

National Department of Health: National Health Laboratory Services (NHLS)



National Department of Health: Food Control & Food Legislation

SCOPE

- Foodstuffs, Cosmetics and Disinfectants Act, No 54 of 1972
- Reg No R 328 of 2007
- Food & Environmental Sampling for *L. monocytogenes* (from RTE meat & diary products)

Legal Aspects of **Sampling** and Analysis of Foodstuffs

FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, NO 54 OF 1972

PURPOSE

To control the **sale, manufacture importation and exportation of foodstuffs**, cosmetics and disinfectants; and to provide for matters connected herewith. (As per Amendment Act, 39 of 2007)

Legal Aspects of **Sampling** and Analysis of Foodstuffs

ADMINISTRATION OF ACT BY AUTHORIZED LOCAL AUTHORITY

23. (1) The Minister may by notice in the Gazette **authorize any Local Authority to enforce** within its area of jurisdiction and through its **duly authorized officers**, such provisions of this Act as the Minister may specify in the notice.

- Authorization of Authority to enforce the provisions of the FCD Act (Sec 23)
- Authorization of Officers (Sec 10 & 23)
- 3. Authority may prosecute if any contraventions (Sec 23)

Foodstuffs, Cosmetics and Disinfectants Act, No 54 of 1972

POWERS, DUTIES AND FUNCTIONS OF INSPECTORS

- 11 (1) An inspector may at all reasonable times enter upon **any premises** on or in which **any foodstuff**, cosmetic or disinfectant **is** or is suspected to be **manufactured, treated, graded, packed, marked, labelled, kept, stored, conveyed, sold, served or administered** or on or in which any other operation or activity with or in connection with any foodstuff, cosmetic or disinfectant is or is suspected to be carried out, and may, subject to the provisions of this Act-
- a. inspect or search such premises, or examine, or extract, **take and remove samples** of, any **foodstuff**, cosmetic or disinfectant found in or upon such premises, or any appliance, product, material, object or substance so found which is or is suspected to be used, or to be destined or intended for use, for, in or in connection with the **manufacture, treatment, grading, packing, marking, labelling, storage, conveyance, serving or administering** of any foodstuff, cosmetic or disinfectant, or for, in or in connection with any other operation or activity with or in connection with any foodstuff, cosmetic or disinfectant, or open any package or container of such foodstuff, cosmetic, disinfectant, product, material, object or substance;

Foodstuffs, Cosmetics and Disinfectants Act, No 54 of 1972

POWERS, DUTIES AND FUNCTIONS OF INSPECTORS

- b. demand any information regarding any such foodstuff, cosmetic, disinfectant, appliance, product, material, object or substance from any person in whose possession or charge it is or from the owner or person in charge of such premises;
- c. weigh, count, measure, mark or seal any such foodstuff, cosmetic, disinfectant, appliance, product, material, object or substance or its package or container, or lock, secure, seal or close any door or opening giving access to it;
- d. examine or make copies of, or take extracts from, any book, statement or other document found in or upon such premises and which refers or is suspected to refer to such foodstuff, cosmetic, disinfectant, appliance, product, material, object or substance;
- e. demand from the owner or any person in charge of such premises or from any person in whose possession or charge such book, statement or other document is, an explanation of any entry in it;

Foodstuffs, Cosmetics and Disinfectants Act, No 54 of 1972

POWERS, DUTIES AND FUNCTIONS OF INSPECTORS

- f. inspect any operation or process carried out in or upon such premises in connection with any activity referred to in paragraph (a);
- g. demand any information regarding such operation or process from the owner or person in charge of such premises or from any person carrying out or in charge of the carrying out of such operation or process;
- h. seize any foodstuff, cosmetic, disinfectant, appliance, product, material, object, substance, book, statement or document which appears to provide proof of a contravention of any provision of this Act.

