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11 April 2003

Registrar of Trade Marks  
IP Australia  
PO Box 200  
WODEN ACT 2606

Dear Registrar

**Certification Trade Mark Application 901311  
Freshcare Ltd  
Final Assessment**

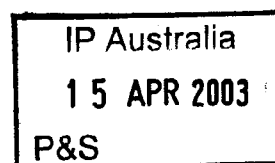
The Australian Competition and Consumer Commission (the Commission), in accordance with the provisions of the *Trade Marks Act 1995*, has completed its final assessment of the above Certification Trade Mark.

A copy of the certificate detailing the Commission's assessment is attached, as well as a certified copy of the rules. The applicant has been notified.

If you have any queries in relation to this matter, please contact Kathryn Kerr on (02) 6243 1050.

Yours sincerely

  
Paul Palisi  
Director





**Australian  
Competition &  
Consumer  
Commission**

**Final Assessment of Certification Trade Mark Application No 901311 lodged by Freshcare Limited**

The Australian Competition and Consumer Commission (the Commission), in accordance with the requirements of the *Trade Marks Act 1995*, has completed its Final Assessment of the above Certification Trade Mark (CTM) application.

The Commission's Final Assessment is that it is satisfied that:

- (a) the approved certifiers are competent to certify the goods in respect of which the CTM is to be registered;
- (b) the rules governing the use of the CTM would not be to the detriment of the public; and
- (c) the rules governing the use of the CTM are satisfactory having regard to the principles relating to restrictive trade practices set out in Part IV of the *Trade Practices Act 1974* (the Act); the principles relating to unconscionable conduct set out in Part IVA of the Act; and the principles relating to unfair practices, product safety and product information set out in Part V of the Act.

Signed.......... (Commissioner)

Date.....24 FEBRUARY 2003.....

CERTIFIED TRUE COPY

TRCMV

957811

*[Signature]* (for the ACCU)

11 / 4 / 03

# Freshcare

On Farm Food Safety Program  
For Fresh Produce



## Certification Rules

January 2001

Issue 1

FRESHCARE

CODE OF PRACTICE

#### Disclaimer

This Code of Practice is an interim document. It is subject to all required regulatory and other approvals and is intended to be revised following further consultation with industry.

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## Introduction

The following document sets out the Certification Rules for the Freshcare On Farm Food Safety Program.

Freshcare is the fresh produce food safety management program developed by the Australian fresh produce industry. Its purpose is to:

- (a) build on the strong quality reputation of the Australian Fresh Produce industry;
- (b) meet customer expectations about handling and presentation of fresh produce
- (c) ensure participants achieve industry accepted food safety standards and agricultural practices; and *benchmark, safety standards.*
- (d) ensure a solid self-regulatory basis on which the industry can grow and prosper in the future.

These Rules provide the fundamental framework for Freshcare, and are administered by Freshcare Limited on behalf of the Australian fresh produce industry.

### 1.1 Definitions and Interpretation

#### Definitions

In these Rules where the word commences with a capital letter, the following definitions will apply, unless the context otherwise requires:

**Agent** means a person approved by Freshcare Limited to act on its behalf;

**Agreement** means the Freshcare Agreement attached hereto as Appendix B

**Audit** means the systematic and independent examination to verify that the Enterprise is acting in accordance with these rules;

**Auditor** means a person approved by Freshcare to conduct audits on its behalf;

**Authorised User** means a person authorised in accordance with these Rules to use the Mark;

**Certification** means Certification of an Enterprise being a grower and/or packer/or marketing group; by Freshcare in accordance with these Rules and the Freshcare Code of Practice;

**Code of Practice** means the Freshcare Code of Practice attached hereto as Appendix D and as amended from time to time;

**Freshcare Certification Rules**

**Company** means Freshcare Limited;

**Enterprise** means a grower, packer or marketing group of Fresh Produce certified by Freshcare in accordance with these Rules and the Freshcare Code of Practice;

**Freshcare** means Freshcare Limited;

**Fresh Produce** means fruit, vegetables, herbs and nuts;

**Freshcare On Farm Food Safety Program** means The Food Safety program administered by Freshcare;

**Goods** means Fresh Produce; agricultural products related to Fresh Produce and; educational and training services provided to and relating to the Fresh Produce industry and its products; technical and business consultancy services provided to and relating to the Fresh Produce industry and its products, including quality assurance services relating to Fresh Produce and products obtained or derived from Fresh Produce;

