

ALL INDIA FOO PROCESSORS' ASSOCIATION

Ref. No. 65-A/2011/

Date: 18.02.2011

The Chairperson
Food Safety and Standards Authority of India
FDA Bhawan, Kotla Road
New Delhi-110002

Sub: Comments on the Draft Notification No. G.S.R. 39(E) dated 19th January, 2011, regarding Food Safety and Standards Rules, 2011.

Dear Sir,

Kindly find below the comments in the above notification discussed in the Technical & Food Regulatory Affairs Committee of All India Food Processors' Association (AIFPA) for your perusal and incorporation in the proposed Rules.

Comments

1.2: Definition:

The definition of "Seizure" and "Detention" are missing, though these words have been frequently used in the Food Safety and Standard Rules Document. These two need to be defined appropriately.

2.1.2: Designated Officer

1. Qualification

The Designated Officer

(iii) Shall Undergo training as ~~may be~~ specified by the Food Authority, **before notifying the Designated Officer** within a period of ~~six months (two years)~~ preferably before taking over.

*(Implementation had been an issue)

(iv) The food safety officers who meet the requisite qualifications and experience should also be eligible for the position of Designated Officer after undergoing requisite training.

1. Powers and duties:

(iv) Without prejudice to anything contained in the aforesaid Rules, the Designated Officer shall have

all administrative powers which may include suspension, cancellation or revocation of the license of the Food Business Operator in case any threat of (or) grave injury to public, has been noticed in the report of the Food Analyst, Provided that while taking such administrative action the procedure described in the Act and Regulations shall be followed.

2.1.3: Food Safety Officer

1. **Qualification:** Food Safety Officer shall be a whole time officer and shall, on the date on which he is so appointed possesses the following:

(i) a degree in Food Technology or Dairy Technology/ Science/Chemistry or Biotechnology or Oil Technology or Agricultural Science or Veterinary Sciences or Bio-Chemistry or Microbiology or Masters Degree in Chemistry or Degree in Chemical / Agricultural Engineering or Technology from a recognized University,

2. Powers and Duties:

(i) Without prejudice to the powers conferred on him under section 38 of the Act, where the Food Safety Officer is ~~of the opinion or~~ he has reason(s) to be recorded in writing that in the given situation it is not possible to comply with the provision of section 38 (1) (c) or the proviso to section 38(1) for reasons like ~~non-availability of the Food Business Operator~~, the Food Safety Officer may seize the adulterant or food which is unsafe or sub-standard or mis-branded or containing extraneous matter, ~~may seal the premises for investigation after taking a sample of such adulterant or food for analysis.~~

**(Sealing would result in spoilage of food items because of limited shelf life)*

**(Sealing of the whole premises would result in a big loss as a National Wastage. This needs consideration as sealing would be too harsh.)*

The Food Safety and Standards Act does not provide power to Food safety Officer to sieze the 'premise' under section 38 (1) of Act but he may sieze 'product'.

2.1.4: Food Analyst

2. Duties:

(ii) After completion of analysis of article of food, the Food Analyst shall send his report to the Designated Officer, the Purchaser of article of food and the FBO, as the case may be, in **Form VII A**.

2.2 - Procedure of taking extracts of documents and matters connected therewith

2.2.1: Manner of taking extracts

1. Where the Food Safety Officer has seized any books of account and other relevant documents but excluding proprietary documents in exercise of powers conferred upon him under sub-section (6) of section 38 of the Act, he shall return the same to the person from whom they were seized within a period not exceeding thirty days from the date of such seizure

Provided that before returning the books of account and other documents, the Food Safety Officer shall be entitled for copies thereof or extracts there from, as the case may be.

2.4: Sampling and Analysis

2.4.1: Procedure for taking sample and manner of sending it for analysis –

The Food Safety Officer while taking sample of food for analysis under clause A of Sub Section 1 of Section 38 and Section 47 (~~except 47 (5)~~) of the Act, shall also follow the procedure specified hereunder, namely;-

1. Ensure the presence of at least two independent witnesses at the time of lifting of the samples
4. in case the food business operator ~~discloses~~ provides sufficient evidence that the product has been obtained from the manufacturer, the distributor or supplier, a notice shall be given to such manufacturer, distributor or supplier,

Reference First Provision under 9 (iv)

Provided that in case the person from whom the sample is taken refuses to affix his signature or thumb impression, the signature or thumb impression of one or more independent witnesses shall be taken in the same manner.

Manuals of Sampling is very critical part of the sampling process for enforcement purposes. It is evident from the fact that thousands of the cases in the court today have been linked to incorrect sampling or handling of the samples therefore correct sampling process is critical for achieving the objectives of enforcement purposes. The sampling manual is requested to cover heterogeneous samples, procedure to collect representative samples covering liquid/semi-solid/solid foods ensuring the product's composition /integrity of the product.

Reference under Provision 10

Provided that fourth part also shall be deposited with Designated Officer to be analysed at a later-date when Food Business Operator so request, if Food Business Operator does not request to send the sample to accredited lab. now.

2.4.2. Analysis of food samples by Food Analyst

7. The manuals of the method of analysis, as amended/adopted by the Authority from time to time including **AOAC, AACC, ISO**/Pearson's/Jacob/IUPAC/Food Chemicals/CODEX/BIS/Woodmen/Winton-Winton/Joslyn, shall be used for analyzing the samples of food articles. However, in case the method for analyzing any parameter is not available in these manuals, a validated ~~and also~~ **and** notified method of analysis prescribed by internationally recognized/analytical/regulatory agencies shall be adopted **provided that such method is validated and proven to be have attained the level of validation following international validation protocols e.g. AOAC/ISO. If any other analytical method is used, it shall have attained the level of validation as in the AOAC.**

2.4.3: Action by Designated Officer on the report of Food Analyst.

If, after considering the report, the Designated Officer is of the opinion for reason(s) to be recorded in writing, that the report delivered by the Food Analyst under **Rule 2.4.2 (5)** is erroneous, he shall forward one of the parts of the sample kept by him to (~~referral~~) **another** laboratory **within the state or outside the state**, for analysis and

if the analysis report of ~~such referral~~ that laboratory is to the effect that the article of food is unsafe or sub-standard or mis-branded or containing extraneous matter, however, the third sample should be sent to the referral laboratory, (the provisions of Rule 3.1 shall, so far as may be, apply).

*(such a change is essential as otherwise the FSO loses the right to get the sample analyzed from the referred laboratory. This will also result in a transparent and uniform application.)

This provision should be completely removed as the designated officer is not qualified / competent on analysis.

2.5: Nomination by the company in the prescribed proforma

2.5.1: The company which is having different establishments or branches, units, any establishment or branch shall inform the Licensing authority in **Form IX** either in writing through registered post or in person, the particulars relating to the concerned head or the person in-charge of such establishment, branch, unit, with due certification that the concerned person has been so nominated for the purposes of the section 66 of the Act and regulations made under section 31 of the Act.

2.5.2: The company shall also intimate to the Licensing Authority, as and when any change occurs in the nomination given in **Rule 2.5.1** above forthwith, in **Form IX** either in writing through registered post or in person.

Thanking you,

Yours sincerely,

Dr. K.L. Gaba
Chairman, T& FRAC, AIFPA