Foodstuffs, Cosmetics and Disinfectants Act, No 54 of 1972

POWERS, DUTIES AND FUNCTIONS OF INSPECTORS

11 (2) An **inspector** referred to in section 10 (1) or (3) (a), (b) or (d) 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 such inspector under this Act.

11 (3) The **procedure** to be followed by an inspector in **obtaining, transmitting for analysis or examination** or **otherwise dealing with any sample**, shall be **prescribed by regulation**.

Legal Aspects of **Sampling** and Analysis of Foodstuffs

POWERS AND DUTIES OF INSPECTORS IN TERMS OF SECTION 11 (SUMMARY)

- Enter at reasonable times
- Inspect / search / examine / extract, take / remove sample of:
 - Foodstuffs
 - Appliance
 - Product
 - Material
 - Object / substance

Legal Aspects of **Sampling** and Analysis of Foodstuffs

POWERS AND DUTIES OF INSPECTORS IN TERMS OF SECTION 11

- Demand information
- Weigh, count, measure, seal
- Examine, make copies, take extracts of books / documents
- Demand explanation iro contents of books / document
- Inspect operation / process
- Demand information iro operation / process
- Seize
- Inspector shall exhibit written authority
- Procedure of sampling prescribed by regulation(s)

Legal Aspects of **Sampling** and Analysis of Foodstuffs

POWERS AND DUTIES OF INSPECTORS IN TERMS OF SECTION 11

1. Authorization of Authority to enforce the provisions of the FCD Act (Sec 23)
2. Authorization of Officers (Sec 23 & 10)
3. Authority may prosecute if any contraventions (Sec 23)
4. **Powers & Duties of Inspectors (Sec 10):**
 1. **Take samples**
 2. **Written authorization**
 3. **Sampling Procedure to be Regulated**

Legal Aspects of **Sampling** and Analysis of Foodstuffs

REG NO R 328 OF 2007

- The Powers and Duties of Inspectors and Analysts conducting Inspections and Analyses on Foodstuffs and at Food Premises
- Prescribes the provisions as set out in Section 10 & Section 12 of the FCD Act
- Annexes!!

Legal Aspects of **Sampling** and Analysis of Foodstuffs

REG NO R 328 OF 2007

- Annexure A: Offer for Division of a Sample Taken for Examination or Analysis Referred to in Regulation 2(2)(c).
- Annexure B: Label of a Sample Taken for Analysis or Examination Referred to in Regulation 2(2)(c)(iii).
- Annexure C: Foodstuffs Detained Certificate.
- Annexure D: Order for the Seizure of Foodstuffs in terms of Regulation 4(1)(b).
- Annexure E: Certificate for Removal and Safe Disposal of Seized Foodstuffs at Request of the Person in Charge Referred to in Regulation 4(9).
- Annexure F: Order for an Instruction Issued in terms of Regulation 5.
- Annexure G: Inspection Report Referred to in Regulation 6.
- Annexure H: Certificate Referred to in Regulation 7(1).

Legal Aspects of **Sampling** and Analysis of Foodstuffs

REG NO R 328 OF 2007: SAMPLING STEPS

1. 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

Legal Aspects of **Sampling** and Analysis of Foodstuffs

REG NO R 328 OF 2007: SAMPLING STEPS

2. SAMPLE DIVISION

Offer in writing **Annexure A** – [Reg 2(c)]

- 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

Legal Aspects of **Sampling** and Analysis of Foodstuffs

REG NO R 328 OF 2007: SAMPLING STEPS

3. PACK, SEAL AND LABEL EACH OF THE THREE PARTS - label format provided in **Annexure B**.

- (a) an identification number;
- (b) concise details regarding the contents;
- (c) the nature of the examination or analysis required;
- (d) the date on which the sample was taken;
- (e) Inspectors name & work address.

Legal Aspects of **Sampling** and Analysis of Foodstuffs

REG NO R 328 OF 2007: SAMPLING STEPS

3. PACK, SEAL AND LABEL EACH OF THE THREE PARTS - label format provided in **Annexure B**.

- 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
- 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.