**Mark** means the certification trademark as represented in Appendix A;

**National Service Provider** means the person contracted by Freshcare to act as its agent in the administration of the Freshcare On Farm Food Safety Program.;

**Non-Conformance** means that the enterprise has failed to meet an element or some elements of the Freshcare Code of Practice and/or the Freshcare Certification Rules;

**Registrar** means the Registrar of TradeMarks;

**Rules** means these Rules and any amendments made hereto from time to time; and

**Standards** means the standards prescribed in the Freshcare Code of Practice and these Rules as amended from time to time.

**1.2 Interpretation**

1.2.1 In these Rules, unless the context otherwise requires:

- (a) words in the singular will include the plural and vice versa;
- (b) references to a particular gender shall include all genders;
- (c) references to a person shall include natural persons, corporations, bodies politic, associations, partnerships and trusts.



**Freshcare Certification Rules**

- 1.2.2 For the purpose of these Rules, all powers to be exercised by Freshcare are exercised by its Board of management (or delegate) unless these Rules state otherwise.
- 1.2.3 All discretions or decisions by Freshcare must be exercised or made in good faith. A person alleging that Freshcare has not acted in good faith bears the onus of proving that allegation.
- 1.2.4 A reference to a person includes the person's successors and permitted assigns. A reference to a person who holds an office includes (as the case requires) the person who holds:
- (a) that office from time to time;
  - (b) a corresponding office in another jurisdiction; or
  - (c) an office that replaces the nominated office from time to time.
- 1.25 A reference to a paragraph or appendix is a reference to a paragraph or appendix to these Rules.
- 1.26 A reference to any other agreement or instrument where amended or replaced means that agreement or instrument as amended or replaced.
- 1.27 Headings must be ignored in the interpretation of these Rules.

**1.3 Proprietorship**

The Mark is the absolute property of Freshcare and may not be used by any person except an Authorised User in accordance with an agreement granted pursuant to these Rules.

The Company may delegate from time to time authority to an agreement to use the Mark.

**2. Obligations Of Certified Enterprises**

**2.1 Compliance**

2.1.1 Each Certified Enterprise must comply in all respects with:

- (a) its application for Certification
- (b) these rules;
- (c) the Freshcare Code of Practice; and
- (d) all laws and regulations relevant to the conduct of its activities, including holding all licences, agreements, permits, consents and approvals required for its activities.

**Freshcare Certification Rules**

- 2.1.2 Each Certified Enterprise must, if required by Freshcare, provide evidence of compliance with paragraph 2.1.1.
- 2.2 **Food Safety Program**
- 2.2.1 Each Certified Enterprise must establish and maintain a Food Safety Program that:
- (a) is approved by Freshcare; and
  - (b) meets the requirements set out in the Freshcare Code of Practice, as well as any other requirements notified by Freshcare to the Certified Enterprise from time to time.
- 2.2.2 Each Certified Enterprise must ensure that its Food Safety program is varied to conform to any variations in these Rules or any other variations required by Freshcare from time to time.
- 2.2.3 In the event of the scope of the operations changing from that detailed in the Enterprise's application or Certification certificate, the Enterprise must give written notice to Freshcare at least 7 days prior to the changes taking effect. The Enterprise must ensure that its Food Safety Program is amended to reflect these changes.
- 2.2.4 Each Certified Enterprise must conduct its activities in accordance with its Food Safety program.
- 2.3 **Sourcing of Fresh Produce**
- 2.3.1 A Freshcare Certified Enterprise must not sell fresh produce unless the produce was produced and/or packed under a Food Safety Program at a Freshcare Certified Enterprise or under an equivalent Food Safety Program recognised by Freshcare.
- 2.3.2 Fresh Produce must not be represented as being derived from a Freshcare Certified Enterprise unless it is subsequently handled and/or packed under a Food Safety Program at a Freshcare Certified Enterprise or under an equivalent Food Safety Program recognised by Freshcare.
- 2.4 **Management representative**  
Each Enterprise must:
- (a) nominate a person employed or engaged by the Enterprise who is acceptable to Freshcare and has completed a course of training approved by Freshcare (or has otherwise demonstrated equivalent competency to the satisfaction of Freshcare);

