NAVIGATING FSSAI INSPECTIONS, SEARCH, SEIZURE AND SCRUTINY: A COMPLIANCE PLAYBOOK FOR FOOD BUSINESSES

Food Safety Officers (**FSO**) across the country have sharply stepped up on-ground enforcement over the past few months. State food safety authorities have widened their inspection drives well beyond routine checks — against manufacturers, packers, dark stores, dairy units, restaurants and even large food brands. Recent action includes seizures, improvement notices, licence suspensions for hygiene lapses, and coordinated inspections / search and seizure operations across various outlets and premises of Food Business Operators (**FBO**). Many of these actions have however been successfully challenged before courts, with interim stays granted.

This flyer summarises the key legal powers, safeguards and practical Dos and Don'ts relating to inspections, searches and seizures, and the steps that may be taken immediately thereafter.

WHAT HAS CHANGED IN 2026?

The Food Safety and Standards (Licensing and Registration of Food Businesses) Amendment Regulations, 2026, dated 10.03.2026 (with revised turnover thresholds applying from 01.04.2026), have altered the inspection landscape in ways that FBOs should factor into their response strategy:

- Licenses remain perpetually valid unless suspended, cancelled or surrendered, subject to payment of the annual regulatory fee and continued compliance. With the periodic renewal checkpoint removed, suspension and cancellation become the principal regulatory levers - which raises the stakes on every improvement notice.
- Inspection frequency is now determined by inputs including previous enforcement actions, dynamic risk-based mechanism, type of food business, past compliance history, third-party audit reports and the risk category of the food handled. How an FBO handles an inspection could therefore affect how often it is inspected in future.
- Where directed by the Commissioner of Food Safety (**Commissioner**) or the Food Authority, an FBO must arrange a food safety audit through a third-party auditing agency or FSSAI recognised auditor at its own cost and must give the auditor access to the premises and all required records.

WHEN CAN A FOOD SAFETY OFFICER INSPECT A PREMISES?

Under Section 38(2) of the Food Safety and Standards Act, 2006 (**FSS Act**), an FSO may enter and inspect any place where articles of food are manufactured, stored or exhibited/exposed for sale, or where food is stored for use in manufacturing other food products and where adulterants are manufactured or kept, and take samples of such food or adulterant for analysis. Separately, Rule 2.1.3(4)(iii)(b) and (e) of the Food Safety and Standards Rules, 2011 (**FSS Rules**) casts duties on the FSO to satisfy himself that licence conditions are being complied with by FBOs in his area, and to investigate complaints made to him in writing.

Under Rule 2.1.3(4)(iii)(j), an FSO can also stop and inspect any vehicle suspected to contain unsafe food or food contravening the FSS Act or the FSS Rules, which is intended for sale or delivery for human consumption.

WHEN CAN AN FSO CONDUCT SEARCH AND SEIZURE?

Under Section 41(1), where there is a reasonable doubt about an article of food or an adulterant being involved in the commission of an offence relating to food, the FSO may search any place and seize any article of food or adulterant. The FSO must thereafter inform the Designated Officer (**DO**) in writing of the action taken.

WHAT CAN BE SEIZED?

- Food articles that appear to contravene the FSS Act or the applicable regulations (Section 38(1)(b));
- Food or an adulterant if there is reasonable doubt of being involved in commission of an offence (Section 41(1));
- Adulterant found in the possession of a manufacturer, distributor or dealer, or in the premises occupied by them, for which the person is unable to satisfactorily account to the satisfaction of the FSO. A sample of such adulterant must be submitted to the Food Analyst for analysis (Section 38(6)).

  Note, the burden of proving that such seized adulterant was not for the purposes of adulteration, lies on the person from whose possession it was seized.
- Books of account and other documents which are useful for or relevant to an investigation or proceeding may also be seized, only with the prior approval of the authority to which the FSO is subordinate to, as per Section 38(6). These are to be returned within a period not exceeding 30 days from the date of seizure, after copies or extracts have been taken.

