

DRAFT

TRAINING MANUAL TO SUPPORT THE LEGISLATIVE REQUIREMENTS OF INSPECTION TEAMS FOLLOWING THE LISTERIA OUTBREAK.

INTRODUCTION

The procedure by which a product or substance is sampled for enforcement purposes is of prime importance and must satisfy any statutory requirements. This is to ensure that the sample will constitute valid evidence in any subsequent court proceedings.

1. WHAT DOES THE LAW SAY REGARDING WHO CAN DO INSPECTIONS?

In terms of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972):

- A local authority authorised under section 23 of the FCD Act, or by any medical practitioner, environmental health practitioner, veterinarian or other person considered fit and authorized thereto in writing by such local authority (local manufactured foodstuffs).
- An officer from the Office of the Commissioner for Customs and Excise authorized thereto in writing, either in general or in a particular case, by the Commissioner for Customs and Excise (Imported Foodstuffs).
- Any member of the South African Police Service, of or above the rank of sergeant.
- Any member of the South African Police Service below the rank of sergeant authorized thereto in writing by a member of the South African Police Service of or above the rank of sergeant.
- Any person appointed under section 28 of the Standards Act, 1993 (Act No. 29 of 1993), as an inspector for the purposes of that Act.

However, in terms of Section 10 of the FCD Act, the Director-General may in writing authorize:

- any employee of the National Department of Health;
- any employee of a Provincial Department or Local Authority after consultation with the head of the provincial department and
- any other person that is considered fit, as an inspector to exercise or perform in general or in a particular case or cases of a particular nature, any power, duty or function conferred or imposed on him/her in terms of the Act.

In terms of the National Health Act, 2003 (Act 61 of 2003) as amended (Act 12 of 2013): Appointment of health officers and inspectors

- The Minister, relevant member of the Executive Council or mayor of a municipal council may **designate** any person in the employ of the national department, province or municipality, as the case may be, as a health officer.
- The Chief Executive Officer must, appoint any person that is suitably qualified with appropriate prescribed expertise and skill as an inspector.
- A health officer designated or an inspector appointed in terms of ~~the Act~~**this section** must be issued with a certificate stating that he or she has been designated or appointed, as the case may be, as a health officer or as an inspector in terms of this Act.
- When a health officer or an inspector performs any function in terms of this Act, he or she has the powers of a peace officer, as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and may exercise any of the powers conferred on a peace officer by law.
- ~~Meaning - before a peace officer they can be authorized to~~ exercise the powers of a ~~peace~~**health** officer, they need to be trained.
- However, Section 83: **Environmental health investigations** - only a health officer who is registered as an environmental health practitioner in terms of the Health Professions Act, 1974 (Act No. 56 of 1974), may exercise any of the powers conferred under this section.

Commented [M1]: According to section 78. The objects of the Office are to protect and promote the health and safety of users of health services. I am not sure whether the current matter at hand falls under the ambit of the Board as referred to here, as I do not think that food establishments can be regarded as "health establishment" as contemplated in this section.

Commented [M2]: My understanding is that by virtue of being a health officer, one is automatically authorised to perform powers of a peace officer, and that training is not a legal requirement but an ideal.

- Section 82 (2) makes provision for a health officer to be accompanied by an interpreter and **any other person reasonably required to assist him or her in conducting the inspection.**

Commented [M3]: This the section that may be used to "authorise" members of the inspection teams who are designated as health officers

Formatted: Font: Bold

2. HOW DOES THE TEAM OBTAIN AUTHORISATION FOR INSPECTIONS?

- For normal inspections under FCD Act** - Apply in writing to the Director General of Health. Directorate: Food Control will facilitate the process. Certified copies of identity documents of inspection team would be required.
- For outbreak investigation inspections under the National Health Act** - Apply in writing to the Minister of Health. Cluster: Environmental and Port Health will facilitate the process. Certified copies of identity documents of the inspection team would be required.

