

GOVERNMENT GAZETTE NO. 28553

DEPARTMENT OF HEALTH

No. R. 186

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**FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, 1972
(ACT NO 54 OF 1972)**

**REGULATIONS RELATING TO THE POWERS AND DUTIES OF INSPECTORS AND ANALYSTS
ON INSPECTIONS AND INVESTIGATIONS CONDUCTED
ON FOODSTUFFS AND AT FOOD PREMISES**

The Minister of Health intends, in terms of section 15(1) of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No 54 of 1972), to make the regulations in the Schedule.

Interested persons are invited to submit any substantiated comments on the proposed regulations, or any representations they may wish to make in regard thereto, to the Director-General: Health, Private Bag X828, Pretoria, 0001 (for the attention of the Director: Food Control), within three months of the date of publication of this notice.

SCHEDULE

Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act, shall bear such meaning and, unless the context otherwise indicates-

“**food premises**” means a building, structure, stall or other similar structure, and includes a caravan, vehicle, stand or place used for or in connection with the handling of food;

“**handle**” includes manufacture, process, produce, pack, prepare, keep, offer, store, transport or display for sale or for serving, and “handling” has a corresponding meaning;

“**person in charge**”, with regard to any foodstuff or food premises contemplated in these regulations, means a natural person who is the owner of or a natural person who is responsible for the foodstuff or food premises; or the agent in the case of imported foodstuff;

“**Sample**” means a portion consisting of one or more units depending on the situation in question, of a foodstuff, divided or undivided as described by these regulations, of a larger quantity of a foodstuff, drawn by an inspector in terms of the provisions of these regulations and to be sent to a laboratory for testing or analysis;

“**Sampling**” means the procedure followed to draw and constitute a sample as described in regulation 2(2) and (3); and

“**the Act**” means the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972) and regulations published under it.

Inspection powers

2. (1) An inspector may, with regard to a food premises in respect of which any provision of the Act is applicable, and with due regard to section 11 thereof-

- (a) demand that the person in charge or apparently in charge of such food premises, submit to him or her any book, document or thing that must be kept or displayed in terms of the Act or that relates to any matter provided for by the Act and that is or was in the possession or in the custody or under the control of such person, or that is on or in such food premises;
- (b) make an extract from or a copy of a book or document referred to in paragraph (a);
- (c) question the person referred to in paragraph (a) with regard to any matter provided for in the Act and obtain information regarding any activity or process or entry in a book or document referred to in paragraph (a);
- (d) for the purpose of preventing a food borne disease, demand any information from a person referred to in paragraph (a) or from any other person who has at any time been on or in such food premises;
- (e) examine any foodstuff that is found in or on such food premises, and any appliance,

product, material, object or substance that is so found and that is or is suspected to be used, or destined or intended for use, for, in or in connection with the handling of any food or any other operation or activity in connection with any foodstuff, and open any package or container of such foodstuff, product, material, object or substance.

- (f) take so much of the foodstuff contemplated in paragraph (e), in whatever kind of package or container it may be, as he may reasonably require as a sample for the purpose of testing or analysing it-
- (i) by offering payment to the person in charge, if the inspector is taking a sample to verify compliance to any of the requirements set in terms of the Act; or
 - (ii) without payment, if the inspector has reason to suspect that such foodstuff is unsound or unwholesome or unfit for human consumption.

(2) The inspector shall follow the following procedure when he or she is taking a sample in terms of these regulations with due regard to the powers conferred on inspectors under section 11(1) of the Act:

- (a) The inspector shall take a sample in the presence of -
 - (i) the person in charge; or
 - (ii) any other adult person who is employed in those premises as a witness if the person in charge is not present.
- (b) The inspector shall, as soon as practicable after the sample has been obtained in terms of paragraph (a)(ii), notify the person in charge, in writing, of the sampling and of the purpose thereof.
- (c) If the person in charge or a witness is present at the taking of a sample, the inspector shall ascertain from such person in writing and in a format provided in **Annexure A**, whether a part of such sample for examination or analysis is required and if so, the inspector shall -
 - (i) divide the sample in such a manner as its nature permits, into three separate parts which shall be as identical as possible. One of the portions shall be handed to such person, one sent to

an analyst for analysis or examination and one carefully kept by the inspector until the case has been finalised;

