

**OPERATIONALIZATION OF FOOD SAFETY AND STANDARDS
ACT, 2006 BY THE STATE/UT GOVERNMENTS**

**Action points for State / UT for effective, efficient & uniform implementation of
the Food Safety & Standards Act, 2006 in the Country.**

The subject of the Food Safety and Standards Act, 2006 and PFA Act, 1954 and Central Food Laboratories which comes under the Second Schedule (Rule 3) of the Distribution of Subjects amongst the Departments/ Ministries wherein it comes under the M/o Health & Family Welfare, Department of Health & Family Welfare.

Based on above, these subjects are to be dealt with by the Department of Health & Family Welfare, in the State Government Structure. The PFA Act is also being implemented by the Health & Family Welfare Department in all the States/ UTs, so the subject Food Safety and Standards Act, 2006 would be dealt by the Health & Family Welfare Department in the State/ UTs Governments through their enforcement machinery.

The responsibility for implementation of the FSS Act rests with the Food Authority and State Food Authorities in the country. The Central Government in the Ministry of Health & Family Welfare has established the Food Authority with its head quarter at FDA Bhawan, New Delhi for effective, efficient and uniform implementation of the Act, the State/UT Governments may take following action for smooth functioning of Food Safety and Standards Act, 2006-

**1. Establishment of the State/UT Food Authority and Appointment of the
Commissioner for Food Safety.**

A. Establishment of State Food Authority- The State/UT Food Authority shall be headed by the Commissioner for Food Safety in the State/UT. The State /UT Government may consider to set up a separate Division / Cell at the Health & Family Welfare Department in the State for overseeing and monitoring, implementation/ administration as well as framing the Rules under the Food Safety and Standards Act 2006, through State/UT Food Authority.

The State/UT Government may determine the number, nature and categories of other officers and employees for this Division. The existing Staff working for administration and implementation of the Prevention of Food Adulteration Act, 1954 may be transferred to this Division/ Cell.

B. Appointment of Commissioner of Food Safety

The State/UT Government shall have to appointment the Commissioner of Food Safety for the State/UT for efficient implementation of the Food Safety and Standards Act,2006 and other requirement laid down under this Act and the Rules and regulations made thereof. A draft for appointment of the Commissioner of Food Safety for State is at **Annex-I**.

The State Government shall provide and define the following:-

- (a) **Infrastructure**- The State/UT Food Authority needs to be provided with appropriate infrastructure (manpower, building / space, office equipments, etc). for efficient enforcement of the Act. The State/UT Government may determine the number, nature and categories of the other officers and employees required to for the State Food Authority in discharging of its functions, keeping in view the day to day implementation of the Act, the legal issues, food science based consultation and risk assessment, education of masses for awareness.
- (b) **Qualification of Commissioner of Food Safety**– The Commissioner of Food Safety shall be a person of food background or from amongst the persons from administration who have been associated with the subject of implementation of Food laws.
- (c) **Rank**- The position of the Commissioner of Food Safety shall not be below the rank of the Secretary of the State. He shall not hold any other office.
- (d) **Place**- The State/UT Food Authority may be situated where the State/UT Government may consider the appropriate place preferably at State Head Quarter.
- (e) **Delegation of power**- The Commissioner of Food Safety may, by Order, delegate, subject to such conditions and restrictions as may be specified in the Order, such of his powers and functions under this Act(except the power to appoint Designated Officer, Food Safety Officer and Food Analyst) as he may deem necessary or expedient to any Officer subordinate to him.

2. Appointment of Designated officer

The Commissioner of Food Safety for the State/UT shall by order appoint the Designated Officers for each District in the State/UT. (The draft

for order of appointment is at **Annex-II**). The Commissioner will have to provide / define the following after appointment of Designated officer:-

Infrastructure – The Commissioner of Food Safety for the State in consultation with the State Government may determine the number, nature and categories of the other officers, and employees required for the office of the Designated Officer keeping in view the functions and etc.)

inspection work, prospective, hearing of officers, consumers redresses,

- (a) responsibilities assigned to him under this Act. (Licensing, monitoring of inspection work, prospective, hearing of officers, consumers redresses, etc.)
- (b) Qualification of Designated Officer- The Designated Officer shall be a person having food science background and has held/ been associated with the implementation or administration of food laws. The Food Safety Officer/ Food Inspector having experience of as such not less than 8 years may be considered for the post of Designated Officer.