Legal Aspects of **Sampling** and Analysis of Foodstuffs

REG NO R 328 OF 2007: SAMPLING EQUIPMENT 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

SUBMISSION OF SAMPLES FOR ANALYSIS

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

Legal Aspects of **Sampling** and Analysis of Foodstuffs

REG NO R 328 OF 2007: SAMPLING DO'S AND DON'TS

- Fill in correct form correctly with sufficient information for the analyst, eg
 - Unique sample number
 - Place where sample taken
 - Details of manufacturer
 - YOUR contact details
- Sample must:
 - sufficient size to allow for analysis - min 50g
 - Maintain integrity

Legal Aspects of **Sampling** and Analysis of Foodstuffs

REG NO R 328 OF 2007: PROCEDURE FOR DETENTION

3.(1) 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**)

Legal Aspects of **Sampling** and Analysis of Foodstuffs

REG NO R 328 OF 2007: PROCEDURE FOR DETENTION

- Serve the 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.

Legal Aspects of **Sampling** and Analysis of Foodstuffs

REG NO R 328 OF 2007: SEIZURE OF FOODSTUFFS

- If foodstuffs **visibly unfit** – seize, condemn and destroy
- If based on analysis the foodstuff is unsound, or unwholesome or contaminated, 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
 - (a) been used for purposes other than human consumption;
 - (b) been destroyed, or
 - (c) been released for human consumption after treatment.

Legal Aspects of **Sampling** and Analysis of Foodstuffs

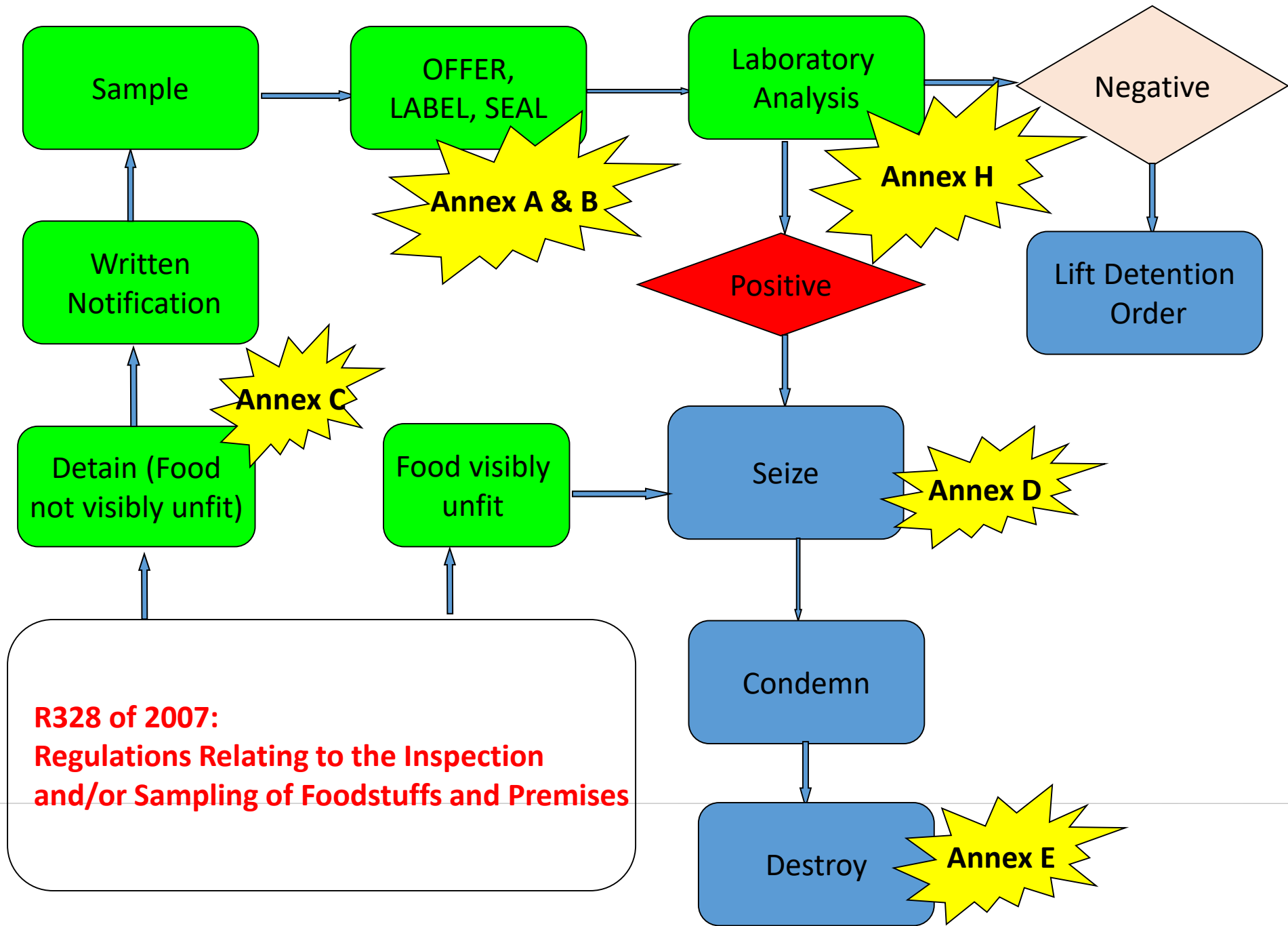
REG NO R 328 OF 2007: SEIZURE OF FOODSTUFFS

