have gathered, in order to generate an opinion as to whether the business is carrying on its system in accordance with the approval provided by the appropriate enforcement agency
- apply interpretative skills to ascertain whether the priority classification status assigned to the business is still appropriate, or whether the RFSA should suggest to the enforcement agency that it amend the priority classification status assigned to the business;

- communicate and negotiate with the business, both during the audit and during the opening and exit meetings
- manage the time imposed upon a business by the regulatory audit process.

Check audits may be triggered by complaints, system reviews, trends, audit reports and requests by food businesses. Outcomes of check audits/ review of audit reports will be communicated to the RFSA by the Department of Health in the form of advice or information or it may result in the issuing of a warning letter or suspension or cancellation of approval if the CEO is satisfied that the RFSA has not competently carried out their duty as a RFSA [section 97(2)(c) of the Food Act].

To ensure a robust regulatory food safety auditing system upon initial approval and on renewal of an RFSA's approval, five-audit reports and a witness audit report (conducted within the approval period) are reviewed by the Department of Health to ensure compliance with the RFSA management system. Further details of the requirements for copies of audit reports and witness audits are contained in the [Guideline for RFSAs \(on the approval process\)](#).

## 9. Appeals, complaints and disputes

There will be times when disputes arise between parties with responsibilities under this system. A food business may disagree with the findings or decisions made by an RFSA or an enforcement agency. There may be occasions where an RFSA lodges a complaint against a food business, for instance if obstructed during an audit. RFSAs may disagree with decisions made by the Department of Health with respect to approval as an RFSA. An enforcement agency may disagree with an RFSA's determination regarding audit frequency or have concerns regarding an RFSA's behaviour or potential conflict of interest.

In the event of such disagreements (at, for example, the food business during a regulatory food safety audit) the RFSA must notify the appropriate enforcement agency of the dispute at the earliest possible opportunity (depending on the severity of the dispute). The food business proprietor should also pursue the matter directly with the appropriate enforcement agency. The RFSA as part of their audit report is to describe the nature of the dispute and the agreed outcome(s) if possible. If the dispute is of a sufficiently serious nature or it cannot be resolved it is recommended that the RFSA does not undertake further regulatory food safety auditing work at the business until the enforcement agency has investigated the dispute.

Examples of issues that may be disputed during a regulatory food safety audit may include:

- interpretation and application of legislation
- the level of non-compliance raised during regulatory audits (critical versus non-critical)
- the need for an RFSA to re-visit a business to ensure it has implemented agreed corrective measures
- a decision by the RFSA to recommend to the enforcement agency that a food business's audit frequency should be increased due to poor audit performance.

If a complaint is received by the enforcement agency regarding the behaviour of an RFSA while conducting a regulatory food safety audit the following process should be followed:

- written notification should be obtained detailing the nature and circumstances of the complaint. A detailed investigation would then be initiated by the relevant enforcement agency
- the enforcement agency may communicate the results of their investigation to the Department of Health for possible further action e.g. variation of conditions of approval, suspension or cancellation
- the RFSA may apply to the CEO for a review of the decision made by an enforcement agency arising from a complaint.

With regard to decisions on an RFSA's approval (grant or refusal, imposition of conditions, variation of conditions, suspension or cancellation) the RFSA may apply to the State Administrative Tribunal (SAT) for a review of a decision of the CEO (section 98 of the Food Act). Applications to SAT for review of a decision of the CEO must be made within 28 days of the determination being made.

Where for example an RFSA breaches the Code of Conduct the CEO will investigate the breach and may take action against the RFSA. For example, RFSA's must not conduct regulatory food safety audits in businesses where it may be argued that a conflict of interest exists. Where an RFSA discovers that a potential conflict of interest exists they are required to notify the relevant officer of the Department of health as soon as possible. The relevant officer shall determine whether the RFSA may continue to conduct the regulatory food safety audit of that business. Failure to declare a potential conflict of interest to the relevant officer of the Department of health will result, in the very least, a review of the RFSA's approval which could result in suspension or cancellation.

RFSA's must maintain confidentiality of all commercially sensitive information or any other information provided in confidence. Should RFSA's disclose such information without appropriate consent, the Department of Health will review, suspend or cancel the RFSA's approval.

Should the Department of Health find reason to vary, cancel or suspend an RFSA's approval, the Department of health will notify the RFSA in writing. Additionally, where applicable the Department of Health will notify other State and federal jurisdictions under the Mutual Recognition Act 1992 of that RFSA's variation, suspension or cancellation. Identity cards must be returned to the Department of Health immediately upon cancellation of approval.