**Freshcare Certification Rules**

- (b) ensure that the person nominated in sub paragraph 2.3(a) is responsible for managing the Enterprise's Food Safety program on a day-to-day basis,
- (c) ensure all records are properly completed and that action is promptly taken to remedy any defects in them;
- (d) ensure all staff receive appropriate training in compliance with these Rules; and
- (e) ensure prompt action is taken in accordance with all notifications from Freshcare from time to time.

**2.5 Staff**

- 2.5.1 Each Enterprise must demonstrate to the satisfaction of Freshcare that it has on its site at all times during the Enterprise's working hours sufficient trained staff to maintain its Food Safety program and otherwise ensure compliance by the Enterprise with these Rules.

**2.6 Equipment**

- 2.6.1 Each Enterprise must ensure there is adequate equipment, in good working order, for all treatments and inspections required under these Rules to be properly carried out.

**2.7 Reference material**

- 2.7.1 Each Enterprise must at all times make the following documents available for reference by all relevant staff:
  - (a) these Rules;
  - (b) all Freshcare notifications, which Freshcare advises, must be retained by the Enterprise;
  - (c) the Freshcare Code of Practice; and
  - (d) all other applicable codes and/or legislation specified by Freshcare, and
  - (e) all other documents, which Freshcare advises from time to time.

**2.8 Change in Ownership**

2.8.1 If a change in ownership is proposed or occurs in respect of an Enterprise, the Enterprise must give Freshcare written notice of a change in ownership (including, without limitation, parties involved in the transaction and any other details Freshcare requires).

2.8.2 Freshcare may (but is not obliged to) review the Certification of an Enterprise if a change occurs.

**3. Fees**

3.1 Each Enterprise must pay all fees payable in connection with these Rules (including without limitation, fees payable to Freshcare, its agents and auditors).

3.2 An Enterprise wishing to apply for certification will be required to purchase the Code of Practice at a price determined by the Company.

3.3 All training and auditing costs will be borne solely by the Enterprise wishing to apply for certification.

3.4 An initial application fee and an annual subscription fee of \$55 (inclusive of GST) will apply. The initial application fee will include one free copy of the Code. The annual fee will be due:

- for businesses who apply between July and December, their annual fee will fall due on the following 1 July, and
- for businesses who apply between January and June, their annual fee will fall due on the following 1 January.

3.5 Freshcare may uniformly prescribe such other fees or amendments to the above fees as it thinks fit.

**4. Application For Certification**

**4.1 Application**

4.1.1 Each Enterprise must apply to Freshcare for Certification and supply all relevant information as required by Freshcare on the prescribed Freshcare Application Form (Appendix C). It is the responsibility of each Enterprise to notify Freshcare of all changes to information provided at the time of application.

4.1.2 Each Enterprise must pay all fees payable to Freshcare or its agents connected with such an application.

Freshcare Certification Rules

- 4.1.3 Each Enterprise must establish and maintain a Food Safety program approved by Freshcare.
- 4.2 Initial Audit
- 4.2.1 Prior to Certification, each Enterprise must notify Freshcare when they will be ready for an audit on the Freshcare Audit Notification Form. All audits under this paragraph will be at the Enterprise's sole expense.
- 4.2.2 Following an Audit, referred to in paragraph 4.2.1, Freshcare will notify the Enterprise of its decision concerning Certification.
5. Grant Of Agreement
- 5.1 In order to become an Authorised User a person, ("Enterprise") must have completed to the satisfaction of Freshcare or a person authorised by Freshcare an audit in accordance with these Rules and the Code of Practice (this first audit being an initial certification audit in accordance with Rule 4).
- 5.2 An audit must be conducted by an Auditor approved by Freshcare to conduct audits on its behalf.
- 5.3 Upon the successful completion by an Enterprise of the audit requirements set out in these Rules and the Code of Practice, Freshcare will agree, upon signing of the Freshcare Agreement, that the successful Enterprise may use the Mark. Freshcare or a person nominated by Freshcare and the successful Enterprise must sign the Agreement.
- 5.4 Any Enterprise can to appeal to the National Service Provider against an Auditor's decision.
- 5.5 In the event that an Enterprise is unable to successfully complete an audit, Freshcare may refuse to grant the Enterprise an agreement to use the Mark.
6. Continuing Audits
- 6.1 Continuing Audits
- 6.1.1 Each Certified Enterprise must arrange for an Auditor to audit the Enterprise's continued compliance with these Rules. Such audits must be conducted at frequencies determined by Freshcare. Audits will commence at a rate of one audit in a 12 month period. All audits under this paragraph will be at the Enterprise's sole expense. The frequency of audits may be varied at the discretion of Freshcare based on an assessment of food safety risk and history of performance for individual enterprises or specific commodity groups.