3. WHAT ARE MY POWERS, DUTIES AND FUNCTIONS AFTER I AM AUTHORISED AS AN INSPECTOR?

An **inspector** shall exhibit the **written authority** by virtue of which he is **authorized** as an **inspector** to any person affected by the exercise or performance of any power, duty or function of an inspector under the various Acts.

FCD ACT	NATIONAL HEALTH ACT
<ul style="list-style-type: none"> Enter at reasonable times 	<ul style="list-style-type: none"> Enter at reasonable times
<ul style="list-style-type: none"> Inspect / search / examine / extract/ take / remove samples of: <ul style="list-style-type: none"> foodstuffs appliance product material object / substance 	<ul style="list-style-type: none"> Inspect premises
<ul style="list-style-type: none"> Demand information 	<ul style="list-style-type: none"> Question any person
<ul style="list-style-type: none"> Weigh, count, measure, seal 	<ul style="list-style-type: none"> Request any document
<ul style="list-style-type: none"> Examine, make copies, take extracts of books / doc's 	<ul style="list-style-type: none"> Take samples of any substance relevant to inspection
<ul style="list-style-type: none"> Demand explanation iro contents of books / doc's 	<ul style="list-style-type: none"> Issue compliance notice
<ul style="list-style-type: none"> Inspect operation / process 	<ul style="list-style-type: none"> Issue compliance certificates
<ul style="list-style-type: none"> Demand information iro operation / process 	<p>Entry & search premises with a warrant</p> <ul style="list-style-type: none"> Inspect / photograph/ copy/ test and examine any: <ul style="list-style-type: none"> document record object material <p>or cause it to be inspected/photographed/copied/tested/examined</p>
<ul style="list-style-type: none"> Seize 	<ul style="list-style-type: none"> seize any document/ record/ object/material
<ul style="list-style-type: none"> Inspector shall exhibit written authority, except members of the South African Police Service, of or above the rank of sergeant 	<ul style="list-style-type: none"> Examine any activity/operation/process

Commented [M4]: I think it must be made clear that the comparison is not necessarily per row, as I do not think that each row compares the same aspect of the 2 Acts

- | | |
|---|--|
| <ul style="list-style-type: none">• Procedure of sampling prescribed by regulation(s) | |
|---|--|

4. TAKING OF FOOD SPECIMENS

(a) When should the food specimens be taken?

- During / after an inspection

(b) Who can take food specimens during an inspection?

- Authorised inspectors

(c) What kind of specimens should be taken?

- Environmental swabs – post production
- Food specimens – final products

(d) How should food specimens be taken?

(i) Sample Collection

- Sufficient Quantity in container/packaging
- Payment - Compliance sample
- Non-Payment - if suspicion; unsound or unwholesome or unfit for human consumption
- Sample in the presence of person in charge/any other adult person
- Notification, in writing, of the sampling and purpose

(ii) Sample Division

- Offer to divide in writing in a format as prescribed in **Annexure A**
- If accepted divide into three identical parts
 - Part A- person in charge
 - Part B-sent to analyst
 - Part C- carefully kept by the inspector until the case has been finalized-
RETENTION SAMPLE
- Insufficient contents of one package
 - obtain additional packages of the same product, mix and divide as above.
- If offer to divide the sample is not accepted – pack, seal & label the undivided sample
- Perishable foodstuff or foodstuff in a sealed package or where opening of package would hamper analysis or examination will not be divided

(iii) Pack, seal and label each of the three parts

- label format provided in **Annexure B**
- an identification number
- concise details regarding the contents
- the nature of the examination or analysis required
- the date on which the sample was taken
- Inspectors name & work address
- The original label of the package or a copy - sent to the analyst
- Milk/cream samples for chemical/compositional analysis - preservative tricresol may be added in the presence of the person in charge - why etc.
- Delivery to analyst by any convenient means BUT provided Inspector's seal remains intact