On receipt of that notice, the RFSA will have an opportunity to make submissions to the Department of Health for a review of the decision.

There may also be situations where an RFSA considers that a food business, subject to a regulatory food safety audit, has not appropriately cooperated during the audit process. The RFSA should provide a written report describing the nature and circumstances of the alleged incident, (in addition to the normal audit report). The enforcement agency may then investigate and inform the RFSA of the outcome.

## **10. Regulatory food safety auditor disciplinary procedures**

CEO may apply disciplinary procedures to RFSA's under certain circumstances, including the imposition of additional conditions on an RFSA's approval, or the suspension or cancellation of an RFSA's approval.

The grounds by which the Department of Health (CEO or delegate) may apply disciplinary procedures to RFSA's is contained in section 97 of the Food Act and within the Food Safety Auditing Code of Conduct.

Examples of circumstances that may result in disciplinary procedures being applied to a RFSA include:

- accepting gifts from food businesses during regulatory audits
- providing false or misleading statements to the Department of Health in a signed statement provided as part of an RFSA's initial approval
- continuing a regulatory audit in circumstances where the Department of Health has confirmed that a conflict of interest is known to exist
- providing deliberately false and misleading information in regulatory audit reports submitted to enforcement agencies
- making of public statements with respect to the findings of a regulatory audit without the express permission of the relevant officer of the Department of Health
- using alcohol and illegal drugs while conducting regulatory audits
- using legal or prescription drugs in a deliberately irresponsible manner while undertaking regulatory audits
- acting inappropriately while conducting regulatory audits.

For further details regarding the conduct expected of RFSA's refer to the Food Safety Auditing - Code of Conduct.

## Appendix 1: WA Priority Classification System

Part 8 Division 2 of the *Food Act 2008* contains provisions for auditing and reporting requirements relative to food safety programs (FSPs).

Section 100 requires the appropriate enforcement agency to determine the priority classification and frequency of auditing of FSPs for each food business having regard to a priority classification system for types of businesses approved by the Department of Health.

The purpose of the priority classification system is to establish the initial auditing frequency and the range of allowable auditing frequencies for food businesses requiring a FSP. Section 103 allows for auditing frequencies to be redetermined by an RFSA with regard to the compliance history of the food business.

The WA approach to FSPs mandates that the priority classification system identifies only those food businesses required to implement a FSP (and not other food safety management systems) in order to comply with the Food Standards Code. No other food businesses at this time are classified.

The CEO of the Department of Health, under section 100(2) of the *Food Act 2008*, has approved the following as the priority classification system in WA for the purposes of the application of the requirements relating to food safety programs:

Food Businesses Type	Priority Classification	Compliance Arrangements
<p>Food businesses required by the <i>Food Act 2008</i> to comply with Australian New Zealand Food Standards Code Standard 3.2.1 (Food Safety Programs)</p> <p>This requirement extends to the following:</p> <ul style="list-style-type: none"> <li>Food business subject to the requirements of Standard 3.3.1 (Food Safety Programs for food service to vulnerable persons) of the Food Standards Code</li> </ul>	<p>Priority 1 (P1)</p>	<p>Audit by Food Act approved RFSA with qualifications suitable to the business type.</p> <p><b>Frequency of audit:</b></p> <p>Initial audit frequency:</p> <ul style="list-style-type: none"> <li>Every 6 months</li> </ul> <p>Audit frequency range:</p> <ul style="list-style-type: none"> <li>maximum 3 monthly</li> <li>minimum 12 monthly</li> </ul> <p>An RFSA may determine that the audit frequency be changed in accordance with section 103 of the Food Act.</p> <p>The audit frequency can only be decreased if the food business has had no non-compliances identified in two previous audits.</p>

