FOOD SAFETY ACT 2003

Food Establishment (Grading) Regulations 2012

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FOOD SAFETY ACT 2003

Food Establishment (Grading) Regulations 2012

IN exercise of the powers conferred upon the Board under section 70 of the Food Safety Act 2003, the Board hereby makes these Regulations-

PART 1 - PRELIMINARY

Short title and commencement

1. - (1) These Regulations may be cited as the Food Establishment (Grading) Regulations 2012.
(2) These Regulations shall come into force on a date or dates to be appointed by the Minister by notice in the Gazette.

Purpose
2. The purpose of these Regulations is to address the enforcement and implementation of the grading of food establishments in Fiji to ensure the safety of food and quality of conditions and services in all food establishments.

Interpretation
3. In these Regulations, unless the context otherwise requires-

"Act" means the Food Safety Act 2003;

"authorised officer" has the same meaning given in the Food Safety Act 2003;

"Board" means the Central Board of Health constituted under section 3 of the Public Health Act [Cap. 111];

"critical" means any condition or malpractices observed in the restaurants which can lead to food becoming unsafe or unwholesome (see regulation 4 (2) (a);

"Food Authority" means a local authority or any other body empowered by the Board to function as a food authority under the Act;

"food establishment" means any operation or any business entity that stores, prepares, packages, serves, vend or provides food for consumption and includes food processing establishments and delivery services and ‘establishment’ has a corresponding meaning;

"Food Official Grading Checklist" means the approved checklist designated by the Food Authority for assessing the compliancy level of food establishments and determining its grade;

"Grading" means the letter grade issued by the authorised officer at the conclusion of the routine inspection of a food establishment with the grade based upon the scoring method set forth in these Regulations resulting from the Inspection Report and shall reflect the restaurants degree of compliance with the Food Safety Regulations 2009;

"Head of the Food Authority" means the-

(a) Chairperson of the Local Authority;
(b) Chief Executive Officer/Town Clerk of the Town Council; or
(c) Chief Executive Officer/Town Clerk of the City Council;

"Letter Grade Card" means the grading system in the form of such letters, A, B, C or D which will inform consumers about the status of restaurants before making uninformed decisions;

"major" means any condition or malpractice observed in the restaurant, which precludes general hygiene and leads to the spoilage of food (see regulation 4 (2) (c));

"manager" includes a person appearing to be in charge of a food establishment operation;
"minor" means any observed conditions or malpractice which does not conform to sanitary requirements but is neither major nor critical (see regulation 4 (2) (d));

"owner" means the owner of a food establishment business;

"serious" means any conditions or malpractices observed in the establishment that can preclude proper implementation of hygienic practices or of the obtaining of appropriate levels of hygiene (see regulation 4 (2) (b)).

PART 2 - INSPECTION AND GRADING

Scoring system

4. - (1) Food establishments are awarded 100 points before an inspection is carried out by an authorised officer, using the Food Official Grading Checklist.

(2) During the inspection by the authorised officer, non-compliance will be categorised as-

(a) "critical" which shall result in the deduction of 20 points;
(b) "serious" which shall result in the deduction of 15 points;
(c) "major" which shall result in the deduction of 10 points; and
(d) "minor" which shall result in the deduction of 5 points.

(3) At the end of the inspection, the total percentage of grading will result in the issuing of the Letter Grade Card.

(4) Inspections on the food establishments will be carried out by the authorised officers with the licensing inspections as required under the Act.

Grading and Letter Grade Card

5. - (1) The letter grade set out in Schedule 4, shall be based upon the final numerical percentage score, set forth in the authorised officers Inspection Report, as follows-

(a) an "A" grade shall indicate a final score of ninety percent (90%) or higher as determined by the authorised officer using the Food Official Grading Checklist;
(b) a "B" grade shall indicate a final score of between 80% to 89% as determined by the authorised officer Food Official Grading Checklist;
(c) a "C" grade shall indicate a final score of between 70% to 79% as determined by the authorised officer Food Official Grading Checklist; and
(d) a "D" grade shall indicate a final score of below 70% as determined by the authorised officer Food Official Grading Checklist.

(2) The authorised officer, with the direction of the Head of the Food Authority may-

(a) order an immediate closure of the food establishment which, upon the completion of the routine inspection, does not achieve a "C" grade or better; or
(b) in respect of which there exists any condition or there is carried out any practice, which, in either case, poses an immediate need to order the closure of a food establishment to protect the safety or the health of customers, staff or the public.

(3) Food establishments graded "B" and "C" in respect of which a critical or serious non-compliance has been identified by the authorised officer must address and take steps to correct such non-compliance within 24 hours.
(4) The food establishment owner or manager may, within the time period given, seek more time from the authorised officer to address the critical or serious non-compliance identified.