(iv) Sample equipment and storage for bacteriological analysis

- Must use sterilized equipment to take a sample and transfer to sterile container
- Surround the sample within 15 minutes after sampling with crushed ice or any other suitable refrigerant to reduce the temperature of the sample to 7°C
- Samples must be maintained at 7°C or below, BUT NOT FROZEN until it is delivered to the analyst

4. WHAT ACTIONS SHOULD BE TAKEN IMMEDIATELY IF FOOD IS VISIBLY UNFIT?

- Seize
- Condemn
- Destroy
- Use templates as provided for in R328/2008

Commented [M5]: Is it possible to define what visibly unfit means. Food that may look rotten may still be fit for consumption, noting that in general non pathogenic bacteria attack the food before pathogenic ones start to multiply.

5. WHAT ACTIONS TO BE TAKEN IF FOOD IS NOT VISIBLY UNFIT

An inspector may, **pending the examination or analysis of a sample**, by written order, in a format provided in **Annexure C**, signed by him or her, **detain** the whole lot or consignment of food in whatever kind of package or container it may be, on or in the premises concerned from which that sample was taken. (also on instruction- Food Safety Alert)

- Serve the detention order to the person in charge/representative
- Order binding – ≤ 30 days;
- May be withdrawn during that period
- May be extended to a maximum period of 30 days if the initial period was less than 30 days
- Lock up, seal, mark, fasten or otherwise secure such detained food in or upon such premises or any other premises.
- Detained Goods may not be tampered/removed
- Issue written permission to remove any foodstuff detained from the place where it is detained; deal with it in any manner.

6. WHICH LABORATORIES SHOULD FOOD AND ENVIRONMENTAL SPECIMENS BE SENT TO?

- Chemical Samples: DoH Forensic Chemical Laboratories (Cape Town & Pretoria)
- Microbiological Sampling: (NHLS / Private Laboratory)

Commented [M6]: Do all NHLS labs comply?

7. HOW SHOULD RESULTS FROM FOOD SPECIMENS BE REPORTED?

- (i) Format for reporting of results by the analyst (laboratory) (Annexure H)
 - Complete a certificate of analysis in the format specified in **ANNEXURE H**
- (ii) Time lines for reporting
 - No time frame given, however should be as quick as possible so that the process for prosecution can take place within the specified time frame.
- (iii) Time lines for action – including prosecution
 - Perishable foodstuffs – 30 days
 - Any other foodstuffs – 60 days
 - From date of sampling - prosecution

7. INSPECTION PROCEDURE

See Murdock's manual/checklist

8. ACTIONS FOLLOWING INSPECTION

(i) What actions should be taken if results are positive for Lm or other pathogens in the food products

- **Seize** - By written order in a format specified in **ANNEXURE D** seize the food or the lot or consignment of food from which the sample was taken.
 - ✓ Serve the written order to the person in charge/representative
 - ✓ Order binding **from** the time it is issued **until** the seized food has
 - been used for purposes other than human consumption
 - been destroyed or
 - been released for human consumption after treatment
 - ✓ May be withdrawn at any time and set out the provisions of this Regulations
- Condemn
- Destroy
- Remedial action to be taken, ie deep cleaning etc.

(ii) What actions should be taken if results are negative for Lm or other pathogens

- Lift detention order.

(iii) What is a compliance notice?

- If any condition constitutes a violation of the right contained in section 24(a) of the Constitution, constitutes pollution detrimental to health; is likely to cause a health nuisance; or constitutes a health nuisance, the health officer must issue a compliance notice to the person determined to be responsible for any such condition.
- It should contain what is wrong, what needs to be done and by when. Operation still continue.
- A compliance notice remains in force until the relevant provision of the Act has been complied with and a compliance certificate has been issued by the relevant authority.
- A compliance certificate issued by the Office shall be valid for a period of no more than four years and must be renewed before or on the expiry date in a manner prescribed.

(iv) What is a prohibition notice?