Provided that in case the Commissioner of Food Safety is of the view that Designated officer is overburdened with the work relating to the implementation of the FSSA, 2006, he may appoint Asstt. Designated Officer who shall be sub-ordinate and supplement to the Designated Officers.

Provided further that Asstt. D.O. may be appointed amongst the FSO, having good track record and have completed at-least 5 years of regular service as FSO/FI as the case may be.

- (c) Rank – The rank of the Designated Officer shall not be below the rank of the Sub- Divisional officer in the State. He shall be in charge of Food Safety Administration in such area as may be specified by the regulation.
- (d) Place- The Office of Designated Officer may be situated where the commissioner or state Government may think fit preferably at District Head Quarter.

3. Appointment of Food Safety Officer(FSO)

The Commissioner of Food Safety of the State shall by notification, appoint such person as he thinks fit as Food Safety Officers having qualifications prescribed by the Central Government. The draft of notification for appointment of Food Safety Officers is at **Annex-III**. The Commissioner for Food Safety for the State shall provide/ define and determine manpower/ infrastructure for FSO:-

- (a) Infrastructure – The Commissioner of Food Safety with the approval of State Government may determine number of assisting and categories of other staff and employees required for smooth functioning of the office of Food Safety Officer keeping in view the duties assigned to him by the Act.
- (b) Qualification of Food Safety Officer- The qualification of Food Safety Officer shall be as prescribed by Central Government.
- (c) Rank – The Commissioner of Food Safety in consultation of the State Government keeping in view of responsibilities, duties & power may consider the appropriate rank as thinks fit, preferably a Group 'B' Gazette rank. He will be an official subordinate to the Designed Officer.
- (d) No. of Food Safety Officers – The Commissioner of Food Safety in consultation with State Govt. may determine number of Food Safety Officers based on the size, population, Business Operation Units, etc in the State for smooth, effective & efficient implementation of the Act in consumer interest.

4. Appointment of Food Analysts

The Commissioner Food Safety for the State shall, by Notification, appoint Food Analysts having the qualification prescribed by the Central Government for such local areas as may be assigned to them by the Commissioner of Food Safety. (The draft for Notification of appointment is at **Annex-IV**)

- (a) Infrastructure – The Commissioner of Food Safety with the approval of State Government may determine the number, nature and categories of the other officers and employees required in the laboratory of the Food Analysts in discharging its functions. Further different Food Analysts may be appointed for different articles of food.
- (b) Qualification of Food Analysts - The qualification of Food Analysts shall be as prescribed by Central Government provided no person, who has any financial interest in the manufacture or sale of any article of food shall be appointed to be a Food Analysts.
- (c) Rank – The Commissioner of Food Safety in consultation of the State Government keeping in view of responsibilities, duties & power may consider the appropriate rank as thinks fit, preferably a Group 'A' Gazetted Officer.

- (d) Place- The Office of Food Analysts may be situated in the Food Laboratory of the State notified by the Food Authority.

5. Adjudicating officer

The State Government shall, by Notification, appoint Adjudicating officer for adjudication in the manner as prescribed by Central Government. (The draft for Notification of appointment is at **Annex- V**).

- (a) Infrastructure – The State Government may determine the number, nature and categories of the other officers and employees required in the office of Adjudicating Officer.
- (b) Qualification and Rank of Adjudicating Officer - The State Government keeping in view the responsibilities, duties & power of Adjudicating officer as prescribed under FSS Act, 2006 may appoint an officer not below the rank of Additional District Magistrate of the district where the alleged offence is committed.
- (c) Place- The Office of Adjudicating officer may be situated where the commissioner or state Government may think fit.