(5) At the end of the time period specified in sub-regulation (3) or the extension of such time in sub-regulation (4), the authorised officer must inspect the food establishment to ensure that the non-compliance has been rectified.

(6) Upon the owner or manager of the food establishment rectifying the non-compliance in sub-regulation (3), the authorised officer must then issue the final grade card.

(7) In the event of a failure to address such non-compliance within the given time period, the authorised officer, with the direction of the Head of the Food Authority, must order immediate closure of the food establishment and suspension of licence until the authorised officer and the Board, are satisfied the non-compliance has been rectified.

Good hygiene practices
6. - (1) All owners, managers or staff must ensure that food establishments and the practices of good hygiene practices prescribed in Part IV of the Food Safety Regulations 2009 are fully observed at all times.

(2) Every owner, manager and responsible staff member of a food establishment who fails to comply with good hygiene practices referred to in sub-regulation (1), commits an offence and is liable upon conviction to a fine not exceeding $2,000 or imprisonment for a term not exceeding 12 months or both and the food establishment is liable to a suspension of its public health permit for a period of up to 21 days from the date of conviction of a person under this sub-regulation.

Posting requirements
7. - (1) Upon completion of the routine inspection and issuance of a percentage score, the authorised officer must post at the food establishment, the applicable Letter Grade Card in such manner and place to be clearly visible to the general public in accordance with sub-regulation (2).

(2) In this regulation, “clearly visible” means having the Letter Grade Card posted-

(a) in the front window of the food establishment within five feet of the front door;
(b) in a display case mounted on the outside front wall of the food establishment within five feet of the front door;
(c) on the drive through menu board of the food establishment, in addition to posting in locations (a) or (b) of this regulation; or
(d) in a display case or on the menu board of a food establishment.

(3) In the event that a food establishment is-

(a) operated in the same building or space as a separately licensed or permitted business; or
(b) sharing a common entrance with such separately licensed or permitted business,

the authorised officer shall post the Letter Grade Card in the initial contact area for the food establishment, on the menu board or counter of the food establishment, or in a location determined by the authorised officer in order to ensure proper notice to the general public.

(4) The Letter Grade Card shall not be removed, defaced, marred, camouflaged, hidden, altered or otherwise rendered other than clearly visible at all times. A food establishment owner, manager or person appearing to be in charge and failing to maintain a Letter Grade Card, or a replacement issued by an authorised officer in place of a removed, defaced, marred or damaged Letter Grade Card commits an offence and is liable to the fixed penalty in Schedule 1.
Where a Letter Grade Card has, by any means become other than clearly legible in the manner hereby required, an authorised officer may issue a replacement bearing the appropriate letter upon surrender to him or her, of the original. Where an original is lost or removed, the owner or the manager must inform an authorised officer in writing, of the date and circumstances of such loss to the best of his or her knowledge or belief.

The Inspection Report upon which the Letter Grade Card is based and all subsequent reports issued by an authorised officer, shall be maintained at the food establishment and shall be available to the general public for inspection, upon request.

The food establishment must keep the authorised officers Inspection Report until such time as the authorised officer completes the next routine check inspection of the establishment and issues a new Inspection Report.

PART 3 - GENERAL

Powers of authorised officers

8. Authorised officers shall exercise powers-

(a) given to them under the Act and regulation 49 of the Food Safety Regulations 2009; and
(b) necessary for them to carry out their functions in these Regulations.

Right of appeal

9. - (1) Any owner or manager of the food establishment wanting to contest the results of the authorised officer's Inspection Report that has led to a Letter Grade Card lower than he believes is warranted, may make a written request for re-inspection, within seven (7) days after the receipt of the Letter Grade Card, to the Board.

(2) The written request for re-inspection must show cause why the Letter Grade Card awarded is inappropriate. Failure to request a re-inspection within seven (7) days after the receipt of the Letter Grade Card shall be deemed a waiver of the right to re-inspection.

(3) A re-inspection granted under this regulation shall be performed within fifteen (15) days of the receipt of a proper request for re-inspection and the payment of the necessary fee.

(4) The re-inspection must be done by another authorised officer other than the authorised officer who had conducted the original inspection.

Cost of inspection undertaken in respect of re-inspection

10. - (1) The Food Authority shall charge a fee for re-inspection to contest the results of the authorised officer's Inspection Report in regulation 9 (see Schedule 2).

(2) The fee charged under sub-regulation (1), shall be the cost incurred by the authorised officer in terms of time spent on the re-inspection, with a minimum of one hour’s labour chargeable along with transportation costs to and from the premises.

(3) The Food Authority shall publish the rates to be applied under sub-regulation (2) as appropriate to ensure food establishment operators and managers are adequately informed and to ensure national consistency of fees charged.