<ul style="list-style-type: none"> <li>Food businesses subject to the requirements of Standard 4.2.4 (Primary Production and Processing Standard for Dairy Products) of the Food Standards Code. (Division 4 – General dairy processing )</li> </ul>	Priority 1 (P1)	<p>Audit by Food Act approved RFSAs with qualifications suitable to the business type.</p> <p>In accordance with regulation 4 of the Food Regulations, the Department of Health is the appropriate enforcement agency for all businesses captured under Standard 4.2.4.</p> <p><b>Frequency of audit:</b></p> <ul style="list-style-type: none"> <li>Initial audit frequency: Standard 4.2.4 Division 4: every 6 months</li> </ul> <p>Audit frequency range:</p> <ul style="list-style-type: none"> <li>maximum 3 monthly</li> <li>minimum 12 monthly</li> </ul> <p>An RFSA may determine that the audit frequency be changed in accordance with section 103 of the Act.</p> <p>The audit frequency can only be decreased if the food business has had no non-compliances identified in two previous audits.</p>
Other food businesses not classified yet	Priority 2 (P2)	Not classified at this time
<ul style="list-style-type: none"> <li>Food businesses subject to the requirements of Standard 4.2.4 (Primary Production and Processing Standard for Dairy Products) of the Food Standards Code. (Division 2 – General dairy primary production requirements and Division 3 – General dairy collection and transportation)</li> </ul>	Priority 3 (P3)	<p>In accordance with regulation 4 of the <i>Food Regulations</i>, the Department of Health is the appropriate enforcement agency for all businesses captured under Standard 4.2.4.</p> <p><b>Frequency of audit:</b></p> <ul style="list-style-type: none"> <li>Initial audit frequency: Standard 4.2.4 Division 2 and 3: every 12 months</li> </ul> <p>Audit frequency range:</p> <ul style="list-style-type: none"> <li>Maximum 6 monthly</li> <li>Minimum 24 months</li> </ul> <p>An RFSA may determine that the audit frequency be changed in accordance with section 103 of the Act.</p> <p>The audit frequency can only be decreased if the food business has had no non-compliances identified in two previous audits</p>

## Appendix 2 Food Act 2008 - Regulatory Food Safety Auditor Report – Enforcement Agency Assessment Checklist

Regulatory Food Safety Audit Report - Assessment	
<b>RFSA Name</b> <i>(must be on <a href="#">list of approved RFSAs</a>)</i>	
<b>Food Business Name</b>	
<b>Date of Audit</b>	
<b>Name of officer completing this form</b>	
<b>Enforcement agency name</b>	
<b>Date form completed</b>	

1.Specialised High Risk Activities				
<b>Does the food business conduct high-risk activities? If yes indicate which high-risk activities</b>	Cook-Chill Process	Heat Treatment	Ready to eat meat products	Raw oysters and bivalve production and processing
<b>Is the RFSA approved for this specialised high-risk activity</b>	Yes / No / N/A	Yes / No / N/A	Yes / No / N/A	Yes / No / N/A

2. Assessment of RFSA report and enforcement agency checklist			
Has the RFSA reported in accordance with section 102, including use of the approved forms/templates?  <i>(Note RFSAs may submit their own versions of the reporting form providing all elements and wording specified in the Department of Health 'approved reporting form' are utilised (refer to section 7.2.2).</i>	Yes	No	N/A
Has the RFSA completed the audit report within appropriate timeframes (i.e. 21 days)?	Yes	No	N/A
If applicable, has the RFSA provided immediate notification (<24hrs) of critical non-compliances in the approved form?	Yes	No	N/A
Has RFSA reviewed the last audit report for any outstanding issues (especially if RFSA has changed)  If no, is enforcement agency aware of any outstanding issues remaining?	Yes	No	N/A
Has the RFSA carried out any necessary follow-up action, including further audits, if necessary, to determine whether action has been taken to remedy any deficiencies of any such food safety program identified in an audit?	Yes	No	N/A
If the RFSA has identified any contraventions of the Food Safety Standards (Chapter 3 of the Food Standards Code), or Standard 4.2.4 if applicable, have these matters now been referred to the relevant enforcement agency for follow up? *	Yes	No	N/A
If the RFSA has recommended a redetermination of the audit frequency, has this been done in compliance with section 103?	Yes	No	N/A
Does reported audit result meet definition in Guidelines for RFSA – Reporting Requirements i.e. incomplete/unsuccessful/marginal/successful/high performance (as per section 7.2.4)	Yes	No	N/A

If no to any question, please provide comments:

