

B 4322

L.N. 265 of 2002

**FOOD SAFETY ACT, 2002
(ACT NO. XXIV OF 2002)**

Food Safety (Sampling Procedures) Regulations, 2002

In exercise of the powers conferred by article 10 of the Food Safety Act, the Minister for Health has made the following regulations:-

Citation and commencement.

1. The title of these Regulations is the Food Safety (Sampling Procedures) Regulations, 2002 and shall come into force on the first day of October, 2002.

Scope and applicability.

2. These regulations shall be applicable to all food, food source, novel food and additives as defined in the Act, and to any article as is referred to in article 28 (2) and (4) of the Act. They shall also apply to all substances that are subject to inspection as established under articles 25, 26 (1) and (2), 29 and 30 of the Act.

Interpretation.

3. In these regulations, unless the context otherwise requires:-

“Act” means the Food Safety Act;

“analysis” means a microbiological or chemical analysis or any other analysis carried out for ensuring compliance with any provision of the Act and of any regulations made thereunder;

“authorised officer” has the same meaning as is assigned to it in the Act;

“examination” means a physical or organoleptic examination or other examination carried out for ensuring compliance with any provision of the Act, and of any regulation made thereunder;

“food analyst” means any person so suitably qualified to the satisfaction of the health authority and, where the person is a public officer, any person appointed by the Minister to act as food analyst on behalf of the health authority and includes any other person appointed under regulation 8 of these regulations to act as a food analyst and any person acting as a food analyst on behalf of an official laboratory as established under article 10 of the Act;

“food examiner” means any person who is so suitably qualified, to the satisfaction of the health authority, to carry out food examinations for the purposes of these regulations, and food examination shall be construed to mean the examination of food for the purpose of providing visual or other indicative evidence of compliance with the provisions of the Act;

“lot” means a batch of units of food for sale that have been produced, manufactured or packaged under the same or similar conditions;

“representative sample” means such portion as would allow repeated analysis but in no case shall such sample exceed 10% of an item or lot;

“sampling” means the act of selecting a certain portion, number of containers or product units from a particular lot of the same food or any other substance referred to in regulation 2 of these regulations.

Examination by
authorised officer or
analyst.

4. Any authorised officer who has procured a sample under paragraph (a) of subsection (3) of article 28 of the Act shall :

(a) examine the sample at the premises where it has been procured or at any other place; and

(b) if he considers that the sample should be further analysed or examined, submit it for analysis or examination by the food analyst or food examiner.

Certificate of result

5. A food analyst or food examiner, who has analysed or examined a sample shall, within a reasonable time, give a certificate to the person by whom it was submitted, specifying:-

(a) an official reference that identifies the sample on which the analysis or examination was carried out and the date when the sample was submitted to him;

(b) the result of the analysis or examination;

(c) the title, type of analysis or examination undertaken and a brief description or reference to the official procedure used;

(d) the date and time at which the analysis or examination started and the date and time at which the analysis and examination terminated if such information may have a bearing on the end result of such analysis or examination; and

(e) the name of the food analyst or food examiner responsible for the carrying out of the analysis or examination and where relevant, the name and signature of the person that has carried out the actual analysis or examination; and

(f) any other information as may be requested by the health authority.

Presentation of certificates.

6. In any proceedings under the Act or under any regulations made thereunder, the production by one of the parties –

(a) of a document purporting to be a certificate given by a food analyst or examiner under regulation 5 of these regulations; or

(b) of a document supplied to him by the other party certified as being a true copy of such document,

shall be sufficient evidence of the facts stated therein unless, in a case falling under regulation 5 of these regulations, the other party requires that the food analyst or food examiner that has issued the said certificate to give evidence in the proceedings.

Rejection of samples by analyst or examiners.

7. A food analyst or food examiner may, by giving good reason, reject or refuse to analyse or examine any sample on the basis that the amount of sample is insufficient or that the sample was, or is suspected to have been taken, kept, handled, conveyed or stored in such a condition that this may be expected to jeopardise the end result of the analysis or examination:

Provided that such refusal or rejection shall be made immediately when the sample is received at the official laboratory and prior to acceptance of the sample:

Provided also that the food analyst or food examiner provides the person submitting the sample with a written statement declaring the reasons for this refusal or rejection:

Provided finally that the acceptance of the sample shall not be construed as certifying the proper taking, keeping, handling, conveying or storage of the submitted sample prior to its acceptance by the food analyst or food examiner.