- If you are of the opinion that in relation to food premises or foodstuffs, activities or conditions exist which are dangerous or harmful to health or which are likely to favor the spread or impede the prevention of a foodborne disease, issue a written order in a format specified in the **ANNEXURE F**.
- Stop operations until condition is rectified.
- Timeframe is 6 months

(iv) When should you issue a prohibition notice or a compliance notice?

- A health officer or an inspector may issue a compliance notice to the person in charge of the premises or health establishment, as the case may be, if any norm and standard or a provision of the Health Act has not been complied with.
- An EHP may issue a prohibition notice to the person in charge of the premises if a provision of the Regulations Governing Hygiene Requirements for Food Premises and the Transport of Food, R962/2012 published under the FCD Act, has not been complied with.

(v) What is the procedure to issue a prohibition or a compliance notice?

Prohibition Notice

- serving a written **order** on the person in charge or, if he or she is not available, his or her representative informing such person of the prohibition.
- A prohibition notice shall contain at least the following particulars:
The reason(s) for the prohibition and a statement that the prohibition will in writing be removed by a local authority as soon as the reason(s) for the prohibition has (have) been removed and provided the inspector is satisfied that the reason(s) for the prohibition is (are) not likely to recur
- A prohibition shall come into operation from the time at and the date on which a notice is served.
- No person shall perform any act that is contrary to such prohibition.

Compliance Notice

- Investigate
- Determine the identity of the person responsible for such condition.
- Issue the compliance notice to that person to take appropriate corrective action in order to minimize, remove or rectify such condition
- Time frame should be more than 14 days
- A compliance notice remains in force until the relevant provision of the Act has been complied with and a compliance certificate has been issued by the relevant authority.
- Only a health officer, registered under the Health Professions Act, 1974 (Act 56 of 1974) may exercise this powers.

(vii) When and how should an inspection report be issued?

- Within 14 days after completing an inspection / investigation on food premises
- Format specified in **ANNEXURE G**.

(viii) What should be done if the business operator does not comply with the notice within the time period?

Prohibition Notice

- No person shall handle food in a manner contrary to the provisions of these regulations.
- Any person who contravenes a provision of these regulations or allows such a contravention to take place shall be guilty of an offence and shall, if found guilty, be liable for a penalty as provided for under Section 18 of the FCD Act.

Compliance Notice

- issue a written warning to achieve compliance within a set period of time in a manner prescribed;
- require a written response from the health establishment regarding the continued non-compliance;
- recommend to the relevant authority any appropriate and suitable action to be undertaken, including the institution of disciplinary proceedings against persons responsible for the non-compliance or continued non-compliance;

- revoke the compliance certificate and recommend to the Minister the temporary or permanent closure of the health establishment or part thereof that constitutes a serious risk to public health or to health service users;
- impose upon that person or health establishment a fine as determined by the Minister in the *Gazette* from time to time; or
- refer the matter to the National Prosecuting Authority for prosecution.
- The Chief Executive Officer must inform the head of a national or provincial department, the municipal manager or the head of a health establishment of any persistent non-compliance.

Consumer Protection Act 68 of 2008.(CPA)

The inspector is appointed by the Commissioner and he must issue a certificate .

The inspector when conducting his duties must produce the certificate and has the powers similar to those of Police officer.

Inspectors has the following powers

Search

Issue summons

Issue compliance notice

Seize

Power to examine

Take extracts

Request any information about any article

Seize

Lastly the CPA allows inspectors to recall any unsafe products from the market if there is a potential risk to the public from the continued use of or exposure to the goods. The Commission may carry out a recall programme.

•

9. APPENDICES

- A. FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, 1972 (ACT 54/1972)
- B. HEALTH ACT, 2003 (ACT 61 OF 2003)
- C. THE POWERS AND DUTIES OF INSPECTORS AND ANALYSTS CONDUCTING INSPECTIONS AND ANALYSES ON FOODSTUFFS AND AT FOOD PREMISES, R328/2007
- D. REGULATIONS GOVERNING GENERAL HYGIENE REQUIREMENTS FOR FOOD PREMISES AND THE TRANSPORT OF FOOD, R962/2012