Freshcare Certification Rules

- 6.1.2 All Certified Enterprises must comply with all audit requirements prescribed in the Code of Practice. Certified Enterprises are required to self-monitor and correct problems when they arise and not to wait until an audit is due.
- 6.1.3 Subject to paragraph 6.1.4, each Certified Enterprise will be notified of Freshcare's intention to conduct an Audit at least seven (7) days before the Audit.
- 6.1.4 Freshcare may schedule random unannounced Audits of each Certified Enterprise or require additional audits if, in the opinion of Freshcare, such Audits are necessary or desirable to protect the interests of the Freshcare Food Safety Program. At any time Freshcare or its National Service Provider deems appropriate, a certified Enterprise must undertake a further audit at the Enterprise's sole expense.
- 6.1.5 If an Authorised User fails any audit prescribed in this Rule 6, then Freshcare may in its absolute discretion revoke the Freshcare Agreement to use the Mark, subject to a right of appeal to Freshcare.
- 6.1.6 A Certified Enterprise may refer to Freshcare any perceived variations in auditing standards, to ensure uniform standards are maintained across Australia.
- 6.2 **Conduct of Audits**
- 6.2.1 When auditing, an Auditor will evaluate non-conformance according to a non-conformance scale as shown in table 1. *addition*

Table 1. Non-conformance assessment scores

Non-conformance	Documented by	Definition
Critical non-conformance	A Critical Incident Report (CIR).	The integrity of Food Safety or the integrity of the Freshcare Food Safety Program has been compromised.
Major non-conformance	A Corrective Action Report (CAR).	There is the <u>potential</u> to compromise food safety or the Freshcare Food Safety Program.
Minor non-conformance	A Corrective Action Report (CAR).	Does not directly impinge on Food Safety or the integrity of the Freshcare Food Safety Program.

- 6.2.2 Without limiting the manner in which an Auditor may conduct an Audit, the Audit will usually be conducted in the following manner:

**Freshcare Certification Rules**

- (a) On arrival at the Certified Enterprise's premises or property the Auditor will conduct an entry meeting to explain the scope and manner of the Audit and answer any questions the Certified Enterprise may have in respect of the Audit. 1
- (b) The Auditor will audit the Certified Enterprise's Food Safety program records to assess compliance with these Rules and the Freshcare Code of Practice. 2
- (c) At the completion of the Audit the Auditor will conduct an exit meeting noting: 3
- (i) faults detected and their severity;
  - (ii) matters which require rectification; and
  - (iii) the date by which rectification must be undertaken.
- (d) At the completion of the Audit, the Auditor will provide a written report of the Audit to the Certified Enterprise, together with a copy of each Corrective Action Report form prepared by the Auditor during the course of the Audit; and
- (e) in the case of an Audit referred to in paragraph 4.2 and 6.1, advise whether or not the Enterprise will be recommended for initial or continued Certification as applicable.

**6.3 Follow-up Audit**

- 6.3.1 An Auditor may conduct a follow-up Audit to verify that effective action has been taken by the Certified Enterprise to remedy any matters which the Auditor or Freshcare consider requires rectification and, following any such Audit, will provide a written report of the Audit to the Certified Enterprise.

**6.4 Assistance and Access**

- 6.4.1 Each Certified Enterprise must provide all reasonable assistance required by an Auditor during the course of each Audit.
- 6.4.2 Each Certified Enterprise must, on request from an Auditor, give the Auditor access to:
- (a) the Certified Enterprise's premises;
  - (b) all records concerning the Certified Enterprise; and
  - (c) all produce,

for any purposes relating to Audits.