The mechanics here are important. Under Rules 2.2.1 and 2.2.2, the person from whom such books of account and documents have been seized must furnish the copies or extracts, duly authenticated by the FBO, initialled on each page, and accompanied by an affidavit in Form I certifying their authenticity. The extracts are taken by the FSO or a person authorised by him, and that person must not cause any dislocation, mutilation, tampering or damage to the records, or make any marking on them. Under the proviso to Section 38(8), if the FBO refuses to certify and a prosecution has been instituted, the records will be returned only after copies certified by the court have been taken.

WHAT DOCUMENTATION IS TO BE PROVIDED UPON SEIZURE?

For every article of food seized under Section 38(1)(b), the FSO is required to issue a receipt in Form II to such person from whom the article of food was seized, as prescribed under Rule 2.3.1. A copy should be obtained immediately after the seizure.

WHAT IS THE PROCEDURE WHEN SEIZED ARTICLES ARE KEPT AT THE PREMISES OF THE FBO?

After taking a sample, the FSO may keep the article of food in the safe custody of the FBO. Where this course is adopted, the FSO must affix a seal on the article of food and make an order to the FBO in Form III to which the FBO shall comply (Rule 2.3.2(1)). The FSO may also require the FBO to execute a surety bond in Form IV for an amount equal to the value of the article (Rule 2.3.2(2), read with the proviso to Section 38(1)). Where a bond is provided, subsequent failure to produce the article intact when called upon results in payment of the amount specified in the bond to the Government.

Note, in case of perishable food seized and where the FSO is satisfied that it has deteriorated to the extent that it is unfit for human consumption, destruction may be undertaken only after written notice is given to the FBO and in accordance with the FSSAI’s directions on the disposal of perishable, seized and rejected food items.

- ***Sealing of premises:*** The FSS Act itself contains no express power to seal premises. The power is traceable to Rule 2.1.3(4)(i), and is narrow. It arises only where the FSO is of the opinion, or has reasons to be recorded in writing, that in the given situation it is not possible to comply with Section 38(1)(c) or the proviso to Section 38(1), for reasons such as the non-availability of the FBO. Even then, the article seized must be an adulterant or food that is unsafe, sub-standard, misbranded or containing extraneous matter, a sample must first be taken for analysis and the sealing is for the purpose of investigation, not an open-ended closure.

WHAT ARE THE PROCEDURAL SAFEGUARDS PROVIDED DURING INSPECTION, SEARCH AND SEIZURE?

- **Entry and Inspection**

  The FSO is required to follow, as far as may be, the provisions of the Code of Criminal Procedure, 1973 ('CrPC') (Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS')) relating to the search or inspection of a place by a police officer executing a search warrant (Section 38(5)). The BNSS provisions relating to search, seizure, summons, investigation and prosecution would apply, as far as may be, to all action taken by the FSO, except as expressly provided (Section 41(2)).

  For certain actions such as sampling, entry and inspection, destruction of seized perishable food, and seizure of adulterants, books or documents, the FSO is required to call one or more persons as witness and take their signatures. (Section 38(7)).

  Two points are worth noting. First, for the taking of samples, Rule 2.4.1 sets a higher standard: the FSO must ensure the presence of one or more witnesses at the time of lifting the sample and obtain their signatures on all forms and documents prepared. Second, Section 38(7) does not, on its terms, extend to a seizure under Section 38(1)(b). In such a case, the witness requirement would come in under Section 41(2) through the corresponding BNSS provisions.

- **Sampling**

  Samples of food and adulterants may also be taken for analysis. Taking samples requires compliance with mandatory procedures under Section 47 read with Rule 2.4.1 including *inter alia* (i) providing notice of intention to have the sample analysed in Form V A served then and there, and to the manufacturer, distributor or supplier where details are disclosed- a point of practical importance for brand owners (ii) drawing a sample from a container in the original condition if available, where sample is drawn from an open container (iii) FSO to pay the cost of sample (iv) collect in clean dry bottles or jars or in suitable containers to prevent leakage, evaporation or avoid moisture (v) label the bottles/ jars and address the parcel properly, as prescribed (vi) division of sample into 4 parts with signature or thumb impression of the person from whom sample is taken (vii) pack and seal the sample in the manner prescribed.