- May be withdrawn at any time and set out the provisions of this Regulations.
- The person in charge may also choose at his or her **expense and your permission** to have such food treated, disposed of or used for purpose other than human consumption or destroyed in a manner approved by you.
- Choice to made known in writing to the inspector within 24 hours of seizure
- Owner refuse choice – you may at any time thereafter destroy such food or cause such food to be destroyed or disposed of.
- Release for human consumption food which, after treatment is in your opinion fit for human consumption, by withdrawing or amending the order.

Legal Aspects of **Sampling** and Analysis of Foodstuffs

FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, NO 54 OF 1972

- No one is allowed to remove/sell/deal with any seized food without your written authority and direction.
- The authority granted authorization shall impose any conditions regarding the transportation and further storage of the food.
- At the request of the person in charge issue a written certificate in a format specified in **ANNEXURE E.**



Legal Aspects of **Sampling** and Analysis of Foodstuffs

REG NO R 328 OF 2007: RECTIFICATION OF CERTAIN CONDITIONS

- 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 favour the spread or impede the prevention of a foodborne disease, issue a written order in a format specified in the **ANNEXURE F.**

Legal Aspects of **Sampling** and Analysis of Foodstuffs

REG NO R 328 OF 2007: INSPECTION REPORT

- Compile an inspection report within 14 days
- After completing an inspection / investigation on food premises
- Format specified in **ANNEXURE G**

Legal Aspects of Sampling and **Analysis** of Foodstuffs

REG NO R 328 OF 2007: ANALYSIS / EXAMINATION OF THE SAMPLES

- Complete a certificate of analysis in the format specified in **ANNEXURE H**
- **For milk or cream samples** indicate whether a preservative is present and allowed
- **For non-perishable food samples which is** adulterated or falsely described or not complying with the requirements of the Act, and not divided, the analyst shall close, seal and carefully retain the unused portion of the sample until after the conclusion of the prosecution.

Legal Aspects of Sampling and Analysis of Foodstuffs

REG NO R 328 OF 2007: ANALYSIS / EXAMINATION OF THE SAMPLES

- Offences – Section 17
- Penalties – Section 18
- Jurisdiction – Section 19
- Forfeiture – Section 20
- Time limits and other requirements in connection with prosecution – Section 21
 - Perishable foodstuffs – 30 days
 - Any other foodstuffs – 60 days
 - From date of sampling - Prosecution

Questions & Answers