Appointment of analysts.

8. (1) The health authority may appoint any individual or person to act on its behalf as a food analyst or a food examiner for the purpose of these regulations provided that such individual or person has the necessary qualifications to act as a food analyst or food examiner:

Provided that in the case of a public officer the Minister shall make the appointment.

(2) No person may be appointed as a food analyst or food examiner for the purposes of these regulations unless he possesses, and in the case of bodies or institutions, unless within that body or institution there are individuals that possess such qualifications as may be prescribed by regulations issued under the Act.

(3) No person shall be engaged or appointed to act as a food analyst or food examiner if such person has any direct or indirect commercial interest in any food business.

Mode of sampling.

9. An authorised officer may take from any place :

(a) a 'selective sample' which is a sample collected either to demonstrate or to document unsatisfactory conditions observed during inspection, or to provide a unit of food suspected to be unsatisfactory, for laboratory analysis; and a selective sample shall be as representative of the entire consignment, shipment or lot from which it is collected as possible and its size should be sufficient to allow repeat analysis, if necessary;

(b) an 'objective sample' which is a sample collected from a lot of food on a routine basis, for random surveillance, collection of data for a specific purpose, or monitoring to determine whether the food is unsatisfactory for any reason; and an objective sample shall be a sample that need not be representative but is sufficient for its examination, analysis or production as evidence or as otherwise established by the Act.

10. (1) The authorised officer, on taking a sample shall:

(a) verbally inform the seller or the responsible person that he intends to submit the sample for analysis or examination;

(b) whenever requested by the seller or the responsible person, at the moment of the taking of the sample, and unless, in the opinion of the authorised officer, division of the quantity taken is not reasonably practicable or would interfere with analysis or examination, shall divide the sample into three approximately equal parts, one part thereof to be handed over to the seller or responsible person, and the two other parts to be retained by the authorised officer for analysis or examination;

(c) ensure, as far as is practicable, that sampling and handling is carried out in such a manner as not to cross-contaminate the food sample;

(d) as far as reasonably practicable, leave the lot from which the sample was taken intact and ascertain that no unnecessary damage is done to the lot;

(e) seal the sample taken, or any part thereof, as the case may be, in such a manner that it cannot be opened without breaking the seal which is individually numbered and tamperproof.

Provided that samples need not be sealed individually as long as all samples sealed collectively are to be delivered to the same official laboratory or other place for analysis or examination.

(g) ensure that samples are taken, kept, conveyed, stored and handled under conditions that under normal circumstances would be considered as appropriate.

(2) The provisions of sub-regulation (1) above shall not apply to the taking, by an authorised officer, of samples of tap water intended for human consumption from a tap water service provider. Such sampling shall follow the procedures for the taking of tap water samples established by the health authority:

Provided that these samples must be sealed before they are submitted for the purpose of analysis or examination.

11. The authorised officer shall ensure that, each sample or part thereof is clearly marked, tagged or otherwise affixed with a label showing the following details:

- (a) the type of sample;
- (b) an indication from where the sample was taken;
- (c) date and time of sampling;
- (d) the signature of the authorised officer and that of the seller or responsible person:

Provided that if the seller or the responsible person refuses, or is unable, or it is impractical for him to sign the sample as required in paragraph (d) above, the signature thereon of the authorised officer shall be sufficient:

Provided also that, if the seller or the responsible person refuses to be present during the taking of the sample, the authorised officer may take the sample notwithstanding the absence of such seller or responsible person and the signature of the authorised officer shall be considered as sufficient:

Provided further, that where an authorised officer takes a sample from an automatic vending machine, the provisions of paragraph (d) above shall apply as if the reference to the seller were substituted by a reference to the individual or person whose name appears on the machine as being the owner thereof or responsible person there for.

Official documents.

12. Any sample taken shall, on submission to the official laboratory be accompanied by document signed by the authorised officer appropriately describing the sample. On receipt at the official laboratory, the food analyst or food examiner receiving the sample shall also append his signature to the said document.

Submission of samples by third parties.

13. Any person, other than an authorised officer who has purchased any food or any article regulated by the Act, may submit a sample thereof to the analyst through the authorised officer for analysis or other examination if such food is suspected to be unfit for human consumption and such a sample shall be accompanied by a document signed by the person submitting the sample appropriately describing the sample. On receipt at the official laboratory, the food analyst or examiner receiving the sample shall also append his signature to the said document.