**Freshcare Certification Rules**

**7. Residues**

7.1 In the event fresh produce consigned by the Enterprise for sale are detected immediately prior to or after sale to have chemical residues above the MRL (Maximum Residue Level), the Enterprise agrees that the appropriate Authority dealing with chemical residues may inform Freshcare through the National Service Provider of the detection of those residues and the level detected.

7.2 The Enterprise further agrees that in the event residues above MRL are detected and reported to the Enterprise, the Enterprise will immediately develop a management strategy to minimise the risk of such an event occurring in the future, and will communicate that strategy to Freshcare through the National Service Provider for approval, and audit if such action is deemed necessary by Freshcare or National Service Provider.

**8. Use of the Mark**

8.1 The Mark may only be used in connection with Goods produced in compliance with the Freshcare Code of Practice and these Rules.

8.2 The Mark may only be used to designate safety, quality, accuracy, or other characteristic, including origin, material, or mode of handling and packing of the Goods.

8.3 An Authorised User may only use the Mark as represented in Appendix A and must not in any way alter, amend or vary the Mark.

8.4 An Authorised User may only identify the Mark as a Certification TradeMark.

**9. Withdrawal of Certification**

**9.1 Voluntary Withdrawal by an Enterprise**

9.1.1 An Enterprise may, on written notice to Freshcare, withdraw from Certification. Withdrawal is effective on receipt by Freshcare of the notice.

9.1.2 The Enterprise must return its Certificate of Certification to Freshcare and cease using the Mark.

**9.2 Withdrawal of Certification by Freshcare**

**9.2.1 If an Enterprise:**



**Freshcare Certification Rules**

- (a) being a body corporate, goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration;
- (b) being an individual, commits any act of bankruptcy or enters into a scheme of arrangement with creditors; or
- (c) ceases to operate its business for a continuous period of 2 years

Freshcare may, by written notice to the Enterprise, withdraw the Enterprise's Certification.

**9.2.2 If an Enterprise:**

- (a) breaches any term of these Rules which, in the opinion of Freshcare, is not capable of remedy;
- (b) fails within seven (7) days after receipt of written notice from Freshcare, or such other period as agreed between the parties, to remedy any breach of these Rules which, in the opinion of Freshcare, is capable of remedy; or
- (c) supplies false information or documentation; or
- (d) fails to grant satisfactory access or assistance in accordance with paragraph 6.4 of these Rules; or
- (e) issues a notice under paragraph 2.7 notifying a proposed change in ownership of the Enterprise,

Freshcare shall consider the matter and may, acting on the advice of an Industry Technical Advisory Committee or the National Service Provider, by written notice to the Enterprise, suspend the Enterprise's Certification.

**9.2.3 If any of the matters set out in paragraph 9.2.2 occurs, Freshcare may serve a notice in writing on the Enterprise:**

- (a) setting out the decision taken of Freshcare and the grounds on which it was based; and
- (b) stating that the Enterprise may give Freshcare a written statement within 14 days of receipt of the notice, showing cause why Certification should not be withdrawn, and that if the Enterprise fails to respond to the notice, Certification may be withdrawn.

**Freshcare Certification Rules**

9.2.4 Freshcare will consider any written submission made by the Enterprise pursuant to paragraph 9.2.3. Freshcare may also consider such other matters or take such other action as it considers necessary in deciding whether or not to withdraw the Certification of an Enterprise.

9.2.5 Where Certification of an Enterprise is withdrawn:

- (a) Freshcare will revoke the permit of the Enterprise as an Authorised User;
- (b) Freshcare will notify the Enterprise in writing and remove the Enterprise's name from the Register of Certified Enterprises; and
- (c) the Enterprise must return its Certificate of Certification to Freshcare and cease using the Mark.

On withdrawal of Certification Freshcare may recover from the Enterprise all damages, losses, costs and expenses incurred by Freshcare arising from or in any way connected with any conduct, act or omission on the part of the Enterprise in connection with withdrawal of the Certification.