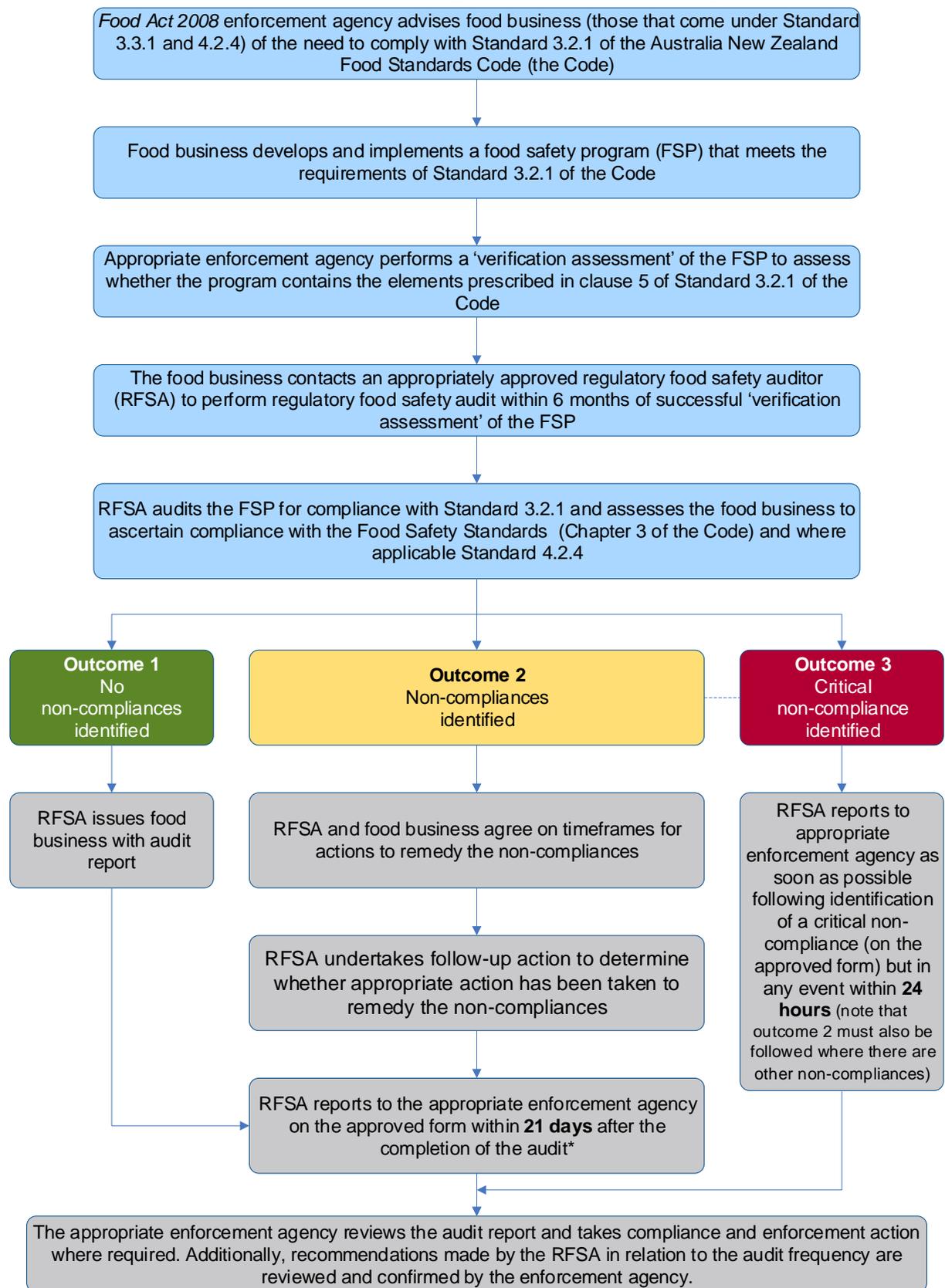
If no to any question, does matter require further action by Department of Health? If so please refer this matter to [foodsafety@health.wa.gov.au](mailto:foodsafety@health.wa.gov.au)

Date referred:

*\*If the RFSA has notified the enforcement agency of issues relating to non-compliance with the Act or Food Safety Standards or failure to have an FSP that meets the requirements of Standard 3.2.1 the enforcement agency is responsible for undertaking follow up action (including any necessary compliance or enforcement response) to ensure that these issues are rectified within the appropriate timeframes.*

*N.B. The enforcement agency is responsible for reviewing any changes in audit frequencies determined by the RFSA and notifying the food business and RFSA in writing of any change to audit frequency.*

### Appendix 3: Flowchart of the regulatory food safety audit process



**\*NOTE: Regulatory food safety audits will be considered complete within 14 days or earlier from the beginning of audit activities**

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