  One part is sent to the Food Analyst, two parts are retained by the DO in safe custody and the remaining part may be sent to an accredited laboratory if requested by the FBO. For further details on the steps that may be taken by the FSO- our previous update may be referred here.

  A distinction to be noted: samples drawn for surveillance, survey or research purposes shall not be used for prosecution, and the detailed sampling procedure in Rule 2.4.1 does not apply for surveillance samples (Rule 2.1.3(4)(iii)(d)) and Rule 2.4.1 (17). FBOs should establish and record, at the time of sampling, whether the sample is being drawn for enforcement or for surveillance.

  If the seized food or adulterant is not destroyed, it is to be produced before the DO as soon as possible but not later than seven days after the receipt of the report of the Food Analyst (issued pursuant to testing of the sample collected). Under the proviso to Section 47(4), the person from whom the article was seized may apply to the DO, who shall then direct the FSO in writing to produce the article within the time specified in the order.

- **Obligations and liability of FSO**

  The FSO is required to maintain records of inspections made and actions taken including samples obtained and stocks seized, and submit copies to the DO (Rule 2.1.3(4)(iii)(h)); the DO is under a corresponding duty under Section 36(3)(f). Notably, the FSO is also liable under Section 39 if the FSO vexatiously and without reasonable ground seizes any article of food or adulterant, or commits any other act to the injury of any person without having reason to believe that it was necessary for the execution of duty. The penalty in such aforementioned case may extend to ₹1 lakh. FBOs should equally note the corresponding proviso: where a complaint against an FSO is proved to be false, the complainant is liable to a fine of not less than ₹50,000 and up to ₹1 lakh.

WHAT ARE THE FBO'S RIGHTS ONCE A SAMPLE IS DRAWN?

The fourth part of the sample: An FBO wishing to have the fourth part analysed must request the FSO in writing to send it to a NABL-accredited or FSSAI-notified laboratory, under intimation to the DO (Rule 2.4.5). The cost is borne by the FBO. If no request is made, the fourth part is simply deposited with the DO. The decision matters because of the proviso to Section 47(1)(c) which states that if the Food Analyst's report and the accredited laboratory's report are at variance, the DO sends a retained part to the referral laboratory, whose decision is final.

Appeal against the Food Analyst's report**:** Upon receipt of the Food Analyst Report, an appeal lies to the DO under Section 46(4) read with Rule 2.4.6, in Form VIII, within thirty days of receipt. The DO must dispose of the appeal after giving the FBO an opportunity of being heard and may send one part of the sample to the referral laboratory within thirty days, whose report is final.

WHAT PROCEDURES APPLY FOR PROSECUTION, SUSPENSION OR CLOSURE?

- ***Prosecution:*** Prosecution does not follow on the FSO's say-so. The Food Analyst's report is sent to the DO within fourteen days; the DO scrutinises the report and decides whether the contravention is punishable with fine only or with imprisonment; and in the latter case must send recommendations within fourteen days to the Commissioner for sanctioning prosecution (Section 42). Section 77 prescribes the time limit for taking cognizance.

- ***Improvement notices and licence action****:* An improvement notice under Section 32 must state the grounds, specify the failure and the measures required, and allow a period of not less than fourteen days. Suspension may follow a failure to comply; cancellation requires a show cause opportunity. The proviso does, however, permit the DO to suspend a licence forthwith in the interest of public health for reasons to be recorded in writing. An appeal against an improvement notice, or against cancellation, suspension or revocation of a licence lies to the Commissioner within fifteen days from service, or within the period specified in the improvement notice, whichever expires earlier.

- ***Closure of a food business****:* Apart from the narrow sealing power discussed above, a food business may be stopped through an emergency prohibition order under Section 34 — where the DO must serve notice to the FBO at least one day before applying to the Commissioner in this regard. Such order shall be passed by the Commissioner after satisfaction regarding health risk, which shall then cease to have effect after DO issues a certificate regarding satisfaction of sufficient measures taken, as prescribed.