6. Food Safety Appellate Tribunal

The State Government shall, by Notification, establish one or more Tribunal known as Food Safety Appellate Tribunal to hear appeals from the decision of the Adjudicating Officer. (The draft for Notification of appointment is at **Annex- VI**). The State Government shall consider to provide :-

- (a) Infrastructure – The State Government may determine the number, nature and categories of the other officers and employees required in the office of Food Safety Appellate Tribunal.
- (b) Qualification and Rank of Presiding Officer - The State Government keeping in view the responsibilities, duties & power of Food Safety Appellate Tribunal as prescribed under FSS Act, 2006 may appoint one person as presiding officer to the Tribunal. No person shall be qualified for the appointment as presiding officer to the Tribunal unless he is or has been a District Judge.
- (c) Terms & Condition – The qualifications, appointment, term of office, salary and allowances, resignation and removal of the Presiding Officer

shall be such as may be prescribed by the Central Government.

- (d) Place- The Food Safety Appellate Tribunal may be situated where the commissioner or state Government may think fit, preferably at State Head Quarter.

7. Special Courts-

The State Government may if consider necessary for the purposes of the trial of offences relating to grievous injury or death of the consumer for which punishment of imprisonment for more than three years has been prescribed under this Act, constitute by notification in the Official Gazette under Section 74 of the Food Safety and Standards Act, 2006 as many Special Courts with the concurrence of Chief Justice of the High Court as may be necessary for such area/ areas and for exercising such jurisdiction as may be specified in the notification. (The Draft for Notification of appointment is at **Annex-VII**). The State Government may also provide:-

- (a.) Infrastructure – The State Government may determine the number, nature and categories of other Officers and employees required in the Office of Special Courts.
- (b.) Place- The food safety special Court may be situated where the Commissioner or the State Government may think fit preferably at District Head quarters.

A Special Court may, on its own motion, or on an application made by the Public Prosecutor and if it considers it expedient or desirable so to do, sit for any of its proceedings at any place other than its ordinary place of sitting.

8. Appointment of Public Prosecutor Additional Public Prosecutor and Special Public Prosecutor -For every Special Court the State Government shall appoint a Public Prosecutor and Additional Public Prosecutor & Special Public Prosecutor. There shall be, for a Special Court.

- (a.) a Public Prosecutor.
- (b.) one or more persons to be the Additional Public Prosecutors.
- (c.) may also appoint for any case or class or group of cases for special public prosecutor.

(The Draft for Notification of appointment is at **Annex-VIII, IX, X**)

Qualification and Rank- The State Government keeping in view the responsibilities, duties of the Public Prosecutor, Additional Public Prosecutor, Special Public Prosecutor may appoint such persons who have been in practice as an advocate for not less than 7 years or has held any post for a period of not less than 7 years under the Union or a State requiring special knowledge of Law.

9. Establishment of State Advisory Committee

To ensure close cooperation between the Food Authority & State Food Authority/District Designated Officer, enforcement agencies, organization operating in the field of food safety and to advise the State Food Authority / Commissioner of Food Safety/ District Designated Officer in the matter for onward discussion/ consideration of Food Authority. The State Advisory Committee will perform the following functions:-

- (i) The performance and drawing up of proposals of the State Food Authority
- (ii) Identify prioritization of work
- (iii) Identifying the potential risk in District/ State
- (iv) Pooling of knowledge
- (v) Such other function as may be specified by regulation

It may meet frequently but not less than twice / thrice a year.

Members- The member of the Committee may consist of the representatives from food industries, agriculture, consumers, relevant research bodies and food Laboratories, representatives from concerned State Government Departments in Agriculture, Animal Husbandry & Dairying, Biotechnology, Commerce & Industry, Consumer Affairs, Environment, Food Processing Industries, Food and Public Distribution, Small Scale Industries, Panchayat Raj, recognized farmers organization.

The Committee will be Chaired by the Commissioner Food Safety/ or his nominee/ Designated Officer as the case may be.

10. Establishment of Risk Management Unit

It is the responsibility of the State Government or Commissioner of Food Safety, while implementing the provisions of this Act to ensure –

- (a) appropriate level of protection of human life, health and consumer interests.
- (b) fair trade practices in food trade.
- (c) proper assessment of Risk management unit in the State

(d) Protection of consumer from deception by trade.