- (ii) if the contents of one package are not sufficient for analysis or examination if divided as aforesaid, obtain additional packages of the property of the same person similarly labelled and purporting to contain a similar article and the contents of two or more such packages shall then and there be mixed by the inspector and the mixture divided and dealt with as provided.
- (iii) pack, seal and label with a special label in a format provided in **Annexure B**, each of the three parts of a sample referred to in paragraph (i) to indicate its nature, origin and identify it with -
 - (aa) an identification number;
 - (bb) concise details regarding the contents;
 - (cc) the nature of the examination or analysis required;
 - (dd) the date on which the sample was taken; and
 - (ee) his or her name and work address;
- (d) If the offer to divide the sample is not accepted, the undivided sample shall be packed, sealed, labelled with a special label to indicate its origin, nature and to identify it as indicated in paragraph (c) (iii) and sent to an analyst for analysis or examination.
- (e) In the case of perishable foodstuff, or foodstuff in a sealed package, or where the opening of such package would hamper analysis or examination, or where no person referred to in paragraph (c) is present, a similar procedure to that described in paragraph (d) shall be followed.
- (f) The original label of the package, if any, or a copy thereof shall accompany the sample sent to the analyst.

- (g) In the case of milk or cream sampled for chemical or compositional analysis, the preservative tricresol, may be added. If a person referred to in paragraph (c) is present, the preservative shall be added to the sample in his presence and he shall be informed of the nature of the preservative.
- (h) The sample may be delivered to the analyst by any convenient means provided the inspector's seal remains intact.
- (i) Samples for bacteriological analysis shall be taken with sterilized equipment and transferred to sterile sample containers taking precautions to prevent the contamination of the samples. The sample container shall be stoppered and, within 15 minutes of the sample being taken, shall be surrounded by crushed ice or other suitable refrigerant which comes into contact with the container and is capable of reducing the temperature of the sample to 7°C and maintaining it at that temperature or below, but not frozen, until delivered to an analyst.

(3) In addition to the procedure described in subregulation (2), when sampling of milk and milk products is carried out, the contents of the International Standard: *ISO 707:1997: Milk and Milk Products – Guidance on Sampling*, shall, where applicable, be taken into consideration.

Detention of foods

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.

(2) The inspector may lock up, seal, mark, fasten or otherwise secure such detained food in or upon such premises or any other premises.

(3) An order referred to in subregulation (1)-

- (a) shall be served on the person referred to in regulation 2(1)(a);

- (b) is binding for the period stated in the order, which shall not exceed a period of 30 days;
- (c) may be withdrawn during that period; or
- (d) may be extended to a maximum period of 30 days if the initial period was less than 30 days.

(4) No person may, without the written permission of the inspector remove any food detained in terms of subregulation (1) from the place where it is being detained, or deal with it in any other manner.

Seizure of foodstuffs

4. (1) An inspector may-

- (a) if, after an examination of any food contemplated in regulation 2(1)(e), he or she is satisfied that such food is unsound, or unwholesome or contaminated; or
- (b) where it appears from the testing or analysis of a sample referred to in regulation 2(1)(f), that the sample or any part of it is unsound, unwholesome or contaminated,

by written order in a format provided in **Annexure D**, signed by him or her, seize the food concerned, or the lot or consignment of food from which the sample was taken if he or she is satisfied that the food in that lot or consignment is in the same condition or possesses the same properties as the sample.

(2) An order referred to in subregulation (1) -

- (a) shall be served on the person in charge or witness referred to in regulation 2(1) (c);
- (b) is binding from the time of such service until the food that has been seized -
 - (i) has been used for purposes other than human consumption;
 - (ii) has been destroyed; or

(iii) has, in terms of subregulation (6), been released for human consumption;

(c) may at any time be withdrawn by the inspector who issued such order; and

(d) shall clearly set out the provisions of this regulation.

(3) Wherever food has been seized under subregulation (1), the person in charge may choose at his or her expense and with the permission of an inspector, to have such food treated, disposed of or used for purposes other than human consumption or destroyed in a manner approved by the inspector.

(4) A choice referred to in subregulation (3) shall be made known in writing to the inspector within 24 hours after seizure.

(5) If the person in charge of food which has been seized by an inspector in terms of subregulation (1)-

(a) refuses or fails to exercise a choice referred to in subregulation (3) within 24 hours after such seizure; or

(b) exercises such choice but thereafter refuses or fails to act in accordance with that choice within a further period of 24 hours,

the inspector may, at any time thereafter, and for the account and risk of such person in charge, destroy such food or cause such food to be destroyed or otherwise disposed of.