- ***Where challenges lie:*** Penalties are adjudicated by an officer not below the rank of Additional District Magistrate (Section 68); an appeal lies to the Food Safety Appellate Tribunal within thirty days, with a further thirty days condonable, and thereafter to the High Court within sixty days (with a further condonable period of 60 days). Action that is administrative in character, i.e., sealing, suspension, emergency prohibition may ordinarily be challenged in writ proceedings. Civil courts have no jurisdiction in matters where the Adjudicating Officer or Tribunal is empowered under the Act. (Section 72).

- ***Recall****:* Where a seized or implicated product has already been placed on the market, obligations under Section 28 and the food recall regulations may be triggered independently of the enforcement action and should be assessed immediately.

WHAT ARE THE PRACTICAL SAFEGUARDS AND POINTS OF CONSIDERATION FOR AN FBO?

It is essential to ensure that there is no obstruction of a lawful inspection since obstruction is itself an offence (resisting, obstructing, impersonating, threatening or assaulting an FSO is punishable with imprisonment up to three months and fine up to ₹1 lakh (Section 62)). At the same time, FBOs must respond in an organised manner, follow procedural safeguards, preserve factual records and exercise statutorily provided rights. Tabulated below is a suggested approach to handle inspections:

BEFORE AN INSPECTION	DURING THE INSPECTION	POST INSPECTION
▪ Identify a site-level response team/lead. ▪ Maintain ready access to documentation (licences, product specifications, batch / lot records, test reports, supplier documents, labels etc). ▪ Train the relevant team on the inspection protocols, conduct mock audits. ▪ Ensure CCTV, access logs and document-retention controls are functional and capable of preservation. ▪ Ensure that the Company's nomination in Form IX under Rule 2.5 is accurate and updated, and that any change is intimated to the licensing authority forthwith. This is relevant to determine responsibility under Section 66. Records that support the due diligence defence should be preserved accordingly. ▪ Assess your risk profile: Inspection frequency is now being determined through a dynamic risk-based mechanism, type of food business, past compliance history, third-party audit results and risk category of food handled. Therefore, maintaining an accurate risk profile becomes a planning tool, not a formality. ▪ Be prepared for a potential direction to arrange a third-party food safety audit at your own cost, including auditor access to premises and records.	▪ Verify identity and record names, designations, arrival time of the FSO and premises covered. ▪ Cooperate with lawful directions; do not obstruct, conceal, alter or remove material. ▪ Maintain a contemporaneous record/ note of documents reviewed, samples drawn and articles / records taken. Providing information or a document known to be false or misleading is itself punishable under Section 61. ▪ Obtain copies of notices, seizure receipts, orders etc. – as statutorily required to be provided; ensure no documents are signed without first examining them. ▪ For sampling, ensure procedural compliances. In particular, the presence of one or more witnesses, service of the Form V A notice then and there, the four-part division, marking, sealing and signature, and payment of the cost of the sample. It is also essential to establish whether the sample is being drawn for enforcement or for surveillance and to potentially consider sending the fourth part of the sample for additional testing. ▪ Where the product was sourced from a manufacturer, distributor or supplier, ensure disclosure so that notice is also issued to that person	▪ Do not retain, remove or tamper with any food, vehicle, equipment, package or labelling or advertising material or other thing that has been seized under this Act. Doing so without the permission of the FSO is an offence under Section 60, punishable with imprisonment up to six months and fine up to ₹2 lakh. ▪ Prepare an incident note recording who attended, what was inspected, what was sampled / seized and what records were provided to determine the way forward internally. ▪ Determine whether to request that the fourth part of the sample be sent for testing or the option to independently send a sample for testing. Weigh this against the consequence that a variance between the two reports takes the matter to the referral laboratory, whose report is final. ▪ Escalate promptly where the action may affect product release, production, imports, distribution, or potential prosecution. ▪ Assess whether recall obligations under Section 28 and the food recall regulations are triggered. ▪ Review any improvement notice, suspension or cancellation of license for potential challenge. Note the fifteen-day window for an appeal to the Commissioner. ▪ Track statutory timelines, for e.g. receipt of food analyst report, appeal against food analyst report in Form VIII, time limit for prosecution etc.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at *insights@elp-in.com* or write to our authors:

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