Keeping in view of the above and to safeguard consumer health risk due to consumption of food, there is an utmost necessity to establish Risk Management / Rapid Alert Unit in the state at the state HQ / Food Commissioner Office. The unit may have its sub- unit at Distt. level under the designated officer.

The unit so established shall carry out the following functions-

- (a) identification of emerging risks from food and possibility of harmful effects on health from that risk
- (b) to investigate the cause of risk
- (c) to assess the risk management by selecting appropriate prevention and control options
- (d) to inform IEC unit to propagate the risk, consumer awareness, rapid alert system
- (e) to alert for recall of food responsible for the hazard
- (f) to coordinate with medical, police and other related authorities involved in investigation of reported food poisoning cases.

The State Govt. may determine the number, nature and categories of officers and employees for proper working and to effectively & efficiently completing its functions.

11. Establishment of Information Education and Communication (IEC) Unit.

The viable IEC strategy addressing the food safety concerns of heterogeneous group of stakeholders who ranges from illiterate to highly literate, with high expectations, from the unorganized sector of production and manufacturers to the state- of- art production facilities and from departmental stores to small out- lets with inadequate storage facilities as well as from open market and street food vendors to sophisticated market out-lets and exclusive restaurants as well as consumer education needs to be develop. The IEC strategy needs to be developed in following manner for better awareness of all stakeholders including consumer:-

- (i) Identification of multimedia IEC strategy networking other existing national programmers, particularly those targeted at women, tribal population and urban poor.
- (ii) To address the multiple concerns identified during course of implementation of the Act.
- (iii) To propagate the risk of certain food causing health hazards as well as food poisoning.

To avoid any delay in launching prosecution and to do justice with the work relating prosecution as well as proper implementation of the Act, it is necessary and essential that the State Govt. /Commissioner of Food Safety may establish a Legal Cell to assist Designated Officer and Adjudicating Officer in the matter relating to legal interpretation and launching of prosecution and to follow up the case in the different courts. The FSO need not be involved in prosecution of cases as he has been assigned responsibility to inspect food and takes the samples for analysis. His involvement would hamper his duties assigned to him by/ under the Act.

The Commissioner of Food Safety in consultation and with approval of the State Govt. may determine the number, nature and categories of other officers & employees required for the Legal Cell in discharging its functions.

- (iv) To identify the registered Medical Practitioners, Medical Institutes/ Hospitals, nursing homes, clinic to investigate the cases of food poisoning and notify them to the Commissioner of Food Safety or the Designated Officer in the area. This needs wide publicity on the channels/ multimedia or print media.
- (v) To address health concerns relating to food by promoting generic marketing of food products.
- (vi) To address the concern of food safety vis-à-vis consumer and trade involvement.
- (vii) To propagate the food being recalled from the market shelves.
- (viii) to provide help to all stakeholders in development of consumer friendly as well as environment friendly atmosphere.

In view of above and for effective implementation of the FSS Act, 2006, there is a need that the State Government /Commissioner of Food Safety may establish an IEC unit for addressing the food safety concerns.

The unit so established shall carry out, in addition to above, the following functions-

- (a) Develop and implement IEC material for propagating the potential health risk arising from consumption of hazardous foods.
- (b) Creating consumer awareness regarding consumption of healthy foods.
- (c) Develop rapid alert system for consumers.
- (d) Educating the street food vendors on food hygiene and sanitation.

12. Establishment of Legal Cell

Any violation of the provisions of the FSS Act attracts the legal and penal provisions provided in the Act. Such cases are to be tried at the level of Adjudicating Officer where the penalty is less or no punishment is specified, tribunal, trial Courts, Special Courts, High Courts and Apex Court where imprisonment is specified.

The Designated Officer is responsible for the scrutiny of the report of the Food Analyst and decides whether the contravention if any is punishable with imprisonment or fine only. In case of contravention being punishable with imprisonment he shall send his recommendations to the Commissioner of Food Safety for sanctioning the prosecution. The Food Safety Commissioner shall decide as per the gravity of offence whether the matter be referred to a Court of ordinary jurisdiction of a Special Court and communicate the same to the designated Officer who will then launch the prosecution. The time limit for launching prosecution has been fixed under the Act. The lapse in time in launching prosecution would amount to loosing the case and improper implementation of the Act.