**9.3 Reapplying for Certification**

9.3.1 If a Certified Enterprise voluntarily withdraws from the Freshcare Food Safety Program, an application for Certification may be made at any time following the same procedure as for initial Certification.

9.3.2 If Certification is withdrawn by Freshcare, an application for Certification cannot proceed until THIRTY DAYS have elapsed from the date Certification was withdrawn. After this period, application for Certification may be made following the same procedure as for initial Certification. When considering any such new application Freshcare will adopt procedures which it considers appropriate to protect the interests of the fresh produce industry, including referring the matter to an Industry Technical Advisory Committee.

**9.4 Revocation Of Permit**

9.4.1 Freshcare may, acting on the advice of an Industry Technical Advisory Committee or the National Service Provider revoke the permit of an Authorised User on the occurrence of any one or more of the following events:

- (a) Certification of the Enterprise being an Authorised User is withdrawn in accordance with these Rules.

- (b) the Authorised User breaches any one or more of these Rules;
- (c) the Authorised User fails to comply with the Standards;
- (d) the Authorised User fails an audit;
- (e) the Authorised User uses the Mark in a manner not authorised by these Rules; or
- (f) the Authorised User dies, becomes bankrupt or is the subject of winding up or liquidation proceedings.

## 10. Appeals

10.1 Any refusal to grant certification or any revocation of an agreement or certification by Freshcare acting on the advice of the National Service Provider or an Industry Technical Advisory Committee is subject always to a right of appeal to Freshcare.

10.2 If the dispute is not resolved within 28 days of submission of the dispute to them, or such other time as they agree, the provisions of paragraph 10.3 will apply.

10.3 Either party may request the President of the Law Society of New South Wales or his nominee to appoint an Expert to determine the dispute.

10.4 In making a determination in accordance with subparagraph 10.3:

- (a) each Expert acts as an expert and not as an arbitrator; and
- (b) the Expert's decision is conclusive, final and binding on the parties (except in the case of manifest error).

The parties must pay the costs of the determination as determined by the Expert.

## 11. Indemnity

### 11.1 Freshcare Indemnity

11.1.1 The Enterprise covenants and agrees with Freshcare that the Enterprise indemnifies and keeps indemnified Freshcare in respect to all or any claim, action, demand or suit made by any third party against Freshcare arising from or in any way related to the withdrawal or refusal of Certification in accordance with these Rules.

- 11.1.2 The Enterprise covenants and agrees with Freshcare that in the event that Certification is withdrawn or refused in accordance with these rules, the Enterprise will not make or institute any claim, demand, action or suit against Freshcare arising from or in any way related to the withdrawal or refusal of Certification.

**12. Variations**

**12.1 Amending The Rules**

- 12.1.1 Freshcare may from time to time apply to the Registrar to amend these Rules.

**12.2 Amending The Standards**

- 12.2.1 Freshcare may from time to time amend the Code of Practice.

- 12.2.2 Where Freshcare proposes to amend the Code of Practice, Freshcare must notify all Certified Enterprises of its intention. A variation takes effect:

- (a) seven (7) days after Freshcare sends the notice, or from any other date specified in the notice; and
- (b) despite any accidental failure to give notice to any Certified Enterprise.

**13. The Register**

**13.1 The Register**

Freshcare or a body authorised by Freshcare shall maintain a Register of Authorised Users which shall include details of the name, address and trade description of each Authorised User and the date of registration and number allotted to each Authorised User and such other details Freshcare may wish from time to time to include in the Register.

**13.2 Use of Information**

The Enterprise acknowledges that Freshcare may use information concerning the Enterprise or the business of the Enterprise obtained in connection with these Rules or the Certification of the Enterprise in a manner Freshcare considers appropriate for the purposes of these Rules or the Certification of the Enterprise, including publishing any or all such information as Freshcare considers necessary or desirable for the purposes of the Certification Program

**Freshcare Certification Rules**

**14. Public Inspection of the Rules**

14.1 These Rules will be available for inspection during normal business hours at the offices of the Company at 9 Buchanan Street, South Brisbane. Qld. 4101.

**15. Paramountcy**

15.1 In the event of any inconsistency between these Rules and an Agreement, these Rules will prevail to the extent of that inconsistency.