(6) An inspector may release for human consumption food which, after treatment referred to in subregulation (3), is in his or her opinion fit for human consumption, by withdrawing or amending the order pertaining to such food that was issued in terms of sub-regulation (1).

(7) Subject to the provisions of this regulation, no person may, without the written authority and direction of an inspector, remove any food seized in terms of subregulation (1) from the premises referred to in that subregulation, or sell such food, or deal with it in any other manner.

(8) An inspector who grants a written authority referred to in subregulation (7) may, in such authority, impose any condition regarding the transportation and further storage of the food concerned.

(9) An inspector acting in terms of this regulation shall, at the request of the person in charge affected by such action, issue to such person a written certificate, in a format provided in **Annexure E** under his or her signature and designation stating the kind and quantity of food removed for safe disposal and the reason for removing it.

Rectification of certain conditions

5. If an inspector is of the opinion that in relation to food premises or foodstuffs contemplated in the Act, activities or conditions exist which are dangerous or harmful or likely to be dangerous or harmful to health or which are likely to favour the spread or impede the prevention of a food borne disease, he or she shall issue a written order, in a format provided in **Annexure F**, signed by him or her and addressed to the person in charge of such premises, in which he or she instructs that -

(a) any activity or condition stated in the order must be rectified immediately or within a specified period determined by the inspector; or

(b) if such an activity or condition is due to failure to comply with the requirements of the Act, such person in charge must comply with the requirements of the Act.

Inspection report

6. An inspector shall, within 14 days after completing an inspection or an investigation of food premises, compile an inspection report, in a format provided in **Annexure G**, and hand or send by registered post a copy thereof to the person in charge of the premises concerned.

Duties of Analysts

7. (1) An analyst referred to in section 12 (2) of the Act shall complete a certificate in a format provided in **Annexure H** of these regulations.

(2) In the case of milk or cream, besides any other aspects which have to be investigated, it shall be determined and reported whether a preservative is present and, if so, whether it is a preservative prescribed by regulation for that purpose.

(3) In the case of a sample of a foodstuff which is not perishable and which is found on analysis or examination to be adulterated or falsely described or otherwise not to comply with the requirements of the Act, and which was not divided by the inspector, the unused portion, if any, of the sample shall be closed, sealed and carefully retained by the analyst until after the conclusion of any prosecution in connection therewith.

Withdrawal

8. The regulations published under Government Notice No. R.2162 of 16 November 1973 made in terms of the Foodstuffs, Cosmetics and Disinfectants Act 1972 (Act No. 54 of 1972) and Notice No. R. 1128 of 24 May 1991 made in terms of the Health Act, 1977 (Act No. 63 of 1977) with the exclusion of regulations 2. (1)(a)-(d); 5; and 6, are hereby withdrawn.

**(signed) METSHA BALALA-MSIMANG
MINISTER OF HEALTH**

Annexure A

**FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, 1972(ACT NO 54 OF 1972): REGULATIONS
RELATING TO THE POWERS AND DUTIES OF INSPECTORS
AND ANALYSTS ON INSPECTIONS AND INVESTIGATIONS CONDUCTED ON
FOODSTUFFS AND AT FOOD PREMISES, R. OF2005**

**OFFER FOR DIVISION OF A SAMPLE TAKEN FOR EXAMINATION OR
ANALYSIS REFERRED TO IN REGULATION 2(2)(c)**

Sample of Inspector's serial No

Nature of examination Health Authority:.....

Name and work address of Inspector

Name and address of person in charge from whom sample was obtained
.....
.....

Whether divided or not?

Signature: **Name of Inspector:**
(Inspector taking sample) **(Block letters)**

Date:

Remarks:
.....
.....

STATEMENT BY INSPECTOR

I intend to submit this foodstuff(s) for analysis and/or examination under the above mentioned regulations.

I now offer to divide the same into three parts to be now separated, each part to be labelled, one of them to be tendered to you. Do you wish me to do so?

Place:
INSPECTOR

I certify that
has offered to divide the above-mentioned sample into three approximately equal parts and that
(i) one part has been tendered to me; (ii) I did not accept the offer of division of the sample.
(delete (i) or (ii)).