(4) The charges payable under this regulation are payable to the Food Authority.
(5) The Board may reduce or waive payment of a charge in a particular case or cases, if requested in writing.

Period of validity

11. A Letter Grade Card shall remain valid for a period of one year from the date of its issue.

MADE at Suva this .......... day of .................................. 2012.

............................
Dr. Eloni Tora
Chairperson
Central Board of Health

............................
Dr. Neil Sharma
Minister for Health
<table>
<thead>
<tr>
<th>Offences</th>
<th>Fixed Penalty</th>
<th>Dollar Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Food establishment owners or managers found to have removed, defaced,</td>
<td>20 penalty</td>
<td>$2,000</td>
</tr>
<tr>
<td>marred, camouflaged, hidden or altered the Letter Grade Card.</td>
<td>points</td>
<td></td>
</tr>
</tbody>
</table>
## SCHEDULE 2

### FEES
(Regulation 11 (2))

<table>
<thead>
<tr>
<th>Categories</th>
<th>Minimum Hour Rate</th>
<th>Every Hour Thereafter (inclusive of transportation)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Class 1 - Hotels</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• The number of beds in the hotel sleep between 1 and 50 people</td>
<td>$100</td>
<td>$5</td>
</tr>
<tr>
<td>• The number of beds in the hotel sleep between 51 and 100 people</td>
<td>$150</td>
<td>$5</td>
</tr>
<tr>
<td>• The number of beds in the hotel sleep more than 100 people</td>
<td>$200</td>
<td>$5</td>
</tr>
<tr>
<td><strong>Class 2 - Other Food Establishments in Urban Areas</strong></td>
<td>$30</td>
<td>$5</td>
</tr>
<tr>
<td><strong>Class 3 - Other Food Establishments in Rural Local Authorities</strong></td>
<td>$20</td>
<td>$5</td>
</tr>
<tr>
<td><strong>Class 4 - Registered Villages Only</strong></td>
<td>$15 flat rate</td>
<td></td>
</tr>
</tbody>
</table>
SCHEDULE 3

FOOD ESTABLISHMENT FIXED PENALTY NOTICE
(Regulation 7 (4))

To: __________________________________________

Place of Offence: __________________________________________

Date of Offence: _____________________________ Time of Offence: _____________________________

YOU ARE HEREBY CHARGED as follows:

Statement of Offence: __________________________________________

contrary to __________________________________________

______________________________ Maximum Penalty: ____________________ penalty units ($ __________).

Particulars of Offence: __________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

TAKE NOTICE that, if not later than 21 days from the date hereof, payment of the fixed penalty of__________ penalty points ($ __________) which is equivalent to as received as specified below at a Ministry of Health office, all liability in respect of the offence will be discharged and no further action will be taken. HOWEVER, if the fixed penalty is not paid within the specified time you will be required to attend court at ______________________ Magistrates Court to answer the charges set out above on the _____ day of _____________________ 20___.

UNLESS-
(a) You admit the offence and plead guilty in writing; OR
(b) An appearance is made on your behalf by a barrister and solicitor, in which case your personal attendance will be excused and the case will be disposed off in your absence.*

NOTICE: In case of default in payment within the time specified in the notice, the court may, if the person is found guilty by the court, impose a penalty which is more than the fixed penalty for the offence or if unable to pay the fixed penalty may apply section 37 (1) and (2) of the Sentencing and Penalties Decree 2009 (Decree No. 42 of 2009).

Signed: ________________________________ Designation: ________________________________

Authorised officer Date: __________________

*see back of form for affidavit of service and plea of guilty
AFFIDAVIT OF SERVICE
(To be completed in all cases)

I, ____________________________, the authorised officer whose signature appears at the foot of the food establishment fixed penalty notice above, make oath and say that, on the ______ day of __________________ at ______________ I did serve upon the accused person specified therein.

A true copy of that food establishment fixed penalty notice.

Sworn by the above named authorised officer on this ______ day of ___________ 20_____

Before: ____________________________
Justice of Peace or Commissioner of Oaths

Authorised Officer

WRITTEN PLEA OF GUILTY

I, ____________________________, being the person named above hereby enter a plea of guilty to the charge specified.

Signed: ____________________________  Date: ____________________________
SCHEDULE 4

LETTER GRADE CARDS
(Regulation 5)

GRADE A
GRADE B

FOOD ESTABLISHMENT GRADE

80%-89% Compliance with food Safety Act 2003
Food Safety Regulation 2009
Food Establishment (Grading) Regulations 2011
Valid Until: 

Food Authority: Name of Establishment:

Date:

Signature of Authorised Officer:

MINISTRY of Health
Shaping Fiji’s Health