.....
SIGNATURE OF SELLER OR SUPPLIER

.....
DATE

Annexure B

**FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, 1972(ACT NO 54 OF 1972): REGULATIONS
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AND ANALYSTS ON INSPECTIONS AND INVESTIGATIONS CONDUCTED
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**LABEL OF A SAMPLE TAKEN FOR ANALYSIS OR EXAMINATION
REFERRED TO IN REGULATION 2(2)(c)(iii)**

Sample of Inspector's identification no

Name and address of Inspector
.....

Nature of examination

Date taken20.... Time

Quantity taken:

Name and address of person in charge from whom sample was obtained.

.....
.....

Whether offer of division accepted

Dispatched to analyst

Person in charge's statement or remarks (if any)

Witnesses

.....

Annexure C

(Health authority's letterhead and contact details)

.....

**FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, 1972(ACT NO 54 OF 1972): REGULATIONS
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ORDER FOR THE DETENTION OF FOODSTUFFS IN TERMS OF REGULATION 3(1)

In terms of the abovementioned regulations the following foodstuffs are hereby detained at
address:.....
..... from to pending the examination
or analysis of a sample:

Quantity	Article of food	Description	Reason for detention	Mark
.....
.....
.....
.....

.....
SIGNATURE: INSPECTOR

.....
DATE:

Annexure D

(Health authority's letterhead and contact details)

**FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, 1972(ACT NO 54 OF 1972):
REGULATIONS RELATING TO THE POWERS AND DUTIES OF INSPECTORS
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ORDER FOR THE SEIZURE OF FOODSTUFFS IN TERMS OF REGULATION 4(1)(b)

In terms of the abovementioned regulations the following foodstuffs are deemed to be unfit for human consumption as verified by an inspection and/or examination or analysis thereof for the following

reason(s):.....

.....and is hereby

seized at the following address:.....

Quantity	Article of food	Description	Reason for detention	Mark
.....
.....
.....
.....

.....
SIGNATURE: INSPECTOR

.....
DATE:

Annexure F

(Health authority's letterhead and contact details)

**FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, 1972 (ACT NO 54 OF 1972): REGULATIONS
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ORDER FOR AN INSTRUCTION ISSUED IN TERMS OF REGULATION 5

ADDRESS OF PREMISES:.....

.....

PERSON IN CHARGE:.....

POSTAL ADDRESS:

NAME OF INSPECTOR:

DATE OF INSPECTION:.....

It is hereby instructed that the following condition(s) existing on the above-mentioned food premises be rectified immediately, or by the following date:.....

.....

(1).....

.....

(2).....

.....

(3).....

.....

(4).....

.....

(5).....

.....
SIGNATURE OF INSPECTOR

.....
DATE

Annexure G

(Health authority's letterhead and contact details)

.....

**FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, 1972(ACT NO 54 OF 1972): REGULATIONS
RELATING TO THE POWERS AND DUTIES OF INSPECTORS
AND ANALYSTS ON INSPECTIONS AND INVESTIGATIONS CONDUCTED
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INSPECTION REPORT REFERRED TO IN REGULATION 6

ADDRESS OF PREMISES:.....

.....

PERSON IN CHARGE:.....

POSTAL ADDRESS:

NAME OF INSPECTOR:

DATE OF INSPECTION:.....

INSPECTION REPORT:
.....

(1).....

.....

(2).....

.....

(3).....

.....

(4).....

.....

(5).....

.....
SIGNATURE OF INSPECTOR

.....
DATE

Annexure H

(Laboratory's letterhead and contact details)

.....

**FOODSTUFFS, COSMETICS AND DISINFECTANTS ACT, 1972(ACT NO 54 OF 1972): REGULATIONS
RELATING TO THE POWERS AND DUTIES OF INSPECTORS
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CERTIFICATE REFERRED TO IN REGULATION 7(1)

Inspector's Identification No of sample Laboratory No. of sample

CERTIFICATE OF ANALYST

To
.....
.....
.....

I,, an analyst authorized under section 12(1) of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972), certify that on the Day of 20..... I received from of a sample stated by him to be of, that the sample was contained in an intact package bearing the inspector's identification number and with the inspector's seal impressed (1) which seal was intact, and with the label or copy of the label attached here to (2); and that I have analysed the said sample and declare that the results of my analysis are as follows:

.....
.....

I am of opinion that the sample

.....
.....

Place:..... (Signed):.....

Date:..... 20 Analyst:.....

-
- 1) If seal is numbered, insert number, if not, describe seal.
 - 2) This refers to the label under which the article was sold. Strike out these words if no label (original or copy) is attached.